



DEPARTMENT OF THE ARMY

NEW ORLEANS DISTRICT, CORPS OF ENGINEERS

P. O. BOX 60267

NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO
ATTENTION OF:

Operations Division
Eastern Evaluation Section

MAY 27 2010

SUBJECT: (Emergency Permit) NOD-20
BASE FILE: MVN 2010-1066-ETT

Ms. Kristi Cantu
State of Louisiana
Coastal Protection and Restoration Authority
Post Office Box 44027
Baton Rouge, Louisiana 70804-4027

Dear Ms. Cantu:

This responds to your letter dated May 11, 2010, requesting emergency authorization to dredge and fill to construct a berm for protection from the Deepwater Horizon Oil Spill along the seaward shoreline of the Chandeleur Islands/Breton National Wildlife Refuge westward to Baptiste Collette Bayou and along the seaward shoreline of Timbalier Island eastward to Sandy Point. Material to construct the berm would be dredged from Ship Shoal, South Pelto, to the Mississippi River Offshore Disposal Site, Pass a Loutre, St. Bernard Shoal and Hewes Point.

We have reviewed your letter and are authorizing a portion of the work under (Emergency Permit) NOD-20, as long as all conditions included with this permit are met. This authorization allows the construction of the berms only in reaches E3, E4, W8, W9, W10 and W11, as shown on the enclosed drawings. No work may be performed on the remaining reaches without prior approval from the US Army Corps of Engineers (CEMVN). This authorization does not eliminate the need to obtain a Louisiana Coastal Use Permit or any other federal, state, or local approval that may be required by law. All proposed activities within the Breton National Wildlife Refuge (BNWR) will require a Special Use Permit, Compatibility Determination and Wilderness Act effect determination from the Refuge Manager. For more information, please contact Mr. Kenneth Litzenberger, BNWR Manager at [REDACTED]. Additionally, prior to dredging from the offshore borrow sites, the permittee shall obtain the required approval from the Minerals Management Service (MMS). For further information on the MMS requirements, please contact Mr. Jack Irion, Office of Leasing and Environment at ([REDACTED])

The following two (2) provisions are hereby made a part of this emergency authorization:

1. The authorized activities shall be done in accordance with the plans specific to the authorized reaches E3, E4, W8, W9, W10 and W11 and performed in a manner that will avoid adverse impacts to the environment and aquatic resources, to the maximum extent practicable.
2. This approval is subject to the terms and conditions of (Emergency Permit) NOD-20, dated September 13, 2007, a copy of which is enclosed with this authorization. Please note that a formal permit application and drawings must be submitted within the time limits stated in the attached emergency permit (30 days from the date of this authorization). Your project is located within the Louisiana Coastal Zone, as such your formal permit application submittal must be sent through the Louisiana Department of Natural Resources. Should you require information on submitting your application through their office, please contact Mr. Karl Morgan at [REDACTED].

The following Special Conditions are hereby made a requirement of this emergency authorization:

1. This emergency permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and it does not authorize any injury to property or invasion of rights or any infringement of federal, state, or local laws or regulations nor does it obviate the requirements to obtain state or local assent required by law for the activity authorized herein.
2. In issuing this permit, the Federal Government does not assume any liability for damages to persons, property or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit unless such damages are caused by the Federal Government in the exercise of their responsibilities under the Oil Pollution Act and the Deepwater Horizon oil spill.
3. All activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Clean Water Act (PL 92-500: 86 Stat 816), and applicable state and local laws.

4. Any individual authorization granted under this permit may be modified, suspended, or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest.
5. In issuing authorizations under this permit, the federal government will rely upon information and data supplied by the permittee. If, subsequent to the issuance of an authorization, such information and data prove to be false, incomplete, or inaccurate, the authorization may be modified, suspended, or revoked, in whole or in part.
6. Any modification, suspension, or revocation of this permit or any individual authorization granted under this permit will not be the basis for any claim for damages against the United States
7. Activities proposed for authorization under the NOD-20 must comply with all other necessary federal, state, and/or local permits, licenses, approvals, laws and regulations.
8. The permittee shall permit the District Commander or his authorized representative(s) or designee(s) to make periodic inspections of the project site(s) and disposal site(s) if different from the project site(s) at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein. This may include a government inspector on site to report construction activities and progress.
9. There shall be no unreasonable interference with navigation (to include maritime activities associated with the oil spill cleanup) by the existence or use of the activity authorized herein. The permittee will, at their expense, install and maintain any safety lights, signals, and signs prescribed by the United States Coast Guard, through regulations or otherwise, on authorized facilities or on equipment used in performing work under the authorization.
10. The Pass a Loutre borrow site shall be limited to the Hopper Disposal Area located in the western most segment of the Pass in close proximity to the Mississippi River. Excavation is limited to a depth of -40 NGVD. All other segments will require approval from US Army Corps of Engineers, New Orleans District (CEMVN), Regulatory Branch and other appropriate state and federal agencies. A more detailed description of this borrow site is shown on the attached drawing.
11. The permittee shall coordinate the use of borrow sites with the Minerals

Management Service (MMS), US Geological Service (USGS), MVN Regulatory Branch, the US Environmental Protection Agency (EPA), US Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS) and other concerned state and federal resource agencies.

12. If the proposed project involves the use of floating construction equipment (barge mounted cranes, barge mounted pile driving equipment, floating dredge equipment, dredge discharge pipelines, etc.), you are advised to notify the Eighth Coast Guard District so that a Notice to Mariners, if required, may be prepared. Notification with a copy of your permit approval and drawings should be mailed to the US Coast Guard, Sector New Orleans Command Center, 201 Hammond Highway, Metairie, Louisiana 70005 before you plan to start work. Telephone inquiries can be directed to (504) 846-5923.

13. The permittee is responsible for the identification and avoidance of all submerged structures, objects and pipelines.

14. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

15. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species which normally migrate through the area.

16. The permittee shall avoid impacting piping plover intertidal foraging habitats. When practicable, the permittee shall allow for a 100-foot buffer from the toe of the berm to the mean low, low water, as defined by the Breton National Wildlife Refuge Manager.

17. The permittee shall keep all construction equipment out of the area from the mean low, low water line to the island dune/vegetation line, as defined by the Breton National Wildlife Refuge Manager.

18. The permittee shall implement and monitor best management practices (BMPs) to protect the seagrass beds on the landward side of the islands.

19. The permittee shall minimize, to the maximum extent practicable, impacts to: natural sediment transport, fish migration, and salinity regimes. Information on area sediment transport can be found at <http://pubs.usgs.gov/sir/2009/5252> (Sand

Resources, Regional Geology, and Coastal Process of the Chandeleur Island Coastal System: an Evaluation of the Breton National Wildlife Refuge).

20. Tidal inlets shall not be blocked to the maximum extent practicable. Temporary oil spill booms or other appropriate containment devices may be used in these areas.

21. To minimize disturbance to colonies of nesting gulls, terns, and black skimmers, all activity occurring within 650 feet of a rookery shall be restricted to non-nesting months September 16th through April 1st of any given year. For colonies containing nesting brown pelicans, activity occurring within 2000 feet of a rookery should be restricted to the non-nesting period of September 15th through March 31st of any given year. If these buffer distances are not practicable, berm construction should occur at the maximum distance practicable from identified rookeries. The CEMVN Regulatory Branch and FWS should be notified of the existence and location of the rookeries and an observer should monitor each rookery to determine the minimum distance at which construction can occur without disturbing nesting birds on an individual rookery basis. The Louisiana Department of Wildlife and Fisheries' Fur and Refuge Division (Tom Hess: [REDACTED]) should be contacted to obtain the most current information about the nesting chronology of individual brown pelican colonies.

22. The permittee is advised that project implementation may adversely affect Essential Fish Habitat (EFH), federally listed threatened and endangered species protected by the Endangered Species Act (ESA). The permittee should consult with the NMFS, FWS and the USGS prior to commencing the project, during the project and upon completion of the project for further information on properly addressing EFH and ESA issues.

23. No activity is authorized under this emergency permit which may adversely affect significant cultural resources listed or eligible for listing in the National Register of Historic Places until the requirements for Section 106 of the National Historic Preservation Act are met. Upon discovery of the presence of previously unknown historic and/or prehistoric cultural resources, all work must cease and the permittee must notify the State Historic Preservation Office and the CEMVN, Regulatory Branch. The authorization shall be suspended until it is determined whether or not the activity will have an adverse effect on cultural resources. CEMVN will initiate the required Federal, State, and Tribal coordination to determine the significance of the cultural materials and the need, if applicable, for additional cultural resource investigations.

24. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

25. The Chitimacha Tribe of Louisiana has stated that the project area is part of the aboriginal Chitimacha homelands. If during the course of work at the site, prehistoric and/or historic aboriginal cultural materials are discovered, the permittee shall contact the Chitimacha Tribe of Louisiana at Post Office Box 661, Charenton, Louisiana 70523, and CEMVN Regulatory Branch. CEMVN, Regulatory Branch will initiate the required federal, state, and tribal coordination to determine the significance of the cultural materials and the need, if applicable, for additional cultural resource investigations.

26. This permit does not extend the State of Louisiana's coastal boundaries seaward or change the existing federal-state offshore boundary, and the State of Louisiana explicitly renounces and affirmatively waives any such claim by accepting and proceeding under this permit. If the State of Louisiana subsequently submits an ATF Standard Permit Application to maintain the temporary structures permitted by this permit, the State of Louisiana must waive any newly created claims or rights to the newly created extension of its offshore boundary to the satisfaction of the US Department of Interior, Minerals Management Service, and the US Department of Justice.

27. This permit does not address the applicability of this proposed project to the spill response effort, which is a decision to be made by the National Incident Commander in consultation with Federal On-Scene Coordinator.

28. Prior to the initiation of work, the permittee must provide a construction schedule that details a timeline for the proposed work.

29. After construction has begun, the permittee will host a weekly conference call with CEMVN Regulatory Branch and other interested parties to report progress and provide project status updates. Questions from CEMVN Regulatory Branch and other interested parties will be addressed by the permittee. Revisions to construction could result based on these discussions.

30. Prior to the initiation of work, the permittee must provide the alignment of the proposed berm and a survey profile of the alignment, inclusive of Global

Positioning System (GPS) coordinates. The survey will form the baseline for a pre-project site condition.

31. Prior to construction, the permittee must develop a monitoring plan in consultation with CEMVN Regulatory Branch and other interested parties for each project site. At a minimum, the monitoring plan shall include a detailed description of the work accomplished to date, any observations of oil, dredge production rates, an assessment on the ability of the material to stack and stay where placed, any observation of increases in erosion, any observation of adverse environmental impacts and a general description on the accomplishment of project purpose. The permittee is responsible for implementing this monitoring plan.

32. Aerial photographic documentation of the project area at a scale of 1-inch=300 feet shall be provided to CEMVN Regulatory Branch documenting pre-project (baseline) conditions and subsequently every two weeks following project commencement.

33. This permit becomes effective upon receipt by the CEMVN of a signed acceptance of the enclosed copy executed by a duly appointed representative of the State of Louisiana with authority to bind the state.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:



Alvin B. Lee
Colonel, US Army
District Commander

Enclosures:

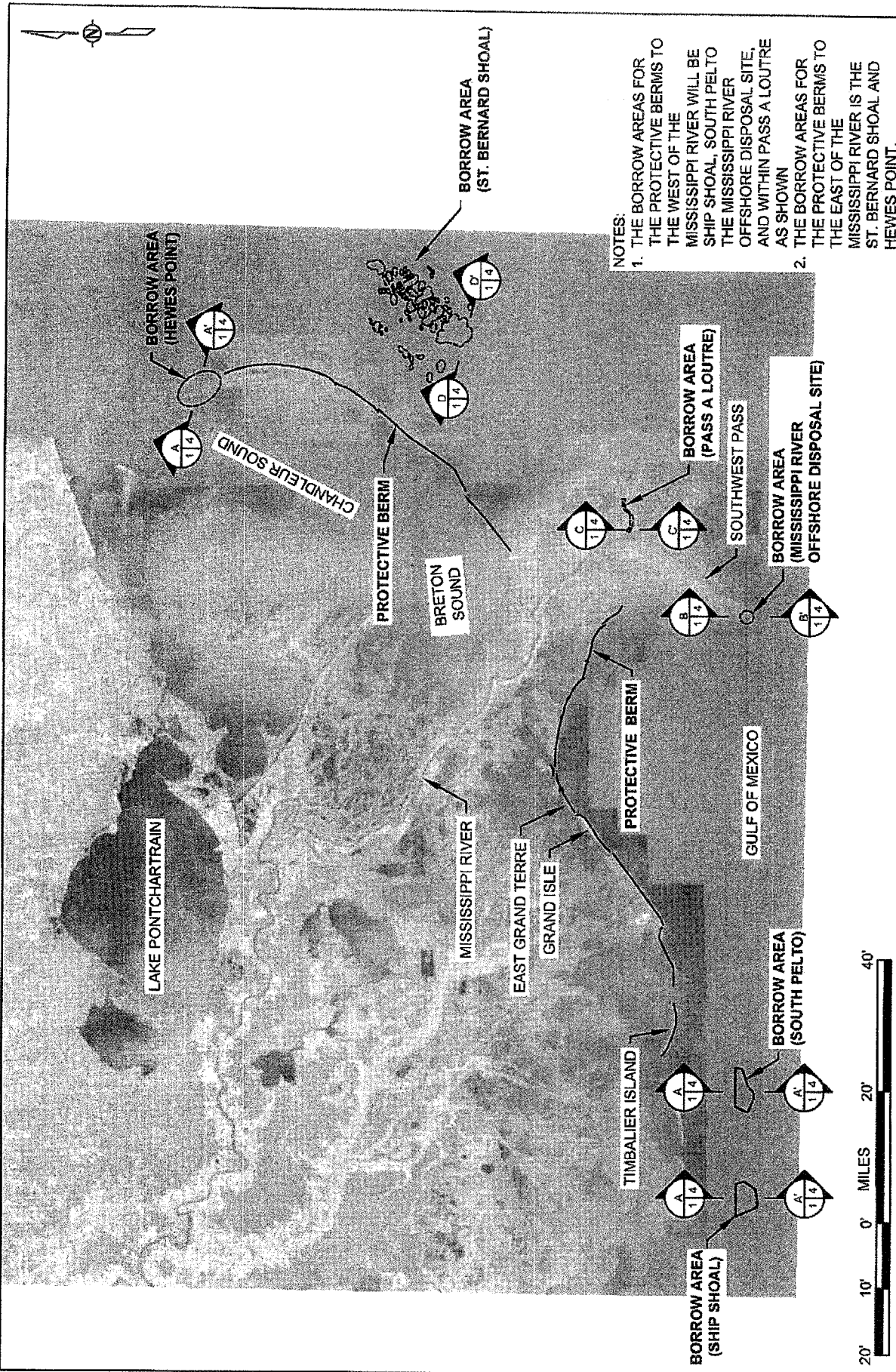
1. Project Drawings
2. NOD-20 Conditions
3. Acceptance Letter

The above terms and conditions are satisfactory and are accepted.

By: _____

Title _____

Date _____



NOTES:
 1. THE BORROW AREAS FOR THE PROTECTIVE BERMS TO THE WEST OF THE MISSISSIPPI RIVER WILL BE SHIP SHOAL, SOUTH PELTO THE MISSISSIPPI RIVER OFFSHORE DISPOSAL SITE, AND WITHIN PASS A LOUTRE AS SHOWN
 2. THE BORROW AREAS FOR THE PROTECTIVE BERMS TO THE EAST OF THE MISSISSIPPI RIVER IS THE ST. BERNARD SHOAL AND HEWES POINT.

APPLICATION BY:
 OFFICE OF COASTAL PROTECTION & RESTORATION
 450 LAUREL STREET
 BATON ROUGE, LOUISIANA 70801

DESIGNED BY: KRISTI CANTU

APPROVED BY:

OFFICE OF COASTAL PROTECTION & RESTORATION
 ENGINEERING BRANCH
 450 LAUREL STREET
 BATON ROUGE, LOUISIANA 70801

STATE PROJECT NUMBER:

FEDERAL PROJECT NUMBER:

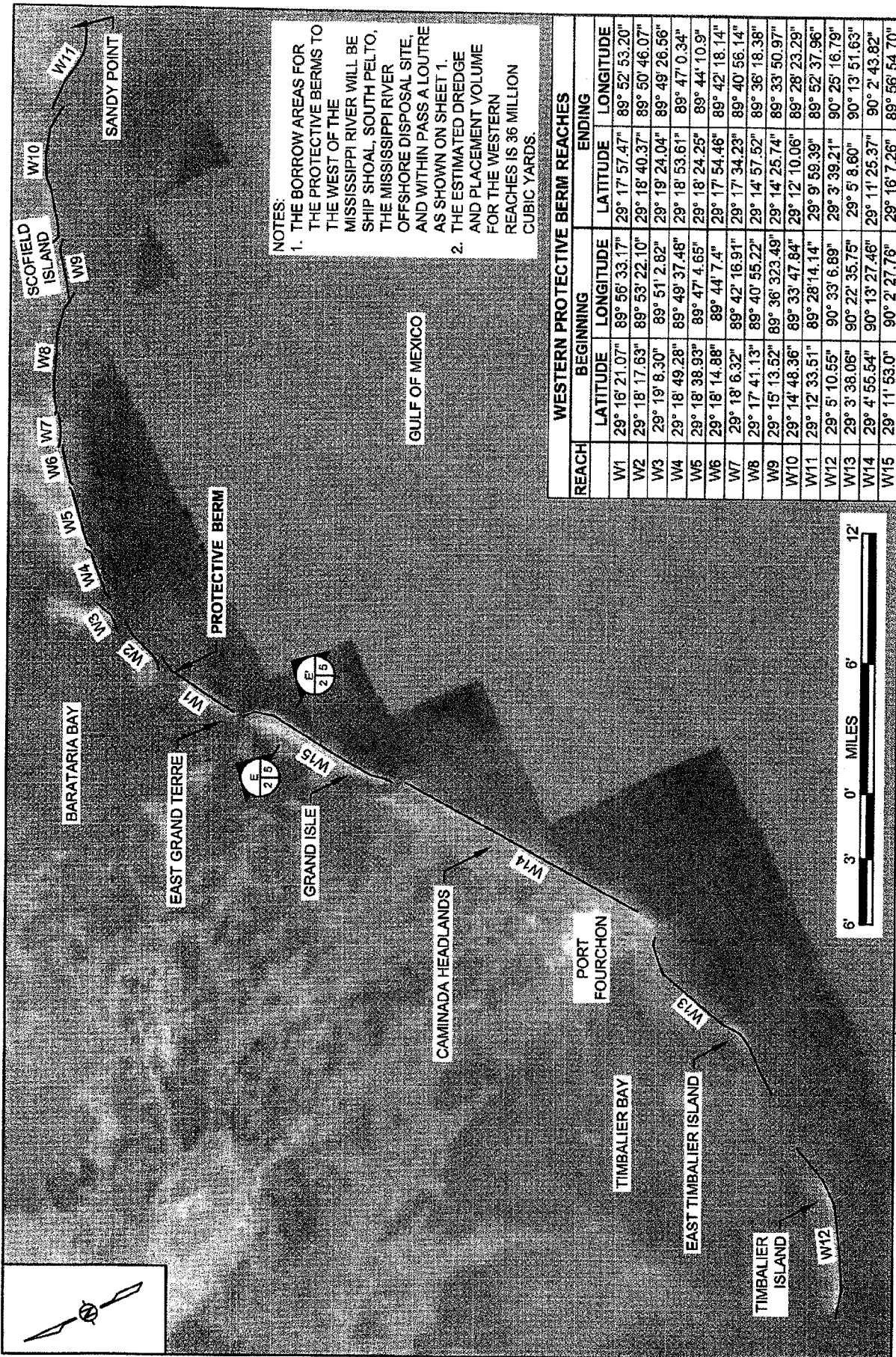
BARRIER ISLAND DEFENSE

PLAN VIEW

DATE: MAY 11, 2010 (REVISED 5/14/10)

WAFB-2010E066-ETT

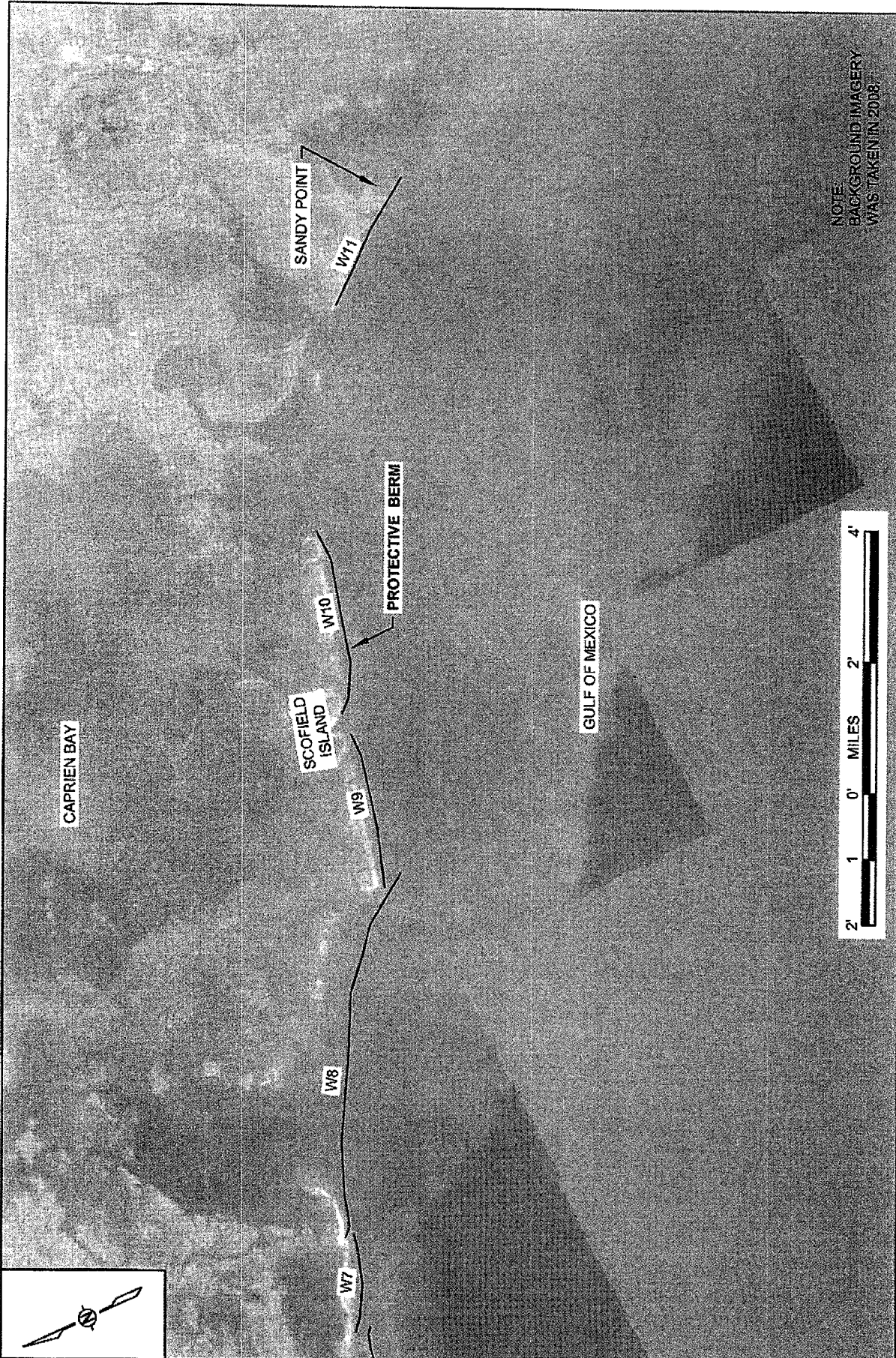
Page 1 of 8



NOTES:
 1. THE BORROW AREAS FOR THE PROTECTIVE BERMS TO THE WEST OF THE MISSISSIPPI RIVER WILL BE SHIP SHOAL, SOUTH PELTO, THE MISSISSIPPI RIVER OFFSHORE DISPOSAL SITE, AND WITHIN PASS A LOUITRE AS SHOWN ON SHEET 1.
 2. THE ESTIMATED DREDGE AND PLACEMENT VOLUME FOR THE WESTERN REACHES IS 36 MILLION CUBIC YARDS.

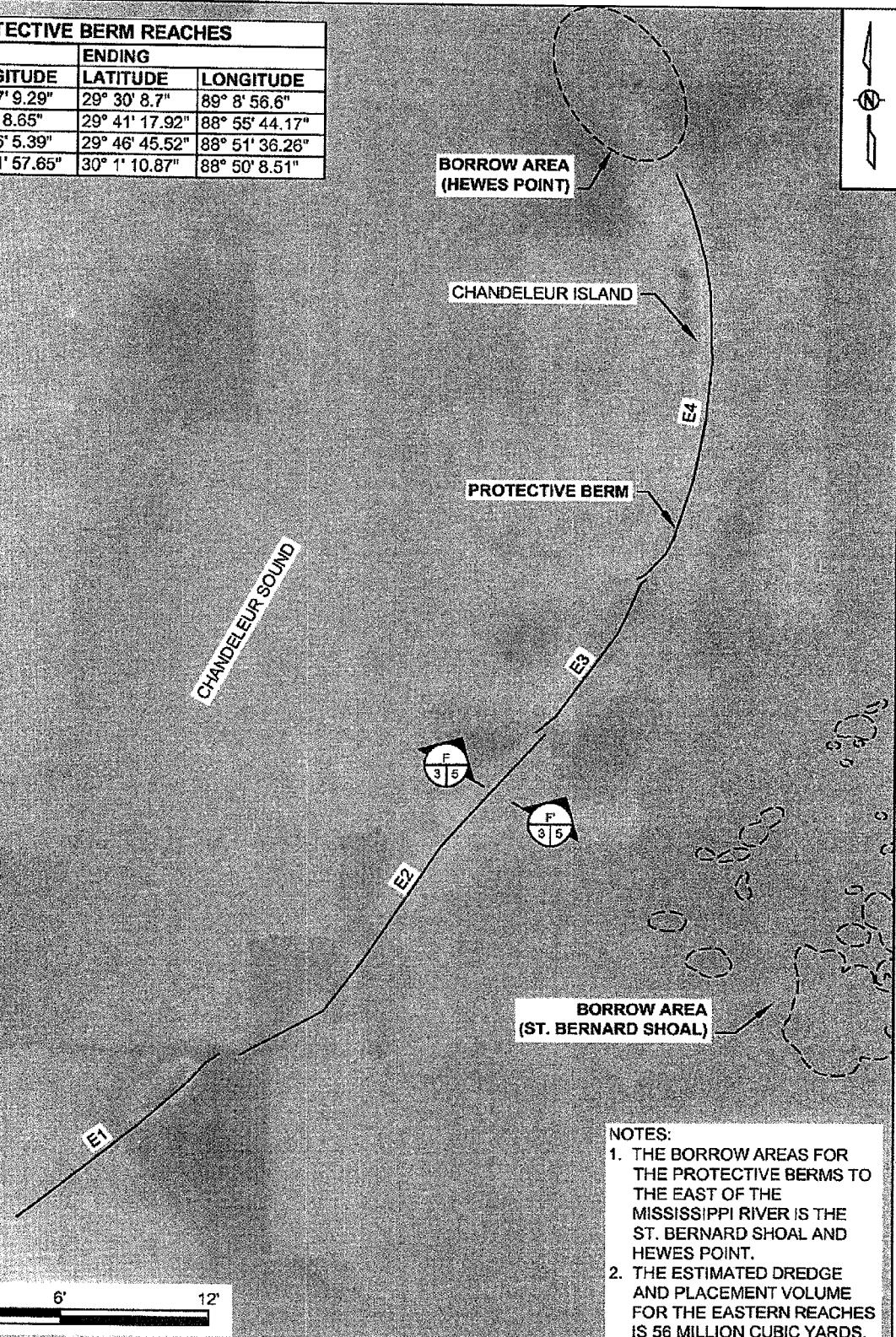
REACH	BEGINNING		ENDING	
	LATITUDE	LONGITUDE	LATITUDE	LONGITUDE
W1	29° 16' 21.07"	89° 56' 33.17"	29° 17' 57.47"	89° 52' 53.20"
W2	29° 18' 17.63"	89° 53' 22.10"	29° 18' 40.37"	89° 50' 46.07"
W3	29° 19' 8.30"	89° 51' 2.82"	29° 19' 24.04"	89° 49' 26.56"
W4	29° 18' 49.28"	89° 49' 37.46"	29° 18' 53.61"	89° 47' 0.34"
W5	29° 18' 38.93"	89° 47' 4.65"	29° 18' 24.25"	89° 44' 10.9"
W6	29° 18' 14.88"	89° 44' 7.4"	29° 17' 54.46"	89° 42' 18.14"
W7	29° 18' 6.32"	89° 42' 16.91"	29° 17' 34.23"	89° 40' 56.14"
W8	29° 17' 41.13"	89° 40' 55.22"	29° 14' 57.52"	89° 36' 18.38"
W9	29° 15' 13.52"	89° 36' 323.49"	29° 14' 25.74"	89° 33' 50.97"
W10	29° 14' 48.36"	89° 33' 47.84"	29° 12' 10.06"	89° 28' 23.29"
W11	29° 12' 33.51"	89° 28' 14.14"	29° 9' 59.39"	89° 52' 37.96"
W12	29° 5' 10.55"	90° 33' 6.89"	29° 3' 39.21"	90° 25' 16.79"
W13	29° 3' 38.06"	90° 22' 35.75"	29° 5' 8.60"	90° 13' 51.63"
W14	29° 4' 55.54"	90° 13' 27.46"	29° 11' 25.37"	90° 2' 43.82"
W15	29° 11' 53.0"	90° 2' 27.76"	29° 16' 7.26"	89° 56' 54.70"

APPLICATION BY: OFFICE OF COASTAL PROTECTION & RESTORATION 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	OFFICE OF COASTAL PROTECTION & RESTORATION ENGINEERING BRANCH 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	BARRIER ISLAND DEFENSE WESTERN REACHES
DRAWN BY: KRISTI CANTU	DESIGNED BY:	STATE PROJECT NUMBER: FEDERAL PROJECT NUMBER:
DATE: MAY 11, 2010 (REVISED 6/14/10)		MVN-2010-1066-ETT



APPLICATION BY: OFFICE OF COASTAL PROTECTION & RESTORATION 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	OFFICE OF COASTAL PROTECTION & RESTORATION ENGINEERING BRANCH 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	BARRIER ISLAND DEFENSE	WESTERN REACHES
DRAWN BY: KRISTI CANTU	DESIGNED BY:	STATE PROJECT NUMBER: FEDERAL PROJECT NUMBER:	DATE: MAY 24, 2010 MVN-2010-1066-ETT

EASTERN PROTECTIVE BERM REACHES				
REACH	BEGINNING		ENDING	
	LATITUDE	LONGITUDE	LATITUDE	LONGITUDE
E1	29° 24' 26.75"	89° 17' 9.29"	29° 30' 8.7"	89° 8' 56.6"
E2	29° 30' 5.98"	89° 8' 8.65"	29° 41' 17.92"	88° 55' 44.17"
E3	29° 41' 23.20"	88° 56' 5.39"	29° 46' 45.52"	88° 51' 36.26"
E4	29° 46' 47.19"	88° 51' 57.65"	30° 1' 10.87"	88° 50' 8.51"



NOTES:

1. THE BORROW AREAS FOR THE PROTECTIVE BERMS TO THE EAST OF THE MISSISSIPPI RIVER IS THE ST. BERNARD SHOAL AND HEWES POINT.
2. THE ESTIMATED DREDGE AND PLACEMENT VOLUME FOR THE EASTERN REACHES IS 56 MILLION CUBIC YARDS.

APPLICATION BY: OCP 450 LAUREL STREET BATON ROUGE, LA	OFFICE OF COASTAL PROTECTION & RESTORATION ENGINEERING BRANCH 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	BARRIER ISLAND DEFENCE	EASTERN REACHES
DRAWN BY: KRISTI CANTU		DESIGNED BY:	APPROVED BY:
STATE PROJECT NUMBER:		DATE: MAY 11, 2010 (5/14/10)	
FEDERAL PROJECT NUMBER:		MVN-2010-1066-ETT	



CHANDELEUR ISLAND

PROTECTIVE BERM

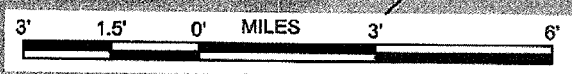
CHANDELEUR SOUND

E2

E3

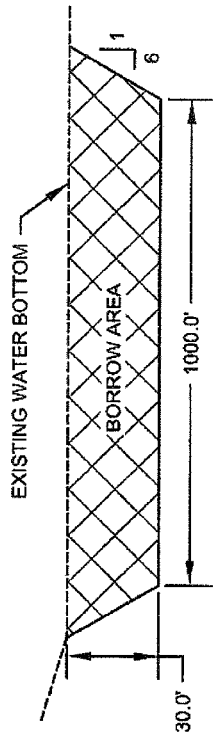
BORROW AREA
(ST. BERNARD SHOAL)

E2

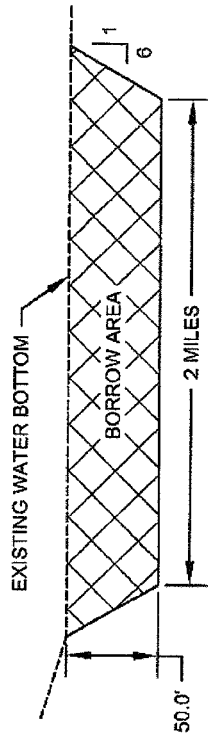


NOTE:
BACKGROUND IMAGERY
WAS TAKEN IN 2008.

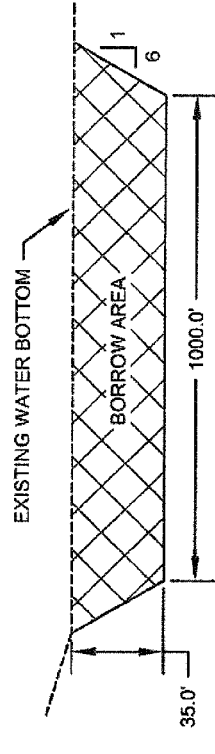
APPLICATION BY: CCPR 450 LAUREL STREET BATON ROUGE, LA	OFFICE OF COASTAL PROTECTION & RESTORATION ENGINEERING BRANCH 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	BARRIER ISLAND DEFENCE	EASTERN REACHES
DRAWN BY: KRISTI CANTU	DESIGNED BY:	APPROVED BY:	STATE PROJECT NUMBER: FEDERAL PROJECT NUMBER:
			DATE: MAY 24, 2010 MVN-2010-1066-ETT Page 5 of 8



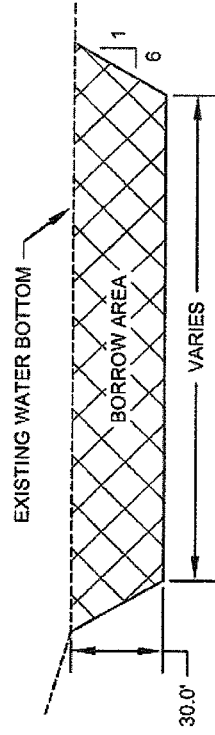
A-A'
**SHIP SHOAL, SOUTH
 PELTO, & HEWES POINT
 BORROW AREAS**



B-B'
**OFFSHORE
 DISPOSAL SITE
 BORROW AREA**

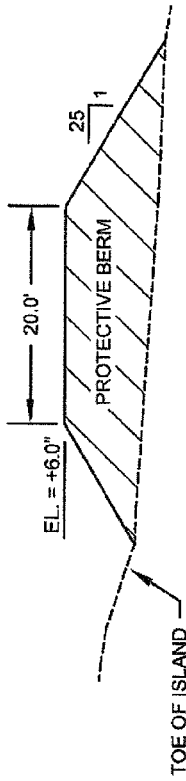


C-C'
**PASS A LOUTRE
 BORROW AREA**



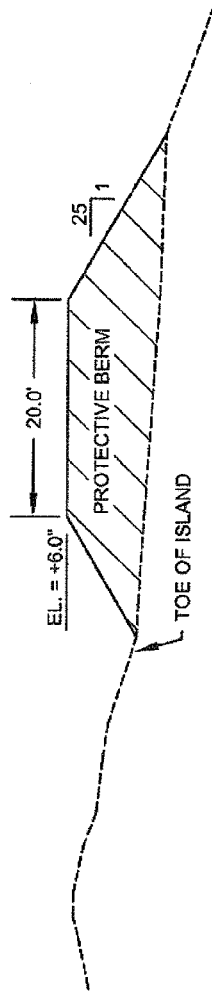
D-D'
**ST. BERNARD
 SHOAL**

APPLICATION BY: OFFICE OF COASTAL PROTECTION & RESTORATION 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	OFFICE OF COASTAL PROTECTION & RESTORATION ENGINEERING BRANCH 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	BARRIER ISLAND DEFENSE	BORROW DETAILS
DRAWN BY: KRISTI CANTU	DESIGNED BY:	STATE PROJECT NUMBER: FEDERAL PROJECT NUMBER:	DATE: MAY 11, 2010 (REVISED 5/14/10) MVN-2010-1066-ETT



**E-E'
PROTECTIVE BERM TO THE WEST
OF THE MISSISSIPPI RIVER**

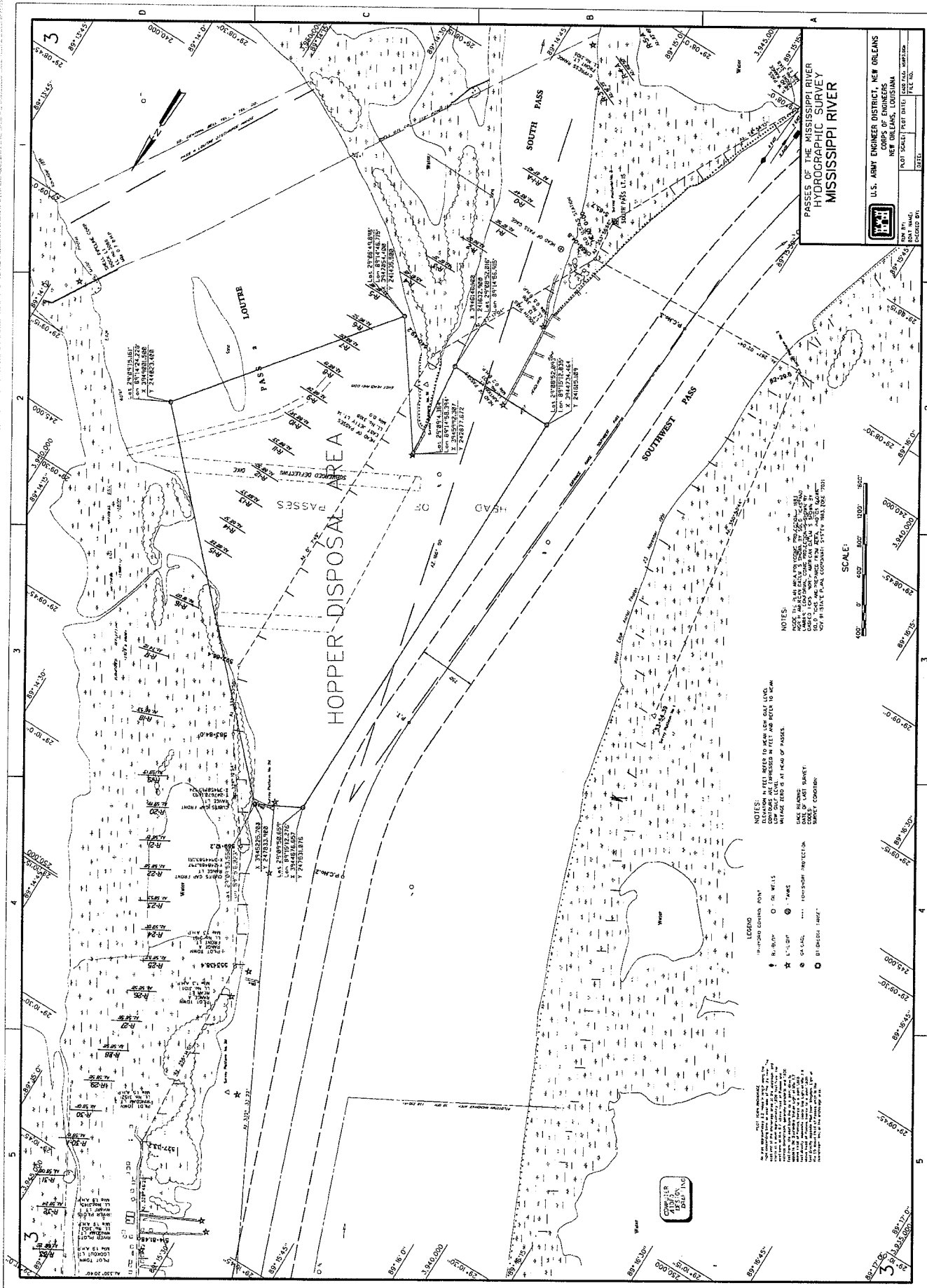
NOTE: SHIP SHOAL, SOUTH PELTO, MISSISSIPPI RIVER OFFSHORE DISPOSAL SITE, AND AREA AT THE BEGINNING OF PASS A LOUTRE WILL BE USED AS THE BORROW SOURCE.



**F-F'
PROTECTIVE BERM TO
THE EAST OF
MISSISSIPPI RIVER**

NOTE: HEWES POINT AND ST. BERNARD SHOAL WILL BE USE AS THE BORROW AREAS.

APPLICATION BY: OFFICE OF COASTAL PROTECTION & RESTORATION 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	OFFICE OF COASTAL PROTECTION & RESTORATION ENGINEERING BRANCH 450 LAUREL STREET BATON ROUGE, LOUISIANA 70801	BARRIER ISLAND DEFENSE	PROTECTIVE BERM DETAILS
DRAWN BY: KRISTI CANTU	DESIGNED BY:	STATE PROJECT NUMBER: FEDERAL PROJECT NUMBER:	DATE: MAY 11, 2010 (REVISED 5/14/10) MVN-2010-1066-ETT



PASSES OF THE MISSISSIPPI RIVER
HYDROGRAPHIC SURVEY
MISSISSIPPI RIVER

U.S. ARMY ENGINEER DISTRICT, NEW ORLEANS
CORPS OF ENGINEERS
NEW ORLEANS, LOUISIANA

DATE MADE: 1954
SCALE: AS SHOWN

NOTES:
1. ALL DATA TO BE USED IN CONNECTION WITH THIS SURVEY SHALL BE USED TO DETERMINE THE LOCATION OF THE PASSAGE OF THE MISSISSIPPI RIVER THROUGH THE HOPPER DISPOSAL AREA.
2. THE LOCATION OF THE PASSAGE OF THE MISSISSIPPI RIVER THROUGH THE HOPPER DISPOSAL AREA IS DETERMINED BY THE LOCATION OF THE PASSAGE OF THE MISSISSIPPI RIVER THROUGH THE HOPPER DISPOSAL AREA.
3. THE LOCATION OF THE PASSAGE OF THE MISSISSIPPI RIVER THROUGH THE HOPPER DISPOSAL AREA IS DETERMINED BY THE LOCATION OF THE PASSAGE OF THE MISSISSIPPI RIVER THROUGH THE HOPPER DISPOSAL AREA.

SCALE:
0 500 1000 1500 2000
0 500 1000 1500 2000

NOTES:
1. ELEVATION IN FEET REFER TO MEAN LOW GALE LEVEL.
2. DOWNINGS ARE EXPRESSED IN FEET AND REFER TO MEAN TIDE ZERO IS AT HEAD OF PASSES.3. ALL DATA TO BE USED IN CONNECTION WITH THIS SURVEY SHALL BE USED TO DETERMINE THE LOCATION OF THE PASSAGE OF THE MISSISSIPPI RIVER THROUGH THE HOPPER DISPOSAL AREA.

LEGEND
 (Symbol) HYDROGRAPHIC POINT
 (Symbol) R-20/21/22
 (Symbol) H-20/21/22
 (Symbol) PASSAGE
 (Symbol) PASSAGE PROTECTION
 (Symbol) DATE OF LAST SURVEY
 (Symbol) SURVEY COMPANY

THIS SURVEY WAS MADE BY THE U.S. ARMY ENGINEER DISTRICT, NEW ORLEANS, LOUISIANA, IN 1954. THE SURVEY WAS MADE BY THE U.S. ARMY ENGINEER DISTRICT, NEW ORLEANS, LOUISIANA, IN 1954. THE SURVEY WAS MADE BY THE U.S. ARMY ENGINEER DISTRICT, NEW ORLEANS, LOUISIANA, IN 1954.

CEMVN-OD-SE

Department of the Army Permit Evaluation
And Decision Document

Applicant: State of Louisiana, Coastal Protection and Restoration Authority

Application No: MVN-2010-1066

Emergency Authorization Request under NOD-20

This document constitutes the Environmental Assessment, Statement of Findings, review and compliance determination according to Section 404 of the Clean Water Act (86 Stat. 816; 33 USC 1344), Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403), and their implementing regulations.

Application Chronology: The State of Louisiana, Coastal Protection and Restoration Authority, submitted an application requesting Department of the Army (DA) emergency authorization on May 11, 2010 for a proposed restoration project which the applicant contended would also provide protection to barrier islands and landward wetlands from contamination caused by the Deepwater Horizon oil spill. The US Army Corps of Engineers, New Orleans District (Corps) coordinated the applicant's request with the concerned state and federal agencies on May 11, 2010. Upon initial review of the application and comments received from the concerned agencies, the Corps determined that the project, as proposed (coastal restoration) would not qualify for the Corps emergency authorization procedures. That determination was made clear to the applicant during the coordination teleconference meeting on May 12, 2010. The applicant submitted revised drawings specifically proposing construction of an oil spill protection berm, late Friday afternoon, May 14, 2010. The revised application was coordinated with all concerned agencies on Monday morning, May 17, 2010 in a teleconference meeting. During that teleconference, the Corps requested that all agencies in attendance submit their comments, concerns, and recommendations by close of business that same afternoon. On Friday, May 21, 2010, the Corps forwarded comments from an internal technical project review to the applicant regarding the barrier plan. By e-mail response on the same day, the applicant provided some additional information relative to the proposed action.

Purpose and Need for the Project: The purpose of the proposed berm is to act as a barrier to reduce oil penetration and impact to the coastal barrier islands and mainland coastal wetlands resulting from the Deepwater Horizon oil spill. The need for the project is to protect sensitive barrier islands and coastal wetlands from oil pollution.

Existing Conditions: Existing conditions in the project area are open waters adjacent to barrier islands and coastal wetlands. Some of the project area contains oil from the Deepwater Horizon Oil spill.

Proposed Project (Applicant's Preferred Alternative): The applicant proposes to construct a sand berm approximately 300 foot at the base, approximately 25-foot at the crown and approximately 6 foot above the mean high water line (MHWL). East of the Mississippi River, the berm would be constructed on the seaward side of the Chandeleur Island westward to Baptiste Collette Bayou; west of the Mississippi River it would be constructed from Timbalier Island eastward to Sandy Point. All fill placement for sand barrier construction would occur in the Gulf of Mexico of southeastern coastal Louisiana. Gaps are to be maintained in the berm for tidal exchange. Material to construct the berms would be dredged from Ship Shoal, South Pelto, the Mississippi River Offshore Disposal Site, Pass a Loutre, St Bernard Shoal, and Hewes Point, Gulf of Mexico. Total length of the berm structure is approximately 128 miles, requiring approximately 102 million cubic yards of dredged material to construct an estimated 9800 acres of sand barrier in waters of the US.

Alternatives considered: The original project proposed on May 11, 2010, entailed construction of a sand barrier east and west of the Mississippi River delta. East of the delta, four reaches were proposed along the Chandeleur/Breton Island complex (E1, E2, E3 and E4); west of the delta, 11 reaches were proposed from East Grand Terre Island to Sandy Point (W1 – W11). Material to construct these reaches was to be obtained from: a borrow area one mile offshore and parallel to the Chandeleur/Breton Island complex; St. Bernard Shoal; a small segment of Pass A Loutre; Mississippi River Offshore Disposal Site, and; Ship Shoal.

Based on concerns expressed by State and Federal agencies, the applicant submitted revised plans on May 14, 2010, consisting of the following modifications: the Hewes Point Borrow Area at the northern end of the Chandeleur Islands was added; the borrow area one mile offshore and parallel to the Chandeleur/Breton Island complex was deleted; the Pass A Loutre borrow area was expanded; the South Pelto Borrow Area was added, and; the number of sand barrier reaches proposed for construction was expanded westward to Timbalier Island (added W12-W15). The revised plans dated May 14, 2010, constitute the applicant's preferred alternative.

No Action: Selection of the "No Action" alternative would result in the proposed sand barrier not being constructed and the avoidance of short- and long-term beneficial and adverse impacts associated with the project. It is reasonable that protective measures taken thus far, such as strategic boom placement, skimming and burning, would continue, but considering the extremely limited success of these spill control techniques in the high energy marine environment, such actions alone would not be effective in achieving the project purpose. In addition, it has become apparent that tremendous volumes of oil occur in a subsurface plume, which renders traditional containment methods ineffective. Therefore, selection of the "No Action" alternative was found to be not practical in preventing oil contamination of the barrier islands and coastal wetlands.

Applicant's Preferred Alternative: Selection of this alternative would result in the establishment of approximately 128 miles of sand barrier berm at the locations (15 reaches west of the delta, and four reaches east of the delta) shown in the revised drawings. If the project functions as proposed, the berm would physically impede the movement of a limited amount of

oil into the coastal marshes and onto the barrier islands themselves. Such benefit would be local in scope, considering the volume that has been discharged into the Gulf of Mexico and the area over which the oil has spread. Moreover, open areas such as the “birdfoot” delta and open passes between the constructed barriers would remain pathways for oil penetration to the mainland marshes.

Selection of this alternative is not without potential adverse impact. Beyond the issues raised by the agencies and entities listed below, project assessment by the Corps identified that project implementation has the potential to alter coastal circulation patterns in such manner that oil introduction is accelerated, and beneficial flushing is reduced, in portions of Breton and Chandeleur Sounds and Barataria Basin. The time required to build the berms and actual longevity of the structures also raised concern. Therefore, a third alternative was evaluated by the Corps as described below.

Partial Project Authorization: Selection of this alternative entails issuing a permit authorizing only reaches E3 and E4 to the east, and W8, W9, W10, and W11 to the west. These areas have been identified by Corps staff assessment as critical locations where greater immediate benefit is likely to be achieved with minimal adverse disruption of coastal circulation patterns. This provides a strategic approach wherein information on success can be obtained from site monitoring, and allows for more careful evaluation of the remaining, more difficult areas, in formulating a construction plan for the reaches not authorized in this permit, should the State maintain interest in addressing those specific areas.

Consultation with Concerned Federal and State Agencies/Entities: On May 13, 2010, May 17, 2010, and May 22, 2010, the Corps coordinated the proposed project with concerned agencies including: the Environmental Protection Agency (EPA), US Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), United States Coast Guard (USCG), Minerals Management Service (MMS), Federal On-Scene Commander (FOSC), National Incident Commander (NIC), Department of Interior (DOI), the Louisiana Office of the Governor, and the Office of Coastal Protection and Restoration (applicant).

In addition the Corps has separately coordinated with the Chitimacha Tribe of Louisiana, State of Louisiana, Office Cultural Development, Division of Archaeology (SHPO), and State of Mississippi, Department of Marine Resources (DMR).

Endangered Species Act (ESA): On May 13, 2010, and May 17, 2010, the Corps coordinated the proposed project with the FWS and the NMFS for consultation on federally listed threatened and endangered species. The FWS and the NMFS, by emails dated May 13, 2010, May 14, 2010, and May 17, 2010, provided the Corps with comments & recommendations for ESA issues anticipated to be encountered during construction of the berm. Federally listed species that may be encountered during dredging and construction activities include the West Indian Manatee (*Trichechus manatus*), Piping Plover (*Charadrius melodus*), Kemp's Ridley Sea Turtle (*Lepidochelys kempii*), Leatherback Sea Turtle (*Dermochelys coriacea*), and the Gulf Sturgeon

(Acipenser oxyrinchus desotoi). FWS and NMFS recommendations have been incorporated into the permit instrument, as special conditions and are to be adhered to by the applicant during all phases of the proposed project. Further coordination for ESA issues are pending the review of an after-the-fact Standard Permit Application (ATF) to be submitted by the applicant within 30 days from the date of this authorization.

National Wildlife Refuge System Improvement Act, Wilderness Act, Migratory Bird Treaty Act, Coastal Barrier Resources Act: On May 13, 2010, and May 17, 2010 the Corps coordinated the proposed project with the FWS regarding activities on the Breton National Wildlife Refuge (BNWR) and impacts to colonial seabirds utilizing the barrier islands. The FWS, by emails dated May 14, 2010, May 17, 2010, and May 22, 2010, provided the Corps with comments & recommendations regarding impacts to BNWR and colonial seabirds from berm construction. A Corps permits does not obviate the need for the applicant to obtain a Special Use Permit from the FWS. FWS recommendations have been incorporated into the permit instrument as special conditions and are to be adhered to by the applicant during all phases of the proposed project. Further coordination for ESA issues are pending the review of an ATF permit application to be submitted by the applicant within 30 days from the date of this authorization.

Magnuson-Stevens Act [Essential Fish Habitat (EFH)]: On May 13, 2010, and May 17, 2010, the Corps coordinated the proposed project with NMFS for consultation on EFH relative to this proposal. The NMFS, by emails dated May 13, 2010, and May 17, 2010, provided the Corps with comments and recommendations for EFH issues anticipated to be encountered during construction of the berm. NMFS recommendations have been incorporated into the permit instrument, as Special Conditions, and are to be adhered to by the applicant during all phases of the proposed project. Further coordination for ESA issues are pending the review of an ATF permit application to be submitted by the applicant within 30 days from the date of this authorization.

Marine Mammal Protection Act (MMPA): On May 13, 2010, and May 17, 2010, the Corps coordinated the proposed project with the FWS and the NMFS regarding potential impacts to marine mammals within the project area waters. The FWS and the NMFS by emails dated May 13, 2010, May 14, and May 17, 2010, provided the Corps with comments and recommendations relative to anticipated issues to be encountered during construction of the berm. FWS and NMFS recommendations have been incorporated into the permit instrument as Special Conditions, and are to be adhered to by the applicant during all phases of the proposed project. Further coordination for MMPA issues are pending the review of an ATF permit application to be submitted by the applicant within 30 days from the date of this authorization.

Section 106 National Historic Preservation Act: By email dated May 19, 2010 the SHPO provided the Corps with contact information which will be incorporated into the permit instrument as a Special Condition requiring the permittee to coordinate all dredge and fill activities with the SHPO. Further consultation for SHPO issues will commence during review of

the ATF application, required to be submitted by the applicant, within 30 days from the date of this authorization.

Tribal Consultation: By email dated May 18, 2010 the Corps coordinated the proposed project with the Chitimacha Tribe of Louisiana. By email also dated May 18, 2010 the Chitimacha Tribe, Cultural Director, Kim Walden stated "I find no cultural sites within the project area that contain human remains". The Cultural Director further states that pre-historic camp sites, shell middens, historic plantations, forts and most importantly a historic cemetery are within or in the vicinity of the proposed activity. The Director also noted that there are 2 sites listed in the National Register of Historic Places, 6 other sites eligible for listing and 2 other sites that are potentially eligible. The Director further stated that it appears as if most of these areas mentioned have already been damaged by erosion and subsidence. They also provided contact information which will be incorporated into the permit instrument as a special condition requiring the permittee to coordinate all dredge and fill activities with the SHPO and Cultural Director of the Chitimacha Tribe.

Section 401 Water Quality Certification (WQC): The State of Louisiana, Department of Environmental Quality (DEQ) has issued a WQC for the NOD-20 emergency permit during previous consultations. Further consultation for WQC issues with the DEQ will commence during review of the ATF application, required to be submitted by the applicant within 30 days from the date of this authorization.

Coastal Zone Management Act (CZM): The State of Louisiana, Office of Coastal Management (OCM), is processing an emergency authorization (#EUA10-037) for the proposed project. Further consultation for CZM issues with the OCM will commence during review of the ATF application, required to be submitted by the applicant to OCM, within 30 days from the date of this authorization.

The DOI, EPA, NIC, FOSC and MMS have all submitted concerns verbally or in writing; however, none of those agencies have submitted a formal objection to the Corps requesting that the NOD-20 emergency permit not be issued for this proposal. The Mississippi DMR did not respond. Further coordination with all the agencies will commence during review of the ATF permit application, required to be submitted by the applicant within 30 days from the date of this authorization.

Environmental Impacts of the Proposed Project: A detailed assessment of environmental impacts that would result from the proposed project has not been conducted at this time due to expedited procedures enacted under emergency provisions outlined in 33 CFR 325.2 (e) (4). As described above, however, authorization of the Reaches E3, E4, W8, W9, W10 and W11 is expected to result in the minimum adverse hydrologic impact, has increased probability of successful implementation, and supports development of an adaptive management approach for project construction. The applicant is required to obtain approval from MMS for the proposed offshore borrow sites. A detailed assessment of the direct, secondary and cumulative impacts

resulting from borrow area excavation and fill deposition to construct the sand barriers will be conducted during the formal ATF permit application review procedure.

The proposed project has been analyzed for conformity applicability pursuant to regulations implementing Section 176 (c) of the Clean Air Act. It has been determined that the activities proposed under this project will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153. Any later indirect emissions are generally not within the Corps continuing program responsibility and generally cannot be practicably controlled by the Corps. For these reasons a conformity determination is not required.

Having reviewed the information provided by the applicant, the permit file and the assessment of environmental impacts, I find this permit action is allowed as outlined in 33 CFR 325.2 (e) (4) and thereby qualifies as "an emergency" as defined by those regulations as an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures to provide protection to barrier islands and coastal wetlands from the Deepwater Horizon Oil Spill. The issuance of NOD-20 authorization provides the mechanism to allow the applicant to proceed with the proposed work and to prepare a Standard Permit application to be submitted within 30 days from the date of this authorization. Therefore, an Environmental Impact Statement (EIS) will not be required at this time. The Corps will decide whether or not an EIS will be required during the review process of the required Standard Permit.

I find that emergency Department of the Army authorization as prescribed by regulations published in 33 CFR 320 to 330 and 40 CFR 230, is not contrary to the overall public interest.

26 May 2010
Date

Robert J. Jasin
Preparer

26 May 2010
Date

Rob Lee
Reviewer

27 MAY 2010
Date

Alvin B. Lee
Approving Officer