



DEPARTMENT OF THE ARMY

NEW ORLEANS DISTRICT CORPS OF ENGINEERS

P.O. BOX 80267

NEW ORLEANS, LOUISIANA 70180-0267

REPLY TO
ATTENTION OF:

November 9, 1999

Operations Division
Regulatory Branch

SUBJECT: (General Permit) NOD-22

SPECIAL PUBLIC NOTICE

TIME EXTENSION AND MODIFICATIONS
FOR ACTIVITIES WITHIN THE COINCIDENTAL BOUNDARIES
OF THE LOUISIANA COASTAL ZONE
AND THE NEW ORLEANS DISTRICT

Interested parties are hereby notified that the (General Permit) NOD-22, originally issued by this District on September 26, 1983, for certain activities within the Louisiana Coastal Zone has been modified and is extended for 5 years until November 30, 2004.

By public notice dated March 30, 1999, all interested parties were notified of the proposed time extension and modifications. All available information and comments were considered in determining that the modifications and time extension would not be contrary to the public interest.

The general permit is applicable to projects within the coincidental boundaries of the New Orleans District and the Louisiana Coastal Zone. However, projects which are specifically regulated and evaluated by the Coastal Management Division will be considered for authorization under the New Orleans District's Programmatic General Permit.

Additional written comments or suggestions for further modification of this general permit are solicited. Persons who become aware of problems or adverse impacts are requested to notify the Regulatory Branch of this District at the above address. This general permit will be suspended, revoked, or modified if it is shown to be in the public interest to take such action.

Ronald J. Ventola

Ronald J. Ventola
Chief, Regulatory Branch

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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
Regulatory Branch

**DEPARTMENT OF THE ARMY
REVISED GENERAL PERMIT
(General Permit) NOD-22**

Original Authorization Date: September 26, 1983

Current Expiration Date: July 31, 2004

Under authorization granted by applicable sections of Parts 320 through 330 of Title 33, Code of Federal Regulations, and under the delegated authority of the Commander, U.S. Army Corps of Engineers, to the District Engineer at New Orleans, it has been determined that it is in public interest to issue a general permit time extension to authorize the following activities subject to the conditions contained in this permit and occurring within the coincidental boundaries of the Louisiana Coastal Management Zone (CMZ) and the New Orleans District:

- a. The discharge of dredged or fill material into waters of the United States, and
- b. Work or structures in or affecting navigable waters of the United States.

Specific legislation requiring Department of the Army permits for work of this nature are:

- a. Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. 403), and
- b. Section 404 of the Clean Water Act (33 U.S.C. 1344).

This authorization is superseded by the Programmatic General Permit for activities regulated by the CMD.

PROCEDURE:

Work in the coastal zone of Louisiana contained in the New Orleans District (See map at Enclosure 1) that receives all required federal and non-federal permits/licenses and that meets all of this permit's other conditions may proceed without an individual permit from the Corps of Engineers, unless the Corps exercises its case-by-case discretionary authority under Special Condition b.

An applicant wishing to perform work under authority of this general permit must make written application to the Louisiana Department of Natural Resources, Coastal Management Division (CMD). The application submittal must contain a check for \$20.00 made payable to the "Coastal Management Division, DNR" and 8 sets of the cover letter, application form (ENG Form 4345), and drawings. CMD will express deliver a copy of the application to the New Orleans District. We will review the proposal to determine eligibility under NOD-22. Proposals not eligible under NOD-22

will be processed under regular permit procedures; otherwise the applicant will be notified by letter of the preliminary determination of eligibility, as will the U.S. Fish and Wildlife Service and National Marine Fisheries Service. These agencies will have 5 days to submit comments. After the 5 days, the Corps will review the proposal along with the comments of the other federal agencies, and will either issue approval of the proposal, issue approval of the proposal with modifications, or deny the proposal. If denied, the applicant will be allowed to modify the proposal or request that the project be processed as a regular permit application to include a public notice.

By eliminating the need for individual Corps approvals in appropriate cases, this general permit is designed to relieve the public of unnecessary delays and paperwork, reduce expenditure of federal funds, and allow federal regulatory resources to be devoted to the review of work that has more than minimal consequences for the aquatic environment.

Attached to this notification are a map, list of general and special permit conditions, and other specifics related to NOD-22.

General Conditions

a. All activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in modification, suspension, or revocation of the authorization granted to the permittee, in whole or in part, as set forth more specifically in General Conditions j. or k. below, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended, or revoked in whole or in part.

b. 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), or pursuant to applicable state and local laws.

c. When the activity authorized herein involves a discharge of any pollutant (including dredged or fill material) into waters of the United States during its construction or operation, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances. Under Section 402 of the Clean Water Act, the Environmental Protection Agency (EPA) and/or the state of Louisiana may require that drilling fluids, produced waters, or cuttings associated with drilling fluids, which contain oil-based fluids, heavy metal additives such as weighting agents and dispersants, asbestos viscosifiers, zinc chromate corrosion inhibitors, sodium chromates/dichromates, pH control chemicals, chlorinated phenol biocides, or any other substances classified as priority pollutants by EPA, be reinjected or contained in a closed system for transportation to an upland disposal facility. Applicants are strongly urged to consider the practicality of containerization.

d. The discharge shall not affect a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. The permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, special aquatic sites, and natural environmental values.

f. The permittee agrees that the construction of work authorized herein shall be prosecuted in a manner so as to minimize any degradation of water quality.

g. The permittee shall permit the District Engineer 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.

h. The permittee shall maintain the structure or work authorized herein in a good and safe condition.

i. The 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 requirement to obtain state or local assent required by law for the activity authorized herein.

j. This permit and/or any individual authorizations granted under this permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension of the activity authorized herein would be in the general public interest.

k. Any individual authorization granted under this permit may be either 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.

l. In issuing authorizations under this permit, the Federal government will rely upon information and data supplied by the applicant. If, subsequent to the issuance of an authorization, such information and data prove to be false, incomplete, or inaccurate, the permit authorization may be modified, suspended, or revoked, in whole or in part.

m. 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.

n. This permit does not authorize or approve the construction of particular structures, the authorization or approval of which require authorization by the Congress or other agencies of the Federal government.

o. If and when an authorized activity is to be abandoned unless such abandonment is part of a transfer procedure by which the authorization is being transferred to a third party, the individual(s) who receive(s) the authorization must restore the area to a condition satisfactory to the District Engineer. Any transfer procedure must include the transferee's written agreement to comply with all terms and conditions of this permit and any additional conditions that may be added to the individual authorization.

p. If the recording of this permit or authorization is possible under applicable state or local law, the permittee shall take such action as may be necessary to record this permit and any individual authorization under this permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interest in real property.

q. There shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein. The permittee will, at his or her 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.

r. This general permit cannot be used for piecemeal dredge or fill activities or other piecemeal work, nor is this general permit valid for any activity that is part of an overall project for which the Corps has determined that an individual permit is required.

s. If the permittee, during prosecution of authorized work within the area subject to Department of the Army jurisdiction, encounters a previously unidentified archaeological or other cultural resource that might be eligible for listing in the National Register of Historic Places, he/she shall immediately cease operations and notify the District Engineer. Work shall not begin again without written notification from the District Engineer.

t. Wetlands that are not part of the project site but that are disturbed during construction, including the temporary crossing of wetlands areas, will be restored to their preproject elevations and conditions, and may include replanting.

u. When work is done by heavy equipment in wetland areas that are not a part of this authorization or heavy materials are temporarily stored in these wetland areas, mats will be utilized and activities confined to matted areas. When work is completed the mats shall be removed.

v. Material discharged into wetlands will be contained or stabilized and will be compatible with existing soils and will not otherwise constitute a non-point pollution source.

w. When project works will be constructed with, be adjacent to, or otherwise in proximity to other works conducted pursuant to this general permit, drawings will be requested to show the relationship of such structures to the proposed work and their appropriate Coastal Use Permit numbers.

x. Misrepresentation of the proposed project or falsification of facts may be cause to exclude the project from further general proceedings. If the misrepresentation or falsification was intentional, the applicant shall forfeit the right to conduct work at the proposed project site pursuant to this general permit.

y. If the project includes deposits of dredged or fill material, only clean dredged material, or hauled material which is free of organic matter, waste metal products, chemical pollutants, unsightly debris, etc., may be used as fill.

z. A project that consists of two or more features, at least one of which could be authorized pursuant to NOD-22 and the remaining feature(s) authorized under any other current general permit issued by New Orleans District, will be administratively considered as one NOD-22 eligible activity. The application form must identify which other general permit(s) apply to each portion of the project. For example, if an application is submitted to install a drilling barge, shell pad, and flowline, the application form must state that the shell pad will conform to the provisions of NOD-3 and the flowline will conform to the provisions of NOD-18. This administrative procedure would apply only to projects located wholly within the CMZ/NOD coincident boundaries. Authorization of projects outside the CMZ/NOD coincident boundaries or for projects within the CMZ/NOD coincident boundaries that consist of other general permit activities (e.g., flowline only, shell pad only) would continue to be granted pursuant to the provisions of the applicable general permit(s).

In effect, many general permit authorizations for eligible activities conducted with the CMZ/NOD coincident boundaries could be "under the umbrella" of NOD-22. Administrative procedures for the granting of authorizations pursuant to other general permits for activities outside of the CMZ/NOD coincidental area would be unaltered.

Also, requests that consist of multiple NOD-22 eligible activities will be processed as a single NOD-22 action.

Special Conditions

a. No work may be performed under this general permit unless and until all required local, state and other Federal permits, licenses, authorizations, and certifications are obtained; this includes, but is not limited to:

- (1) A Coastal Use Permit signed by the Secretary of DNR or his designee; or
- (2) A letter from the Secretary of DNR or the Administrator of the Coastal Management Division stating that, pursuant to state law, a Coastal Use Permit is not required for the activity in question; or
- (3) Authorization from an approved local coastal zone management program agency; and
- (4) A water quality certification (if required) from the Louisiana Department of Environmental Quality, Office of Water Resources, for projects on State lands, and from the Environmental Protection Agency for projects on lands of the Chitimacha Tribe of Louisiana.

b. Irrespective of whether a proposal meets the other conditions of this permit, the Corps of Engineers retains discretionary authority to subject the proposal to all individual permit review procedures, whenever the Corps of Engineers determines that the potential consequences of the proposal warrant this requirement.

c. Exclusions: The following work will not be eligible under this general permit. Applications for this work will be processed in accordance with 33 CFR 325.

- (1) Work outside the Louisiana Coastal Zone.
- (2) Work or structures within 1,000 feet of any mainline flood control or hurricane protection levee constructed and/or maintained with Federal funds without prior coordination with, and the approval of, the New Orleans District.
- (3) Structures or work associated with new boating facilities or with the extension of the areal limits of existing boating facilities. For the purpose of this condition, "boating facilities" are marinas, yacht clubs, boat clubs, and other entities that rent or sell mooring space.
- (4) Structures or work in or that would impinge upon the value (habitat, hydrology, etc.) of any National Wildlife Refuge, National Forest, areas administered by the National Park Service of the US Department of the Interior, areas administered by the Louisiana Departments of Natural Resources or Wildlife and Fisheries, or other similar publicly held areas administered by Federal, state, or local governmental authority, unless special permission from these agencies is submitted with the application for this general permit.
- (5) Projects of national concern. This exclusion is invoked on a case-by-case basis and represents, in essence, a special class of projects that receive particular attention in Corps decisions on whether to exercise the discretionary authority (special condition b) to require individual applications for work that otherwise meet all of this permit's conditions. While a precise definition is not possible, this category of work normally includes, but is not limited to, the following examples: projects that could cause an unreasonable interference with navigation; significant wetland fills;

major power plants, shipping facilities and oil refineries; major commercial, residential or industrial developments; and work that could adversely affect habitats important to migratory birds, endangered or threatened species, estuarine-dependent fishes and shellfishes, or other species of high Federal interest; or historic, cultural, or archaeological sites listed in the National Register of Historic Places or sites listed in the National Registry of Natural Landmarks.

(6) Oil and gas well canals or channels greater than 70 feet wide or slips larger than 345 feet by 160 feet and/or with a total (canal and slip) length greater than 500 feet (to include access canals), and any not specifying that restoration (if appropriate), will be conducted upon abandonment.

(7) Work within 1,500 feet of colonial bird nesting sites or within 1 mile of bald eagle or brown pelican nesting sites.

(8) Pumping and/or drainage facilities with associated levee systems, which are capable of draining (either forced or gravity) any wetlands not currently subject to artificial lowering of water levels.

(9) Work that would modify the effectiveness of an existing, functional water control structure.

(10) Mining for sand, gravel, or shell.

(11) New structures or work within 1-mile of a designated shipping safety fairway or designated anchorage area in the Gulf of Mexico. Modifications to existing permitted facilities may qualify for approval under the general permit.

(12) Work within restricted areas of Atchafalaya Bay and East Cote Blanche Bay where oyster and/or clam shell dredging is specifically authorized by active permits from the New Orleans District of the Corps of Engineers and the Coastal Management Division of the Louisiana Department of Natural Resources.

(13) Work other than that listed above which fills, excavates, impounds, drains, or segregates over one-fourth of an acre of wetlands.

d. Inclusions. The following are examples of work that will likely be eligible under this general permit.

(1) Maintenance dredging in oil or gas well channels, canals, and slips. Deposition of the dredged material may be in open water, or on existing spoil banks, or used to create or maintain existing wetlands. The applicant's proposed disposal area for dredged material will be reviewed to determine if alternate practical disposal areas are available near the project site that have less adverse environmental impact, or if bucket, hydraulic, wheel wash, or spray dredging should be utilized. Final approval for the work under the general permit may require use of an alternate disposal site and/or dredging and disposal method, and/or other mitigation.

(2) Pipelines (a line used for the transportation of any gaseous, liquid, liquefiable, or slurry substance) installed in marsh by the use of the push ditch method, and installed by the use of the push ditch or jetting methods in open waters provided that the pipeline:

- (a) is no more than 6 inches in inside diameter;
- (b) does not exceed 10,000 feet in total length;
- (c) bottom and/or marsh topography will not be changed by more than 6 inches;
- (d) is installed at a depth of no less than 3 feet; and
- (e) installation does not involve shell reefs, barrier islands, the Gulf shoreline, or the emerging Atchafalaya delta.

NOTE: Pipelines may be laid on the marsh surface.

(3) Lowering or relocation of pipelines due to erosion or to accommodate a Federal project.

(4) Well structures and production facilities in open waters, that are not on shell reefs, submerged seagrass beds, or in the emerging Atchafalaya delta.

(5) Bulkheads, riprap, etc., used for pipeline erosion protection.

(6) Waterway closures (with or without culverts) that are not part of a marsh management plan, constructed of shell, riprap, or other suitable hardened caps installed in man-made canals for mitigation purposes recommended by Federal agencies.

(7) Platforms in open waters for fishing or research that do not interfere with navigation.

(8) The construction of pile-supported or barge-mounted production facilities (e.g., well structures, heater platforms) in wetlands and man-made oil field canals.

(9) Oil and gas well canals and channels not greater than 70 feet or slips not larger than 345 feet by 160 feet and/or with a total length (canal, channel, and slip) not greater than 500 feet, and specifying that restoration will be conducted upon abandonment. Dredged material may be placed in open water or in wetlands. Restoration will normally include plugging the mouth of the canal with an earthen closure capped with riprap or other suitable erosion retarding material, placing 50-foot wide gaps in the spoil banks on either side, and reopening any water courses blocked by the spoil placement. All spoil above the 2-foot elevation may be returned to the slip and canal or used to create or maintain adjacent wetlands. All proposals will be reviewed to determine if practical less environmentally damaging alternatives are available prior to issuing an approval. Any dredging operations, described above, greater in length than 375 feet, will be discussed at a Geologic Review meeting to determine if directional drilling from another location that would have less environmental impact is possible and practical. If so, the site which would result in less environmental impact would be the site considered for general permit approval.

(10) Oil and gas well slips no larger than 120 feet by 375 feet, located parallel and contiguous to an existing canal.

(11) Reconstruction and backfill of a bulkhead less than 3 feet channelward of existing bulkhead structures for maintenance purposes.

(12) Dredging of less than 150 cubic yards of material to provide or maintain moorage at an existing bulkhead, wharf, boat slip, or access canal. Dredged material will not be placed in open water or wetlands.

(13) Construction of private or commercial boat launching ramps and parking areas requiring the placement of less than 250 cubic yards of fill or disturbing less than a total of one-fourth acre of wetlands.

(14) Installation of no more than two mooring piles (including clusters that consist of up to three piles) for small boats.

(15) Timber wharves and decks of up to 300 square feet, as well as single-story, timber pile or float supported boat sheds that cannot serve as a camp, foundation for a residence, or a residence, provided that any of the structures identified above:

(a) are no longer (i.e., channelward extension into waterway), than 10 percent of the waterway width at the project site, or

(b) will not cause unreasonable interference with navigation (see general condition q), whichever is less.

(16) Work not specifically excluded which fills, excavates, impounds, drains or segregates less than one-fourth of an acre of wetlands.

Application, Reporting & Acknowledgment Procedures

Applications, specifically requesting authorization under the general permit, should be sent to the Louisiana Department of Natural Resources, Coastal Management Division, Post Office Box 44487, Baton Rouge, Louisiana 70804-4487. The Coastal Management Division (CMD) will review the application for completeness and, if complete, will assign it a coastal use permit (CUP) number and forward a copy of the application to the New Orleans District by express next day delivery. A complete application includes all of the following:

1. A coastal use permit application fee in the form of a \$20 check made payable to "Coastal Management Division, DNR".
2. Eight copies of Department of the Army application form "ENG Form 4345" that includes the signature, the latitude and longitude, the Section, Township and Range, and a statement by the applicant that to the best of his or her knowledge, the project complies with and will be conducted in a manner that is consistent with the Louisiana Coastal Management Program.
3. A clear description of the proposed work and intended use, along with a discussion of alternatives considered and details supporting the chosen alternative. If a geologic review meeting is required, a written alternatives analysis is not necessary as alternative options will be evaluated at the meeting.
4. For most projections requiring authorization under Section 404 of the Clean Water Act, a compensatory mitigation plan to offset unavoidable wetland losses. This plan will adhere as closely as possible to the requirements of the Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency (i.e., compensatory mitigation will generally be in-kind, performed within the same geographical area as the project site, etc.). The compensatory mitigation plan must provide a minimum of 1 to 1 acreage replacement, with each plan evaluated on the basis of conditions existing at the proposed project site. Compensatory mitigation may consist of wetland creation, enhancement, participation in an approved mitigation bank, etc. The plan should be designed to replace the functions and values of the affected project site. It may be performed on Federal wildlife refuges, state wildlife management areas, and parish or private lands. The plan must include a letter from the refuge or land manager agreeing to the proposed plan. Compensatory mitigation shall be commenced within 90 days (or the first planting season of December-March, if applicable) of commencement of work under the general permit, and shall be completed no later than 2 years from the date of commencement.
5. Signed statements from the affected landowners establishing that they have no objection to the required restoration/mitigation and that they agree not to develop restoration/mitigation areas without the prior approval of the District Engineer.
6. A list of names and mailing addresses of adjacent landowners, and a completed "Affidavit of Notification to Owner of Property" (copy attached).

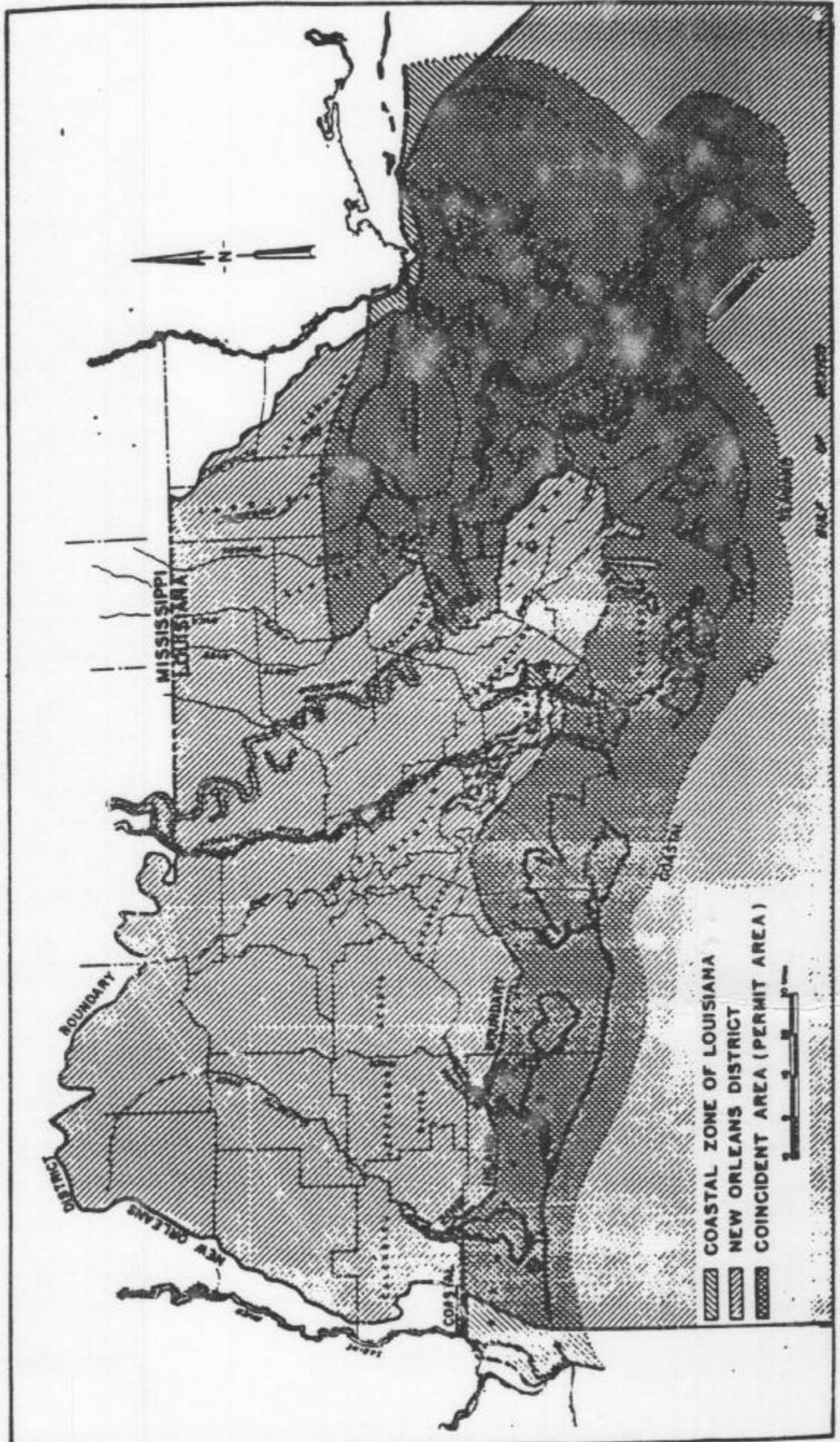
7. Eight sets of application plats to include a legible location plat on which the project site is clearly indicated and accurate scaled drawings (plan view and cross-sectional views), with all dimensions clearly labeled and the number of cubic yards of any dredged or fill material involved. The mean high and low water shorelines must also be included on the cross sections.

Upon receipt of a copy of the application package from CMD, we will review it for completion and eligibility for the general permit. Incomplete applications will be returned to the applicant and/or the applicant will be advised of the application deficiencies. Work not eligible for NOD-22 will be evaluated as a standard individual permit to include a joint Corps/CMD public notice, if applicable.

A geologic review meeting will normally be required for dredging of oil/gas slips greater than 375 feet long and 120 feet wide. Oil/gas slips greater than 375 feet by 120 feet will not be eligible under the general permit if there is another site within the directional drilling radius that is technically and/or economically feasible that has less adverse environmental impact, as determined at the conclusion of the geologic review meeting. The directional drilling radius is the maximum distance from a proposed bottom hole location from which a given well feasibly can be directionally drilled. It is determined by the following formula: $[(\text{proposed total well depth in feet} - \text{surface casing distance in feet} - 1425) \times .57735027] + 375 \text{ feet}$.

Applicants whose proposals meet the requirements of NOD-22 will be notified by letter that their project is being considered for approval under the general permit. Copies of the letter will be sent to the US Fish & Wildlife Service and the National Marine Fisheries Service for review and comment. These agencies will have 5 days in which to comment. Concurrences may be forwarded to the Corps via telephone; however, non-concurrences must be made in writing with an information copy sent to the applicant and must include a description of the impact(s) considered to be more than minimal. These agencies may comment on the project or request additional information needed for their analysis during the comment period. If additional time is needed for their evaluation, they may request a time extension of up to 20 days. Lack of response within 5 days by these Federal agencies will be considered as no objection or no position by those agencies. Corps of Engineers' decision of non-concurrence with reviewing Federal agencies' objections and/or recommendations will be made in writing by the District Engineer to the respective agency.

After receipt of comments from the Federal agencies or after 5 days from the start of the comment period, the proposal will be evaluated in consideration of the comments from the Federal agencies and a decision will be made to issue the general permit approval as requested, issue the general permit approval with modifications, or require the project to be evaluated as a standard individual permit to include a public notice. The applicant will be notified of our decision by letter.



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