ANNEX 8: Magnuson-Stevens Fishery Conservation and Management Act of 1976 and The Magnuson-Stevens Act Reauthorization of 2006 (Essential Fish Habitat)

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505
https://www.fisheries.noaa.gov/region/southeast

July 14, 2025

Colonel Cullen Jones
District Commander, New Orleans District
Department of the Army, Corps of Engineers
7400 Leake Avenue
New Orleans, Louisiana 70118-3651

Dear Colonel Jones:

NOAA's National Marine Fisheries Service (NMFS) Habitat Conservation Division (HCD) has reviewed the 2025 Supplemental Draft Integrated General Reevaluation Report (2025 Report) and Supplemental Environmental Impact Statement (SEIS) for the Mississippi River, Baton Rouge to the Gulf of Mexico Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels Project. The recommended plan is to replace the existing Industrial Canal Lock, also referred to as the Inner Harbor Navigational Canal (IHNC) Lock, with a 900 ft. L x 110 ft. W x -22 ft. North American Vertical Datum (NAVD88) navigation lock.

By letter dated February 1, 2017, NMFS HCD provided comments to the 2017 report for the IHNC Lock project. Our letter provided essential fish habitat (EFH) conservation recommendations (CRs). The EFH CRs encouraged the USACE to develop a mitigation plan designed to offset the loss of approximately 45 acres of EFH, as well as to use over 600,000 cubic yards of dredged material that would be excavated for project construction to beneficially be used to restore tidal marsh in the Bayou Bienvenue area. The recommended plan proposes no EFH mitigation, and would dispose of the project derived dredge material in the Mississippi River disposal site.

Section 305(b)(4)(B) of the Magnuson-Stevens Act and 50 CFR 600.920(k)(1) require federal agencies to provide the NMFS with a substantive response when EFH conservation recommendations are not adopted. The NMFS concludes the USACE has met this requirement in the 2025 Report and SEIS which describe considerations and constraints for not using the dredged material beneficially and your coordination efforts satisfy the consultation procedures outlined in 50 CFR Section 600.920, the regulation to implement the EFH provisions of the Magnuson-Stevens Fishery Conservation and Management Act.

We appreciate your consideration of our comments. If you wish to discuss this project further or have questions concerning our recommendations, please contact craig.gothreaux@noaa.gov.

Sincerely,

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Date: 2025.07.14 13:10:03 -05'00'

/for

Pace Wilber, Ph.D.
Acting Assistant Regional Administrator
Habitat Conservation Division

cc:
F/SER4, nmfs.ser.hcdconsultations@noaa.gov

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT
7400 LEAKE AVENUE
NEW ORLEANS, LOUISIANA 70118

REPLY TO
ATTENTION OF

Regional Planning and
Environment Division South
Environmental Compliance Branch

31 March 17

Ms. Virginia M. Fay
Assistant Regional Administrator
NMFS – Habitat Conservation Division
Southeast Regional Office
263 13th Avenue South
St. Petersburg, Florida 33701-5505

Dear Ms. Fay:

The U.S. Army Corps of Engineers (USACE), New Orleans District (CEMVN), has received your letter dated February 1, 2017, provided in accordance with essential fish habitat coordination requirements of the Magnuson-Stevens Fishery Conservation and Management Act of 1976. Your letter provides comments on the integrated draft general reevaluation report (GRR) and draft supplemental environmental impact statement (SEIS) for the Mississippi River, Baton Rouge to the Gulf of Mexico, Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels Project. The draft GRR/SEIS proposes to replace the existing Inner Harbor Navigation Canal (IHNC) Lock, sometimes referred to as the Industrial Canal Lock, with a new lock designed to accommodate shallow draft vessels using the Gulf Intracoastal Waterway.

Your letter correctly points out that CEMVN estimated the acreage of aquatic habitat to be permanently lost due to project implementation to be 30 acres. NMFS estimates approximately 45 acres of tidally influenced aquatic habitat would be rendered non-tidal due to project implementation. CEMVN agrees with NMFS' estimate. Section 6.2.2 of the final report will be revised to reflect the correct estimate. The final report will explain the 45 acres of tidally-influenced aquatic habitat will be converted to approximately 15 acres occupied by the new navigation lock and associated lock grounds and 30 acres of freshwater habitat directly connected to the Mississippi River. In addition, approximately 10 acres occupied by the existing lock and associated lock grounds would be converted to freshwater habitat, making the total increase of freshwater habitat approximately 40 acres.

Your letter also recommends using over 600,000 cubic yards of dredged material that would be excavated for project construction beneficially to restore tidal marsh in the Bayou Bienvenue area. While this is the amount of material that would be dredged or excavated for project construction, the work is expected to occur over a period of at least 13 years. During the first two years of construction, about 350,000 cubic yards would be dredged for preparation of the new lock site, and during construction years 7

through 13, the remaining 260,000 would be removed from the area around the existing lock. So, there would be two dredging periods, about 4 years apart, and the second period would extend over 7 years. Note that some of the material that would need to be removed from the IHNC has been determined to be unsuitable for open water disposal due to contamination levels. That material is not included in the 600,000 cubic yards recommended by your agency for wetland restoration, and we will not address that material further since it is chemically unsuitable for wetland restoration.

As noted in the draft GRR/SEIS, Section 8.4, CEMVN fully supports the beneficial re-use of dredged material to restore fish and wildlife habitat wherever feasible and practicable. In comparing alternative disposal options, including landfill disposal, beneficial use for wetland creation or restoration, and open water discharge into the Mississippi River, important factors under the Clean Water Act Section 404(b)(1) practicable alternatives analysis (40 CFR 230; §230.10 (2)) were considered, including cost, existing technology, and logistics. Additional factors considered during the development of the proposed disposal plan include the suitability of the dredged material for open water disposal into both fresh water and estuarine environments, the amount of material that would be available for wetland development, compliance with Louisiana State Water Quality Criteria, and the concern of nearby residents and neighborhood groups concerning impacts of the project, particularly the potential for exposure to material dredged from the IHNC. In the following paragraphs, we discuss considerations and factors pertinent to our evaluation of alternative dredged material disposal plans.

For dredging large quantities of alluvial material in restricted areas, the least expensive method is utilizing a hydraulic cutterhead dredge with unconfined disposal into open water. A hydraulic cutterhead dredge would be the logical way to dredge material for this project. The basic dredging costs for disposing dredged material into the two possible sites would be similar due to both locations being within normally acceptable pumping distances. Disposal into the Mississippi River would be unconfined, but disposal into the Bayou Bienvenue area would require construction of retaining dikes to achieve adequate elevation of the material for wetland vegetation to colonize. The construction of retention dikes to a sufficient elevation to achieve their purpose could be a problem due to the highly fluid, organic soils commonly found in this area. The inability to build adequate dikes in a reasonable amount of time could cause significant project delays. In addition to the temporary construction easements required for the discharge pipeline, acquisition of real estate easements or purchases of land in fee would be required for disposing material into the Bayou Bienvenue area. Since this project does not have a non-Federal sponsor, the USACE would be responsible for all real estate acquisition. If the Bayou Bienvenue site were to be used for beneficial use of dredged material, decisions would have to be made concerning long term operation and management. Typically, the USACE turns over long-term management of such lands to non-Federal project sponsors. In summary, there would be a significant amount of coordination and approvals required to address the long term management of any lands acquired by the project for the beneficial use of dredged material.

Technology exists to hydraulically pump material to either the Mississippi River or Bayou Bienvenue site. However, the logistics of pumping material to the two sites are substantially different. To pump material to the Mississippi River site, the discharge pipeline could be placed within the IHNC from the site of the new lock construction, under the Claiborne Avenue Bridge, across the USACE-owned property on the east side of the existing lock, under the east approach ramp for the St. Claude Avenue Bridge adjacent to Sister Street, over the existing Mississippi River Levee into the IHNC, and then into the Mississippi River. Few relocations and obstacles stand in the way, and the real estate acquisition should not be difficult since the route is through existing lands and easements held by public agencies. To pump material into the Bayou Bienvenue site, the discharge pipeline could be placed in the IHNC up to the vicinity of the Florida Avenue Bridge, and then possibly routed to the east, either north or south of the bridge. To the south of the bridge, the pipeline would have to cross either over or under the Federal storm-surge risk reduction floodwall, Florida Avenue, a unnamed road connecting Florida Avenue to Harbor Drive, the storm drainage system associated with New Orleans Sewerage and Water Board Pump Station Number 5, a railroad, and the 40-Arpent Levee, before entering the general area where wetland restoration would occur. To the north of the bridge, the discharge line would have to cross either over or under Harbor Drive, the Federal storm-surge risk reduction floodwall, underneath a high voltage electrical transmission support tower, and across Pump Station Number 5's outfall canals (headwaters of Bayou Bienvenue). Both of these routes would likely cross through properties of multiple land owners and easements. A possible option would be to horizontally directionally drill the discharge pipe from the IHNC to the potential wetland restoration area. Such an endeavor may be possible, although the proximity of the IHNC to the floodwalls and the length of the pilings supporting the floodwall may prevent such an endeavor. Even if possible, horizontal directional drilling for a discharge pipeline is beyond the scope of typical beneficial use of dredged material projects. During the second phase of dredging, during construction years 7 to 13, dredging would be intermittent. Beneficial use of this material would be very difficult due to pumping distance, from the south end of the IHNC, and the need to maintain the pipeline in place over a period of up to 5 years.

Sediments and soils in and adjacent to the IHNC have been analyzed for contaminant levels, and voluminous information is contained in report appendices, especially Appendix C, to the 2009 Supplemental EIS for this project. The material that is suitable for open water disposal, including wetland restoration, is suitable only if adequate mixing zones are available to dilute pollutants to concentrations acceptable under Louisiana State Water Quality Criteria. The recommended Bayou Bienvenue area has very limited water exchange. Any material placed in this area would have to contain essentially zero contaminants to not cause a violation of State Water Quality Criteria for Bayou Bienvenue. The area is essentially the upper, dead-end of Bayou Bienvenue including the bayou and a large triangular-shaped area of shallow water surrounded by a levee, spoil bank, sewage treatment plant, and municipal landfill. Bayou Bienvenue is the only tidal connection and it is largely silted-in and very shallow. During and following local rainfall, urban stormwater runoff is pumped into the upper end of Bayou Bienvenue by New Orleans Sewerage and Water Board Pump Station

Number 5. This flow is sporadic and unpredictable. Based on estimates of dilution requirements for standard elutriates for the subject dredged material, available dilution in Bayou Bienvenue would be insufficient to meet State Water Quality Criteria during dredged material disposal. The upper reach of Bayou Bienvenue and the adjacent triangle area would become close to 100 percent dredged material effluent, and areas downstream in Bayou Bienvenue, including other areas of the Central Wetlands extending to the Mississippi River Gulf Outlet would become turbid with suspending sediment in the effluent from the disposal area. A waiver to exceed state water quality criteria for several constituent elements would certainly be required. To our knowledge, a request to exceed state water quality criteria has never been necessary for a coastal wetlands restoration project.

The first supplemental EIS for this project recommended a plan to dispose material that is unsuitable for open water disposal into wooded wetlands located along the south bank of the Mississippi River Gulf Outlet. The supplemental EIS further proposed to use some of the dredged material that was determined suitable for restoring wetlands to mitigate for the impacts to the wooded wetlands. We had proposed a system of disposing the material suitable for wetland restoration into a confined disposal facility, dewatering it, and then placing into the Bienvenue area to reduce the likelihood of needing to apply for a waiver to violate state water quality criteria. However, it was proposed only because the project required mitigation and no other reasonable mitigation options were available. We mention this here to address why wetland mitigation using dredged material was proposed in a previous report, and there is no plan to include a similar action for wetland restoration in the current report.

We acknowledge a number of local community groups have previously supported marsh creation in the recommended placement area. However, local residents and their neighborhood associations, along with state-wide and national environmental organizations have filed several lawsuits against this lock replacement project. The first of their lawsuits that was ruled in their favor resulted in the preparation of a supplemental EIS in 2009. The USACE is currently enjoined from performing any construction activities on the lock replacement project due to a second lawsuit that was ruled in their favor, until new National Environmental Policy Act and Clean Water Act compliance documentation is prepared. In these lawsuits, and in comments received on the project EIS dated 1997 and the supplemental EIS of 2009, voluminous comments focused on the canal bank soils and canal bottom sediments that would need to be dredged to construct the lock replacement project. These comments and the lawsuits make it clear that residents and their associations are very concerned about the potential spread of contamination during project construction, including the placement of any dredged material into confined disposal facilities or wetlands. They make no distinction between material that has been found suitable for open water disposal and material that is not suitable. While we agree that some groups have supported wetland restoration in this area and there have been a number of restoration projects proposals, there have been no proposals or support for using dredged material from the lock replacement project outside of Federal agencies.

When taking into consideration cost, existing technology and logistics in light of the project purpose, and the other factors discussed above, the current proposal to dispose all dredged material suitable for open water disposal into the Mississippi River is the least environmentally damaging practicable alternative, as required by the Clean Water Act.

The EFH conservation recommendation contained in your letter recommends development of a mitigation plan to offset the loss of 45 acres of EFH. While we acknowledge that the southern end of the IHNC technically contains two categories of EFH (estuarine water column and estuarine mud bottom), the area is nonetheless an operating shipping channel with extensive prior, and some current industrial activity along its banks. Industrial activity prior to the Clean Water Act and other environmental laws and regulations has resulted in the canal bottom sediments containing various industrial pollutants. Navigation traffic in the canal is frequent. The IHNC Lock has the highest average wait times for any USACE lock in the U.S. It is important to note that the part of the IHNC that would affected by the project is subjected to fresh water pulses from the Mississippi River each time a vessel lockage occurs, hence this part of the canal is heavily influenced by turbid, fresh water. We acknowledge that the IHNC, between its intersection with the Gulf Intracoastal Waterway and Lake Pontchartrain provides a vital tidal connection for estuarine organisms immigrating into Lake Pontchartrain during their early life stages, and emigrating from the lake later in their lives, especially brown shrimp, white shrimp, and red drum. Such is not the case in the southern end of the IHNC where lock replacement would occur. This part of the IHNC is essentially a dead end, except for pulses of river water entering from the existing lock operations. We believe that is not appropriate to provide compensatory mitigation for the loss of this low-quality estuarine habitat, which plays a minimal role in supporting Federally-managed species.

Thank you for your comments. If questions arise or if you have additional comments, please contact me at the address on the letterhead above, or contact Mr. Mark Wingate, Deputy for Project Management, at (504) 862-2204 or mark.r.wingate@usace.army.mil.

Sincerely,

Michael N. Clancy
Colonel, U.S. Army
District Commander

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
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February 1, 2017 F/SER46/RH:jk
225/389-0508

Colonel Michael N. Clancy
District Commander, New Orleans District
U.S. Army Corps of Engineers
7400 Leake Avenue
New Orleans, Louisiana 70118

Dear Colonel Clancy:

NOAA's National Marine Fisheries Service, Habitat Conservation Division (NMFS HCD) has received the Integrated Draft General Reevaluation Report and draft Supplemental Environmental Impact Statement (SEIS) for the Mississippi River, Baton Rouge to the Gulf of Mexico, Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels project. The draft SEIS was transmitted for our review by a January 4, 2017, letter from Edward Lambert of your staff. The U.S. Army Corps of Engineers (USACE) proposes to replace the existing lock on the Inner Harbor Navigation Canal (IHNC) with a new lock designed to accommodate shallow draft vessels plying the Gulf Intracoastal Waterway.

Based on our review of the draft SEIS, we believe resources in the project area have been adequately described. However, NMFS disagrees with conclusions provided in the document regarding impacts to essential fish habitat (EFH). Specifically, the USACE has estimated the acreage of aquatic habitat to be permanently lost due to project implementation to be 30 acres. Using Google Earth, the NMFS estimates approximately 45 acres of tidally influenced aquatic habitat would be rendered non-tidal due to project implementation. Additionally, NMFS disagrees with the statement that impacts to EFH would eventually be offset through the demolition of the existing lock structure and the conversion of that site to open water (Section 6.2.2, page 6-22). The disagreement is because the post-construction aquatic habitats between the new lock and the river, including the existing lock area, would not be tidally influenced and would not be considered EFH supportive of federally managed marine fishery species. In summary, NMFS believes project implementation would result in the unmitigated permanent loss of approximately 45 acres of EFH.

The NMFS HCD also is concerned opportunities to maximize the environmental benefits of project implementation have not be incorporated into the project. Specifically, more than 600,000 cubic yards of dredged material suitable for open water disposal is proposed to be deposited into the Mississippi River, rather than used beneficially to create tidally influenced marsh. The NMFS believes beneficial use options appropriate for tidal marsh creation purposes are available in close proximity to the dredging area (see attached figure). According to the draft SEIS, the beneficial use of dredged material was not considered for any of the lock replacement alternatives because impacts to fish and wildlife habitats requiring compensatory mitigation were not identified (page 2-23, paragraph 1). While NMFS understands the project was designed to benefit economic development, not the environment, the USACE's Environmental Operating Principles suggest civil works projects should be designed to benefit the environment, if such actions are possible and do not result in project cost increases.

The NMFS has a "findings" with the New Orleans District that states fulfillment of EFH coordination requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) for civil works projects will be completed through our review and comment on documents prepared under the requirements of the National Environmental Policy Act. Therefore, in view of the above and in compliance with provisions of the Magnuson-Stevens Act, NMFS recommends the following to ensure the conservation of EFH and associated marine fishery resources:

EFH Conservation Recommendation

> The NMFS recommends the USACE develop a mitigation plan designed to offset the loss of approximately 45 acres of EFH. Such a plan should be developed in coordination with NMFS and incorporated into the final EIS.

Regarding mitigation to offset project impacts to EFH, the NMFS believes it is technically feasible to pump the 600,000 cubic yards of sediment identified as appropriate for open water disposal into an adjacent open water area. The pumping distance to the potential marsh creation site is similar to, or closer than, the Mississippi River disposal site identified in the draft EIS (see enclosed figure). As such, the beneficial use of sediment should not result in a significant cost increase in the project. While NMFS is aware there are some land rights issues associated with disposal in the recommended area, the NMFS believes those problems could be circumvented. Additionally, it should be noted that a number of local community groups have previously supported marsh creation in the recommended placement area.

Consistent with Section 305(b)(4)(B) of the Magnuson-Stevens Act and NMFS' implementing regulation at 50 CFR 600.920(k), your office is required to provide a written response to our EFH conservation recommendation within 30 days of receipt. Your response must include a description of measures to be required to avoid, mitigate, or offset the adverse impacts of the proposed activity. If your response is inconsistent with our EFH conservation recommendation, you must provide a substantive discussion justifying the reasons for not implementing the recommendation. If it is not possible to provide a substantive response within 30 days, the USACE should provide an interim response to NMFS, to be followed by the detailed response. The detailed response should be provided in a manner to ensure that it is received by NMFS at least 10 days prior to the final approval of the action, i.e., the signing of the Record of Decision.

We appreciate your consideration of our comments. If you wish to discuss this project further or have questions concerning our recommendation, please contact Richard Hartman at (225) 389-0508, extension 203.

Sincerely,

Virginia M. Fay

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

Enclosure

c:
FWS, C Breaux, D. Walther
NOD, M. Lahare
F/SER46, Swafford
F/SER4, Dale, Silverman
LDNR Consistency, Haydel
Files

Figure 1: New lock site, location of NMFS recommended disposal site, and the location of the draft EIS recommended disposal site.