

**COOPERATING AGENCY MEMORANDUM OF UNDERSTANDING
FOR THE PROPOSED “MID-BARATARIA SEDIMENT DIVERSION”
ENVIRONMENTAL IMPACT STATEMENT
BETWEEN THE
UNITED STATES ARMY CORPS OF ENGINEERS, AS LEAD AGENCY
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION,
THE UNITED STATES DEPARTMENT OF THE INTERIOR,
THE UNITED STATES FISH AND WILDLIFE SERVICE, AND
THE UNITED STATES DEPARTMENT OF AGRICULTURE,
AS FEDERAL COOPERATING AGENCIES**

THIS MEMORANDUM OF UNDERSTANDING is entered into this 11th day of September, 2017, by and between the Department of the Army, United States Army Corps of Engineers (hereinafter “USACE”), represented by the U.S. Army Engineer, New Orleans (hereinafter the “District Engineer”); the United States Environmental Protection Agency (hereinafter “EPA”) represented by the Director of Compliance Assurance and Enforcement Division, Region 6; the National Oceanic and Atmospheric Administration (hereinafter “NOAA”) represented by the Deputy Assistant Administrator for Regulatory Programs; the United States Department of the Interior (hereinafter “DOI”) represented by the DOI *Deepwater Horizon* NRDAR Case Manager; the United States Fish and Wildlife Service (hereinafter “USFWS”) represented by the Assistant Regional Director, Ecological Services; and the United States Department of Agriculture (hereinafter “USDA”) represented by the Director, USDA-NRCS Gulf Coast Ecosystem Restoration Team.

ARTICLE I - INTRODUCTION

1. The State of Louisiana, acting by and through, the Coastal Protection and Restoration Authority (hereinafter “CPRA”) has submitted a Joint Permit Application for Department of Army permits to USACE under the provisions of Section 404 of the Clean Water Act (33 U.S.C. §1344) and Section 10 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. §403) (hereinafter collectively referred to as “Section 10/404”), and a request for permission under Section 14 of the Rivers and Harbors Appropriation Act of 1899, as amended (33 U.S.C. §408) (hereinafter “Section 408”) to USACE for CPRA’s proposed action referred to herein as the proposed Mid-Barataria Sediment Diversion (“MBSD Project”).

2. USACE administers a Regulatory Program to protect the Nation's aquatic resources under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §407), and Section 404 of the Clean Water Act (33 U.S.C. §403). Section 10 requires authorization from the Secretary of the Army, acting through USACE, for the construction of any structure in or over any navigable water of the United States. Section 404 requires authorization from the Secretary of the Army, acting through USACE, for the discharge of dredged material or fill material into all waters of the United States, including wetlands.

3. In addition, USACE evaluates requests for temporary and permanent modifications of USACE projects under Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. §408). Section 408 authorizes the Secretary of the Army, upon the recommendation of the Chief of Engineers, to grant approval for the alteration, permanent occupation, or use of any USACE public works, when in the judgment of the Secretary, such operation or use will not be injurious to the public interest and will not impair the usefulness of the public work.

4. USACE has determined that an Environmental Impact Statement ("EIS") pursuant to the National Environmental Policy Act of 1969 ("NEPA") for the proposed MBSD Project must be prepared and used in conjunction with other relevant materials prior to making a decision on the Department of the Army, Section 10/404 and Section 408 requests for permits and permissions. USACE filed a Notice of Intent ("NOI") to prepare an EIS for the proposed MBSD Project which was published in the Federal Register on October 4, 2013. An updated NOI was published by USACE in April 2017 in the Federal Register to supplement the original NOI and to make the status and direction of that Notice current.

ARTICLE II – PURPOSE

This Memorandum of Understanding ("MOU") describes the respective authorities, expertise, responsibilities, and procedures agreed to by the Parties and establishes a cooperating agency relationship between USACE as the Lead Agency, and the EPA, NOAA, DOI, and the USDA as cooperating agencies ("Cooperating Agencies") pursuant to NEPA for the purpose of preparing the DEIS and FEIS for the proposed MBSD Project. USACE is the Lead Agency responsible for preparing the DEIS and FEIS pursuant to 40 C.F.R. §§ 1501.5 and 1508.16. The Cooperating Agencies have jurisdiction by law and/or special expertise pursuant to 40 C.F.R. §§ 1501.6 and 1508.5. The Parties intend that this MOU will facilitate the preparation of an EIS that will properly address the potential environmental impacts of the proposed MBSD Project and its alternatives. Furthermore, this MOU provides a framework for early cooperation, coordination, and participation between the Parties to facilitate the successful completion of the draft EIS ("DEIS") and final EIS ("FEIS") in a timely, efficient, and thorough manner. The Parties share a mutual goal of preparing a FEIS that contains all of the information that the Parties require to fulfill their respective NEPA and/or regulatory responsibilities, and to make independent decisions within their jurisdiction and area of expertise. As such, the Parties shall collaborate and use their best efforts to develop an integrated statement of the "purpose and need" for the proposed MBSD Project FEIS to facilitate the preparation and evaluation of a reasonable range of alternatives in the FEIS that enables Parties with special expertise or jurisdiction by law to render their own respective Records of Decision ("ROD") and/or satisfy their respective authorities. Some or all of the Cooperating Agencies with related federal actions and/or jurisdiction by law may adopt the FEIS pursuant to 40 C.F.R. § 1506.3(a) provided that the FEIS meets the standards for an adequate statement.

ARTICLE III - AUTHORITIES

1. The authority of the Parties to enter into and engage in the activities described within this MOU includes, but is not limited to NEPA (42 U.S.C. 4321 et seq.) and the regulations implementing NEPA, including the Council of Environmental Quality ("CEQ") NEPA regulations (40 C.F.R. Part 1500 et seq.).
2. The authorities of the EPA to enter into and engage in the activities described within this MOU include, but are not limited to:
 - a. Oil Pollution Act of 1990 (33 U.S.C. § 2701 et seq.);
 - b. Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan;
 - c. National Environmental Policy Act, 1970 (42 U.S.C. §4321);
 - d. The Clean Water Act (33 U.S.C. §1344);
 - e. The Clean Air Act (42 U.S.C. §7401, et seq.);
 - f. Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601 et. seq.); and
 - g. Coastal Zone Management Act of 1972 (16 U.S.C. §1451-1466).
3. The authorities of NOAA to enter into and engage in the activities described within this MOU include, but are not limited to:
 - a. Oil Pollution Act of 1990 (33 U.S.C. § 2701 et seq.);
 - b. Marine Mammal Protection Act (16 U.S.C. § 1361 et seq.);
 - c. Endangered Species Act (16 U.S.C. § 1531 et seq.);
 - d. Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);
 - e. Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.);
 - f. Coastal Zone Management Act of 1972 (16 U.S.C. §1451-1466); and
 - g. NOAA Administrative Order-216-6A (April 22, 2016).
4. The authorities of DOI and USFWS to enter into and engage in the activities described within this MOU include, but are not limited to:
 - a. Oil Pollution Act of 1990 (33 U.S.C. § 2701 et seq.);
 - b. Marine Mammal Protection Act of 1972 (16 U.S.C. § 1361 et seq.);
 - c. Endangered Species Act (16 U.S.C. § 1531 et seq.);
 - d. Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 et seq.);
 - e. National Environmental Policy Act of 1969 (83 Stat. 852, as amended; 42 U.S.C. 4321 et seq.);
 - f. Migratory Bird Treaty Act, 40 Stat. 755, as amended, 16 U.S.C. §§ 703–712);
 - g. Bald and Golden Eagle Protection Act, (54 Stat. 250, as amended, 16 U.S.C. §§ 668–668d);
 - h. Coastal Barrier Resources Act, (16 U.S.C. §§ 3501–3510 (2017)); and
 - i. Federal Water Pollution Control Act of 1977 (Clean Water Act) (33 U.S. C. §1344).
5. The authorities of the USDA to enter into and engage in the activities described within this MOU include, but are not limited to:
 - a. Farmland Protection Policy Act of 1981 (7 U.S.C. §4201 et. seq.).

ARTICLE IV – USACE ROLES & RESPONSIBILITIES

1. As Lead Agency, USACE is ultimately responsible for implementing the NEPA process in the preparation of the DEIS and the FEIS to support the Department of the Army decision making on the Section 10/404 permits and Section 408 permissions relative to the proposed MBSD Project. USACE's responsibilities for content development and coordination with the Cooperating Agencies include, but are not limited to the following:

- a. determining the purpose and need for the DEIS and FEIS;
- b. determining the range of reasonable alternatives to be considered and selecting the alternatives for analysis;
- c. determining the methodologies to be used and the level of detail required in the analysis of each alternative;
- d. determining the important and significant environmental resources potentially impacted;
- e. planning and scheduling public and tribal outreach and coordination, to the extent required by applicable law, and planning formal public comment and consideration of said comments in accordance with NEPA;
- f. identifying and informing the public and decision-makers of the potential direct, indirect, and cumulative impacts of the alternatives that are reviewed during the DEIS and FEIS process including potential means to mitigate those impacts;
- g. determining appropriate mitigation and developing mitigation actions that would avoid, minimize and reduce potential adverse impacts (before moving to compensatory mitigation);
- h. determining adaptive management and monitoring measures;
- i. providing invitations and adequate notice (typically two weeks) to the Cooperating Agencies for DEIS and FEIS coordination meetings, including monthly Federal Coordination Team (FCT) meetings;
- j. managing the collaborative processes with Cooperating Agencies that provide for inclusive and full collaboration on all aspects of the DEIS and FEIS throughout development to facilitate the multiple purposes for the DEIS and FEIS determined herein.
- k. clarifying and acknowledging the roles and responsibilities of the Cooperating Agencies in preparing the DEIS and FEIS;
- l. providing the preliminary DEIS deliverables, as appropriate, to the Cooperating Agencies for review and comment; and
- m. providing technical analyses and information to the Cooperating Agencies and soliciting their review and comment particularly with respect to key subject areas and issues within the Cooperating Agency's jurisdiction by law or special expertise as appropriate.

2. To the maximum extent possible and consistent with its own responsibilities as Lead Agency, USACE will consider the comments, recommendations, data, and/or analyses provided by the Cooperating Agencies in the DEIS and FEIS planning and development process, giving particular consideration to those subject matters which the respective Cooperating Agencies possess jurisdiction by law and/or special expertise. USACE will utilize a systematic, interdisciplinary approach that will help ensure the integrated use of the submitted material in accordance with 40 C.F.R. §1501.6(a)(2) and §1502.6. In accordance with 40 CFR 1506.3(c),

when requested by a Cooperating Agency, USACE will provide Cooperating Agencies that intend to adopt the FEIS with information and explanation on how Cooperating Agency comments were addressed including explanation why any comments were not incorporated into the DEIS and FEIS. USACE shall make the final determination on the inclusion or exclusion of material in the DEIS and FEIS as to the content or relevance of any material, data, analyses, and conclusions in accordance with applicable laws and regulations. USACE will determine whether any necessary modifications to the DEIS and FEIS are required as a result of public, Cooperating Agency or CPRA submitted comments.

3. To the maximum extent possible, USACE will provide the Cooperating Agencies with copies of documents underlying the EIS relevant to the Cooperating Agencies responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and DEIS and FEIS. USACE will make information regarding the environmental, historic, and socio-economic resources within the proposed MBSD Project area available to the Cooperating Agencies as early as practicable in the review process.

4. USACE has issued a letter of introduction and invitation to consult for purposes of Section 106 of the National Historic Preservation Act (36 CFR §800.8(a)(1)) on October 21, 2016 and is coordinating future conference calls with the State Historic Preservation Office and recognized Tribal Nations to identify concerns and determine survey requirements for Section 106 compliance.

5. USACE will establish a comment period of not less than 45 calendar days and not more than 60 calendar days after the date on which the notice announcing the availability of the DEIS is published in the Federal Register unless the conditions set forth in 42 U.S.C. §4370m-4(d)(1)(A)-(B) are met. For all other review or comment periods in the DEIS and FEIS review process (40 C.F.R. parts 1500-1508) USACE will establish a comment period of not more than 45 days after the date on which the materials on which comments are requested are made available, unless the conditions set forth in 42 U.S.C. §4370m-4(d)(2)(A)-(B) are met. USACE shall be solely responsible for directly communicating the status of the DEIS and FEIS to CPRA and the public.

6. USACE will ensure that the Cooperating Agencies receive copies of all comments received on the DEIS and FEIS and provide an initial identification of those comments pertaining to the Cooperating Agencies' expertise or regulatory authority, which may require the Cooperating Agencies to prepare a written response for inclusion in the DEIS and FEIS.

7. To the extent practicable, public meetings as required under NEPA will incorporate Natural Resource Damage Assessment ("NRDA") considerations in order to provide transparency and efficiency for the public and the Lead and Cooperating Agencies.

8. USACE will promptly inform the Cooperating Agencies of all schedule changes that might affect a Cooperating Agency's ability to provide timely input for a document review.

ARTICLE V - COOPERATING AGENCIES' ROLES & RESPONSIBILITIES

1. The Cooperating Agencies will provide information, comments, and technical expertise to USACE regarding those elements of the DEIS and FEIS, and the data and analyses supporting them, for which they have jurisdiction or special expertise or when USACE requests their

assistance. This will not limit a Cooperating Agency's ability to comment on other environmental resources or aspects of the DEIS and FEIS.

- a. EPA. The EPA's mission is to protect human health and the environment, and in the furtherance thereof, has responsibility for establishing environmental regulations and enforcement, including in partnership with states and tribes. The EPA is a Cooperating Agency in the EIS development process and is recognized to have jurisdiction by law and special expertise, including but not limited to, protecting the nation's waters, air quality, and communities. The EPA will focus its efforts on the issues and subject areas in the DEIS and FEIS pertaining and/or related to compliance with the applicable requirements of the Clean Water Act (33 U.S.C. §1344); the Clean Air Act (42 U.S.C. §7401, et seq.) as amended; and the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §9601 et. seq.). The participation by the EPA as a Cooperating Agency does not abridge the EPA's independent review of the DEIS and FEIS pursuant to NEPA and §309 of the Clean Air Act (CEQ's 40 Questions, No. 15).
- b. NOAA. NOAA is a Cooperating Agency in the EIS development process and is recognized to have jurisdiction by law and special expertise in the areas of natural resource damage assessment and restoration planning, threatened and endangered species, marine mammal protection, and Essential Fish Habitat ("EFH"). NOAA's National Marine Fisheries Service ("NMFS") will focus on issues and subject areas in the DEIS and FEIS pertaining and/or related to compliance with the applicable requirements of the Marine Mammal Protection Act of 1972 ("MMPA") (16 U.S.C. § 1361 et seq.); the Endangered Species Act of 1973 ("ESA") (16 U.S.C. § 1531 et seq.); the Fishery Conservation and Management Act of 1976 (Magnuson-Stevens Fishery Conservation and Management Act) (16 U.S.C. §1801 et seq.); the implementing regulations at 50 CFR Part 600 for actions that may adversely affect EFH, providing conservation recommendations, and the Natural Resource Damage Assessment.
- c. DOI. DOI is a Cooperating Agency in the EIS development process and is recognized to have jurisdiction by law and special expertise and will focus its efforts on issues and subject areas in the DEIS and FEIS pertaining and/or related to compliance with the Natural Resource Damage Assessment and restoration planning under the Oil Pollution Act of 1990 (33 U.S.C. § 2701 et seq.), and applicable requirements of the Department of the Interior Regulations for the Implementation of the National Environmental Policy Act of 1969 (43 CFR Part 46).
- d. USFWS. The USFWS is a federal land management and regulatory agency within the United States Department of the Interior, responsible for initiating, conducting, and supporting programs for the conservation of threatened and endangered species of wildlife and plants, and the ecosystems of which they are a part. The USFWS is a Cooperating Agency in the EIS development process and is recognized to have jurisdiction by law and special expertise and will focus its efforts on the issues and subject areas in the DEIS and FEIS pertaining and/or related to compliance with the Endangered Species Act of 1973, as amended (16 U.S.C. §1531 et. seq.); the Fish and Wildlife Coordination Act (16 U.S.C. §661-666c);

Migratory Bird Treaty Act, 40 Stat. 755, as amended, 16 U.S.C. §§ 703-712); Bald and Golden Eagle Protection Act, (54 Stat. 250, as amended, 16 U.S.C. §§ 668–668d); Coastal Barrier Resources Act, (16 U.S.C. §§ 3501–3510 (2017)); and the Federal Water Pollution Control Act of 1977 (Clean Water Act) (33 U.S. C. §1344).

- e. USDA. The USDA is a Cooperating Agency in the EIS development process and is recognized to have jurisdiction by law and special expertise for the DEIS and FEIS, including but not limited to, the conversion of farmland to non-agricultural uses; soil quality; plant and wildlife health, condition, and habitat; and conservation planning and assistance. The USDA will focus its efforts on issues and subject areas in the DEIS and FEIS pertaining and/or related to compliance with the regulations and procedures for implementing the provisions of NEPA (7 C.F.R. Part 650 and 7 C.F.R. Part 1b), the Joint Guidance from NRCS and USACE Concerning Wetland Delineation for the Clean Water Act and the Food Security Act of 1985 (Feb. 25, 2005), and the Farmland Protection Policy Act (7 U.S.C. §73); among other applicable laws and regulations.

2. Cooperating Agency Activities. The Cooperating Agencies will actively participate in the development of the DEIS and FEIS. Following the directives of NEPA, the Cooperating Agencies shall cooperate fully and share information and technical expertise to evaluate the potential environmental effects of the proposed MBSD Project and its alternatives. Each Cooperating Agency shall give full recognition and respect to the authority, expertise, and responsibility of the others. Participation in this MOU does not imply endorsement of the proposed MBSD Project, nor does it abridge the independent review of the DEIS and FEIS by the Cooperating Agencies. The Cooperating Agencies may participate in activities which include, but are not limited to:

- a. devoting staff resources sufficient to provide technical assistance to fulfill its role as a Cooperating Agency;
- b. consulting with USACE in establishing the EIS schedule;
- c. providing review and comment on preliminary EIS deliverables;
- d. providing guidance on public involvement strategies;
- e. attending public scoping meetings, public comment meetings, or other meetings to represent the Cooperating Agencies separate authorities where those meetings will serve the purpose of public meetings for separate, related processes, in particular for purposes of public comment under 15 CFR Part 990 or the MMPA;
- f. providing assistance on proposed planning criteria; identifying coordination requirements; identifying relevant local and regional organizations and interest groups; identifying data needs and technical analysis in within the Cooperating Agency's expertise and/or jurisdiction that may be needed;
- g. providing responses to data requests;
- h. participating in public meetings, scoping meetings and/or hearings held by USACE consistent with all relevant laws and regulations;
- i. participating in monthly FCT meetings and/or conference calls;
- j. providing technical information and expertise associated with the Cooperating Agency's statutory responsibilities or related experience (including review of technical analyses of key subject areas as requested by USACE);
- k. identifying and raising issues and concerns as early in the process as reasonably feasible to avoid delay and inefficiency;
- l. suggesting management actions to resolve planning issues, identifying effects of

- alternatives;
- m. suggesting mitigation measures, suggesting monitoring and adaptive management requirements, consultation and coordination as required by law;
 - n. reviewing comments on the DEIS and assisting in drafting responses to comments within the Cooperating Agencies respective jurisdiction or area of expertise;
 - o. providing written comments on working drafts of the DEIS and FEIS and supporting documents;
 - p. assisting with comments as requested by USACE;
 - q. complying with confidentiality requirements and procedures contained in this MOU;
 - r. attempting to identify and resolve outstanding environmental and other issues raised in the DEIS prior to the issuance of the FEIS.

3. Cooperating Agency Communications with Third Party Contractor. Direction to and of the Third Party Contractor is the exclusive responsibility of USACE. Therefore, any technical instructions, direction, or guidance provided by the Cooperating Agencies to the Third Party Contractor must be made through USACE (e.g. by email copy to USACE, on a SharePoint site, or by USACE representation at meetings). The Cooperating Agencies may not directly provide technical instructions, direction, or guidance to the Third Party Contractor retained by CPRA relative to preparation of the EIS, compliance with federal laws, policies, regulations, and procedures, impact assessments, data interpretation, conclusions, and other matters for inclusion in the EIS without the written agreement of USACE. The Cooperating Agencies may respond directly to requests by the Third Party Contractor for data gap information and materials but shall copy USACE on all such communications with the Third Party Contractor.

4. Comment Resolution. Upon expiration of each comment period, the Third Party Contractor and USACE shall evaluate the written comments received and draft proposed responses and/or identify issues with any comments. USACE shall schedule a meeting with the Cooperating Agencies and CPRA to discuss all comments and attempt to resolve any issues.

5. Cooperating Agency Communications with CPRA. For purposes of the EIS, the Parties assume that any required coordination has occurred or is occurring as between CPRA and the Cooperating Agencies, and that such coordination will not impact the evaluation of any authorizations required to be solely made by any individual Party. The Parties agree that USACE retains the final authority over the content of the DEIS and FEIS, and that any coordination between the Cooperating Agencies and CPRA will not prejudice any Party's independent decision-making obligations established by NEPA and the CEQ regulations or its respective authorities.

6. Confidentiality. The Cooperating Agencies shall keep all deliberations with USACE confidential prior to the release of a public draft of the DEIS and FEIS. The Cooperating Agencies shall not disclose confidential deliberations regarding the status or content of the DEIS and FEIS to members of the press and media without prior written approval of USACE. The Cooperating Agencies shall not publish articles, blogs, social media posts, or other publications about the status or content of deliberative drafts of the DEIS or FEIS or post comments on the EIS Proposed Action website without the prior written approval of USACE. The Cooperating Agencies may not make presentations about the status or content of deliberative drafts of the DEIS or FEIS without the prior written approval of USACE.

ARTICLE VI - RESPONSIBILITIES OF ALL PARTIES

1. FAST-41 Dashboard. The proposed MBSD Project has been added to the inventory of “covered projects” that are pending environmental review or authorization by the head of a Federal Agency pursuant to the requirements set forth in Title 41 of Fixing America’s Surface Transportation Act (“FAST-41”). 42 U.S.C. §4370m-l(c)(1)(A)(i). USACE has developed a coordinated project plan (“CPP”) which is attached hereto as **Appendix “A”** for the proposed MBSD Project. The CPP was developed to meet the requirements and intent of FAST-41, and to guide public and agency participation throughout the remainder of the federal environmental review process and authorizations. The CPP includes a Permitting Timetable and comprehensive schedule with deadlines for all federal environmental reviews and authorizations, and to the maximum extent possible, state reviews and authorizations. In addition, the CPP sets forth a list of the roles and responsibilities for all entities with NEPA or federal authorization for the MBSD Project. The CPP addresses potential avoidance, minimization and mitigation strategies and includes plans and a schedule for public and tribal outreach and coordination to the extent required by law. The Parties agree to comply with the Permitting Timetable set forth in the CPP as contained in **Appendix “A”**. “Cooperating Agencies” as used in the MOU, refers to cooperating agency status under the CEQ NEPA regulations, and NOT the “cooperating agency” status as established by FAST-41.

2. Collaboration and Team-Writing. The Parties agree to work collaboratively in drafting the DEIS and FEIS based on the Parties’ respective jurisdictions by law and/or area of expertise with the full understanding that USACE is the Lead Agency for purposes of NEPA compliance. USACE will direct the Third-Party Contractor to establish a SharePoint site that will be accessible for all Parties for concurrent review and drafting. USACE will initiate the collaborative writing process that will occur on the SharePoint site by providing advance notice to the Parties. At the time a draft EIS work product is placed on the SharePoint site, USACE shall provide a specific time period for the completion of the collaborative writing by the Parties for the particular draft EIS work product. In addition, USACE may provide written consent for the preparation of an initial draft of an EIS work product by one or more Cooperating Agencies based on the Cooperating Agency’s area of jurisdiction by law and/or area of expertise. In such event, USACE shall provide written notice of its consent to all Parties in accordance with the provisions of Article VII, Paragraph 7 of this MOU, together with the date and/or time period established by USACE within which the work product must be received by USACE; USACE shall also provide the same written notice to the Third Party Contractor. In such event, the Cooperating Agency or Agencies shall prepare and submit the initial draft of the EIS work product to USACE via e-mail or placement on the SharePoint site for viewing only by USACE within the time period specified by USACE. Upon completion of USACE review and the making of any revisions to the draft EIS work product, USACE shall provide the draft EIS work product to the Third-Party Contractor for review, revision, formatting and placement of the draft EIS work product on the SharePoint site for the review and the submission of proposed revisions and comments by all Parties in accordance with the terms set forth in this Paragraph. The Collaboration and Team-Writing Flow Chart is attached hereto as **Appendix “C”**.

3. Document Review Periods. USACE will provide the Cooperating Agencies with copies for review and comment of the preliminary draft(s) sections of the DEIS and FEIS and interim work products, such as individual EIS sections or maps, in a timely manner. USACE will provide the following administrative DEIS deliverables to the Cooperating Agencies for collaborative writing, review, and comment for the minimum noted amount of time from receipt:

- a. Draft Scoping Report for 20 working days;
- b. Draft Purpose and Need for 20 working days;
- c. Draft Scope of Impacts, Alternatives, and Analysis for 20 working days;
- d. Draft Table of Contents for 10 working days;
- e. Draft Affected Environment for 20 working days;
- f. Draft Alternatives for 30 working days;
- g. Draft Environmental Consequences for 20 working days;
- h. Draft Mitigation Measures for 10 working days;
- i. Draft Technical Appendices, except for USACE's Clean Water Act Section 404(b)(1) analysis, for 10 working days;
- j. DEIS for 20 working days;
- k. Fatal flaw review of final DEIS prior to release for 5 working days;
- l. Draft Notice of Availability of the DEIS for 5 working days;
- m. Draft Responses to Comments for 30 working days;
- n. Draft interim revised sections leading to the Administrative draft FEIS for 10 working days;
- o. Draft FEIS for 20 working days;
- p. Fatal flaw review of final FEIS prior to release for 5 working days; and
- q. Draft Notice of Availability of the FEIS for 5 working days.

Comments and revisions to draft EIS work products by Cooperating Agencies that are not placed and provided on the SharePoint site within each document review period as specified in this Paragraph or as otherwise specified in writing by USACE, will not be addressed or considered by USACE. At the conclusion of the collaborative writing process, USACE will manage the Third-Party Contractor's finalization of each draft EIS work product before it is distributed to the Cooperating Agencies for review.

4. Management of Information. The Parties acknowledge that all supporting materials and draft documents may become part of the administrative record and may be subject to the requirements of the Freedom of Information Act ("FOIA") and other federal statutes. The Cooperating Agencies acknowledge that USACE will maintain the official Administrative Record for preparation of the DEIS and FEIS. USACE acknowledges that the Cooperating Agencies' handling of these materials may be impacted by the Louisiana Public Records Act (La. R.S. 44:1, et. seq.). To the fullest extent practicable after consideration of the effect on FOIA exemptions and civil discovery privileges, USACE will provide the Cooperating Agencies with copies of documents underlying the DEIS and FEIS relevant to the Cooperating Agencies responsibilities, including technical reports, data, analyses, comments received, working drafts related to environmental reviews, and the DEIS and FEIS. The Cooperating Agencies will keep confidential and protect from public disclosure any and all documents related to the DEIS and the FEIS that they receive from USACE or the Third Party Contractor prior to determination by USACE of their suitability for public review or release under the provisions of the FOIA, in accordance with the FOIA implementing regulations of the Lead or Cooperating Agencies.

5. Natural Resource Damages Restoration Planning and Funding. EPA, NOAA, DOI, USFWS, USDA, CPRA, the Louisiana Department of Wildlife and Fisheries, the Louisiana Oil Spill Coordinator's Office, the Louisiana Department of Natural Resources, and the Louisiana Department of Environmental Quality comprise the *Deepwater Horizon* Louisiana Trustee Implementation Group ("LA TIG"), established via the April 4, 2016 federal-state Consent Decree with British Petroleum. On March 28, 2017, the LA TIG published a notice to solicit project ideas

“to restore and conserve wetland, coastal and near shore habitats in Barataria Basin,” and the LA TIG intends to prepare a strategic restoration plan (“Phase 1”) for the Barataria Basin. Following completion of that Phase 1 restoration plan, a second plan (“Phase 2”) will initiate restoration planning for projects identified in the phase 1 restoration plan, potentially including the Mid-Barataria Sediment Diversion. *Deepwater Horizon* NRDA restoration plans are developed under the Oil Pollution Act (OPA, 33 U.S.C. 2701 et seq.), the OPA implementing NRDA regulations at 15 CFR 990 et seq., and in accordance with the *Deepwater Horizon* Oil Spill: Final Programmatic Damage Assessment and Restoration Plan and Final Programmatic Environmental Impact Statement (“PDARP/PEIS”) and associated Record of Decision. While restoration plans are typically integrated with the NEPA analysis into one document, the related NEPA analysis may be prepared as a separate document. The LA TIG determined that the USACE-led EIS could serve, in whole or in part, as an FEIS for a separate but parallel Phase 2 restoration plan provided: the Federal Trustees are able to tier sections of the document to the PDARP/PEIS, where appropriate, for their own decision-making (40 C.F.R. §1502.4(d)); the Federal Trustees’ input is sufficiently incorporated into the DEIS and FEIS; and the FEIS analyses are sufficient for purposes of OPA, NRDA, and the PDARP/PEIS. The LA TIG Federal Trustees (NOAA, EPA, USDA, and DOI) are cooperating with the USACE to prepare the MBSD FEIS in the interest of potential future adoption of the FEIS to inform NRDA restoration planning decisions.

6. Coordination with the Louisiana TIG. In accordance with 15 C.F.R. § 990.23, when federal trustees propose to take OPA NRDA restoration actions, including preparation of restoration plans, the federal trustees must integrate the restoration planning with NEPA, the CEQ regulations, and agency’s(ies) NEPA implementing regulations. In accordance with the PDARP/PEIS and the Trustee’s ROD, the Trustees work as a Trustee Implementation Group (TIG), inclusive of federal and state trustees, for development of restoration plans and their integrated NEPA analyses. NOAA, as the lead federal agency for purposes of the FEIS in the context of a LA TIG restoration plan, and the Federal Trustees will share the content of the FEIS with the LA TIG in order to ensure the FEIS adequately reflects a description and analysis of alternatives for purposes of the Trustee’s consensus decision-making required under the Consent Decree entered into by the Court in *In re: Oil Spill by the Oil Rig “Deepwater Horizon” In the Gulf of Mexico* on April 4, 2016. Any appendices of the FEIS that relate specifically to agency regulatory or other decision-making processes would be excluded from any such communication and coordination by the federal natural resource trustees with the Louisiana TIG.

7. Conflicts of Interest Prohibited. The Parties shall not employ or accept the services of any person, agent, representative, or party having a financial interest in the outcome of the proposed MBSD Project. The Parties will take all necessary steps to ensure that no conflict of interest exists with its consultants, counsel, or representatives employed in this undertaking. [40 C.F.R. 1506.5(c)] If conflict of interest disclosure statements are obtained by a Party as a result of contractor or other person or entity retained, procured, or utilized in connection with the preparation of documents, data, reports, and other materials in preparation and development of the DEIS and/or FEIS for the proposed MBSD Project, or for the construction and/or operation of the proposed MBSD Project, copies of all such conflict of interest disclosure statements will be forwarded to USACE for inclusion in the Administrative Record.

8. Funding. Each party agrees to be responsible for its own expenses associated with DEIS and FEIS preparation and participation in the NEPA process.

9. Principal Points of Contact. Prior to the execution of this MOU each Party shall designate a principal representative to serve as the designated Point of Contact ("POC") for coordination of deliverable reviews and meetings. The respective POCs for the Parties listed on **Appendix "B"** shall be responsible for ensuring that the information sharing, collaboration, participation, document review procedures, and other responsibilities established by this MOU are implemented. The Parties will make every effort to maintain the same POC through the duration of the NEPA process. If reassignment of the POC becomes necessary, the Cooperating Agency will notify the Parties of the change. In such cases, previous positions recorded in the administrative record will not be revisited, unless there is significant new information or significant changes to the proposed MBSD Project, the environment, or laws and regulations. Additional representatives may also be appointed by the Parties to serve as technical points of contact.

10. Effect of Participation in MOU. Participation in this MOU by any Party to this MOU does not imply endorsement of the CPRA's proposed MBSD Project nor does it foreclose the authority of the Lead Agency or the Cooperating Agencies to identify alternate preferred alternatives, nor does it abridge the independent review of the DEIS and FEIS by USACE and the Cooperating Agencies.

11. Federal Advisory Committee Act. The Parties agree to consider whether proposed meetings or other activities would waive the Unfunded Mandates Reform Act exception to the Federal Advisory Committee Act (2 U.S.C. 1534(b) and 5 U.S.C. App.).

12. Compliance with Laws. The Parties shall observe, abide by, and comply with all NEPA, CEQ and other applicable federal regulations, laws, policies and guidance pertaining to preparation of the DEIS and FEIS and all processes relating thereto

13. Common Interest. The Parties share close and common interests in the application of federal laws for environmental and NEPA compliance related to the Mid-Barataria Sediment Diversion permit application and in assessing the impacts from the proposed project to protect the natural resources over which the Parties have jurisdiction. The Parties wish to confer with and assist one another concerning the development of the environmental impact statement being developed as part of the MBSD permit application, and recognize that these consultations will require the exchange of communications, information and documents, that, in the sole possession of the originating Party, would be protected from public disclosure by the attorney-client privilege, the work product doctrine, the executive deliberative process privilege, and other privileges recognized by common law and by statute, or would be exempt from public disclosure requirements under applicable federal and state public records laws. The Parties recognize that continued protections of such confidential or privileged communications, information, and documents, when exchanged among the Parties for deliberative, consultative, or joint DEIS and FEIS development purposes, is essential to the Parties' fulfillment of their respective governmental roles and responsibilities and the attainment of their common interests with respect to the MBSD permit application. The Parties do not intend, through their consultations either before or after the initiation of any proceeding, to waive any privilege or immunity from disclosure, including, but not limited to, the attorney-client and executive deliberative process privilege and the work product doctrine, that would otherwise attach to any information, documents, or communications shared among them, their consultants, investigators, scientists, and any other experts. The Parties specifically intend that all such privileges and immunities shall be preserved. A Party's inadvertent disclosure of records subject to any privileges or immunities to a non-Party to this MOU in a manner not in accordance with law or statute may not be interpreted as a waiver of that Party's

claim of privilege or immunity. To the extent an inadvertent disclosure is made by a Party to a non-Party, the Party making the inadvertent disclosure shall notify the other Parties within five (5) days of the discovery of the disclosure.

ARTICLE VII - ADMINISTRATION

1. **Authorities not Altered.** Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions, nor is it intended to modify or supersede any other applicable interagency agreements as of the date of this MOU. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority. This MOU is intended only to improve the working relationships of the Parties in connection with expeditious decisions with regard to coordination of environmental reviews. This MOU is not a final agency action by any of the signatory agencies, and does not, and is not intended to, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any person or party against the United States, its agencies, its officers, or any other person. This MOU shall be construed in a manner consistent with all existing laws and regulations. This MOU does not direct or apply to any party outside of the signatory Parties. The terms of this MOU are not intended to be enforceable by any party other than the signatory Parties. In the exercise of their respective rights and obligations under this MOU, the Parties each act in an independent capacity and no Party is to be considered the officer, agent, or employee of another Party.

2. **Financial Obligations.** This MOU is neither a fiscal nor funds obligation document. It does not obligate, commit or authorize the expenditure of funds and cannot be used as the basis for the transfer of funds. Any endeavor involving the reimbursement or contribution of funds between the Parties will be in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authority by appropriate statutory authority. This MOU does not provide such authority. This MOU does not obligate any Party to provide funding to another Party for involvement in the MOU efforts, nor does it require the signatory agencies to obligate or expend funds in excess of available appropriations. As required by the Anti-deficiency Act, 31 U.S.C. §§1341 and 1342, all commitments made by the Parties in this MOU are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU, in and of itself, requires any Party to enter into any contract, grant, or interagency agreement. All provisions in this MOU are subject to the availability of funds. Except as funds may be made available pursuant to 40 C.F.R. §1501.6(b)(5), the Parties will fund their own expenses associated with participation in the NEPA process, including development of information, reviewing, and providing comments on the DEIS and FEIS pertaining to the Cooperating Agencies' jurisdiction and special expertise as outlined above.

3. **Immunity and Defenses Retained.** Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

4. **Dispute Resolution.** While retaining ultimate responsibility for making determinations and exercising individual responsibilities within respective authorities, the Parties will consult with one another to resolve disputes informally. If no agreement can be reached at the Agency Representative level, then either Party may refer the matter to a higher management level within its respective agency. The higher management level consists of the New Orleans District Engineer for USACE; Director of Compliance Assurance and Enforcement Division, Region 6, for EPA; Restoration Center Chief, Office of Habitat Conservation, National Marine Fisheries Service

for NOAA; Southeast Regional Director, Fish and Wildlife Service for DOI and USFWS; Director of the Gulf Coast Ecosystem Restoration Team (GCER) for USDA-NRCS. The Parties reserve the right to make a final decision on any matter within their respective authorities. If the Parties cannot resolve the dispute regarding substantive elements of the NEPA process, then the Parties may revisit this Dispute Resolution procedure as appropriate.

5. Modification and Termination. This MOU may be modified at any time upon written concurrence of all Parties. If not terminated earlier, this MOU will end when the USACE issues a ROD for the MBSD FEIS. Any Party may end its participation in this MOU by providing 60 days advance written notice to the other Parties.

6. Incorporation by reference. This MOU shall be incorporated into the DEIS and FEIS by reference so that each Party's respective role may be understood by the public.

7. Notice. Notices required under this MOU, including but not limited to notices to modify or terminate this MOU shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile or electronic transmission of any signed document and retransmission of any signed transmission shall be the same as the delivery of an original document. Any request, demand, or other communication required to be given under this MOU shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

- | | |
|-----------------|---|
| If to USACE: | District Engineer
U.S. Army Corps of Engineers
New Orleans District
7400 Leake Avenue
New Orleans, LA 70118 |
| If to the EPA: | Director
Compliance Assurance and Enforcement Division
U. S. Environmental Protection Agency
Region 6 (South Central)
1445 Ross Avenue, Suite 1200 (6EN)
Dallas, TX 75202-2733 |
| If to the NOAA: | Deputy Assistant Administrator for
Regulatory Programs
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
1315 East West Highway, Building SSMC3
Silver Spring, MD 20910-3282 |
| If to the DOI: | DOI <i>Deepwater Horizon</i> NRDAR Case Manager
U.S. Fish and Wildlife Service
1875 Century Blvd.
Atlanta, GA 30345 |

If to the USFWS: Assistant Regional Director, Ecological Services
U.S. Fish and Wildlife Service
1875 Century Blvd.
Atlanta, GA 30345

If to the USDA: Director
USDA Gulf Coast Ecosystem Restoration Team
7578 Old Canton Road
Madison, MS 39110
Phone: 601-607-3131
Fax: 844-325-7065

A Party may change the address to which such communications are to be directed by giving written notice to the other Parties in the manner provided in this Section. Any request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven (7) calendar days after it is mailed.

IN WITNESS WHEREOF, the parties have executed this MOU, which shall become effective upon the date it is signed by USACE. The signatures may be executed using counterpart original documents.

UNITED STATES ARMY CORPS OF ENGINEERS

BY: [REDACTED]
MICHAEL N. CLANCY
Title: District Engineer
Date: 11 sep 17

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: [REDACTED]
CHERYL T. SEAGER
Title: Director of Compliance Assurance and Enforcement Division, Region 6
Date: August 01, 2017

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: [REDACTED]
SAMUEL D. RAUCH III
Title: Deputy Assistant Administrator for Regulatory Programs
Date: 8/28/17

UNITED STATES DEPARTMENT OF THE INTERIOR

BY: [REDACTED]

KEVIN REYNOLDS

Title: DOI *Deepwater Horizon* NRDAR Case Manager

Date: 8/17/2017

UNITED STATES FISH & WILDLIFE SERVICE

BY: [REDACTED]

LEOPOLDO MIRANDA

Title: Assistant Regional Director, Ecological Services

Date: 8/17/17

UNITED STATES DEPARTMENT OF AGRICULTURE

BY: [REDACTED]

DR. HOMER WILKES

Title: Director, USDA-NRCS Gulf Coast Ecosystem Restoration Team

Date: 8-24-17