



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT
7400 LEAKE AVE
NEW ORLEANS, LA 70118-3651

July 18, 2022

Regulatory Division

SUBJECT: MVN-2001-01267-CG
(General Permit) GP-159

SPECIAL PUBLIC NOTICE

ANNOUNCEMENT OF MODIFICATION AND TIME EXTENSION TO GENERAL PERMIT (GP)-159 FOR DRAINAGE MAINTENANCE ACTIVITY/EXCAVATING IN EXISTING WATER BODIES, INCLUDING DEBRIS REMOVAL FROM WITHIN CHANNELS (e.g., storm debris, downed trees, and log rafts) FOR THE PURPOSE OF MAINTAINING DRAINAGE WITHIN THE BOUNDARIES OF THE NEW ORLEANS DISTRICT (CEMVN).

The New Orleans District, Corps of Engineers is hereby issuing a public notice announcing a time extension for GP-159. All available information and comments were considered in determining whether the overall public interest would be best served by modifying and extending this general permit. A copy of the proposed extended general permit is attached.

In response to the Joint Public Notice dated March 21, 2022, advertising the proposed modification and time extension, there were no recommendations made by state or federal agencies. The modifications made for GP-159 are as follows: (1) clarification of authorized activity as drainage maintenance in place of dredging, (2) inclusion of email as a correspondence method for agencies to provide non-concurrences during the review of applications, and (3) update of the National Bald Eagle Management Guidelines website. These modifications have been included in this time extension. Additionally, the time extension is being granted on 5-year intervals.

BY THE AUTHORITY OF THE SECRETARY OF THE ARMY:

Martin S. Mayer
Chief, Regulatory Division

Attachment



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT
7400 LEAKE AVENUE
NEW ORLEANS, LOUISIANA 70118-3651

Regulatory Division

DEPARTMENT OF THE ARMY GENERAL PERMIT

Authorization No.: General Permit (GP)-159
MVN 2001-01267 CG

Original Effective Date: March 30, 2011

Expiration Date: July 31, 2027

Under authorization granted by applicable sections of Parts 320 through 332 of Title 33, Code of Federal Regulations, and delegated authority from the Commander, U.S. Army Corps of Engineers, District Engineer at New Orleans has determined that it is in the public interest to issue a general permit for drainage maintenance in existing water bodies, including debris removal from within channels (e.g., fallen trees, log rafts, woody vegetation, storm debris, appliances, metal objects, accumulated sediment, and beaver dams) for the purpose of maintaining drainage within the boundaries of the New Orleans District (CEMVN).

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

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

This general permit excludes any activity:

- a. Within 1,500 feet of a known colonial bird nesting site.
- b. Within an area where the activity is likely to adversely affect federally listed threatened or endangered species, or that is likely to destroy or adversely modify the critical habitat of such species.
- c. Work authorized under General Permit GP-159 may not be performed in areas where the activity is likely to result in a "disturbance" to bald eagles. Applicants are advised to review the National Bald Eagle Management (NBEM) Guidelines to make this determination. A copy of the NBEM Guidelines is available at: <https://www.fws.gov/program/eagle-management/working-around-eagles> or contact the U.S. Fish and Wildlife Service(337-291-3100) for further assistance.

d. Within 1,500 feet of the Mississippi River and Tributaries levees centerline and/or 300 feet of the levee centerline or 250 feet from the visible levee or berm toe of a federal hurricane risk reduction project to include natural or man-made waterways which are components of Corps of Engineers flood control Hurricane and Storm Damage Risk Reduction System (HSDRRS), or navigation projects until reviewed and approved by the appropriate elements of the New Orleans District.

e. At or within one mile of a site listed or eligible to be listed on the National Register of Historic Places, within one-half mile of a known archaeological site, or within one-half mile of any known cultural resource site, without the written approval or waiver from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO) or the appropriate authority.

f. Within any area leased by the Louisiana Department of Wildlife and Fisheries for harvesting oysters without the specific authorization of the lease holder. Additionally, no work may be performed in public oyster grounds or seed beds.

g. Within a component of a National Wild and Scenic River System or state scenic river system without the written approval from the appropriate authority.

h. That would impinge upon the value (habitat, hydrology, etc.) of any National Wildlife Refuge, National Forest, or areas administered by the National Park Service, Louisiana Departments of Natural Resources or Wildlife & Fisheries, or other similar publicly held areas administered by federal, state, or local government authority, unless special permission from these agencies is submitted with the application for this general permit.

i. Which would modify the effectiveness of an existing, functional water control structure.

j. Which would result in new channel excavation, excavation for fill material, sand and gravel mining activities, or dredging for navigational purposes.

k. In water bodies which have not been previously maintained or otherwise channelized. In general, excavation under this general permit will not be authorized without evidence of, or documentation evidencing, previous drainage maintenance activities in the water body.

l. Increases the drainage capacity of the previously authorized, documented, or permitted drainage feature (i.e., deeper, wider, or realigned).

m. In wetland areas where the maintenance will harmfully sever or fragment the wetland or water body, and/or reasonable and practicable less environmentally damaging alternatives exist such that an evaluation of the project impacts under the individual permit procedure is warranted.

n. That would reduce the reach of the waters of the U.S., including wetlands. In the case of USDA program participants, the activity must not permanently drain or facilitate the

drainage of jurisdictional wetlands such that a participant may lose benefits (i.e., swampbusting). To insure this, the applicant shall contact the local Consolidated Farm Service Agency and provide documentation that such activities will not occur as a result of the proposed maintenance activity. This documentation must be submitted as part of the complete permit application.

Work authorized by this general permit is subject to the applicable standard conditions of permit form ENG Form 1721 (enclosure 1), and the following special conditions:

- a. The work must not interfere with the public's right to free navigation on all navigable waters of the United States.
- b. Any safety lights and signals prescribed by the U. S. Coast Guard, through regulations or otherwise, must be installed and maintained at the applicant's expense.
- c. The permittee understands and agrees that, if future operations by the united States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. Any modification, suspension, or revocation of this general permit, or any individual authorization granted under this general permit, will not be the basis of any claim for damages against the United States.
- d. If the authorized project, or future maintenance work, involves the use of floating construction equipment (barge mounted cranes, barge mounted pile driving equipment, floating dredge equipment, dredge discharge pipelines, etc.,) in the waterway, you are advised to notify the U.S. Coast Guard so that a Notice to Mariners, if required, may be prepared. Notification, with a copy of your permit approval and drawings, should be mailed to Commander (dpw), Eighth Coast Guard District, Hale Boggs Federal Building, 500 Poydras Street, Room 1230, New Orleans, Louisiana 70130, about 1 month before you plan to start work. Telephone inquiries can be directed to the Eighth Coast Guard District, Waterways Management, at (504) 671-2107.
- e. When the activity authorized herein involves a discharge of any pollutant (including dredged or fill material) into waters of the U.S. during its construction operation, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this general 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 periods 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.

f. 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 degradation of water quality or any adverse impact on fish, wildlife, special aquatic sites, and natural environmental values.

g. This general permit cannot be used for piecemeal maintenance, 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.

h. Wetlands that are not part of the authorized project site, but that are disturbed during construction, including the temporary crossing of wetland areas, will be restored to their pre-project elevations and conditions, and may include replanting. Following project completion, those jurisdictional areas not required for future maintenance of the waterway, but which suffered disturbance as a result of construction activities, shall be restored to pre-project conditions, and replanted in accordance with recommendations from the CEMVN as determined in coordination with appropriate resource agencies.

i. When work is done over land, the permittee shall utilize the least environmentally damaging alternative route to gain access to the work site. This will include existing access points/routes that result in minimal adverse impacts to wetlands such as road crossings, rights-of-way or other servitudes. Also, the least damaging work method shall be utilized (e.g., working from within the stream/ditch/canal), if applicable. If work is done by heavy equipment in wetland areas that are not a part of the authorized project area, mats will be utilized and activities confined to matted areas. When work is completed, mats must be removed and the area restored to natural elevations. Heavy work equipment shall be confined to the smallest sized vehicle(s) possible and must be the minimum number required to perform the activity.

j. An access route through wetlands is only authorized when it is the least environmentally damaging, practicable alternative to gain access to a site, as mentioned above. The permit application must include an explanation of need for an access route once all less damaging alternatives have been considered and why those alternatives cannot be utilized. A proposed access route must clearly be shown on the permit drawings and shall be confined to 10 feet in width or less. Mechanized land clearing, excavation, and deposition of fill for access road construction are not authorized. However, removal of shrubs and herbaceous vegetation to clear a path may be done through bush hogging. Trees less than 6 inches DBH (diameter at breast height), may be chipped and the cuttings broadcasted over the area (see condition k on chipping). Removal of any native trees greater than 6 inches DBH is prohibited. However, tree removal restrictions do not apply to noxious and invasive species (e.g., Chinese tallow, black willow, etc.). Access route maintenance is not authorized.

k. Chipping of storm debris, log rafts, downed trees in the waterway, including for access as described above in condition J, is authorized and the cuttings may be broadcasted over the area so as not to exceed 4-inches in thickness.

l. 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 under this general permit.

m. 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, a coastal use permit or waiver from the Louisiana Department of Natural Resources.

n. Appropriate measures to minimize a proposed activity's impact on the aquatic ecosystem may be required such as limiting removal of woody vegetation to that necessary for spoil deposition; limiting work to one side of the channel; protecting native trees with a breast height diameter greater than 16 inches from construction activities; confining deposition of removed material to existing spoil banks, prior converted cropland, and upland areas whenever possible; depositing removed material in a manner which could create or enhance wetland habitat; and including gaps in spoil banks.

o. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction and all deposited material shall be stabilized within two (2) weeks following completion or disturbance.

p. Unless designated otherwise, all existing streams and sloughs shall remain open and unimpeded. Culverts shall be placed in all streams and sloughs to maintain water circulation and flow. In addition, the stockpiling of vegetative material in streams and wetland areas is not authorized.

q. Individual approvals granted to applicants under this general permit allow 5 years from the date of the individual approval letter for completion of the project. Activities approved under this general permit and completed within the above time limit may be maintained for 10 years from the date of the individual authorization.

r. Additional conditions may be added to this general permit by the District Engineer if it is found to be in the public interest to do so. Any additional conditions added to the general permit will be announced by public notice.

s. This general permit may be suspended, in whole or part, modified, and/or revoked if the District Engineer determines such action to be in the public interest. If the permit is revoked, suspended, and/or modified, the action will be announced by public notice.

t. The District Engineer may choose not to grant approval under this general permit and require the applicant to go through individual permit evaluation procedures when he finds that such action is in the public interest.

u. The permittee shall maintain a record/log each time a maintenance event is conducted. These records shall be made available anytime at the request of CEMVN permitting office.

v. If cultural artifacts are uncovered by work authorized by this general permit, the work must be suspended and modification given to this District and the State Archeologist or Historic Preservation Officer. Work may not be resumed until provisions for study, recovery, and/or preservation of the artifacts have been made.

w. The authorization to perform work under the general 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.

Reporting/Acknowledgement Procedures

Applying for permit approval under General Permit 159 is identical to applying for an individual permit for work within CEMVN. If located within the Coastal Zone of Louisiana (CZ) (see enclosure 2), the Joint Permit Application request must be submitted electronically to the Louisiana Department of Natural Resources, Office of Coastal Management (OCM) and will consist of an application form and a set of drawings with a \$100.00 application fee for commercial and \$20.00 for noncommercial. The OCM will review the application for completeness and, if complete, will assign it a coastal use permit number and forward an electronic copy of the application to the CEMVN. If the project is not located within the CZ, the ENG Form 4345 application is required and should be sent directly to the U. S. Army Corps of Engineers, New Orleans District, ATTN: Regulatory Division, 7400 Leake Avenue, New Orleans, Louisiana 70118 or, as a convenience (but not mandatory), can be sent electronically to: CEMVNRegulatoryApplication@usace.army.mil. Be sure to include OCZ, the parish the project is located in and applicant name on the email subject line. For oversized attachments, contact our office for further instructions.

A complete application includes ALL of the following:

(1) A completed application form that includes the signature of the applicant; latitude and longitude; section, township and range; a statement indicating the need for the project; a clear description of the proposed work and intended use; the date and specifications of previously permitted or documented maintenance operations; and a discussion of alternatives considered and details supporting the chosen alternative. The application must also include a statement that the fill material will be free of contaminants, to the best of the applicant's knowledge.

(2) A vicinity map on which the project site is clearly indicated, and accurately scaled drawings (plan view and cross section with mean/ordinary high and low water lines) with all dimensions clearly labeled and the number of cubic yards of removed or fill material involved. When project works will be constructed with, be adjacent to, or otherwise in proximity to other works conducted under this general permit, drawings **MUST** show the relationship of such work to the proposed activity and their appropriate permit numbers.

(3) For projects requiring authorization under Section 404 of the Clean Water Act, in reference to 33 CFR 325.1 (d)(7), the applicant is required to submit a statement explaining how impacts to the waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts. Unavoidable project related impacts will be assessed on a case-by-case basis to determine if compensatory mitigation will be required. If required, proposed compensatory mitigation should be located within the appropriate watershed for the permitted impact, to the extent practicable, and follow the preferential hierarchy established in 33 CFR 332.3(b): 1) Mitigation bank credits; 2) Existing in-lieu fee programs; 3) permittee-responsible mitigation (PRM).

(4) Documentation from the local Consolidated Farm Service Agency as required by exclusion n. above (pg. 3).

Upon receipt of a copy of the application form, drawings, and additional information described above, we will review the application for completeness and eligibility for processing under GP-159. Incomplete applications will be returned to the applicant and/or the applicant will be advised of the application deficiencies. Work not eligible for evaluation under GP-159 will be evaluated under individual permit procedures, to include a public notice, if applicable.

Electronic copies of the permit application will be sent to the U.S. Fish & Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency and the Louisiana Department of Wildlife & Fisheries 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, preferably by email and copied to the applicant, or by hard copy with an information copy sent to the applicant and must include a description of the impact(s) considered to be more than minimal. Agencies may request additional information needed to complete their reviews during the comment period. If additional time is needed, the agencies may request an additional 20 days, commencing upon their receipt of the requested information. Lack of response within 5 days by these agencies will be considered as no objection or no position by those agencies. Corps of Engineers' decision of non-concurrence with reviewing agencies' objections and/or recommendations will be made in writing by the District Engineer to the respective agency.

A decision will be made to issue the general permit approval as requested, issue the general permit approval with modification, or require the project to be evaluated as a standard individual permit to include a public notice following receipt of federal and state agency comments and completion of all required coordination. The applicant will be notified of our decision by letter or electronic format, if applicable.

Approval of work under (General Permit) GP-159 only indicates authorization from the New Orleans District, Corps of Engineers. It does not relieve the applicant from obtaining a coastal use permit or waiver (if required) signed by the Secretary of the Louisiana Department of Natural Resources or his designee, or any other permits, licenses, or certifications required by law, prior to commencement of work.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Martin S. Mayer
Chief, Regulatory Division
for
Stephen F. Murphy
Colonel, U.S. Army
District Commander

DEPARTMENT OF THE ARMY PERMIT

Permittee _____

Permittee No. _____

Issuing Office _____

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

Project Location:

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on _____ . If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

() Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER)

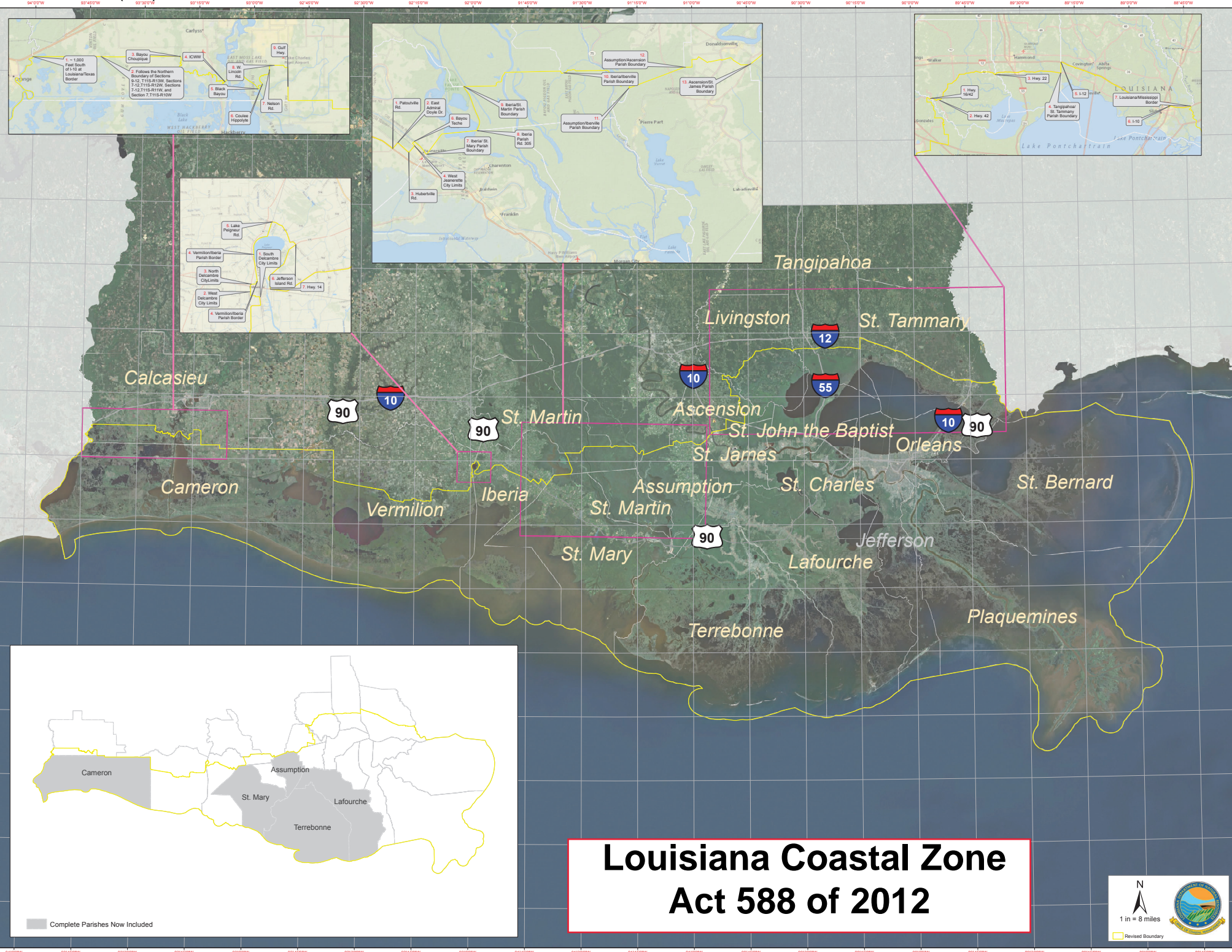
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

General Permit (GP)-159 Enclosure 2



Louisiana Coastal Zone Act 588 of 2012

