

CHAPTER 6 COORDINATION AND COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

This chapter documents the coordination and compliance efforts regarding statutory authorities including: environmental laws, regulations, executive orders, policies, rules, and guidance. Consistency of the Selected Plan (SP) with other Louisiana coastal restoration efforts is also described.

6.1 ENVIRONMENTAL COORDINATION AND COMPLIANCE

Following completion of the final integrated report, the Assistant Secretary of the Army for Civil Works will issue a written Record of Decision (ROD) concerning the proposed action. The ROD will be issued within a framework of laws, regulations, executive orders, policies, rules, and other guidance. These authorities establish regulatory compliance standards for environmental resources pertaining directly to USACE management of water resources development projects, or provide planning guidance for the management of environmental resources. Relevant Federal statutory authorities and executive orders are listed in **Table 6.1**. Relevant State of Louisiana statutory authorities are listed in **Table 6.2**. Full compliance with statutory authorities will be accomplished upon review of the final feasibility report and EIS by appropriate agencies and the public and the signing of a ROD.

6.1.1 Clean Water Act – Section 401 Water Quality

Under provisions of the Clean Water Act (33 U.S.C. § 1251), any project that involves placing dredged or fill material in waters of the United States or wetlands, or mechanized clearing of wetlands would require a water quality certification from the Louisiana Department of Environmental Quality (LDEQ), Office of Environmental Services. The public notice for the proposed action was issued on October 10, 2008. Along with a copy of this draft EIS, an application for water quality certification was provided to the LDEQ on November 14, 2008, stating that the proposed placement of fill material into waters of the state will not violate established water quality standards. The LDEQ issued a state Water Quality Certification (WQC 060302-01/AI 101234/CER 20060014) on November 21, 2008.

6.1.2 Clean Water Act – Section 404(b)(1)

The USACE is responsible for administering regulations under Section 404(b)(1) of the Clean Water Act. Potential project-related impacts subject to these regulations, such as the discharge of dredged material into shallow open water areas to create wetlands, and the placement of rock for shoreline protection, have been evaluated in compliance with Section 404(b)(1) of the Clean Water Act (**Appendix D**). The evaluation of potential impacts to water quality indicated that, on the basis of the guidelines, the proposed disposal sites for the discharge of dredged material and stone comply with the requirement of these guidelines, with the inclusion of appropriate and practicable methods to minimize adverse effects to the aquatic ecosystem.

Table 6.1 Relevant Federal Statutory Authorities and Executive Orders**(Note: This list is not complete or exhaustive).**

Abandoned Shipwreck Act of 1987	Marine Mammal Protection Act of 1972
American Indian Religious Freedom Act of 1978	Marine Protected Areas (EO 13158) of 2000
Anadromous Fish Conservation Act of 1965	Marine Protection, Research, and Sanctuaries Act of 1972
Archaeological Resources Protection Act of 1979	Migratory Bird Conservation Act of 1929
Archaeological and Historical Preservation Act of 1974	Migratory Bird Treaty Act of 1918
Bald Eagle Protection Act of 1940	Migratory Bird Habitat Protection (EO 13186) of 2001
Clean Air Act of 1970	National Environmental Policy Act of 1969
Clean Water Act of 1977	National Historic Preservation Act of 1966
Coastal Barrier Improvement Act of 1990	National Invasive Species Act of 1996
Coastal Barrier Resources Act of 1982	Native American Graves Protection and Repatriation Act of 1990
Coastal Wetlands Planning, Protection, and Restoration Act of 1990	Neotropical Migratory Bird Conservation Act of 2000
Coastal Zone Management Act of 1972	Noise Control Act of 1972
Coastal Zone Protection Act of 1996	Nonindigenous Aquatic Nuisance Prevention and Control Act of 1996
Comprehensive Environmental Response, Compensation, and Liability Act of 1980	North American Wetlands Conservation Act of 1989
Consultation and Coordination with Indian Tribal Governments (EO 13175) of 2000	Oil Pollution Act of 1990
Deepwater Port Act of 1974	Outer Continental Shelf Lands Act of 1953
Emergency Planning and Community Right-to-Know Act of 1986	Pollution Prevention Act of 1990
Emergency Wetlands Restoration Act of 1986	Prime or Unique Farmlands, 1980 CEQ Memorandum
Endangered Species Act of 1973	Protection and Enhancement of the Cultural Environment (EO 11593) of 1971
Environmental Quality Improvement Act of 1970	Protection and Enhancement of Environmental Quality (EO 11991) of 1977
Estuaries and Clean Waters Act of 2000	Protection of Children from Environmental Health Risks and Safety Issues (EO 13045) of 1997
Estuary Protection Act of 1968	Protection of Cultural Property (EO 12555) of 1986
Estuary Restoration Act of 2000	Protection of Wetlands (EO 11990) of 1977
Exotic Organisms (EO 11987) of 1977	Reclamation Projects Authorization and Adjustments Act of 1992
Farmland Protection Policy Act of 1981	Recreational Fisheries (EO 12962) of 1995
Federal Actions to Address Environmental Justice in Minority Populations & Low-Income Populations (EO 12898, 12948) of 1994, as amended	Resource Conservation and Recovery Act of 1976
Federal Compliance with Pollution Control Standards (EO 12088) of 1978	Responsibilities of Federal Agencies to Protect Migratory Birds (EO 13186) of 2001
Federal Emergency Management (EO 12148) of 1979	Rivers and Harbors Acts of 1899, 1956
Federal Water Pollution Control Act of 1972	River and Harbor and Flood Control Act of 1970
Federal Water Project Recreation Act of 1965	Safe Drinking Water Act of 1974
Fish and Wildlife Conservation Act of 1980	Submerged Land Act of 1953
Fish and Wildlife Coordination Act of 1958	Sustainable Fisheries Act of 1996
Flood Control Act of 1944	Toxic Substances Control Act of 1976
Floodplain Management (EO 11988) of 1977	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646)
Food Security Act of 1985	Water Resources Development Acts of 1976, 1986, 1990, 1992, and 2007
Greening of the Government Through Leadership in Environmental Management (EO 13148) of 2000	Water Resources Planning Act of 1965
Historic Sites Act of 1935	Watershed Protection & Flood Prevention Act of 1954
Historical and Archaeological Data-Preservation Act of 1974	Water Pollution Control Act Amendments of 1961
Indian Sacred Sites (EO 13007) of 1996	Wild and Scenic River Act of 1968
Invasive Species (EO 13112) of 1999	Wilderness Act of 1964
Land & Water Conservation Fund Act of 1965	
Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended	

Table 6.2 Relevant State Statutory Authorities
(Note: this list is not complete or exhaustive)

Air Control Act	Louisiana Threatened and Endangered Species and Rare & Unique Habitats
Archeological Treasury Act of 1974	Protection of Cypress Trees
Louisiana Coastal Resources Program	Water Control Act
Louisiana Natural and Scenic Rivers System Act	

6.1.3 Coastal Zone Management Act of 1972

Section 307 of the Coastal Zone Management Act (CZM) of 1972 (16 U.S.C. 1456(c)(1)(A)) directs Federal agencies proposing activities or development projects (including civil work activities), whether within or outside the coastal zone, must assure that those activities or projects are consistent, to the maximum extent practicable, with the approved state coastal zone management program. A Consistency Determination is included with this report (**Appendix E**) and has been submitted to the Louisiana Department of Natural Resources (LDNR) for consistency review. Implementation of the SP is considered consistent, to the maximum extent practicable, with the approved Louisiana state coastal management program.

6.1.4 Fish and Wildlife Coordination Act Report

The USACE and the USFWS have formally committed to work together to conserve, protect, and restore fish and wildlife resources while ensuring environmental sustainability of our Nation's water resources under the January 22, 2003, Partnership Agreement for Water Resources and Fish and Wildlife. Accordingly, in a letter dated December 20, 2006, the USFWS indicated agreement to serve as a Cooperating Agency (per NEPA section 1501.6) in developing the EIS for the proposed project in accordance with applicable NEPA and CEQ guidance. Participation of the USFWS includes: 1) participating in meetings and field trips to obtain baseline information on project-area fish and wildlife resources; 2) evaluating the proposed project's impacts to wetlands and associated fish and wildlife resources, and assisting in the development of measures to avoid, minimize, and/or compensate for those impacts; and, 3) providing technical assistance in the development of a Biological Assessment describing the impacts of the proposed activity to Federally listed threatened or endangered species and/or their critical habitat. In the December 20, 2006 letter, the USFWS also provided specific guidance on avoiding impacts to West Indian manatee (*Trichechus manatus*) and Gulf sturgeon (*Acipenser oxyrinchus desotoi*).

In accordance with provisions of the report prepared in fulfillment of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*), the USFWS has provided recommendations on the originally proposed (first) Tentatively Selected Plan (TSP) in a May 14, 2007, Fish and Wildlife Coordination Act Report (FWCAR), and again for the revised (second) TSP in an October 18, 2007, supplemental letter to that FWCAR (**Appendix F**). The first and second TSPs were developed, based on additional Congressional guidance, changes in alternative plan formulation, and reallocation of funds to construct other projects. Passage of the WRDA 2007 and deauthorization of the MRGO as a navigation channel has necessitated additional revisions resulting in the Selected Plan that assumes all conditions under the No Action Alternative are considered to have the MRGO closed to navigation. The USFWS

provided a supplemental letter, dated December 17, 2007, to the original FWCAR (May 14, 2007) addressing this revised final SP (**Appendix F**). The construction of the MRGO North Bank (Mile 40 to Mile 44.5) reach was initiated under a previous Environmental Assessment and MRGO Operations and Maintenance authority. This required that the benefits associated with this reach be removed from the benefits analysis for this document. An additional letter acknowledging this change was provided by the USFWS on January 25, 2008.

The January 25, 2008, supplemental letter states that the current SP still results in a significant gain in habitat for fish and wildlife resources over the project life and therefore the analysis and recommendations (presented below) provided in the May 2007 FWCAR continue to remain in effect:

1. The USFWS and the NMFS should be provided an opportunity to review and submit recommendations on the draft plans and specifications on the MRGO and Lake Borgne wetland creation and shoreline protection addressed in this report.
2. Coordination should continue with the USFWS and the NMFS on detailed contract specifications to avoid and minimize potential impacts to manatees and Gulf sturgeon.
3. If the proposed project has not been constructed within one year or if changes are made to the proposed project, the CEMVN should re-initiate Endangered Species Act consultation with the USFWS.
4. Material dredged for floatation should be used to create marsh to the greatest extent practicable.
5. The created and nourished wetlands and shoreline protection should be monitored over the project life to help evaluate the effectiveness of these features.
6. Dredged material borrow pits should be carefully designed and located to minimize anoxia problems and excessive disturbance to area water bottoms. Wave refraction/diffraction models should be used to ensure the borrow pits are sited at a sufficient distance from adjacent shores such that they do not accelerate erosion of those shorelines.

Provided that the above recommendations are included in the feasibility report and related authorizing documents, the USFWS will support further planning and implementation of the SP.

The CEMVN does not concur with the FWCAR recommendation to monitor the proposed project features. CEMVN typically monitors some O&M projects via the Beneficial Use Management Program (BUMP). However, because a major portion of the MRGO navigation channel would be deauthorized (from Mile 60 to the Gulf of Mexico), it is unlikely that any funds would be available for BUMP-related monitoring activities along the deauthorized portion of the MRGO.

Because they are integral components of the administrative record, this FEIS includes the December 20, 2006, planning aid letter; the draft FWCARs dated May 14, 2007; and the supplemental draft FWCAR letters dated October 18, 2007, December 17, 2006, and January 25, 2008 (**Appendix F**).

6.1.5 Endangered Species Act of 1973 (ESA)

Compliance with the ESA (7 U.S.C. 136; 16 U.S.C. 460 *et seq.*) has been coordinated with the USFWS and the NMFS for those species under their respective jurisdictions. The use of

recommended primary activity exclusion zones and timing restrictions would be utilized, to the maximum extent practicable, to avoid project construction impacts to any threatened or endangered species or their critical habitat within the proposed action area. The CEMVN will continue to closely coordinate and consult with the USFWS and the NMFS regarding threatened and endangered species under their jurisdiction that may be potentially impacted by the proposed action. Although brown pelican and West Indian manatee may be found in the proposed action area, the only endangered species with a possibility of potential adverse impacts from the SP is Gulf sturgeon. The Lake Borgne water bottom has been designated as critical habitat for the Gulf sturgeon. See **Section 4.8 Threatened and Endangered Species** and the **Biological Assessment** and NMFS **Biological Opinion** (both included in **Appendix A**) for additional information on Gulf sturgeon critical habitat primary constituents, and the finding of “Not Likely to Adversely Affect.” The concurrence (via fax) from the USFWS that the proposed action is not likely to adversely affect these resources is also included in **Appendix A**.

6.1.6 Louisiana State Rare, Threatened and Endangered Species, and Natural Communities Coordination

The CEMVN reviewed the database maintained by the Louisiana Natural Heritage Program that provides the most recent listing and locations for rare, threatened and endangered species of plants and animals and natural communities within the State of Louisiana. The proposed action would not adversely impact any rare, threatened or endangered species, or unique natural communities. The proposed action would increase the extent of brackish marsh and salt marsh habitats, which are identified as rare to secure natural communities for St. Bernard Parish (see also **Section 4.4 Coastal Vegetation Resources**).

6.1.7 Magnuson-Stevens Fishery Conservation and Management Act of 1996 and the Magnuson-Stevens Act Reauthorization of 2006 (Essential Fish Habitat)

As directed by the Magnuson-Stevens Fishery Conservation and Management Act (Public Law 104-297), the CEMVN has coordinated with the NMFS and that agency’s experts on various marine organisms, as well as EFH. The NMFS provided a letter dated December 22, 2006, to help guide the development of the EIS for the proposed action (**Appendix C**). The NMFS identified shrimp, red drum, reef fish, and stone crabs as species managed by the Gulf of Mexico Fishery Management Council that have Essential Fish Habitat (EFH) in the proposed action area. They also listed estuarine emergent wetlands, mud, sand and shell substrates, and estuarine and marine water column as primary categories of EFH in the proposed action area. The analysis of potential impacts of the SP on EFH is described in **Section 4.7 Essential Fish Habitat**.

6.1.8 Clean Air Act – Air Quality Determination

Compliance with the Clean Air Act (42 U.S.C.A. §§7401) has been fully coordinated with the Air Quality Section of the LDEQ (see also **Section 4.15 Air Quality**). As required by *Louisiana Administrative Code*, Title 33 (LAC 33:III.1405 B), an air quality applicability determination was made for the SP. This included consideration of the proposed action for the category of general conformity, in accordance with the Louisiana General Conformity, State Implementation Plan (LDEQ, 1994). An air quality determination has been calculated, based upon direct and indirect air emissions. Generally, since no other indirect Federal action, such as

licensing or subsequent actions would likely be required or related to the restoration construction actions, it is likely that indirect emissions, if they would occur, would be negligible. Therefore, the air applicability determination analysis was based upon direct emission for estimated construction hours. Considering that total emissions for each work item separately (or even when all work items are summed) would not exceed the threshold limit applicable to Volatile Organic Compounds (VOC) for parishes where the most stringent requirement (50 tons per year in serious non-attainment parishes) is in effect, (see General Conformity, State Implementation Plan, Section 1405 B.2), the VOC emissions for the proposed construction would be classified as *de minimus* and no further action would be required.

6.1.9 National Historic Preservation Act of 1966

In compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, and 36CFR 800, Federal agencies are required to identify and consider potential effects that their undertakings might have on significant historic properties, district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. Additionally, a Federal agency shall consult with any tribe that attaches religious and cultural significance to such properties. Agencies shall afford the State Historic Preservation Officer (SHPO) and tribes a reasonable opportunity to comment before decisions are made. Accordingly, the proposed action has been coordinated with the SHPO and tribes. Coordination letters received from the SHPO, as well as the coordination letter with the Chitimacha Tribe of Louisiana, are included in **Appendix G**. The DEIS was provided to the SHPO and tribes, as well as other interested parties for comment.

6.1.10 Farmland Protection Policy Act

The purpose of the Farmland Protection Policy Act (7 U.S.C. 658) is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to non-agricultural uses. There are no farmlands within the study area. Hence, there would be no unnecessary or irreversible conversion of farmland to non-agricultural uses.

6.1.11 Executive Order 13186 – Migratory Bird Habitat Protection

Executive Order 13186 proclaims the intent to support the conservation of previous migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions. This Executive Order requires environmental analyses of Federal actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern. In addition, each Federal agency shall restore and enhance the habitat of migratory birds, as practicable. Implementation of the SP would result in a net increase in migratory bird habitat.

6.1.12 Executive Order 12898 – Environmental Justice

Concern with environmental justice issues can be traced to Title VI, Section 601 of the Civil Rights Act of 1964 (Public Law 88-352):

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

On February 11, 1994, President Clinton issued Executive Order 12898 regarding Federal actions to address environmental justice issues in minority populations and low-income populations:

“To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.”

Executive Order 12898 is designed to focus Federal attention on the environmental and human health conditions in minority communities and low-income communities. The order is also intended to promote non discrimination in Federal programs substantially affecting human health and the environment, and to provide minority communities and low income communities access to public information on, and an opportunity for public participation in, matters relating to human health or environmental planning, regulations, and enforcement. Potential environmental justice issues have been considered throughout the entire study process, and will continue to be considered through project implementation. As part of the NEPA process, a scoping input request was provided to the public and interested parties. The four scoping comments did not identify any potential environmental justice issues. The CEMVN is committed to ensuring that any potential environmental justice issues are addressed as the study proceeds. The proposed wetland creation and nourishment and shoreline protection measures would equally impact all potential users (e.g., commercial and recreational fishers) in the area. There would be no potential environmental justice issues from implementing the SP.

6.1.13 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646)

All real estate interests acquired for construction of the SP will be in accordance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended in 42 USC 4601-4655, and the Uniform Regulations contained in 49 C.F.R. Part 24. The Uniform Act sets forth procedures for the acquisition of private property for public use and specifically requires that the acquiring agency appraise the real property interests it wishes to acquire and provide the owner a written summary of the basis for the amount established as just compensation.

6.1.14 Executive Order 13112 – Invasive Species

On February 3, 1999, President Clinton issued Executive Order 13112 to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause by establishing the National Invasive Species Council. The SP is consistent with Executive Order 13112 to the extent

practicable and permitted by law and subject to the availability of appropriations, and within Administration budgetary limits. The SP will use relevant programs and authorities to prevent the introduction of invasive species and not authorize, fund, or carry out actions likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere, unless the USACE has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species, and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.