

MEMORANDUM OF UNDERSTANDING
Between
THE UNITED STATES OF AMERICA
And
THE STATE OF LOUISIANA

Framework for Establishing Discipline and Accountability in the Environmental Review and Authorization Process of the Mid-Barataria Sediment Diversion Project

I. PARTIES

This Memorandum of Understanding (“MOU”) is hereby entered into by, between, and among the State of Louisiana (“State”) acting through the Coastal Protection and Restoration Authority Board (“CPRA Board”), the Coastal Protection and Restoration Authority (“CPRA”), the Governor’s Executive Assistant for Coastal Activities (“GOCA”), the Louisiana Department of Environmental Quality (“DEQ”), the Louisiana Department of Natural Resources (“DNR”), the Louisiana State Historic Preservation Officer (“SHPO”), the Louisiana Department of Transportation and Development (“DOTD”), and the Louisiana Department of Wildlife and Fisheries (“DWF”), and the United States of America (“United States”), acting through the Federal Permitting Improvement Steering Council (“FPISC”), the Department of the Army (“Army”), the Department of the Interior (“DOI”), the Department of Commerce (“DOC”), including the NOAA Damage Assessment, Remediation and Restoration Program (NOAA DARRP) and the NOAA National Marine Fisheries Service (NOAA NMFS), the Environmental Protection Agency (“EPA”), the Department of Homeland Security (“DHS”), including the U.S. Coast Guard (“USCG”), and the Department of Agriculture (“USDA”), including the Natural Resources Conservation Service (NRCS). All of the aforementioned entities are “Parties” for purposes of this MOU.

A. State of Louisiana

The State has experienced greater coastal land loss than any other state in the nation. Since 1930, 1,800 square miles of the State coastal area has turned into open water. The loss of the State coastal area continues at the average rate of a football field every 100 minutes.

The extensive loss of the Louisiana coastal area poses a wide variety of dangers to the people of southern Louisiana, not the least of which is the loss of the storm protection benefits of the coastal area protecting New Orleans and other population centers in the State. Coastal land loss in the State also threatens the United States’ economy and infrastructure due to adverse impacts on commercial and recreational fisheries, transportation of goods and services, and the exposure of oil and gas infrastructure.

The loss of Louisiana's coastal area was significantly exacerbated by the *Deepwater Horizon* Oil Spill, which oiled over 684 linear miles of wetlands Gulf-wide, with approximately 95% of this marsh oiling occurring in coastal Louisiana. Within Louisiana, the majority of the "heavier" and "heavier persistent" oiling was in the Barataria Bay. This heavy oiling was primarily in marshes dominated by grasses that build and hold the marshes in place. Because these marsh plants are critical to maintaining the resilience of coastal marshes, the extensive oiling and death of marsh vegetation in the Barataria Bay created a significant acceleration of land loss following the spill. Accelerated erosion due to the spill thus resulted in a loss of coastal wetlands over large portions of the Barataria Basin that can be addressed through restoration of the coastal marshes in the Bay.

A major goal of the State and its citizens is the protection of their remaining coastal area and the restoration of as much of its lost coastal area as possible. The State, following Hurricanes Katrina and Rita, created CPRA to direct and manage the state's coastal protection and restoration efforts. CPRA has developed a Comprehensive Master Plan for a Sustainable Coast ("Master Plan" or "Plan"), setting forth a 50 year, 50 billion dollar effort to protect and restore the State's coastal area. The Plan is based on sound science, developed through an extensive public process, and updated every five years. The 2017 Master Plan was approved unanimously by the state legislature.

The proposed Mid-Barataria Sediment Diversion Project ("MBSD Project" or "Project") would be a signature component of the Plan. The MBSD Project, which is expected to cost \$1.3 billion, would modify the Mississippi River levee on the west side of the River south of New Orleans to allow sediment-heavy river waters at the flood stage to be diverted into the Mid-Barataria Basin. CPRA intends for the MBSD Project, if approved for funding, to sustain and rebuild, over the next fifty years, a substantial portion of the State coastal area that has been lost since 1930. The Parties also recognize that construction funding currently depends on the independent determination of the Louisiana Trustee Implementation Group pursuant to the Oil Pollution Act of 1990 and the April 2016 consent decree with BP¹ whether to select the MBSD Project to restore injury to natural resources and services caused by the *Deepwater Horizon* oil spill.

The State is committed to developing the Project in an environmentally sound manner and in compliance with all applicable federal, state, and local laws and ordinances.

B. United States of America

The United States implements a wide range of federal environmental and other laws that are applicable to the proposed MBSD Project. The United States is focused on

¹ <https://www.justice.gov/enrd/file/838066/download>.

improving the efficiency of the federal environmental review and authorization process such that covered infrastructure projects are brought on line quickly, for the benefit of the public and the economy, while ensuring compliance with all applicable Federal, State, and local laws and ordinances. To that end, on August 15, 2017, the President issued Executive Order (“EO”) 13807, noting in the Statement of Purpose:

Inefficiencies in current infrastructure project decisions, including management of environmental reviews and permit decisions or authorizations, have delayed infrastructure investments, increased project costs, and blocked the American people from enjoying improved infrastructure that would benefit our economy, society, and environment. More efficient and effective Federal infrastructure decisions can transform our economy, so the Federal Government, as a whole, must change the way it processes environmental reviews and authorization decisions.

Sec. 2(h) of EO 13807 establishes the goal of completing all Federal environmental reviews and authorizations decisions for major infrastructure projects within two years.²

EO 13807 builds off of legislative efforts to expedite and more effectively engage in environmental review and authorization of large-scale infrastructure projects, including the creation of FPISC pursuant to Title 41 of the Fixing America’s Surface Transportation Act (“FAST-41”), Pub. L. No. 114-94 (Dec. 4, 2015) (codified at 42 U.S.C. §4370m *et seq.*).

Accordingly, the United States is implementing FAST-41, and seeks to implement applicable provisions of EO 13807, when undergoing the environmental review and authorization process for the MBSD Project. The United States, in coordination with the State, is also committed to regularly reviewing established timelines to determine when milestones can be updated based on efficiencies in the process, including quarterly updates pursuant to 42 U.S.C. 4370m-2 (c)(1).

The Parties recognize that the United States has made no decision with respect to the proposed MBSD Project and will fully and fairly evaluate alternatives, environmental impacts, and any other factor required by law before making a determination on any aspect of the Project requiring a federal review, decision, and permit or authorization.

² While EO 13807 does not apply retroactively to this Project, the Parties will use their best efforts to strive to meet the goals and objectives set forth therein.

II. PURPOSES

Consistent with the preceding goals of the Parties, the primary purposes of this MOU are (i) to integrate the State significantly into the environmental review and authorization process to the extent authorized by law for the proposed action to improve upon the dates established by the Coordinated Project Plan (“CPP”), pursuant to 42 U.S.C. 4370m-2(c)(1); and (ii) to continue the implementation of FAST-41 by performing environmental review and authorizations as expeditiously as practicable and consistent with the objectives of EO 13807, “Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure.” Specifically, the Parties intend:

A. To Review and Attempt to Accelerate the Established Milestone Date for the Issuance of All Federal Environmental Reviews and Authorizations and Determine By Utilizing Efficiencies and Dependencies in the Process.

The Parties recognize that the CPP serves as the governing document for the Project schedule, and that the CPP may be amended at any time to reflect an accelerated milestone date contained therein. The Parties further acknowledge that the current CPP (available on the Permitting Dashboard) establishes a milestone date for issuance of the Final EIS that is beyond the two-year goal stated in EO 13807. Recognizing the significance of the two-year goal articulated in EO 13807, the Parties hereby agree to attempt to accelerate the environmental review process for the MBSD Project by completing permitting and environmental review as expeditiously as possible in accordance with the law. In striving to meet this goal, the Parties will clearly determine and explain whether the goal of two years for the environmental review is attainable; whether the milestones identified in the CPP can be accelerated; or whether the existing schedule identified in the CPP is the most efficient and timely practicable.

B. To Utilize the Appropriate and Effective Dispute Resolution Processes of FAST-41 and EO 13807 for the proposed MBSD Project.

The Parties recognize that the Project would be a complex ecosystem restoration project, including infrastructure construction subject to a diverse set of Federal and State laws. The Parties further recognize that several Federal agencies will be involved in the Federal environmental review and authorization process. Due to complexities of the Project and its environmental review and authorizations, there may be disagreements among the Parties as to how to address issues of concern. To that end, the Parties seek to utilize the effective processes, as identified in Section V “Dispute Resolution” of this MOU, for resolving disputes that arise during the regulatory processes to ensure the regulatory processes are completed efficiently and effectively, consistent with applicable

federal authorities and dispute resolution mechanisms, including those articulated under FAST-41 and EO 13807.

C. To Establish an Appropriate and Effective Role for CPRA in the Environmental Review and Authorization Processes.

The Parties recognize the significance of the MBSD Project to CPRA and the State as identified in the State's 2017 Master Plan. The Parties further recognize that the MBSD has been proposed as a means of restoring natural resources injured by the Deepwater Horizon Oil Spill, and that all of the natural resource trustees for those resources have significant roles in restoring those resources. The Parties further recognize that, through the Louisiana Master Planning process and its status as the FAST-41 project sponsor, CPRA is uniquely situated to provide significant, substantive information and perspective that may meaningfully aid the Parties in achieving the efficient execution of Federal environmental review and authorizations. While recognizing that the Federal agencies retain independent discretion to make regulatory decisions under their respective statutory authorities, the Parties seek to ensure that CPRA participates fully and substantially in the regulatory process to the maximum extent allowed by law. The Parties further acknowledge that CPRA can substantially participate in these while allowing the United States to remain objective and open-minded throughout the regulatory process as it is required to be by law.

D. To Endeavor to Pursue One Federal Decision for all Federal Regulatory Decisions Necessary for the MBSD Project.

To the extent permitted by law and consistent with FAST-41 and applicable provisions and goals of EO 13807, the Parties agree to endeavor to develop a single Record of Decision for federal decisions that may be issued pursuant to their environmental review of the MBSD Project, recognizing that a single ROD may or may not be suitable or appropriate given the complexities and timing related to the multiple decision points and authorizations required for this project.

III. AUTHORITIES

This MOU is based on and consistent with the authorities provided in the following laws, regulations, orders, decisions, and documents:

A. FPISC

FPISC has authority to enter into this MOU under FAST-41. FAST-41 and EO 13807 assign FPISC the tasks of ensuring that Federal agencies expeditiously complete all necessary environmental reviews and authorizations for infrastructure projects on an

efficient and timely basis consistent with their obligations under applicable laws, and mediating certain disputes between agencies.

B. DOA

Army has authority to enter into this MOU pursuant to FAST-41, EO 13807, and pursuant to its responsibilities for administering Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 USC §403), Section 404 of the Clean Water Act (CWA) (33 USC §1344), Section 14 of the RHA (33 USC §408), and the National Environmental Policy Act (NEPA, 42 U.S.C. § 4321 *et seq.*).

C. DOI

DOI has authority to enter into this MOU pursuant to FAST-41, EO 13807, NEPA, the Oil Pollution Act (OPA, 33 USC § 2701 *et seq.*), the Endangered Species Act (ESA, 16 USC §1531 *et seq.*), the Fish and Wildlife Coordination Act (FWCA, 16 USC §661 *et seq.*), the Migratory Bird Treaty Act (MBTA, 16 USC 703 *et seq.*), the Bald and Golden Eagle Protection Act (16 USC 668-668d), the Coastal Zone Management Act (CZMA, 16 USC 1451-1466), the Marine Mammal Protection Act (MMPA, 16 USC 1361 *et seq.*), and the Coastal Barrier Resources Act (16 USC 3501-3510).

D. DOC

DOC has authority to enter into this MOU pursuant to FAST-41, EO 13807, OPA, ESA, NEPA, MMPA, FWCA, and the Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801 *et seq.*).

E. EPA

EPA has authority to enter into this MOU pursuant to FAST-41 and pursuant to EPA's obligations under applicable laws, including OPA and NEPA.

F. USDA

USDA has authority to enter into this MOU pursuant to FAST-41, EO 13807, OPA, NEPA, and the Farmland Protection Policy Act (7 USC 4201 *et seq.*).

G. DHS

DHS has authority to enter into this MOU pursuant to FAST-41, EO 13807, OPA, NEPA, 6 U.S.C. § 112 and 14 U.S.C. § 141.

H. CPRA

CPRA has authority to enter into this MOU pursuant to La. R.S. 49:214.1 et. seq., including R.S. 49:214.5.2, R.S. 49:214.6.1, and R.S. 49:214.6.2. Further, CPRA has authority to enter into this MOU pursuant to FAST-41, 42 U.S.C. 4370m-2(c)(1)(C) and 42 U.S.C. 4370m-2(c)(3)(C)(i).

I. GOCA

GOCA has authority to enter into this MOU pursuant to La. R.S. 49:214.1, et. seq., including La. R.S. 49:214.3.1 with regard to the authority to coordinate the powers, duties, functions, and responsibilities of any state agency relative to integrated coastal protection. Further, GOCA has authority to enter into this MOU pursuant to FAST-41, 42 U.S.C. 4370m-2(c)(1)(C) and 42 U.S.C. 4370m-2(c)(3)(C)(i).

J. DEQ

DEQ has authority to enter into this MOU pursuant to La. R.S. 36:231 et. seq. and La. R.S. 30:2001, et. seq., including La. R.S. 30:2011. Further, DEQ has authority to enter into this MOU pursuant to FAST-41, 42 U.S.C. 4370m-2(c)(1)(C) and 42 U.S.C. 4370m-2(c)(3)(C)(i).

K. DNR

DNR has authority to enter into this MOU pursuant to La. R.S. 36:351, et. seq., including La. R.S. 36:358(B). Further, DNR has authority to enter into this MOU pursuant to FAST-41, 42 U.S.C. 4370m-2(c)(1)(C) and 42 U.S.C. 4370m-2(c)(3)(C)(i).

L. SHPO

SHPO has authority to enter into this MOU pursuant to La. R.S. 36:201, et. seq. and La. R.S. 25:911, et seq. Further, SHPO has authority to enter into this MOU pursuant to FAST-41, 42 U.S.C. 4370m-2(c)(1)(C) and 42 U.S.C. 4370m-2(c)(3)(C)(i).

M. DOTD

DOTD has authority to enter into this MOU pursuant to La. R.S. 36:501, et. seq., and La. R.S. 48:1, et seq., including La. R.S. 48:21. Further, DOTD has authority to enter into this MOU pursuant to FAST-41, 42 U.S.C. 4370m-2(c)(1)(C) and 42 U.S.C. 4370m-2(c)(3)(C)(i).

N. DWF

DWF has authority to enter into this MOU pursuant to La. R.S. 36:602, et. seq and La. R.S. 56:1, et seq., including La. R.S. 56:5. Further, DWF has authority to enter into this MOU pursuant to FAST-41, 42 U.S.C. 4370m-2(c)(1)(C) and 42 U.S.C. 4370m-2(c)(3)(C)(i).

IV. COMMITMENTS TOWARD ACHIEVING OBJECTIVES

A. FPISC Assistance

This MOU recognizes that the MBSD Project is a unique ecosystem restoration project that may present complex issues related to the application of several federal environmental laws, including, but not limited to, NEPA. Given this reality, it is highly likely that federal and state agencies reviewing and authorizing the Project may confront new and unique issues during their analysis. FPISC agrees that coordinating the permitting process within the structure of existing federal environmental reviews and authorizations for the MBSD Project will require major FPISC assistance. FPISC—in consultation with the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ), where appropriate—will assist the lead agency in coordinating the permitting process, including coordinating with any required State environmental reviews and authorizations because the State has opted in to FAST-41. Specifically, FPISC is prepared to serve in the facilitating and mediating roles set forth in FAST-41, including working with CEQ and other federal and state agency partners to coordinate the appropriate application of NEPA and other coordinated federal and state environmental reviews and authorizations as they relate to the Project. Additionally, consistent with OMB and CEQ Guidance implementing FAST-41, FPISC is prepared to call upon federal and state agency partners where special expertise is necessary. CEQ is prepared to issue guidance on the application of NEPA and other federal environmental laws to the MBSD Project as appropriate.

B. Permitting Timetable

Pursuant to the statutory process of modifying approved permitting FAST-41 timetables under 42 USC 4370m-2(c)(2)(D) and to applicable provisions under EO 13807, the Parties hereby agree to make best efforts to work together to modify the approved FAST-41 permitting timetable published on the Dashboard so that environmental review and permitting for the proposed MBSD Project can be completed as expeditiously as possible in accordance with law.

Accordingly, the Parties agree to work together to modify, as appropriate, the schedule currently set forth in the CPP. In striving to meet this goal, the Parties will

clearly determine and explain whether the goal of two years for the environmental review is attainable; whether the milestones identified in the CPP can be accelerated; or whether the existing schedule identified in the CPP is the most efficient and timely practicable.

As required by 42 USC 4370m-2(c)(2)(E), the Parties agree that conformity with a FAST-41 permitting timetable schedule shall be performed consistent with any other relevant time periods established under Federal law and shall not prevent any cooperating or participating agency from discharging any obligation under Federal law in connection with the Project. Additionally, the Parties agree that Federal agencies will not be considered in non-conformity with a FAST-41 permitting timetable for reasons outside the control of Federal agencies and will determine if dates can be adjusted and included in an updated Permitting Timetable. The Parties further recognize that establishing dates is dependent on submission of completed permit applications and development of sufficient data to inform the NEPA process.

C. Parties' Roles and Responsibilities

1. All Parties Will:

(a) Make best efforts to meet all deadlines in the CPP to the greatest extent possible. Each Party recognizes that implementation of the Project will require significant and ongoing collaboration among all of the Parties. All Parties commit to active and timely engagement in all processes necessary to complete the environmental reviews and authorizations in an efficient and effective manner, and to make decisions consistent with the CPP.

(b) Designate one point of contact responsible for coordinating with the other Parties and ensuring that the responsibilities set forth in this MOU are met. The initial point of contact for each Party is set forth in Exhibit B.

(c) USACE is the lead agency for purposes of NEPA, CWA section 404, RHA sections 10 and 14, and FAST-41 review of the MBSD Project. Each other federal agency Party agrees to participate as a cooperating agency in the environmental review to ensure that the resulting EIS is sufficient to meet each Party's statutory obligations, and to work with the Parties with the goal of issuing a single Record of Decision ("ROD") consistent with Section 5(b) of EO 13807, unless CPRA requests that agencies issue separate NEPA documents, or the lead agency determines that a single ROD would not best promote completion of the Project's environmental review and authorization process. In particular, as part of the EIS process, the Parties agree to work collaboratively on all aspects of the EIS and to seek agreement on the NEPA statement of purpose and need, the range of alternatives to be considered in the EIS, the modeling and analysis of NEPA alternatives, consideration of public comments, and the identification of any preferred alternative, in accordance with the relevant NEPA regulations.

(d) Participate in informal and formal Project-specific consultations and coordination (e.g., ESA Section 7, Magnuson-Stevens Fishery Conservation and Management Act (MSA) Section 305, National Historic Preservation Act (NHPA) Section 106, and any other consultations necessary for the authorization decisions) as required for the Project.

(e) Designate appropriate representatives with relevant technical expertise to participate in the environmental review and authorizations in the CPP.

(f) Identify issues and concerns early in the process, including through milestones identified in the CPP. These milestones shall include the list of coordination and concurrence points for the environmental reviews and authorizations specified in Appendix B of the FAST-41 Implementation Guidance, as amended. The lead agency, after consultation with cooperating and participating agencies and the project sponsor and following their collective agreements, may modify the CPP by including any other milestones in the CPP that the lead agency deems desirable, are requested by CPRA, are requested by the FPISC Office of the Executive Director, or are requested by a cooperating or participating agency. See Attachment A for milestones. All Parties will work diligently to enable the environmental review, consultations, and authorization decisions to proceed consistent with the CPP.

(g) Communicate on a timely basis any issues related to adhering to the CPP—or to any provision outlined herein—to all Parties. If at any point during the environmental review, consultation, and authorization processes, any Party anticipates or foresees an inability to comply with the schedule set forth in the CPP or with any provision of this MOU, it will immediately communicate the anticipated delay and the rationale for the delay to the other Parties. Each Party will then work with FPISC, CPRA, and any other relevant Parties to avoid or minimize the delay, and the Parties will update the CPP to ensure that the environmental review, consultations and Final EIS are completed within the timetable discussed in Section IV.C, above, or under a revised timetable modified pursuant to 42 USC 4370m-2(c)(2)(D).

2. FPISC Will:

(a) Consistent with FAST-41, serve as the overall Primary Contact for Federal-State communications and for facilitating the resolution of any disputes between the State and Federal agencies as set forth in 42 U.S.C § 4370m-2(c)(2)(C).

(b) Be responsible for working with each Party to assist each Party in meeting the milestones and deadlines set forth in the CPP; to ensure that the environmental review, consultations, and authorizations are completed as set forth in the CPP; and to address any disputes or conflicts as set forth in Section V below.

3. CPRA Will:

(a) Timely provide all information and materials requested by the federal agency Parties to complete the required environmental review and authorizations for the MBSD Project.

(b) To the maximum extent allowed by law, participate in the environmental review and authorizations in order to facilitate the development of a thorough and detailed analysis of the issues associated with the Project. CPRA will provide required materials and related information in the NEPA process as well as other applicable regulatory processes to the extent allowed by law. CPRA acknowledges and agrees that each federal agency Party must independently evaluate all information relevant to any required environmental review and authorizations and shall independently make any assessments about that information and final determinations regarding sufficiency and compliance with any relevant regulatory requirements.

V. DISPUTE RESOLUTION

A. Establishing Dispute Resolution Points of Contact.

To ensure that the Parties can quickly identify and resolve any disagreements or disputes that might delay the environmental review and authorization processes or result in duplication in the federal review and authorization processes for the MBSD Project, this MOU establishes a Primary Contact for dispute resolution for each Party and sets forth Dispute Resolution Protocols. For the State, the Primary Contact for dispute resolution shall be the Chair of the CPRA Board or his or her designee. For the United States, the Primary Contact for dispute resolution shall be the Executive Director of FPISC or his or her designee.

This MOU does not confer on these Primary Contacts any powers or authorities that these officials do not currently possess under the laws of the United States and the State, and is not in lieu of informal, regular communications to avoid disputes. Rather, these Primary Contacts are expected to be in regular contact with each other and are charged with facilitating the resolution of issues expeditiously that may arise in the permitting process that could either delay the Project or lead to duplicative and wasteful permitting efforts. All officials of the United States are expected to cooperate with the United States' Primary Contact and all officials of the Louisiana state government are expected to cooperate with the State Primary Contact.

B. Dispute Resolution Protocols.

1. Dispute resolution process per FAST-41 for disputes related to the CPP and permitting timetable.

Consistent with FAST-41, any disputes related to the permitting timetable of the CPP permitting timetable shall first be mediated by the FPISC Executive Director, in consultation with the CERPO for the relevant Federal agency and CPRA. If the dispute remains unresolved after 30 days, the Director of OMB, in consultation with the Chairman of CEQ, shall seek to facilitate resolution of the dispute within 60 days of the date when the dispute was originally raised with the FPISC Executive Director. Any action taken by the Director of the Office of Management and Budget shall be final and conclusive and not subject to judicial review pursuant to 42 U.S.C § 4370m-2(c)(2)(C)(iii).

2. Elevation of Delays and Dispute Resolution per One Federal Decision (Implementing EO 13807).

- (a) Any issue or dispute that arises between or among the Parties during the environmental review process shall be addressed expeditiously to avoid delay.
- (b) If there is a dispute resolution process established in an applicable law, regulation, or a legally binding agreement, then to the maximum extent practicable it will be implemented consistent with this provision.
- (c) The Parties will seek to resolve issues or disputes at the earliest possible time through discussion at the lowest appropriate organizational level, (i.e., Project-level staff who have day-to-day involvement in the Project).
- (d) In any instance where a dispute is to be elevated, the involved Federal agency's CERPO shall be notified. Where appropriate, the CPRA shall be engaged and its issues shall also be addressed through this collaborative process.
- (e) If an issue cannot be resolved through meetings among the project-level staff, then the staff will notify the appropriate agency personnel having regional management responsibilities over this issue.

3. Automatic Elevation.

- (a) The regional management staff will enter discussions to resolve the dispute. If at the end of 30 days after the relevant milestone date or extension

date, the lead agency determines that all regional management staff involved in the dispute are making progress toward resolution, then the agencies shall continue to work toward the resolution of the dispute.

(b). If no resolution has been reached at the end of 30 days after the relevant milestone or extension date, then the agencies will elevate the dispute to a senior agency official at the agency's headquarters office unless the agency CERPOs determine that the agencies are making progress toward reaching an agreement, provided that, if the issue remains unresolved for 30 more days the dispute will be elevated to a senior agency official at the agency's headquarters office in all cases.

(c) Once elevated to the agency's headquarters office, then the agencies will have 45 days to resolve the dispute at their respective level of final decision-making authority. If a resolution of the matter cannot be facilitated at the headquarters level by the end of the 45-day period, the matter will then be elevated to the relevant signatories of this agreement for resolution at each agency's respective level of final decision-making authority for the dispute in question.

VI. ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

A. Terms/Definitions. All terms used herein shall have the definitions set forth in FAST-41 (42 U.S.C. § 4370m) and Section 3 of EO 13807.

B. Authorities. Nothing in this MOU shall be construed to extend the jurisdiction or decision-making authority of any Party to this MOU beyond that which exists under current laws and regulations. Nothing in this MOU shall be construed as limiting or affecting the authority or legal responsibility of any Party, or as binding any Party to perform beyond the respective authority of each, or to require any Party to assume or expend any specific sum of money. Nothing in this MOU shall be construed as affecting the decision-making requirements of any Party or impairing the independent judgment of each Party regarding policy decisions.

C. Sovereign Immunity. Neither the State of Louisiana nor the agencies of the federal government waive sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

D. Severability. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and any Party may renegotiate the terms affected by the severance.

E. Third Party Beneficiary Rights. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only among the Parties to this MOU, and shall inure solely to the benefit of the Parties to this MOU. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU.

F. Non-Funded Obligation Document. This MOU is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the Parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the Parties and shall be independently authorized by appropriate rules, policies, and statutory authority. This MOU does not provide such authority. Specifically, this MOU does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Nothing herein constitutes a binding commitment to fund any of the proceedings encompassed by the MOU. Any specific cost sharing or funding shall be executed separately through other funding mechanisms, as deemed necessary and appropriate by each of the signatories.

G. Participation in Similar Activities with Other Entities. This MOU in no way restricts any of the Parties from participating in similar activities with other public or private agencies, organizations, and individuals.

H. Modification. Any Party may request changes in this MOU. Any changes, modifications or amendments to this MOU which are mutually agreed upon by and among the Parties to this MOU shall be incorporated by written instrument, executed and signed by all Parties to this MOU.

I. Effective Date; Term. The effective date of this MOU is the date of the signature last affixed to these pages. This MOU shall remain in effect for an initial term of five (5) years from its effective date and may be renewed by the Parties.

J. Consistency with Other Agreements. The Parties recognize that there are other existing agreements (including the previously executed Memorandum of Agreement by and between the U.S. Army Corps of Engineers and the federal cooperating agencies and the Third-Party Agreement by and between the U.S. Army Corps of Engineers, CPRA and GEC Environmental) related to the MBSD Project regulatory processes that remain effective and will be implemented in harmony with this MOU.

VII. SIGNATURES

By: _____ Date: _____
JOHNNY BRADBERRY
GOVERNOR’S EXECUTIVE ASSISTANT FOR
COASTAL ACTIVITIES AND CHAIRMAN,
COASTAL PROTECTION AND
RESTORATION AUTHORITY BOARD
STATE OF LOUISIANA

By: _____ Date: _____
SIGNATORY FOR Louisiana Department of Environmental Quality (“DEQ”)

By: _____ Date: _____
SIGNATORY FOR Louisiana Department of Natural Resources (“DNR”)

By: _____ Date: _____
SIGNATORY FOR Louisiana State Historic Preservation Officer (“SHPO”)

By: _____ Date: _____
SIGNATORY FOR Louisiana Department of Wildlife and Fisheries

By: _____ Date: _____
SIGNATORY FOR Louisiana Department of Transportation and Development
 (“DOTD”)

By: _____ Date: _____
TERESA POHLMAN
CHIEF ENVIRONMENTAL REVIEW AND PERMITTING OFFICER
DEPARTMENT OF HOMELAND SECURITY

By: _____ Date: _____
THOMAS SMITH
CHIEF ENVIRONMENTAL REVIEW AND PERMITTING OFFICER
USACE, DEPARTMENT OF THE ARMY

By: _____ Date: _____
JAMES UTHMEIER
CHIEF ENVIRONMENTAL REVIEW AND PERMITTING OFFICER
NOAA, DEPARTMENT OF COMMERCE

By: _____ Date: _____
JAMES CASON
CHIEF ENVIRONMENTAL REVIEW AND PERMITTING OFFICER
DEPARTMENT OF THE INTERIOR

By: _____ Date: _____
ROBERT TOMIAK
CHIEF ENVIRONMENTAL REVIEW AND PERMITTING OFFICER
ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: _____
GLENN CASAMASSA
CHIEF ENVIRONMENTAL REVIEW AND PERMITTING OFFICER
US DEPARTMENT OF AGRICULTURE

By: _____ Date: _____
JANET PFLEEGER
ACTING EXECUTIVE DIRECTOR
FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL

Exhibit A

Permitting Timetable

<u>Action</u>	<u>Agency</u>	<u>Target Completion</u>	<u>Status</u>
Section 408 Permit	US Army Corps of Engineers - Civil Works	10/31/2022	In Progress
Environmental Impact Statement (EIS)	US Army Corps of Engineers - Regulatory	08/31/2022	In Progress
Clean Water Act Section 404 Permit	US Army Corps of Engineers - Regulatory	10/31/2022	In Progress
Section 10 Permit	US Army Corps of Engineers - Regulatory	10/31/2022	In Progress
Endangered Species Act Consultation - FWS	Fish and Wildlife Service (Cooperating under FAST-41), (Cooperating under NEPA)	12/31/2021	Planned
Fish and Wildlife Coordination Act Review	Fish and Wildlife Service (Cooperating under FAST-41), (Cooperating under NEPA)	12/31/2021	Planned
Endangered Species Act Consultation - NOAA-NMFS	National Oceanic and Atmospheric Administration (Cooperating under FAST-41), (Cooperating under NEPA)		Planned

<u>Action</u>	<u>Agency</u>	<u>Target Completion</u>	<u>Status</u>
Consultation to Protect Essential Fish Habitat	National Oceanic and Atmospheric Administration (Cooperating under FAST-41), (Cooperating under NEPA)		Planned
Marine Mammal Protection Act Incidental Take Authorization	National Oceanic and Atmospheric Administration (Cooperating under FAST-41), (Cooperating under NEPA)		Planned
Section 106 Review	Louisiana (Cooperating under FAST-41), (Cooperating under NEPA)		Planned
National Environmental Policy Act (NEPA) Compliance	Natural Resources Conservation Service (Cooperating under FAST-41)		Complete
National Environmental Policy Act (NEPA) Compliance	Louisiana (Cooperating under FAST-41), (Cooperating under NEPA)		Planned
National Environmental Policy Act (NEPA) Compliance	Louisiana (Cooperating under FAST-41), (Cooperating under NEPA)		Planned
National Environmental Policy Act (NEPA) Compliance	Louisiana (Cooperating under FAST-41)		Planned
National Environmental Policy Act (NEPA) Compliance	Louisiana (Cooperating under FAST-41)		Planned

Exhibit B

Points of Contact

Federal Permitting Improvement Steering Council	Janet Pfleeger
Louisiana Coastal Protection and Restoration Authority:	Chip Kline
Department of the Army - USACE:	
Department of Commerce – NOAA:	
Department of Interior – USFWS:	
Environmental Protection Agency:	
US Department of Agriculture:	
Department of Homeland Security:	Jennifer Hass
Governor’s Executive Assistant for Coastal Activities:	
Louisiana Department of Environmental Quality:	
Louisiana Department of Natural Resources:	
Louisiana State Historic Preservation Officer:	
Louisiana Department of Transportation and Development:	
Louisiana Department of Wildlife and Fisheries:	