

NOTICE OF INTENT

Department of Natural Resources Office of the Secretary

Coastal Use Permit Extensions (LAC 43:I.723)

Under the authority of the laws of the State of Louisiana and in accordance with the provisions of Section 213 of Chapter 2 of Title 49 of the Louisiana Revised Statute of 1950, with the general authority of the Department of Natural Resources under Chapter 8 of Title 36 of the Louisiana Revised Statutes of 1950 and, Coastal Resources Management Act of 1978, La. R.S. 49:214.21 and with the Administrative Procedure Act, La. R.S. 49:950 et seq., the secretary hereby gives notice that rulemaking procedures have been initiated to amend the rules that govern the extension of Coastal Use Permits, LAC 43:I.723.

The proposed Rule amends the Coastal Use Permit Extension rules with regard to the process for requesting an extension of the term to initiate a coastal use permit and the term to complete the use of a coastal use permit. The proposed Rule amends the existing provision of LAC 43:I. Chapter 7, Subchapter C which prohibits a coastal use permit recipient from requesting an extension of the term to complete use of a coastal use permit and authorizes a request to extend the term to complete use pursuant to the same guidelines set forth for requesting an extension of the term to initiate a coastal use permit. The proposed Rule will authorize the Secretary to issue an administrative order to extend the terms to initiate or complete use of a coastal use permit up to thirty days, without public notice of the request, a public comment period, or further formality upon a showing of good cause. The Rule will also authorize the Secretary to modify, suspend or extend the terms of all or an individual coastal use permit when an executive order or proclamation has been issued declaring an emergency.

Title 43

NATURAL RESOURCES

Part I. Office of the Secretary

Chapter 7. Coastal Management

Subchapter C. Coastal Use Permits and Mitigation

§723. Rules and Procedures for Coastal Use Permits

- A. - B.8.c. ...
- C. Permit Application, Issuance, and Denial
 - 1. - 8.c. ...
 - 9. Conditions of Permit
 - a. - c.ii ...
 - d. The term of issuance of permits shall be as follows.
 - i. The term to initiate a coastal use permit shall be two years from the date of issuance, and the term to complete the use shall be five years from the date of issuance.
 - ii. Repealed.
- D. Modification, Suspension or Revocation of Permits
 - 1. - 4. ...
 - 5. Extension
 - a. The term to initiate a coastal use permit or the term to complete the use of a coastal use permit may be extended, notwithstanding the provision of Subparagraph j below, as follows:

- i. The term to initiate a coastal use permit may be extended for an additional 2 years beyond the term set forth in Subsection C.9.d.

- ii. The term to complete the use may be extended for up to a total of an additional 3 years beyond the term for completion of use set forth in Subsection C.9.d.

- iii. A grant of an extension request for the term to initiate a coastal use permit does not automatically extend the term to complete use of a coastal use permit. Requests to extend the term to initiate a coastal use permit and complete use of the same permit may be submitted separately or together in accordance with Subparagraph f. Each request shall include the appropriate fee consistent with schedule of fees set forth in Subparagraphs f-g. Each request shall be considered separately consistent with Subparagraph a.v.

- iv. The secretary may, in his discretion, upon a showing of good cause and upon receipt of a complete request for an extension, grant a permittee an extension up to 30 days beyond the last day of the term to initiate work on a use pursuant to a permit, or 30 days beyond the last day of the term to complete the permitted use without public notice of the request, a public comment period, or further formality, except that notice required in Subparagraph j below, of the secretary's decision to grant or deny the extension shall be made.

- b. The secretary shall review extension requests subject to this part on a case-by-case basis. The secretary shall determine, based upon the merits of the request and upon the compliance of the permitted activity with the regulations and policies existing at the time of the request, whether extension may be considered.

- c. If the secretary determines that extension may be considered, the Permits, Mitigation and Support Division shall cause to be issued for public comment, for a period of 10 days, a notice containing a brief summary of the original permit in accordance with Subparagraph i below. The secretary shall consider public comments received during this period prior to the final decision on whether to allow permit extension. The sole reason for not allowing extension based upon public comment shall be that there has been a change in the conditions of the area affected by the permit since the permit was originally issued.

- d. If the secretary determines that a permit should not be extended, the permittee shall be notified and, provided that the permittee desires a new permit, the use shall be subject to processing as a new permit application pursuant to the procedures set forth in Subsection C. A decision of the secretary not to allow extension of a permit shall not be subject to appeal. A decision of the secretary to allow extension shall be subject to appeal only on the grounds that the proposed activity should be treated as a new application pursuant to Subsection C rather than be considered for extension.

- e. All coastal use permits in effect on the date these rules are adopted are eligible for extension provided that all requirements in Subparagraph f below are met.

- f. Extension requests shall be in the form of a written letter which shall refer to the original coastal use permit application number and specifically state that a permit extension is desired. A nonrefundable extension request fee in the amount of \$80 shall be included with such a request, and the request must be received by the Permits,

Mitigation and Support Division no sooner than 180 days and no later than 60 days prior to the expiration of the permit in question. Requests received later than 60 days prior to the expiration date of the permit shall be eligible for consideration for extension, however a permittee who fails to make a timely request for an extension shall not engage in any activity requiring a coastal use permit past the original permit expiration date until an extension of the lapsed permit or a new permit is granted.

g. If the appropriate fees are not included along with the request for an extension to initiate a coastal use permit and/or to complete the use, the request will be considered incomplete, and returned to the permittee.

h. Extension requests involving modifications to a permitted activity which would result in greater impacts to the environment than previously permitted will be considered as new applications rather than as extension requests. Extension requests involving modifications to a permitted activity which would result in identical or lesser impacts to the environment than previously permitted may be considered as extension requests, and must, in addition to the requirements in Subparagraph f above, contain adequate information (such as drawings, maps, etc.) to support and explain the proposed modifications.

i. The Permits, Mitigation and Support Division shall issue notice of the extension request to all members of the Joint Public Notice mailing list, and shall publish notice that the extension request has been granted or denied in the Bi-weekly Status Report that is published in the state journal as well as mailed to Joint Public Notice mailing recipients.

j. The secretary may issue administrative orders that modify, suspend, or extend the terms of all coastal use permits, or the secretary may order or delegate the authority to order modification, suspension, or extension of an individual permit when, in either case, the permits are in an area where an executive order or proclamation is issued declaring an emergency, and the need for the modification, suspension, or extension is related to the emergency.

E. - G.4.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:214.21- 49:214.41.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of the Secretary, L.R. 6:493 (August 1980), amended LR 8:519 (October 1982), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 16:625 (July 1990), amended by the Department of Natural Resources ,Office of the Secretary, LR 21:835 (August 1995), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 28:516 (March 2002), amended by the Department of Natural Resources, Office of Coastal Restoration and Management, LR 35:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by Coastal Use Permit Extensions. Such comments must be received no later than August 4, 2009, at 4:30 p.m., and should be sent to O.C. Smith, III, Attorney, Office Coastal Resources and Management, Box 44487, Baton Rouge, LA 70804-4487 or to fax (225) 342-9439 or by e-mail to oc.smith@la.gov. This

proposed regulation is available for inspection and copying from 8 a.m. until 4:30 p.m. at the following address: Office of Coastal Restoration and Management, 617 North Third Street, 10th floor, Baton Rouge, LA 70804.

Robert D. Harper
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Coastal Use Permit Extensions

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

While the administrative burden to DNR may be heavy initially, the agency will absorb the additional workload with existing staff. No increase in costs (savings) to state or local government entities is anticipated to result from this action.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Current regulations already authorize DNR to collect an extension request fee from coastal use permit recipients for an extension of the term to initiate a coastal use permit. The proposed regulations will amend the current authorization to also allow coastal use permit recipients to request an extension of the term to complete the use of a coastal use permit, separate or together with a request to extend the term to initiate a coastal use permit. The same \$80 fee currently authorized in the rules to request an extension to initiate a coastal use permit, will be imposed for request of an extension to complete the use of a coastal permit. Based on the average number of extension requests received annually (9), the Coastal Resources Trust Fund may realize up to \$720.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Coastal use permit recipients are currently required to remit a fee for an extension request for the term to initiate a coastal use permit. Coastal use permit recipients will incur an additional fee in the same amount currently authorized under the rules if the permittee elects to request an extension of the term to complete use of a coastal use permit. This is a voluntary activity.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition or employment is anticipated in either the public or private sector.

Robert D. Harper
Undersecretary
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Robert Hosse
Staff Director
Legislative Fiscal Office