

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ATCHAFALAYA BASINKEEPER,)
LOUISIANA CRAWFISH)
PRODUCERS’ ASSOCIATION-WEST,)
and GULF RESTORATION NETWORK,)

Plaintiffs,)

v.)

U.S. ARMY CORPS OF)
ENGINEERS and)
LIEUTENANT GENERAL THOMAS P.)
BOSTICK, in his official capacity as)
Chief of Engineers, U.S. Army Corps)
of Engineers,)

Defendants.)

Case: 2:15-cv-06982

Section: G

Division: 1

Judge: Nannette Jolivette Brown

Magistrate Judge: Sally Shushan

FIRST AMENDED COMPLAINT

Plaintiffs Atchafalaya Basinkeeper, Louisiana Crawfish Producers’ Association-West (the “Crawfishermen”) and Gulf Restoration Network (“GRN”) make the following allegations against the U.S. Army Corps of Engineers (the “Corps”) for their Complaint:

NATURE OF THE CASE

1. This case is about the U.S. Army Corps of Engineers’ response to the expiration of New Orleans District General Permit 13 (“NOD-13”) on December 31, 2012. NOD-13 is a regional “general permit” for temporary roads and other constructions in wetlands in southern Louisiana. General permits authorize the filling of wetlands by category of project, without any requirement for public notice of individual projects or project specific environmental review under the National Environmental Policy Act. When re-issuing general permits, however, the

Corps must provide public notice and undertake environmental reviews under the Clean Water Act and the National Environmental Policy Act.

2. When NOD-13 expired, the Corps continued to authorize projects under this expired general permit for almost two years. During this period, the Corps authorized projects without regard to the public's right to receive notice and a pre-decisional opportunity to comment pursuant to 33 C.F.R. § 325.3. Now, the Corps has reissued NOD-13 without complying with legal mandates for public participation and environmental review. This general permit allows destruction of Atchafalaya Basin and other wetlands and waters that the Plaintiffs' members use without further notice to the Plaintiffs. Thus, without complying with the legal requirements for issuing a general permit, the Corps has rescinded the Plaintiffs' right to notice and a pre-decisional opportunity to comment pursuant to 33 C.F.R. § 325.3. The Atchafalaya Basinkeeper, the Louisiana Crawfish Producers' Association–West, and the Gulf Restoration Network ask this Court to vacate the reissued general permit and enjoin the Corps from authorizing additional projects under the expired permit.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 because this case concerns federal questions under the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.*; the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

4. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1), which provides: “A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity . . . or an agency of the United States . . . may . . . be

brought in any judicial district in which (A) a defendant in the action resides, [or] (B) a substantial part of the events or omissions giving rise to the claim occurred.”

5. The Corps has residence in New Orleans through its New Orleans, Louisiana District office, which is within the jurisdiction of this Court.

6. A substantial part of the events giving rise to the claims asserted occurred in New Orleans because the Corps’ New Orleans District office made the decision at issue.

PARTIES
Plaintiffs

7. The Louisiana Crawfish Producers’ Association-West (“the Crawfishermen”) is a non-profit corporation organized under the laws of Louisiana. The Crawfishermen is a regional business and conservation organization dedicated to protecting the public access, use, and quality of navigable waterways in Louisiana. Its members are commercial crawfishermen, recreational fishermen, hunters and nature photographers who live, work, and recreate in and around the Atchafalaya Basin and other waters.

8. The Atchafalaya Basinkeeper is a non-profit corporation organized under the laws of Louisiana. It is dedicated to protecting and restoring the ecosystems within the Atchafalaya Basin, acting as an advocate for the protection of these wetlands. It is a Waterkeeper program under the Waterkeeper Alliance, which is a grassroots advocacy organization consisting of over 200 local Waterkeeper programs dedicated to preserving and protecting the nation’s waters. The Atchafalaya Basinkeeper’s members include recreational and commercial fishermen and crawfishermen, hunters, outdoor recreationists, bird-watchers, and nature photographers who live, work, and recreate in and around the Atchafalaya Basin and other waters.

9. The Gulf Restoration Network (“GRN”) is a non-profit corporation organized under the laws of Louisiana. GRN is a network of environmental, social justice, and citizens’

groups in addition to individuals who are committed to restoring the Gulf of Mexico to an ecologically and biologically sustainable condition. It is dedicated to empowering people to protect and restore the natural resources of the Gulf of Mexico for future generations. GRN works throughout all five Gulf States to advance issues important to the health of the Gulf, including the protection of wetlands. GRN's members consist of residents throughout south Louisiana who use and enjoy public waters, including the Atchafalaya Basin and other wetlands affected by NOD-13.

10. The Atchafalaya Basinkeeper, the Crawfishermen, and GRN are corporations and therefore "person[s]" within the meaning of 33 U.S.C. § 1362(5).

11. GRN and the Atchafalaya Basinkeeper have members who live, work, and recreate near St. Gabriel, Louisiana. GRN's and the Atchafalaya Basinkeeper's members use and enjoy Bayou Braud, Spanish Lake, and Alligator Bayou, as well as the surrounding wetlands. These Plaintiffs' members intend to continue using those waters and wetlands. Project MVN 2014-2017-CQ, which the Corps authorized under NOD-13 on November 25, 2014, is located on or near Bayou Braud, which then flows into Spanish Lake and then into Alligator Bayou. Project MVN 2014-2017-CQ. The Corps' authorization of this project under NOD-13 impairs GRN's and the Atchafalaya Basinkeepers' members' ability to protect their use and enjoyment of Bayou Braud, Spanish Lake, and Alligator Bayou and the surrounding wetlands.

12. The Atchafalaya Basinkeeper, the Crawfishermen, and GRN have members who use and enjoy the area that NOD-13 affects, including the waters and wetlands of the Atchafalaya Basin. The Plaintiffs have members who regularly use and depend on the Atchafalaya Basin - from its east levee to its west levee and from Simmesport to Morgan City -

and other wetlands for their livelihoods, for recreation, and as part of their cultural heritage, and intend to continue doing so for the duration of their lives.

13. NOD-13 purports to authorize construction of roads and other structures in wetlands without notice to the Plaintiffs and their members. This authorization includes roads and levees that block the Plaintiffs' members' navigation and fishing access to bayous and surrounding wetlands. Such roads and constructions also interfere with the Atchafalaya Basin's water flow and so impair Plaintiffs' members' commercial, recreational and aesthetic interests throughout the Atchafalaya Basin. Further, such roads and constructions facilitate logging and other destruction of Atchafalaya Basin wetlands. Such destruction and threatened destruction also impairs the Plaintiffs' members' use and enjoyment of these wetlands. The resulting damage means that areas of the Atchafalaya Basin are lost to traditional Acadian fishermen, including Plaintiffs' members, and that affected areas fail to function as viable parts of the Atchafalaya Basin ecosystem.

14. The effect of the Corps' extension of NOD-13 is to rescind the Plaintiffs' right to notice and an opportunity to participate in decisions that affect the quality of their lives. This right to participate is a legally protected right under 33 C.F.R. § 325.3 which helps implement Congress' mandate that "Public participation ... be provided for, encouraged, and assisted" 33 U.S.C. § 1251(e).

15. Impacts of projects purportedly authorized under NOD-13 before the November 2014 "Time Extension" that is the subject of this action have impaired and continue to impair Plaintiffs' members use and enjoyment of the Atchafalaya Basin. Such projects include, but are not limited to, MVN-2011-01149, MVN 2010-2452-CQ, MVN 2009-01149 CM, MVN 2008-2820-CQ, MVN 2007-2217-CQ, and MVN 2000-3033.

16. Plaintiffs have brought the adverse environmental impacts of NOD-13 authorized projects that injure their members to the attention of the Corps in the past, including through litigation, in-person meetings, and written communications. The Corps did not consider the cumulative impacts of projects MVN-2011-01149, MVN 2010-2452-CQ, MVN 2009-01149 CM, MVN 2008-2820-CQ, MVN 2007-2217-CQ, MVN 2000-3033, or other NOD-13 projects in any of its **A**) November 2014 decision to reissue (or purportedly extend the time of) NOD-13, **B**) decisions to authorize projects under NOD-13 (including at least one affecting the Atchafalaya Basin) after NOD-13 expired on December 31, 2012 and before the Corps' November 2014 decision, **C**) 2007 decision to reissue (or purportedly extend the time of) NOD-13, or **D**) 2002 decision to reissue (or purportedly extend the time of) NOD-13, further injuring Plaintiffs and their members.

17. On June 19, 2015, the Eastern District of Louisiana found that each the Atchafalaya Basinkeeper and the Crawfishermen had standing to challenge the Corps' use of NOD-13 to authorize a project in 2012. *Atchafalaya Basinkeeper v. Bostick*, No. CIV.A. 14-649, 2015 WL 3824318, at *7 (E.D. La. June 19, 2015) (Barbier) (“[A]ffidavits reflect[] the affiant's habitual use of the affected areas and lessened enjoyment-aesthetically and recreationally—of such use as a result of the 2012 Project.”).

18. The Corps further injured Plaintiffs' and their members by use of a time extension to purport to extend NOD-13 for a period greater than five years, which 33 U.S.C. § 1344(e)(2) and 33 C.F.R. § (e)(2) each prohibit.

19. The Corps' November 2014, decision immediately altered the rights of Plaintiffs and their members.

20. Upon information and belief, additional NOD-13 projects in and affecting the Atchafalaya Basin will further injure Plaintiffs' members through their direct, indirect, and cumulative impacts. The Plaintiffs will not have a reasonable opportunity to challenge those actions because the Corps' NOD-13 extension, under challenge here, rescinds the Plaintiffs right to notice and comment pursuant to 33 C.F.R. § 325.3.

21. The Clean Water Act violations alleged in the Complaint injure the Plaintiffs and their members by denying them public notice and an opportunity to comment about and participate in the Corps' substantive determination – or, as is the case here, failure to make a determination – about the adverse impacts, individually and cumulatively, of the activities within the category that NOD-13 purports to authorize. Specifically, the NOD-13 reissuance denies the Plaintiffs and their members the legal benefit of 33 U.S.C. § 1344(e)(1) and 33 C.F.R. §§ 325.2(a)(2), 325.2(e)(2), and 325.3(b), which requires public notice and an opportunity to participate in decision making before the Corps issues § 404(e) permits in the Atchafalaya Basin.

22. The NEPA violations alleged in this Complaint injure the Plaintiffs and their members by denying them public notice and an opportunity to comment about future projects that will impair their use and enjoyment of Atchafalaya Basin wetlands. Further, by withholding an environmental assessment and environmental impact statement under the National Environmental Policy Act on its decision to reissue NOD-13, the Corps injured Plaintiffs' members by denying them the information they need to effectively participate in government decisions that impair their use and enjoyment of Atchafalaya Basin wetlands. Specifically, the NOD-13 reissuance denies the Plaintiffs and their members the legal benefit of 33 C.F.R. §§ 325.2(a)(4), 325.2(e)(2), 325.3(b), 40 C.F.R. § 1503.1(a), and 40 C.F.R. § 1506.6(b), which

requires public notice and an opportunity to comment before the Corps issues § 404 permits in the Atchafalaya Basin as well as access to environmental documents.

23. Plaintiffs' members have a legally protected interest in the integrity of Atchafalaya Basin wetlands. They are people for whom the aesthetic, occupational, and recreational values of Atchafalaya Basin wetlands are and will continue to be lessened by the Corps' reissuance of NOD-13. These injuries are actual, concrete, and irreparable. They cannot be redressed by monetary damages. The requested relief will redress these injuries.

24. This suit is germane to the purposes of Plaintiffs' organizations.

25. Neither the claims asserted nor the relief requested in this case requires the participation of any of the Plaintiffs' members in this suit.

Defendants

26. Defendant Lieutenant General Bostick is the U.S. Army Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers. Plaintiffs sue Lieutenant General Bostick in his official capacity as the federal officer responsible for compliance with any injunction that this Court issues. Lieutenant General Bostick is sued solely in his official capacity.

27. Lieutenant General Bostick, as U.S. Army Chief of Engineers, is responsible for discharging Congress' commands to "the Secretary" in the Clean Water Act § 404, which defines the section's use of "Secretary" as "the Secretary of the Army, acting through the Chief of Engineers." 33 U.S.C. § 1344(d).

28. Defendant U.S. Army Corps of Engineers is an administrative agency of the federal government as defined by the APA. 5 U.S.C. § 701(b)(1).

29. The Corps is the agency responsible for issuing general permits under the Clean Water Act. 33 U.S.C. § 1344, *et seq.*

BACKGROUND

Legal

Administrative Procedure Act

30. The APA provides for judicial review of final agency actions. 5 U.S.C. § 704.

31. Under the APA, “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

32. The APA authorizes courts to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; . . . without observance of procedure required by law; . . . or unwarranted by the facts” 5 U.S.C. §706(2).

33. The term “arbitrary and capricious” includes decisions where

the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983).

The Clean Water Act and the Corps' Permitting Authority

34. The Clean Water Act provides that “the discharge of any pollutant by any person shall be unlawful,” except in compliance with, *inter alia*, section 404 discharge permits for “dredged or fill material.” 33 U.S.C. § 1311.

35. The Clean Water Act provides:

the Secretary may, *after notice and opportunity for public hearing*, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, *will cause only minimal adverse environmental effects when performed separately*, and *will have only minimal cumulative adverse effect on the environment*.

33 U.S.C. § 1344(e)(1) (emphases added).

36. Public notice is the “primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on public interest.” 33 C.F.R. § 325.3(a).

37. Public notice is required for “proposed regional general permits and for significant modifications to, or reissuance of, existing regional permits.” 33 C.F.R. § 325.3(b)

National Environmental Policy Act

38. The National Environmental Policy Act (“NEPA”) requires that “all agencies of the Federal Government shall . . . include in every recommendation or report on proposals for . . . major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official” on the environmental impacts of, and alternatives to, the proposed action. 42 U.S.C. § 4332(2)(C). This detailed statement is known as an environmental impact statement (“EIS”). 40 C.F.R. § 1508.11.

39. “Major Federal action includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly.” *Id.* § 1508.18.

40. “Federal actions” include “[a]pproval of specific projects, such as construction . . . activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision.” *Id.*

41. The EIS must include consideration of direct, indirect, and cumulative environmental impacts of the proposed action. *Id.* §§ 1508.25(c); 1508.7; 1508.8.

42. A “cumulative impact” is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” *Id.* § 1508.7.

43. Under NEPA, an agency may perform an environmental assessment (“EA”) to “[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” 40 C.F.R. § 1508.9(a)(1).

44. NEPA’s environmental review, whether by EIS or by EA, requires consideration of direct, indirect, and cumulative environmental impacts. *See O’Reilly v. U.S. Army Corps of Engineers*, 477 F.3d 225, 235 (5th Cir. 2007) (“[T]he EA provides too little information . . . to conclude that the Corps took a ‘hard look’ at the project, [and] realistically assessed its individual and cumulative environmental effects . . .”).

45. “After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall . . . [r]equest comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested [in] or affected” by the proposed action. 40 C.F.R. § 1503.1(a).

46. Federal agencies “shall . . . [p]rovide public notice of . . . the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.” 40 C.F.R. § 1506.6(b).

Factual

47. On March 22, 1981, the Corps' New Orleans District office issued a regional general permit, NOD-13, "for dredging and deposits of dredged and/or fill material for construction of oilfield roads, drilling locations, pits, levees, and associated facilities in wetlands of the New Orleans District."

48. On May 27, 1982, the Corps issued a time extension of NOD-13 to June 30, 1987.

49. On February 23, 1988, the Corps issued a time extension of NOD-13 to June 30, 1992.

50. On December 2, 1992, the Corps issued a time extension of NOD-13 to June 30, 1997.

51. On August 30, 2002 the Corps issued a time extension of NOD-13 to December 31, 2007.

52. On July 18, 2007, the Corps issued a time extension of NOD-13 to December 31, 2012.

53. NOD-13 expired on December 31, 2012.

54. For more than 22 months following expiration of NOD-13, the Corps continued to authorize projects under authority of this expired general permit.

55. On November 24, 2014, the Corps reissued NOD-13, promulgated as a "Time Extension and Modification of the General Permit for Board Roads and Ring Levees" (the "NOD-13 Reissuance"). The NOD-13 Reissuance stated that it "modified and extended until December 31, 2019" the general permit NOD-13 that had expired on December 31, 2012. Since November 24, 2014, the Corps has applied NOD-13 to authorize one or more projects destroying south Louisiana wetlands.

First Cause of Action
(NEPA Violations)

56. In relation to the NOD-13 Reissuance, the Corps did not perform an EA (environmental assessment) that meets the requirements of NEPA. *See* 42 U.S.C. § 4332(2)(C).

57. The Corps failed to consider the direct, indirect and cumulative impacts of the NOD-13 Reissuance. *See* 40 C.F.R. § 1508.7.

58. The Corps' failure to perform an EA in connection with its reissuance of NOD-13 violated NEPA.

59. In relation to the NOD-13 Reissuance, the Corps did not perform an EIS (environmental impact statement), as NEPA requires.

60. The direct, indirect, and cumulative environmental impacts of the NOD-13 Reissuance are significant.

61. The Corps' failure to perform an EIS in connection with its reissuance of NOD-13 violated NEPA.

Second Cause of Action
(Violations of Clean Water Act requirements re: impact)

62. The Clean Water Act allows the Corps to issue general permits only for activities that "will cause only minimal adverse environmental effects when performed separately" and "will have only minimal cumulative adverse effect on the environment." 33 U.S.C. § 1344(e)(1).

63. In relation to the NOD-13 Reissuance, the Corps failed to consider or determine whether activities authorized by NOD-13 would cause only minimal adverse environmental effects individually and have only minimal cumulative adverse effects on the environment.

64. The category of activities authorized under NOD-13 will cause more than minimal adverse environmental effects when performed separately.

65. The category of activities authorized under NOD-13 have more than minimal cumulative adverse effect on the environment.

66. The Corps' NOD-13 Reissuance violates 33 U.S.C. § 1344(e)(1).

Third Cause of Action

(Violations of Clean Water Act requirements re: duration of permit)

67. The Clean Water Act provides, "No general permit issued under [Clean Water Act § 404] shall be for a period of more than five years." 33 U.S.C. § 1344(e)(2).

68. The Corps' characterized the NOD-13 Reissuance as a "time extension and modification."

69. Since its issuance of NOD-13 in 1981, the Corps has authorized wetlands dredge and fill projects under NOD-13 for more than thirty-four (34) years using a series of "time extensions" to maintain NOD-13's purported validity.

70. The Corps has not analyzed the adverse environmental impacts of NOD-13 as the law requires for more than thirty-four (34) years.

71. The effect of the Corps' use of a purported time extension for the NOD-13 Reissuance is that NOD-13 is in effect for a period of more than five years without any recent assessment of separate or cumulative adverse environmental impacts.

72. The Corps' NOD-13 Reissuance violates 33 U.S.C. § 1344(e)(2).

73. The Corps' purported time extension of NOD-13 was illegal because an already expired permit cannot be extended.

Fourth Cause of Action
(Arbitrary Agency Action)

74. Upon information and belief, the Corps' administrative record for the NOD-13 Reissuance lacks substantial evidence that the category of activities authorized under NOD-13 will only cause minimal adverse environmental effects when performed separately.

75. Upon information and belief, the Corps' administrative record for the NOD-13 Reissuance lacks substantial evidence that the category of activities authorized under NOD-13 will only have minimal cumulative adverse effect on the environment.

76. Upon information and belief, for the NOD-13 Reissuance, the Corps entirely failed to consider whether the activities authorized NOD-13 will cause only minimal cumulative adverse environmental effects when performed separately, or will have only minimal cumulative adverse effect on the environment.

77. The Corps' decision to reissue NOD-13 is arbitrary and capricious.

78. The Corps' policy of approving projects under an expired permit is arbitrary and capricious.

Fifth Cause of Action
(Violation of Public Participation Requirements)

79. On or about August 11, 2014, the Corps posted on its website a "Special Public Notice" for "Consideration of Granting a Time Extension and Modification of the (General Permit) NOD-13 for Board Roads and Ring Levees" (the "Special Public Notice").

80. The Corps' regulations dictate that "[p]ublic notices . . . will be sent to . . . concerned business and conservation organizations . . . and to any other interested party." 33 C.F.R. § 325.3(d)(1).

81. In the years leading up to the Corps' Special Public Notice, the Atchafalaya Basinkeeper communicated repeatedly with Corps officials to express concerns about the Corps' management of, and preservation of, Atchafalaya Basin wetlands, including its use of NOD-13.

82. Communications between the Atchafalaya Basinkeeper or its representative and the Corps on NOD-13 related matters include, but are not limited to, emails dated: March 30, 2011, August 24, 2011, September 14, 2011, September 12, 2011, February 23, 2012, November 14, 2012, May 1, 2014, and June 27, 2014, and a meeting on December 12, 2011. □

83. Communications between the Crawfishermen or its representative and the Corps on NOD-13 related matters include, but are not limited to, emails dated: August 25, 2011, May 1, 2014, and June 27, 2014, and a meeting on December 12, 2011. □

84. Corps personnel also engaged in numerous internal communications about the Basinkeeper's and Crawfishermen's NOD-13 related concerns, including, without limitation, emails dated: February 27, 2012; February 26, 2012, December 8, 2011, December 7, 2011, November 3, 2011, October 31, 2011, September 15, 2011, September 12, 2015, September 9, 2011, September 8, 2011, August 26, 2011, August 25, 2011, June 13, 2011, April 6, 2011, April 5, 2011, March 30, 2011, and February 27, 2012. Such Corps personnel include, but are not limited to, Martin S. Mayer (current Chief, Regulatory Branch), Pete Serio (Chief, Regulatory Branch), Thomas A. Holden Jr. (Deputy for programs and Project Management New Orleans District), Robert A. Heffner, Rene Poche, Kenneth Blanke (Environmental Resource Specialist), Neil T. Gautier (Environmental Resources Specialist), Doris Terrell, Ricky D. Boyett, Jamie Phillippe, Ronnie Duke, Randall J. Fermin, Rose E. Schwamenfeld, Rose E. Palumbo, and Gary M. Couret. □

85. Martin S. Mayer signed the November 24, 2014, NOD-13 Reissuance decision.

86. At the time of the Corps' Special Public Notice, the Atchafalaya Basinkeeper and the Crawfishermen were engaged with the Corps in litigation challenging the use of NOD-13 to permit a permanent road in wetlands.

87. The Atchafalaya Basinkeeper is an interested party and a concerned conservation organization within the meaning of 33 C.F.R. § 325.3(d)(1).

88. The Crawfishermen is an interested party, a concerned business organization, and a concerned conservation organization within the meaning of 33 C.F.R. § 325.3(d)(1).

89. At the time of the Corps' Special Public Notice, the Corps knew that the Atchafalaya Basinkeeper is a conservation organization that is concerned about management and preservation of Atchafalaya Basin wetlands and about the use and effects of NOD-13.

90. At the time of the Corps' Special Public Notice, the Corps knew that the Crawfishermen is a business organization and a conservation organization that is concerned about management and preservation of Atchafalaya Basin wetlands and about the use and effects of NOD-13.

91. In the year prior to the Corps' Special Public Notice, GRN had been in contact with and sought and received information from the Corps regarding the implementation of NOD-13.

92. Communications between GRN or its representative and the Corps on NOD-13 related matters include, but are not limited to, seven written information requests under the Freedom of Information Act, dated January 14, 2014, January 14, 2014, January 14, 2014, November 1, 2013, November 1, 2013, and October 31, 2013, and March 4, 2013, respectively.

93. The January 2014, November 2013, and October 2013, requests sought information on NOD-13 authorized projects, including approximately 25 specific project sites.

94. The March 4, 2013 request sought “documentation concerning the uses of the NOD-13 General Permit. In particular, we are seeking information relating to the instances, locations, and amount of impact related to each U.S. Army Corps of Engineers issuance of this general permit for oilfield roads since July 1, 2008. ... [W]e are seeking any and all documentation regarding the permit applicants for these activities, and additionally, documentation regarding the issuance and uses of the NOD-13 over the last five years.”

95. GRN is an interested party and a concerned conservation organization within the meaning of 33 C.F.R. § 325.3(d)(1).

96. At the time of the Corps’ Special Public Notice, the Corps knew that the GRN is a conservation organization that is concerned about management and preservation of Atchafalaya Basin wetlands and about the use and effects of NOD-13.

97. The Corps did not send its Special Public Notice or any other notice of its proposal to extend and modify NOD-13 to any of the following interested parties, concerned business organizations or concerned conservation organizations: the Atchafalaya Basinkeeper, the Crawfishermen, and GRN.

98. The Corps did not send its Special Public Notice or any other notice of its proposal to extend and modify NOD-13 to any interested party, concerned business organization, or concerned conservation organization.

99. The Corps' regulations dictate that “[p]ublic notices will be distributed for posting in post offices . . . in the vicinity of the site of the proposed work.” 33 C.F.R. § 325.3(d)(1).

100. The Corps did not distribute its Special Public Notice or any other notice of its proposal to extend and modify NOD-13 for posting in any post office in the vicinity of the area to be covered by NOD-13.

101. The Corps' regulations dictate that "Public notices will be distributed for posting in ... other appropriate public places in the vicinity of the site of the proposed work." 33 C.F.R. § 325.3(d)(1).

102. Upon information and belief, the Corps did not distribute its Special Public Notice or any other notice of its proposal to extend and modify NOD-13 for posting in an appropriate public place in the vicinity of the area to be covered by NOD-13.

103. The Corps' regulations dictate that "[p]ublic notices . . . will be sent to . . . to local news media" 33 C.F.R. § 325.3(d)(1).

104. The Corps did not send its Special Public Notice or any other notice of its proposal to extend and modify NOD-13 to local news media.

105. The Corps did not provide the required public notice and opportunity for public participation when it reissued NOD-13. *See* 33 U.S.C. § 1344(e)(1); 42 U.S.C. § 4332(2)(C); 33 C.F.R. §§ 325.2, 325.3; 40 C.F.R. § 1503.1(a); 40 C.F.R. § 1506.6(b).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for the following relief:

- A. An order declaring the Corps' reissuance of NOD-13 is illegal.
- B. An order vacating General Permit NOD-13.
- C. An order enjoining the Corps from authorizing projects under NOD-13 until such time, if any, that the Corps lawfully promulgates NOD-13.
- D. Such other relief as this Court may deem appropriate; and
- E. An award of attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412.

Respectfully submitted on March 11, 2016,

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the Gulf Restoration Network* □

CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2016, I served a copy of the foregoing on counsel for Defendants, by filing the same with the Clerk of Court through the CM/ECF system.

s/ Elizabeth Livingston de Calderón
Elizabeth Livingston de Calderon