

FINAL Evaluation Findings
Texas Coastal Management Program
April 2004 through December 2006



Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration
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I. EXECUTIVE SUMMARY

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of the performance of states and territories with federally approved coastal management programs. This review examined the operation and management of the Texas Coastal Management Program (TCMP or coastal program) by the Texas General Land Office (GLO), the designated lead agency, for the period from April 2004 through December 2006.

This document describes the evaluation findings of the Director of NOAA's OCRM with respect to the TCMP during the review period. These evaluation findings include discussions of major accomplishments as well as recommendations for program improvement. This evaluation concludes that the GLO is successfully implementing and enforcing its federally approved coastal management program, adhering to the terms of the Federal financial assistance awards, and addressing the coastal management needs identified in section 303(2) (A) through (K) of the CZMA.

The evaluation team documented a number of TCMP accomplishments during this review period. The TCMP and the Coastal Coordination Council have begun to establish funding priorities and to identify specific types of projects for the grants program. Data collection and research funded by the TCMP are beginning to be provided to local decision-makers for consideration in policy changes. The General Land Office and the state are making some progress in addressing the issue of structures on the public beach in violation of the Texas Open Beaches Act (OBA). The Galveston County Dune Protection and Beach Access Plan has been fully certified by the GLO as consistent with state law, and the GLO and TCMP are working diligently to address the major issues regarding the status of the City of Galveston's Dune Protection and Beach Access Plan. The TCMP has effectively coordinated with multiple partners and funding sources to achieve protection or restoration of significant coastal habitat. The GLO and TCMP are supporting the ongoing efforts of existing, and helping to create new, local community shoreline protection task forces. The Galveston Permit Service Center is open and fully staffed. Finally, the TCMP has completed and received OCRM concurrence for the first program change for the TCMP's administrative rules since program approval.

The evaluation team also identified areas where the TCMP could be strengthened. The TCMP must proceed expeditiously with enforcement or other means to remove the houses on the public beach in violation of the OBA. The TCMP is encouraged to follow through with the self assessment it has begun, to seek more ways to move research and data to implementation and resulting changes in coastal management, to encourage more coastal local governments to establish citizen advisory beach and dune task forces, and to work with the City of Galveston to obtain full certification of its dune protection and beach access plan. Finally, the TCMP should submit a program change package to OCRM for all TCMP statutes and enforceable policies.

II. PROGRAM REVIEW PROCEDURES

A. OVERVIEW

The National Oceanic and Atmospheric Administration (NOAA) began its review of the TCMP in August 2006. The §312 evaluation process involves four distinct components:

- An initial document review and identification of specific issues of concern;
- A site visit to Texas, including interviews and a public meeting;
- Development of draft evaluation findings; and
- Preparation of the final evaluation findings, partly based on comments from the State regarding the content and timetables of necessary actions specified in the draft document.

The recommendations made by this evaluation appear in boxes and **bold** type and follow the findings section where facts relevant to the recommendation are discussed. The recommendations may be of two types:

Necessary Actions address programmatic requirements of the CZMA's implementing regulations and of the TCMP approved by NOAA. These must be carried out by the date(s) specified;

Program Suggestions denote actions that the OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA §312 evaluation.

A complete summary of accomplishments and recommendations is outlined in Appendix A.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312 (c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. The findings in this evaluation document will be considered by NOAA in making future financial award decisions relative to the TCMP.

B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT

The evaluation team reviewed a wide variety of documents prior to the site visit, including: (1) the 2005 TCMP §312 evaluation findings; (2) the federally-approved Environmental Impact Statement and program documents; (3) federal financial assistance awards and work products; (4) semi-annual performance reports; (5) official correspondence; and (6) relevant publications on natural resource management issues in Texas.

Based on this review and discussions with NOAA's OCRM, the evaluation team identified the following priority issues:

- Program accomplishments since the last evaluation;
- The effectiveness of the GLO and the other networked agencies in implementing, monitoring, and enforcing the core authorities that form the legal basis for the TCMP;
- Implementation of the federal consistency process, including adherence to procedural requirements;
- Effectiveness of interagency and intergovernmental coordination and cooperation;
- Effectiveness of technical assistance, training, and outreach to local governments and public outreach and education in order to further the goals of the TCMP;
- Long-term planning to guide the program in identifying priorities, gaps, and the most effective role for the CMP;
- Coastal nonpoint pollution control program; and
- The manner in which the TCMP has addressed the recommendations contained in the §312 evaluation findings released in 2005. The TCMP's assessment of how it has responded to each of the recommendations in the 2005 evaluation findings is located in Appendix B.

C. SITE VISIT TO TEXAS

Notification of the scheduled evaluation was sent to the GLO, the TCMP, relevant environmental agencies, members of Texas's congressional delegation, and regional newspapers. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on October 24, 2006.

The site visit to Texas was conducted from December 4-8, 2006. The evaluation team consisted of L. Christine McCay, Evaluation Team Leader, Office of Ocean and Coastal Resource Management, National Policy and Evaluation Division; Carrie Hall, Program Specialist, Office of Ocean and Coastal Resource Management, Coastal Programs Division; and Bob Bailey, Program Manager, Oregon Coastal Management Program.

During the site visit the evaluation team met with the Commissioner of the Texas General Land Office (GLO), other GLO Coastal Resources administrators and staff, TCMP staff, members of the Coastal Coordination Council and member agency representatives, federal agency representatives, local government representatives and agencies, academicians, and interest group members involved with or affected by the TCMP. Appendix C lists individuals and institutions contacted during this period.

As required by the CZMA, NOAA held advertised public meetings. The first meeting was held on Tuesday, December 5, 2006, at 5:30 p.m. at the Club Padre, 5800 Padre Boulevard, South Padre Island, Texas. The second meeting was held in conjunction with a regularly scheduled meeting of the Coastal Coordination Council on Thursday, December 7, 2006, at 1:00 p.m. at the Stephen F. Austin Building, Room 170, 1700 North Congress Avenue, Austin, Texas. The public meeting gave members of the general public the opportunity to express their opinions

about the overall operation and management of the TCMP. Appendix D lists persons who registered at the public meeting. NOAA's response to written comments submitted during this review is summarized in Appendix E.

The GLO and TCMP staff members were crucial in setting up meetings and arranging logistics for the evaluation site visit. Their support is most gratefully acknowledged.

III. COASTAL MANAGEMENT PROGRAM DESCRIPTION

NOAA's OCRM approved the Texas Coastal Management Program in 1996. The Texas General Land Office (GLO) is the designated lead coastal management agency. The TCMP is located in the GLO's Coastal Resources Program Area.

The TCMP is based primarily on the Coastal Coordination Act of 1991, as amended in 1995, which calls for the development of a comprehensive coastal program based on existing statutes and regulations. The Texas Legislature created the Coastal Coordination Council (Council) through the Coastal Coordination Act of 1991. The Council oversaw the development of the TCMP and now serves as a link among existing state agencies and legal authorities in a network designed to make management of coastal resources both more efficient and more effective. The Council is chaired by the Commissioner of the GLO and includes representatives from the following agencies and gubernatorial appointments:

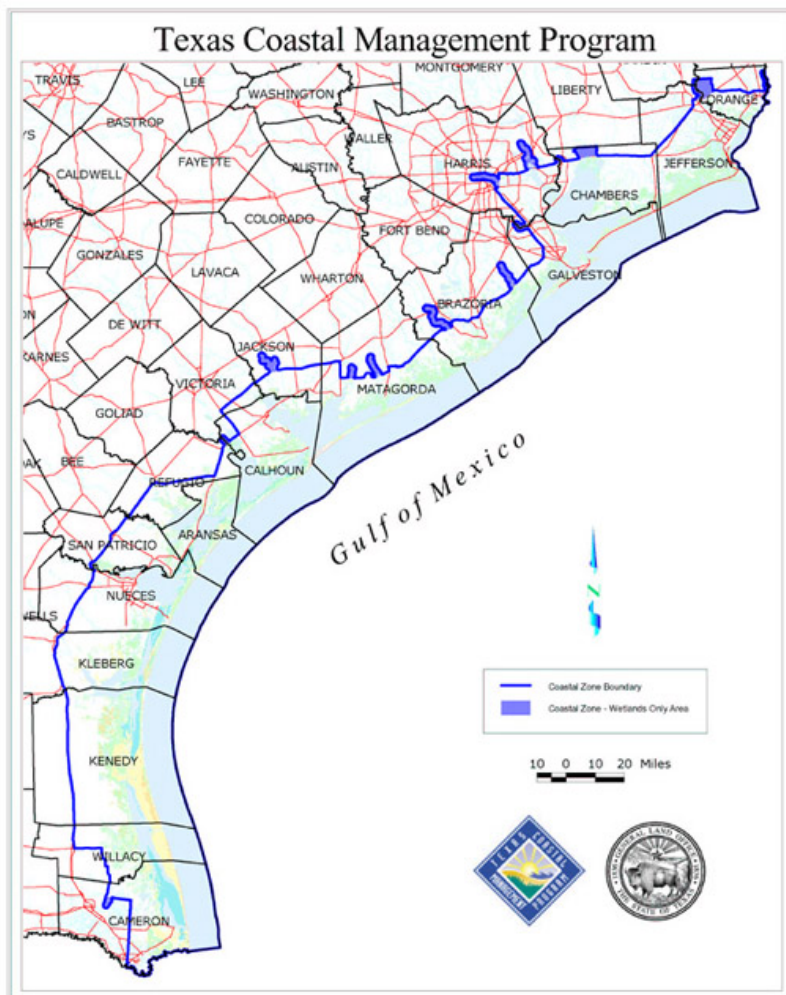
- Texas Parks and Wildlife Department
- Railroad Commission of Texas
- Texas Water Development Board
- Local elected official
- Coastal business owner
- Representative of agriculture
- Texas Commission on Environmental Quality
- Texas Department of Transportation
- Texas State Soil and Water Conservation Board
- Coastal resident
- Texas Sea Grant College Program (non-voting)

The scope of the TCMP's regulatory program is focused on the direct management of 16 generic "areas of particular concern" called coastal natural resource areas (CNRAs). These CNRAs are associated with valuable coastal resources or vulnerable or unique coastal areas and include: waters of the open Gulf of Mexico; waters under tidal influence; submerged lands; coastal wetlands; seagrasses; tidal sand and mud flats; oyster reefs; hard substrate reefs; coastal barriers; coastal shore areas; Gulf beaches; critical dune areas; special hazard areas; critical erosion areas; coastal historic areas; and coastal preserves. Specifically, the geographic scope of the regulatory programs is based on the direct regulatory jurisdiction of those "networked" state agency and local government authorities that are subject to the program as provided by the Coastal Coordination Act. The geographic scope extends upstream 200 miles from the mouths of rivers draining into coastal bays and estuaries in order to manage water appropriations on those rivers. In addition, the state has designated the Western Outer Continental Shelf planning area as the geographical area in which federal consistency shall apply outside of the coastal boundary. The TCMP also identifies those federal lands which are excluded from the state's coastal zone.

The TCMP defines the Texas coastal zone as southwest along the coast from the Sabine to the Rio Grande, seaward into the Gulf of Mexico for a distance of 10.36 miles (three marine leagues), and inland to include 18 counties. The program's inland boundary is based on the state's Coastal Facilities Designation Line (CFDL), which was developed in response to the Oil Spill Act of 1990 and basically delineates those areas in which oil spills would affect coastal waters or resources. For purposes of the TCMP, the CFDL was modified somewhat to capture

wetlands in the upper reaches of tidal waters. The program boundaries encompass all or portions of 18 coastal counties, including Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Jefferson, and Orange counties, and include roughly 8.9 million acres of land and water.

The coastal zone includes 3,359 miles of waterfront. Approximately eighty percent of the coast is behind a strip of barrier islands that includes Galveston, Follets, Matagorda, St. Joseph, Mustang, and Padre Islands and the Bolivar Peninsula. Except for three areas where the mainland is directly exposed to the Gulf, the islands and peninsulas form an almost continuous barrier shield, protecting the mainland from waves and storms. The total coastal zone comprises an area of almost 14,000 square miles. The zone is richly endowed with natural resources. Mineral production (largely oil and gas), commercial fisheries, agricultural production, and tourism have a significant value to the Texas economy. In spite of the dangers from hurricanes and beach erosion, development in the coastal zone has been continuous and rapid since the end of World War II.



IV. REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS

A. OPERATIONS AND MANAGEMENT

1. Organization and Administration

The strength of the TCMP continues to be its staff members. Throughout the course of the site visit, numerous people commented on how knowledgeable and accessible the staff is. The GLO Commissioner (who had only been commissioner for a little over a year at the time of the last evaluation site visit) has been supportive of the TCMP, its programs, and initiatives. The Coastal Resources Program Area is headed by a new deputy commissioner since the last evaluation site visit. He, too, is supportive of the TCMP programs and staff and takes an active role in program administration and Coastal Coordination Council operation. There has been some reorganization within the Coastal Resources Program Area that may benefit both citizens and resources – for example, all of the funding sources (Coastal Impact Assistance Program, the coastal management program, and the Coastal Erosion Planning and Response Act) are organized within the same division. This, according to the staff, has provided an opportunity for better coordinated project funding. The regulatory functions of permitting/permit service centers, federal consistency, and natural resource damage assessment are now organized within another single division.

2. Coastal Coordination Council

The Coastal Coordination Council (CCC or Council) was created by the Texas Coastal Coordination Act and administers the TCMP. It is comprised of both representatives from state agencies with statutory authority within the TCMP and gubernatorial appointees representing specific interests. The Director of the Texas Sea Grant College Program is a non-voting member. The Council also has an Executive Committee (EC) with the same representation as the Council, and in some cases the same members serve on both the EC and the CCC. It provides a forum for intergovernmental coordination.

At 10 years of age, the Council is subject to some of the same growth and maturation concerns of other state coastal program councils and commissions. The TCMP has initiated a 10-year self assessment, and one of the many areas the self-assessment will address is the role and function of the Council. During this review period the Council itself has begun to consider its membership, the role of the Executive Committee, and the number and location of meetings. It has also begun to move beyond intergovernmental coordination and public input functions and, as evidenced at the CCC meeting the evaluation team attended, is discussing new issues and policy concerns (e.g., wind farms and alternative energy sources, and offshore aquaculture facilities [see the “Aquaculture” section in this findings document discussing this]) that are arising both in Texas and nationally. These and other issues for which conflicting, duplicative, or little or no policy or regulatory authority exists in the Texas coast, provide an opportunity for the Council to develop a role as a proactive planning body and make policy or regulatory recommendations to the

Governor, Texas Legislature, or other appropriate agencies. OCRM encourages the TCMP and the Council to continue with such considerations.

PROGRAM SUGGESTION: The TCMP is encouraged to follow through with the self-assessment it has begun and to consider the composition of the Council and its Executive Committee and their roles and functions. The Council is also encouraged to continue discussions about new and emerging issues and policies and ways the Council can involve itself in more coastal planning and policy recommendations.

3. Grants Management

The TCMP passes through 90 percent of its Section 306/306A funding to local entities. This is, not surprisingly, the primary mechanism by which many local governments know about the TCMP. Local government staff members and elected officials with whom the evaluation team met acknowledged the importance and indispensability of the TCMP funding (often in conjunction with CIAP or CEPRAs funding) for completing projects or planning efforts. For them, the grants program is the face of the TCMP, and they all praised the TCMP/GLO staff for the hands-on assistance, advice, wealth of knowledge, and time spent with them throughout the year. This is significant for a program that, like many other funding programs, is fairly complex and process-oriented.

The Coastal Resources Program Area funding programs and sources are all now within the same division, and improved coordination here appears to help provide a good return on the dollars expended for projects and to leverage more funding. The TCMP currently identifies eight categories of project types that are eligible for funding. During this evaluation period the Council has identified two funding priorities for the Council's focus. By setting aside \$800,000 for these priority Section 306A projects, the Council directs those funds to: 1) habitat protection projects, which can be in the form of restoration and/or acquisition of these areas; and 2) acquisition of land to increase public access. For the most recent grant cycle occurring during the time period covered by this evaluation, the Council identified specific types of small-scale research and technical projects that it would prefer to fund using 306 monies. TCMP staff plans to recommend enhancements to this list. Language has also been added to the Council's discretionary funding criteria, clarifying that research projects should have a tangible benefit to local, state, and/or federal entities and have an active outreach plan component to disseminate the research findings.

TCMP staff members continue to hold grant workshops, covering the grant guidance document and application package, and have recently introduced project management training into the workshops. They also held several meetings with entities that had not previously applied for TCMP funding.

ACCOMPLISHMENT: The TCMP and Council have begun to establish funding priorities and to identify specific types of projects for the grants program. They work closely to assist grant applicants and recipients with the application and grant management processes, have developed a grants procedures manual, and hold grant workshops.

Because the grants program is arguably the most well known and positive aspect of the TCMP for much of the public and therefore provides the TCMP with supportive stakeholders, OCRM encourages the TCMP and Council to continue their efforts to streamline and simplify the grants process, to provide as much training and education in the process as possible, and to seek out eligible applicants who have not applied for funding. These efforts, in concert with establishing specific funding priority areas, should continue to increase the quality and value of single projects.

PROGRAM SUGGESTION: The TCMP and Coastal Coordination Council are encouraged to continue their efforts toward refining priorities for funding, streamlining the grants process, and seeking to involve entities that have not previously applied for TCMP funding.

The most recent evaluation findings (dated June 2005) contained a program suggestion that recommended the TCMP address grants management concerns dealing with the use of coastal nonpoint program (CNP) implementation (Section 310) funds for projects on private agricultural lands. Since then, the TCMP has revised its funding process to preclude the use of Section 310 funds on private agricultural lands; is working to help identify other sources of non-CZMA funds for implementation of nonpoint BMPs on private agricultural lands in coastal counties; and is working with soil and water conservation districts to identify projects that do meet the CNP funding guidance.

4. Program Identity and Visibility

As is the case with many similarly structured and networked coastal management programs, the distinctions between the separate identities and functions of the TCMP, the Coastal Coordination Council, and the General Land Office are unclear for a portion of the general public and even for many grant recipients. This was identified in the first phase of the self-assessment begun by the TCMP during this evaluation period. As noted above, OCRM encourages the TCMP to follow through with the next phases of the self-assessment. Follow-through on recommendations may result in more clearly defined roles and identity.

Many of the public participation and education activities of the TCMP that are discussed in a later section of this document, particularly those that are ‘directly delivered’ by TCMP staff, help to more clearly establish the identity and increase the visibility of the coastal program. However, the number of staff members definitely limits direct delivery.

The TCMP has a very strong, supportive constituency in its local community grant recipients. Yet during the site visit, several recipients admitted they knew very little about the coastal program and what it does except to provide funding. These recipients are potentially excellent envoys for the TCMP. If the coastal program staff educates grant recipients about the other activities and functions of the TCMP, the recipients (both locally elected officials and staff) are well-positioned to educate their constituents and leaders at the local and state level. The TCMP should take advantage of such an opportunity. The grants workshops are logical venues for such education, although the TCMP staff may certainly identify other mechanisms.

PROGRAM SUGGESTION: The TCMP should develop ways to educate eligible grant applicants and recipients about the non-funding related activities, roles, and functions of the TCMP. This is a constituency that can play a role to help more clearly establish the TCMP's separate identity and visibility through educating its citizens and its local coastal legislative and congressional representatives.

5. Use of Technology, Data, and Research

The Coastal Resources Geographic Information Systems (Coastal GIS) section provides spatial data support and services to the TCMP (for the grants program, federal consistency review, and Coastal Coordination Council) and other partner agencies, local coastal communities, and members of the general public. This includes the creation of numerous GIS data layers for use in a variety of maps; regional maps of the coast showing the coastal zone boundary, political boundaries, hydrologic features, parks, roads, and other base layers; grant maps showing locations of projects funded by the TCMP; and aerial photo maps with GIS data layers overlaid on digitally rectified and geo-referenced aerial photos. During the period covered by this evaluation, Coastal GIS initiated, continued, or completed a variety of projects and products, including, but not limited to:

- Hurricane Rita-related support – conducted change analysis for West Galveston Island beach nourishment using LiDAR data and generated maps and graphics for agency applications to FEMA following Hurricane Rita;
- Open Beaches Act – created custom maps, posters, animations, and change analysis to assist with enforcement of Open Beaches Act;
- Sabine Pass to San Luis Pass Shoreline Erosion Feasibility Study – created a GIS layer of barrier headland for habitat value assessment study, mapped vegetation cover for barrier headland habitat model, generated a dune crest elevation profile along shorelines in Jefferson County, conducted change analysis between 2001 and 2005;
- Texas Sand Sources Database – provided guidance and technical support for the design and implementation of geospatial database for use in addressing beach erosion.

At the time of the issuance of the last evaluation findings, the Corpus Christi Permit Services Center Coordinator and the Coastal GIS section were developing an interagency permit tracking database, which was very close to being ‘live and on line.’ That has since occurred.

During this evaluation time period, the TCMP provided funds to the Bureau of Economic Geology (BEG) at the University of Texas-Austin to develop baseline data used to produce the Galveston Island Geohazards Map at the request of the City of Galveston. Through other projects the BEG had acquired or developed several data sets pertinent to delineating geohazards on Galveston Island. These data sets, which included topography from LiDAR, recent and historical aerial photography, wetlands maps, historical shoreline positions, and projections of future shoreline and wetland changes, were combined and analyzed to create a hybrid map of geological hazards. The resulting map showed areas that vary in susceptibility to, and function for mitigating, the effects of geological processes, including sea-level rise, land subsidence, erosion, and storm surge flooding and washover, and identifies highest to lowest risk areas. This map was presented to the Galveston City Council for its consideration in determining whether new and/or revised building and growth management regulations are needed. The TCMP is considering how to broaden this effort to locations along the coast that are in earlier stages of development so that the appropriate risks can be better understood before major development takes place. [Since the site visit, the TCMP is requesting Section 309 funds in its cooperative agreement application for FY 2008 to create a Geohazards Map for Mustang Island and a portion of North Padre Island.]

ACCOMPLISHMENT: The TCMP provided funds to the Bureau of Economic Geology (BEG) at the University of Texas-Austin to develop baseline data used to produce the Galveston Island Geohazards Map at the request of the City of Galveston. The maps identify areas that vary in susceptibility to, and function for mitigating, the effects of geological processes and hazards on Galveston Island. This is a good example of data collection and research funded through the TCMP and used by local government decision makers that may result in policy or regulatory changes.

The TCMP spends a significant amount of its CZMA funding on data collection and research projects, which the increased accessibility of technology makes possible. As noted earlier in this document, the Council has identified specific types of small-scale research and technical projects that it would prefer to fund using 306 monies. TCMP staff plans to recommend enhancements to this list and requires that such projects have a tangible public benefit with a plan to disseminate the research findings.

It is a good first step to identify specific types of research projects that should be linked to specific priority or focus areas delineated by the TCMP. It is also an excellent next step to require that such research have a public benefit and that the results of a project be circulated. However, conducting research, producing data, and making the results available are of lesser value if such activities do not meet the needs of coastal managers or if there is little understanding about how such efforts could lead to changes in coastal management and potentially result in policy or regulatory changes. OCRM and TCMP staffs have already had some discussions about the need to show how TCMP-funded research can lead to changes, particularly through the Section 309 funded projects, and this is an area that should continue to be pursued.

PROGRAM SUGGESTION: The TCMP should look for ways to move research and data to implementation and to changes in coastal management. It should identify the needs of coastal managers for types of data and research, if necessary. It should define ways that the research and data collection it funds will be disseminated to appropriate coastal decision makers and will be linked with information showing how such research could be used to inform and influence coastal management decisions. The TCMP should serve as an intermediary or link, if necessary, between research and data collection and use of the results by an appropriate governmental entity. Entities such as Sea Grant and the newly designated Mission-Aransas National Estuarine Research Reserve, which will be developing a coastal training program, should be tapped for their expertise and resources in outreach and implementation efforts.

B. PUBLIC ACCESS

1. Open Beaches Act and Houses on the Beach

Texas has an Open Beaches Act (OBA). The public beach extends from the lowest waterline inward to the natural line of vegetation. Landward of the mean high water or mean higher high water line (which delineates the boundary of state-owned submerged lands), “dry” beaches can be privately owned but are subject to a rolling public beach easement, allowing the public free and unrestricted access to and use of the beach. The OBA guarantees the public access to and use of beaches fronting the Gulf of Mexico that are accessible by public road or common carrier ferry. Some beaches are pedestrian only, and parking is provided. Other beaches are open to vehicular use.

Perhaps the most significant public access concern facing the state of Texas (as it was during the 2004 evaluation) is the issue of structures/houses left in violation of the OBA following erosion, generally caused as a result of a tropical storm or a hurricane. The OBA gives the Texas General Land Office sole responsibility for identifying and removing houses that are in violation of the OBA. Several tropical storms and hurricanes during the last decade have put scores of houses, originally built landward of the natural line of vegetation, on the public beach. During the period covered by this evaluation, the GLO Commissioner, consistent with legislative amendments to the OBA, issued a moratorium order for each of 116 houses in Galveston and Brazoria counties which were located partially or wholly seaward of the natural line of vegetation. The two-year moratorium gave these homeowners a period during which lawsuits for removal under the OBA were prohibited so homeowners could decide how to handle their properties on the beach and to see whether the natural line of vegetation would recover.

On June 7, 2006, the moratoria orders all expired, and even though the line of vegetation had fluctuated, all 116 homes on the moratorium list remained partially or wholly on the public beach. Also on June 7th the GLO Commissioner announced his “Plan for Texas Open Beaches.” In terms of immediate action, the GLO does not favor an approach that requires the filing of a large number of lawsuits, although that remains an option for removal. The Commissioner will issue an internal guideline defining what constitutes a threat to public health and safety as it relates to structures on the public beach to help prioritize structures for removal; the GLO will

adopt post-moratorium repair rules without the moratorium protection from removal actions; and will provide state financial assistance for removal of houses on the beach.

The plan then includes four legislative measures which the Commissioner intends to submit to the 2007 Texas Legislature, seeking additional authority and clarification for: 1) administrative enforcement for active/willful violation; 2) denial of windstorm insurance for any house on the public beach easement; 3) setback requirement authority for local governments; and 4) more effective OBA disclosures on property transactions.

During the period covered by this current evaluation, the Texas Legislature amended the Coastal Erosion Planning and Response Act (CEPRA) to allow CEPRA funds to be used to reimburse property owners for the cost of removal and relocation expenses of structures on the public beach. Such removals are considered to be hazard mitigation projects, and funding is based upon removal of a hazard to public health and safety. The GLO established a plan and application process to provide for allocation of up to \$1.3 million in CEPRA funds to the 116 homeowners to a maximum of \$40,000 each. The GLO received 20 applications from property owners for reimbursement for the removal and/or relocation of structures on the public beach. At the time of the issuance of these findings, the GLO has entered into 17 agreements with homeowners for the use of CEPRA funding to remove structures.

The evaluation team visited the village of Surfside Beach, where hurricanes Claudette (2003), Katrina (2005), and Rita (2005) and a late season high tide event in October 2006 left homes seaward of Beach Drive significantly damaged and even partially located on state owned submerged land. In November 2006 the GLO Commissioner met with local residents there and announced that the houses seaward of Beach Drive were no longer viable. The village is working with the Texas Department of Emergency Management, Federal Emergency Management Agency (FEMA) and the GLO to obtain funding to remove the houses and provide other long term responses.

ACCOMPLISHMENT: The State and the GLO have made some progress in addressing the issue of structures on the public beach and their removal as hazards. State CEPRA funds have been identified as a source of financial assistance to the 116 property owners, and some owners have entered into agreements for the funding. The GLO has indicated that it will seek legislative action to grant counties the authority to establish building setback requirements for storm mitigation and to protect public access and has identified other proposals for legislative action to deal with the issue of structures on the public beach.

The evaluation findings dated June 2, 2005, contained a Necessary Action with regard to enforcement of the Open Beaches Act. The 2005 Necessary Action stated that portions of the Necessary Action would be repeated in further evaluation findings. As was noted then, the OBA is a core policy of the TCMP, and NOAA and the public expect it to be enforced. Houses have been located on the public beach in violation of the OBA since 1998. NOAA recognizes that any litigation or proposed legislation may affect resolution of this issue but still expects the GLO to

proceed expeditiously with enforcement or other means to remove the houses on the beach in violation of the Open Beaches Act.

NECESSARY ACTION: The Open Beaches Act (OBA) is a core policy of the TCMP, and NOAA and the public expect it to be enforced. Houses have been located on the public beach in violation of the OBA since 1998. NOAA recognizes that any litigation or proposed legislation may affect resolution of this issue but still expects the GLO to proceed expeditiously with enforcement or other means to remove the houses on the beach that are in violation of the Open Beaches Act. The TCMP must:

A. Provide a report to OCRM every six months as part of the cooperative agreement award performance reports, detailing the status of: a) litigation and any proposed or adopted legislation involving the OBA; b) removal of houses on the beach; and c) implementation and enforcement of the OBA; and

B. Provide a draft report to OCRM within six months of the date of passage of any legislation or of any resolution of any litigation, describing how these address the 116 houses on the beach.

Failure to show continued action and additional progress in removing the houses on the beach by the date of the next evaluation site visit could result in the imposition of sanctions, including the redirection of CZMA funds awarded to the TCMP toward resolution of the issue of houses on the beach.

[Since the site visit and just prior to the issuance of these Final Findings, contractors began on March 22, 2007, to move a house on Beach Drive in Surfside to a new location off the public beach, according to a press release from the Texas General Land Office. According to that press release, the 13 remaining homes eligible for assistance in Surfside will be removed over the next several weeks.]

2. Beach Access and Dune Protection Program

A core element of the TCMP is the Beach Access and Dune Protection Program (Beach/Dune Program), administered by the GLO, which is designed to accomplish several major objectives. In addition to coastal erosion objectives, the Program is designed to protect the public's right of access to, use of, and enjoyment of the public beach; and to assist local governments in managing the Texas coast so that the interests of both the public and private landowners are protected. In compliance with the Open Beaches Act and the Dune Protection Act, 15 coastal local governments must each develop and adopt a dune protection and beach access plan, which must then be certified by the GLO.

According to the TCMP staff, many of the issues confronting the Beach/Dune Program are related to the dramatic increase in population and development along the Texas coast. The main areas subject to this increased development are East Beach in Galveston, the northern reach of South Padre Island, and all of Mustang Island between Packery Channel and Port Aransas (Corpus Christi area). Areas of the coast that were previously undeveloped or were the sites of single-family beach houses are now the sites of multi-story condominiums. Single-family home construction and permitting related to it have also increased greatly over the past two years.

Some of the access issues that have emerged in relation to this development are proposals to change access from vehicular to pedestrian and to construct larger dune walkovers, in many cases to be compliant with Americans with Disabilities Act requirements.

The most recent evaluation findings contained a program suggestion dealing with both beach access signage and the expeditious approval and certification of the City of Galveston's dune protection and beach access plan. The City is the only local government required to develop a dune protection and beach access management plan whose plan has not been certified as fully consistent with state law. As noted in those final findings covering the evaluation period January 2001 through March 2004, "The City of Galveston's dune protection and beach access plan has been the source of concern for a range of interested citizens and other parties. The City's plan has been submitted to the GLO several times over nearly a decade; each time it has not been fully approved and certified by the GLO (receiving conditional certification that is effective for a 180-day period) and has required changes and amendments to the plan. During those times, however, some construction and other activities have been approved by the City." During both that 2001-2004 evaluation and the current evaluation, several aspects of the City's plan, as well as its ongoing conditional status, were the subject of written comments from citizens as well as comments at public meetings held during the site visits.

The City's plan was conditionally approved again on July 20, 2004, shortly after the 2001-2004 evaluation site visit and during the period covered by this evaluation. In the new plan, many new beach access points were added, which require new signage, and an implementation schedule was developed. In the first two years of the schedule the City was required to address the "negative" signs and install signs for all 41 beach access points. The GLO has worked closely with the City to ensure that it had adequate funding to address the signage needs. Staff contacted the City when surplus Coastal Impact Assistance Program funds were available, offering the funds to meet the needs of the two-year implementation schedule. To ensure the plan is being adequately implemented, GLO staff conducted a comprehensive inspection of all 41 beach access points in August 2006. Where signage was indicated to be lacking or in violation of the Texas Open Beaches Act, the City was notified.

The only item in the City's plan that was conditioned was a section addressing East Beach, where the City is required to provide parking and beach access in both a temporary manner during the construction of several condominiums and permanently after construction is completed. When all phases of the permanent parking and access ways are in place the City will apply to have its conditionally certified plan fully certified. The GLO Commissioner notified the City that it is ineligible for CEPRA grant funds until all aspects of the conditionally certified plan are in full compliance. Furthermore, as a member of the Coastal Land Advisory Board, the Commissioner indicated that he will not support funding applications from the City for Coastal Impact Assistance Program projects until the remaining issues are resolved.

ACCOMPLISHMENT: The GLO and TCMP have worked diligently to address major issues regarding the status of the City of Galveston’s dune protection and beach access plan, including: ensuring that the City had adequate funding to address signage needs at beach access points; conducting an inspection of all beach access points; and finding the City ineligible for CEPRA grant funds and refusing to support Coastal Impact Assistance Program funding applications from the City until all aspects of the conditionally certified plan are in full compliance.

PROGRAM SUGGESTION: The GLO and TCMP should continue to work with and exert pressure on the City of Galveston to obtain full and timely certification of its dune protection and beach access plan.

After more than 10 years of negotiations the Galveston County Beach Access and Dune Protection Plan received full certification from the GLO during this evaluation period in September 2006. It had been conditionally certified in 1993. The major issue in the amended plan has focused on the Dune Protection Line. The new line delineation reflects a line landward of all critical dune areas identified by the GLO and the County after several mutual field inspections. The County will also install beach access signage. A similar inspection that was completed for the City of Galveston will be conducted for Galveston County approximately six months after the plan is certified. As is the case with the City, where signage is indicated to be lacking or in violation of the OBA, the County will be notified, and the GLO will work with the County to correct any inadequacies.

ACCOMPLISHMENT: The TCMP and GLO have worked with Galveston County to fully certify the County’s Beach Access and Dune Protection Plan.

Some communities with dune protection and beach access plans have established citizen advisory committees to serve as a link between the citizens and the local government with regard to the plans. The evaluation team met with some members of the South Padre Island Beach and Dune Task Force Committee during the site visit. The Task Force reviews all permits for projects east of Gulf Boulevard (the easternmost north-south street in South Padre Island) and then provides recommendations to the South Padre Island Board of Aldermen as to project compliance with the Town’s Dune Protection and Beach Access Plan. The primary responsibility of the Town’s Task Force is to ensure that all requirements of the Dune Protection and Beach Access Plan are met. Currently the town is amending its dune protection and beach access plan following annexation of “The Shores” subdivision and its master plan. In discussions with several Task Force members, they believe the Task Force serves a vital function for the Town and its citizens and that the input through review and recommendation seems to generally help the entire plan enforcement and amendment processes to run smoothly.

The City of Corpus Christi (as well as the City of Galveston, Galveston County, and several other local governments) does not have a citizen beach and dune task force committee. During the period covered by this evaluation, Corpus Christi proposed an amendment to its beach/dune plan to close a section of beach to vehicular traffic. The issue received so much attention that it was put on the city's November 2006 ballot as a referendum. Voters rejected the proposal, so the particular section of beach remains open to vehicular traffic. The City of Galveston had also proposed to amend its beach/dune plan with regard to a seawall parking fee. Again, the issue received so much attention from citizens that it, too, was voted on at referendum and was defeated.

There is nothing in Texas statute or regulation that requires a local government to establish a beach and dune task force. There is also nothing that guarantees that the presence of a citizen advisory beach and dune task force will prevent controversial proposals, assure easy approval of a proposal, or assure recommendations for approval of permits. However, it is more likely that early citizen involvement and input would alert a local government to potential controversy, strong opposition, or strong support for a particular permit or plan amendment. This would seem to be particularly useful in those municipalities and counties facing significant population and development pressures.

PROGRAM SUGGESTION: OCRM suggests that the TCMP and GLO encourage those local governments that are required to develop dune protection and beach access plans but that have not established citizen advisory beach and dune task forces to do so.

3. Assistance to Local Governments for Beach Access Enhancement

The TCMP continues to provide funding for a number of local beach access enhancement projects. During this evaluation period, several projects were initiated or completed, including, but not limited to:

- conversion of an existing levee into a walking/hiking trail for bird watching in Chambers County (completed)
- construction of six picnic pavilions and an interpretive/directional kiosk at Matagorda County Jetty Park (completed)
- construction of a canoe and kayak launching and docking facility, parking area, lighting, and all-weather surface road to the facility to provide access to Double Bay (completed)
- renovations to the town of Fulton's fishing pier
- acquisition of oak motte habitat to add to Live Oak Park and construction of public restrooms at Live Oak Park in the city of Ingleside.

C. COASTAL HABITAT

Texas has identified 16 coastal natural resource areas that are designated as requiring special management through the TCMP. These include: waters of the open Gulf of Mexico; waters under tidal influence; submerged lands; coastal wetlands; seagrasses; tidal sand and mud flats; oyster reefs; hard substrate reefs; coastal barriers; coastal shore areas; Gulf beaches; critical dune

areas; special hazard areas; critical erosion areas; coastal historic areas; and coastal preserves. The TCMP addresses protection of these natural resources and areas through several of its programs and initiatives, some of which are discussed in other sections of this findings document. In its grants program, for example, the Council has identified eight categories for use of grant funds by coastal communities, all of which directly or indirectly address natural resource protection. Program efforts to address water quality clearly have an effect on natural resource protection as well. Through the Section 309 assessments and strategies, protection of coastal wetlands continues to be a high priority. And projects funded with Coastal Impact Assistance Program monies and CEPRAs funds have provided significant protection or restoration of critical coastal habitats and natural resources in addition to erosion response benefits.

Section 306A funding provided to local communities during the evaluation period has addressed coastal habitat issues in a variety of ways, including, but not limited to:

- eradication of invasive species from Mission Lake in the Guadalupe Delta Wildlife Management Area, from the Peach Point Wildlife Management, and Aransas Wildlife Refuge;
- enhancement and restoration of a freshwater wetland, riparian forest, coastal flatwood, and coastal prairie areas within Clear Creek Nature Park;
- restoration of native prairie habitat as part of a project to enhance Jarboe Bayou Park;
- restoration of marsh habitat within a heavily subsided segment of Burnet Bay.

Section 309 strategies to address wetlands conservation and restoration during the period covered by this evaluation have included a multi-year project to determine spatial and temporal changes in marshes, mangroves, seagrass beds, tidal flats, and water bodies on barrier islands and peninsulas along the Texas coast. Another multi-year strategy sought to determine the critical physical and chemical environmental factors necessary for the restoration of seagrass beds in the lower Texas coast.

Coastal Impact Assistance Program (CIAP) monies during this evaluation period were awarded to numerous entities for projects that restored or enhanced coastal habitats, including, but not limited to:

- acquisition of 2,500 acres of inter-tidal marshland, high marsh, and upland prairie (Virginia Point) within the I-45 Estuarine Corridor in Galveston County and establishment of a conservation easement;
- acquisition of 300 acres of depressional prairie wetlands, riparian corridor, and palustrine emergent agricultural wetlands within the Cypress Creek watershed on the Katy Prairie and establishment of a conservation easement;
- acquisition of 135 acres of diverse river delta wetlands and meandering tidal channels at the Aransas River-Copano Bay interface;
- restoration of 1,500 feet of dunes within the town of Quintana with beach quality sand and locally grown native dune plants;
- restoration of marginal cropland to native prairie as a demonstration project.

The Coastal Erosion Planning and Response Act (CEPRA) Program was developed and is funded by the State of Texas to address erosion on the Texas coast. In that capacity, there is further discussion under Section E. “Coastal Hazards” in this findings document. However, as is

noted there, many CEPRAs funded projects that address coastal erosion also preserve, create, or protect natural resources and coastal habitats. Some of the projects funded through CEPRAs during this evaluation period that significantly address coastal habitats and resources include, but are not limited to:

- Jamaica Beach dune restoration

The originally envisioned beach nourishment project was not feasible because of limited funding, but the proposed dune restoration portion of the project was completed. Because the project went forward during the sea turtle nesting season, volunteers and paid professionals monitored the work area for signs of sea turtles or their eggs. No impacts to sea turtles occurred during the construction of the project, which resulted in a dune five feet high and 3,000 feet in length.

- Goose Island Shoreline Stabilization and Marsh Restoration

Goose Island is an integral part of the Goose Island State Park, which provides public access to Aransas and St. Charles bays. Goose Island is located within the Coastal Bend Bays and Estuaries Program and the Mission-Aransas National Estuarine Research Reserve. Phase I provides immediate and long term protection and enhancement of valuable seagrass, intertidal marsh, high marsh, and oyster reef habitats in Aransas Bay through the construction of an offshore breakwater to protect the eroding shoreline of Goose Island. Phase II includes construction of two containment levees for the creation of intertidal marsh in a future phase.

- West Bay Bird Island Shoreline Protection and Wetlands Restoration

Both CEPRAs funds and federal Coastal Wetlands Planning, Protection and Restoration Act program funds awarded to the Texas Parks and Wildlife Department are being used to design and construct an erosion response project to protect the wetlands on West Bay Bird Island by San Luis Pass and the West Bay portion of the Galveston Bay estuary system. The island is an important habitat for nesting shorebirds.

- Port Aransas Nature Preserve Shoreline Protection/Marsh Preservation

Multiple partners and funding sources are being used to construct shore protection along the Corpus Christi Ship Channel to protect 12,000 acres of prime wetlands from severe erosion. The wetlands have been developed by the City into the Port Aransas Nature Preserve, and many tracts of land in the preserve were purchased with TCMP 306A funds. There are also long-term plans to improve the ecotourism and recreation aspects of the preserve.

ACCOMPLISHMENT: The TCMP and GLO have effectively coordinated multiple partners and multiple funding sources to achieve protection or restoration of significant coastal habitats. In addition, other goals such as erosion response and enhanced public access have been achieved through many of the projects.

The U.S. Supreme Court decision in *Solid Waste Agency of Northern Cook County (SWANCC) v. the Army Corps of Engineers* eliminated Clean Water Act (CWA) jurisdiction over isolated

waters that are intrastate and non-navigable, where the sole basis for asserting CWA jurisdiction is the actual or potential use of the waters as habitat for migratory birds that cross state lines in migration. This resulted in the loss of protection for some wetlands in Texas. The amount and extent of the loss is not clearly defined. The only published attempt to determine the extent of isolated wetlands on the Texas coast was a U.S. Fish and Wildlife Service preliminary assessment of geographically isolated wetlands in the U.S. Recent status and trends information, based on 2001 and 2002 aerial photography, is currently being developed for areas in the lower Galveston Bay watershed and will provide some baseline data for assessing the impact of SWANCC on coastal wetlands. Additional coastal wetland status and trends studies will be needed and could also help determine the possible changes to regulatory programs that are needed to address the issue. The TCMP is using Section 309 funds for a strategy to address this need for data and information and to incorporate this information into funding priorities and management plans for state-owned lands.

D. WATER QUALITY

The TCMP used several mechanisms to address water quality during the period covered by this evaluation: Texas Coastal Beach Watch Program, the Coastal Nonpoint Pollution Control Program, and §309 strategies.

The GLO originated the Texas Coastal Beach Watch Program in the late 1990s as a water-quality monitoring program funded by the TCMP. When the federal Beaches Environmental Assessment and Coastal Health (BEACH) Act of 2000 was passed by Congress, the GLO was designated as the state's lead agency to implement the BEACH Act. The Program currently collects water samples from 163 stations along the Texas coast in nine counties. The GLO contracts with universities, local governments, and laboratories to collect the samples and test them for the presence of *enterococcus* bacteria. The results of the tests are entered into a database and posted online. The site gives the public the opportunity to check real-time water quality. When bacteria levels exceed those recommended by the Environmental Protection Agency, water quality advisories are recommended and local government officials may post advisory signs at public beach access areas where bacteria levels are high.

The Texas Coastal Nonpoint Pollution Control Program (NPS Program) received conditional approval on July 9, 2003, and has five years to address remaining conditions concerning some aspects of management measures dealing with: new development and site development; watershed protection and existing development; new and operating onsite sewage disposal systems; roads, highways, and bridges; and hydromodification. During this evaluation period the TCMP has used Section 310 (coastal nonpoint source) funds to implement some management measures required under the NPS program to restore wetlands and treat nonpoint source pollution at Mad Island Marsh; to establish a Dickinson Bayou Restoration Working Group and develop/publish a comprehensive, community-based wetland restoration plan for Dickinson Bayou; to develop a design manual for the creation of storm water treatment wetlands for the Texas Gulf coast region; to provide a pumpout station at Cove Harbor, Aransas County; and to develop a feasibility study to determine a type of debris collection system to contain, collect, and

dispose of pollutants entering Corpus Christi Bay through several storm water outfalls along the seawall and within the Corpus Christi Marina.

At the time of the last evaluation site visit, the TCMP had been using Section 310 funds for agricultural best management practices (BMPs) on private agricultural lands. NOAA's funding guidance for NPS Program funding precludes the use of funds on private property, and the TCMP wanted a reversal of that prohibition. The most recent evaluation findings included a recommendation to address this issue. Since the last site visit, the TCMP no longer distributes Section 310 funds for uses on private agricultural lands.

Under both the Years 2001-2005 and Years 2006-2010 Section 309 Assessment and Strategies, TCMP ranked the impacts to water quality from cumulative and secondary impacts as significant. The TCMP has provided Section 309 funds to address these impacts through projects including, but not limited to: development of a bacteria loadings watershed model in Copano, Port, and Mission Bays; sediment collection and analysis of zinc, followed by monitoring, in Nueces Bay and the Inner Harbor to develop a total maximum daily load for zinc; and identification of causes and possible solutions for low dissolved oxygen values in the Tres Palacios Harbor area, to be followed with education and outreach to harbor users;

E. COASTAL HAZARDS

During the period covered by this evaluation, Hurricanes Katrina and Rita affected various parts of the Texas coast, from both public safety and natural resources perspectives. As a result of hurricanes, storms, coastal flooding, sea level change, sediment dispersal, and other processes, the Texas coast suffers from both long-term and short-term shoreline erosion. According to the TCMP's Section 309 Assessment and Strategies Report for 2006-2010, approximately two-thirds of Texas bay shores are eroding at rates of two to nine feet per year, while approximately 62 percent of the Gulf facing shoreline is eroding at rates of two to 10 feet per year, with some areas, particularly along the extreme western end of Galveston Island, experiencing erosion rates at greater than 10 feet per year.

The Texas Coastal Erosion Planning and Response Act (CEPRA) Program provides significant state funding to address erosion on the Texas coast. In many cases, the CEPRA funds represent the state's share of project costs or are match for federal dollars. The GLO Coastal Resources Program Area administers the program, which has made available approximately \$7 million per biennium during the period covered by this evaluation. Projects funded are of two types: erosion response or scientific studies. Erosion response projects have included shoreline restoration (beach renourishment, dune restoration, and, in some, cases hard structures), marsh restoration or preservation, and wetlands restoration. Some CZM funds have been used to support CEPRA funded projects.

CEPRA funds awarded in one biennium have no guarantee of future funding, so projects are often funded in segments or phases. Because of the close coordination among federal, state, and local partners, many projects do receive multiple years of funding. Many projects also go beyond erosion response and preserve, create, or protect natural resources and coastal habitats.

During the period covered by this evaluation, a sample of projects which were either initiated, ongoing, or completed, include:

- several beach nourishment projects with beneficial use of dredged material (e.g., Isla Blanca Park, Rollover Pass, South Padre Island Beach, City of Jamaica Beach, Town of Quintana, Packery Channel/North Padre Island);
- shoreline protection and marsh restoration at Starvation Cove;
- construction and monitoring of erosion control demonstration project along Jefferson County's Gulf shoreline to evaluate the effectiveness of groins and beach nourishment;
- shoreline protection (bulkhead and geotextile tube) in Port Aransas;
- protection and restoration of approximately 60 acres of intertidal march and tidal flats in Jumbile Cove, with at least a half dozen partners, both public and private, and at least that many different funding sources. The NOAA Community-based Restoration Program provided funds for this project.

Section 309 assessments and strategies for both Years 2001-2005 and 2006-2010 identified coastal hazards as a significant threat to the Texas coast. Projects funded using Section 309 monies to address hazards during this evaluation period included the creation and subsequent maintenance on-line of the Texas Coastal Erosion Data Network (TCEDN); several surveys to investigate potential sand sources for beach renourishment and erosion response projects, a new multi-component strategy to evaluate the status and trends of coastal vulnerability to natural hazards, and the evaluation of the status and trends of dune volume, morphology, and vegetative cover to develop a time series for analysis of short-term dynamics of the beach/dune system.

The Coastal Texas 2020 initiative created by the GLO Commissioner during the last evaluation period involved stakeholders throughout the coast. These stakeholders identified coastal erosion along the shoreline as one of the most important issues facing Texas, but it became apparent during the initiative that many coastal communities and counties are not well organized with regard to shoreline protection planning and response and many other coastal related issues. Some communities have created strategic planning groups, called shoreline protection task forces to begin regional planning and project implementation. The task forces garner public support for funding of shoreline restoration projects, foster education and outreach on coastal issues in the region, and create and identify funding mechanisms for projects. Task forces now exist in four counties, and the TCMP would like to continue to support these efforts as well as help to create other task forces. The Coastal Resources Program Area is now providing technical and management staff support to existing task forces and to new task forces that may be developed, and the TCMP is using Section 306 funds to provide travel costs for CMP Grants program staff. OCRM supports these efforts.

ACCOMPLISHMENT: The GLO and TCMP are supporting the ongoing efforts of existing local community shoreline protection task forces and the creation of new task forces.

F. COASTAL DEPENDENT USES AND COMMUNITY DEVELOPMENT

Because the TCMP is very much focused at the local government and community level, particularly in its funding opportunities, many of its projects and activities are entirely directed toward or facilitate community development. In particular, beach access funding and projects have served local community development as discussed in previous sections of this document. Projects addressing coastal hazards, through both CEPRA and CMP funding, are community development-oriented in many cases. Related to the coastal hazards efforts, the GLO and TCMP are working with communities that already have or that may want to establish local community shoreline protection task forces.

The TCMP addresses the siting of some coastal dependent uses, such as energy-related facilities and OCS activities, through the permitting and federal consistency processes. Another coastal dependent use, aquaculture, is also regulated through permitting of coastal aquaculture facilities. The state is beginning to receive permits for offshore aquaculture facilities but does not have a framework in place for permitting these operations. See the section below dealing with “Aquaculture” for further discussion.

G. GOVERNMENT COORDINATION AND DECISION-MAKING

1. Federal Consistency and Program Changes

During the period covered by this evaluation the TCMP has reviewed an average of approximately 443 federal consistency applications annually. The federal consistency process is complex and fairly process-oriented. The last evaluation findings contained several program suggestions that could help with the effectiveness and efficiency of the review and permitting process in Texas.

One suggestion dealt with the proposed opening of a Permit Service Center (PSC) on the upper Texas coast (in Galveston) to complement the lower coast Permit Service Center in Corpus Christi. The PSC in Corpus Christi became operational in 2001 and serves not only as a single point of contact for environmental permitting information but receives/tracks/processes the joint permit application form (JPAF) for the Corps of Engineers and four state agencies. The Galveston PSC opened in May 2006 and accomplishes the same tasks as the Corpus Christi PSC. During this evaluation site visit, National Marine Fisheries Service staff noted that the application documentation was quite complete for JPAFs in the Corpus Christi PSC area and hoped that the presence of staff in the Galveston PSC would now improve application documentation and processing for the upper coast. The evaluation team believes that as more applicants become aware of the Galveston PSC and are able to take advantage of the staff support there, the federal consistency and permit application documentation and processing will become more effective and efficient.

ACCOMPLISHMENT: The TCMP and Council have opened and staffed a Permit Service Center (PSC) in Galveston to serve the upper coast of Texas, which complements the Permit Service Center in Corpus Christi for the lower coast. The Corpus Christi PSC presence and staff have helped to make the consistency and permitting processes become more effective and efficient.

There was a Necessary Action in the last findings document that dealt with the ambiguity of identifying which statutes, enforceable policies, and rules are a part of the approved TCMP and the fact that there had been no analysis or program change submission made since the original approval of the program. The Necessary Action required the TCMP to work with OCRM and determine the specific Texas statutes, policies and rules or regulations that are a part of the approved TCMP and to establish a schedule for submission of program changes for those statutes and rules.

During the period covered by this evaluation the TCMP prepared and submitted a program change request for the Texas Administrative Code rules of the TCMP governing the Coastal Coordination Council (31 TAC Part 16). That request was, with some exceptions, approved by OCRM in November 2006. The TCMP has also analyzed changes to the Coastal Coordination Act (Chapter 33, Texas Natural Resources Code) and submitted a draft of that change submission to OCRM just prior to the site visit. The TCMP analyzed the other statutes that make up the TCMP and that have been amended since the original program approval. After confirmation from OCRM that the general format and general information provided for Chapter 33, Texas Natural Resources Code, was appropriate, the TCMP will make any adjustments necessary to the package for the other statutes, and a complete and final program change packet for all TCMP statutes will be submitted to OCRM. [Since the site visit, OCRM has notified the TCMP that the general format and informational submission was sufficient for Chapter 33, and the TCMP is completing the final program change submission for other statutes and enforceable policies in the TCMP.] The TCMP and OCRM had agreed, via a letter dated September 9, 2005, from the CCC Chairman to the OCRM Coastal Programs Division Chief, that the submission of the final TCMP program change package would occur no later than January 17, 2006, and that that deadline would also include the identification and compilation list of all statutes, enforceable policies, and rules that are a part of the TCMP. The list of statutes, enforceable policies, and rules has been submitted but not the final program change package. Because that deadline has passed, the OCRM and TCMP should agree upon a new and immediate deadline.

ACCOMPLISHMENT: The TCMP has completed and received OCRM concurrence for the first program change for the program's administrative rules since TCMP approval.

PROGRAM SUGGESTION: The TCMP and OCRM should establish a prompt and immediate deadline for submission of the program change package for all the TCMP statutes and enforceable policies. The TCMP should submit that package by the deadline.

2. Programmatic Coordination and Partnerships

As was evident to the evaluation team, most of the TCMP's programs, projects, and procedures involve coordination and partnerships with other agencies and groups. The TCMP itself is a networked program, and the Coastal Coordination Council provides a formal mechanism by which the activities of individual state agencies within the network are coordinated. The federal consistency process is also a formal mechanism by which federal and state partners are able to coordinate. The creation of the Galveston Permit Service Center should help to assure the same level of coordination and partnership on the upper coast as occurs on the lower coast because of the existence of the Corpus Christi PSC.

The realignment within the Coastal Resources Program Area to bring all of the funding sources (Coastal Impact Assistance Program, the coastal management program, and the Coastal Erosion Planning and Response Act) within the same division has provided an opportunity for better coordinated project funding. The regulatory functions of permitting/permit service centers, federal consistency, and natural resource damage assessment are now organized within another single division, and this, too, seems to be promoting better coordination.

3. Public Participation and Outreach

In general, the TCMP focuses its efforts toward public education and outreach by serving as a clearinghouse for educational and outreach materials and information. The TCMP website continues to be a well-populated, user-friendly source where almost all of the coastal program's publications, maps, and resource materials are available. The TCMP is currently developing the "Texas Coastal Connection" website, which is targeted to teachers and the general public. It will serve as a clearinghouse for information on the Texas coast and include a coastal-related 'hot topic' that will change monthly, hyperlinks to sources of information on the Texas coast, and a rundown of online calendars that list upcoming coastal activities.

There are also two long-term education/outreach projects that the TCMP has funded each year for approximately nine years. The "Captain Clean Crab" beach media and education campaign serves the Rio Grande Valley, a poor, underserved region of the state, through billboards, public service announcements and a puppet shows presented to school children. In its nine years of existence, County officials say they have seen a significant decline in the number of citations issued for beach littering. The Texas high school monitoring program was one of the first education and outreach projects funded by the TCMP. It pairs teachers and students at Galveston, Bay City, Port Aransas, and Port Isabel schools with scientists from the University of Texas Bureau of Economic Geology (BEG). As part of their coursework, science students from these schools monitor selected beaches for one year, learning to measure topography, map vegetation and shorelines, and observe weather and wave conditions. After students and teachers have recorded their findings, scientists at the BEG analyze the data and use it to monitor changes in beaches, dunes, and vegetation lines, particularly after tropical storms and hurricanes.

The TCMP also provides staff at exhibit booths at conferences and open houses, such as the state's annual hurricane conference. As has been previously noted, TCMP staff members

conduct outreach meetings each year for its grants program. The TCMP also wants to tap into the pool of coastal management grant applicants and recipients to educate them about the non-funding related activities, roles, and functions of the TCMP, so that they can in turn play a role to in educating and reach out to their citizens about coastal related issues. And the TCMP hopes to use the newly opened Galveston Permit Service Center as an outreach and education conduit as staffing and workload allows.

The TCMP staff often works with Sea Grant educators and extension agents and the education coordinators at both the Coastal Bend Bays and Estuary Program and Galveston Bay Estuary Program. The recent designation of the Mission Aransas National Estuarine Research Reserve also presents an opportunity for the TCMP to work with the education program there.

4. Aquaculture

According to the TCMP Section 309 assessment, aquaculture in Texas contributed more than \$127 million to the state's economy in 2004. The major products are marine shrimp, red drum, catfish, hybrid striped bass, tilapia, aquatic plants, and crawfish. As of 2004, channel catfish was the largest aquaculture production crop, followed by Pacific white shrimp. Texas has traditionally been a major supplier of shrimp to the U.S. seafood economy.

The Texas Department of Agriculture has the authority to regulate coastal aquaculture facilities through license, fee, and marketing. The Texas Parks and Wildlife Department exercises control over all exotic species. The major concerns with aquaculture revolve around discharges from production facilities (uncontrolled total suspended solids discharges can cause turbidity and sedimentation problems in localized areas that may contain seagrasses); accidental released of exotic species; and the threat of introduced viruses.

No offshore aquaculture facilities currently exist in Texas state waters, but the TCMP is beginning to receive permit applications for offshore aquaculture facilities for consistency reviews. Currently the state does not have a framework in place for permitting these operations because of the lack of information available regarding the potential impacts. As noted under the earlier section discussing the "Coastal Coordination Council," this may be an issue for which the Council can serve as a proactive planning body and make policy or regulatory recommendations to the Governor, Texas Legislature, or other appropriate agencies.

V. CONCLUSION

For the reasons stated herein, I find that the State of Texas is adhering to the programmatic requirements of the Coastal Zone Management Act and its implementing regulations in the operation of its approved TCMP.

The TCMP has made notable progress in the following areas: Grants Management; Use of Technology, Data, and Research; Open Beaches Act and Houses on the Beach; Beach Access and Dune Protection Program; Coastal Habitat; Coastal Hazards; and Federal Consistency and Program Changes.

These evaluation findings also contain eight (8) recommendations: one (1) Necessary Action that is mandatory and seven (7) Program Suggestions. The state must address the Necessary Actions by the date indicated. The Program Suggestions should be addressed before the next regularly-scheduled program evaluation, but they are not mandatory at this time. Program Suggestions that must be repeated in subsequent evaluations may be elevated to Necessary Actions. Summary tables of program accomplishments and recommendations are provided in Section VI.

This is a programmatic evaluation of the TCMP which may have implications regarding the State's financial assistance awards. However, it does not make any judgment about or replace any financial audits.

/signed/ David M. Kennedy
David M. Kennedy
Director, Office of Ocean and Coastal
Resource Management

4-4-07
Date

VI. APPENDICES

Appendix A. Summary of Accomplishments and Recommendations

The evaluation team documented a number of the TCMP’s accomplishments during the review period. These include:

Issue Area	Accomplishment
Grants Management	The TCMP and Council have begun to establish funding priorities and to identify specific types of projects for the grants program. They work closely to assist grant applicants and recipients with the application and grant management processes, have developed a grants procedures manual, and hold grant workshops.
Use of Technology, Data, and Research	The TCMP provided funds to the Bureau of Economic Geology (BEG) at the University of Texas-Austin to develop baseline data used to produce the Galveston Island Geohazards Map at the request of the City of Galveston. This is a good example of data collection and research funded through the TCMP and used by local government decision makers that may result in policy or regulatory changes.
Open Beaches Act and Houses on the Beach	The State and the GLO have made some progress in addressing the issue of structures on the public beach and their removal as hazards. State CEPRA funds have been identified as a source of financial assistance to the 116 property owners, and some owners have entered into agreements for the funding. The GLO has indicated that it will seek legislative action to grant counties the authority to establish building setback requirements for storm mitigation and to protect public access and has identified other proposals for legislative action to deal with the issue of structures on the public beach.
Beach Access and Dune Protection Program	The GLO and TCMP have worked diligently to address major issues regarding the status of the City of Galveston’s dune protection and beach access plan, including: ensuring that the City had adequate funding to address signage needs at beach access points; conducting an inspection of all beach access points; and finding the City ineligible for CEPRA grant funds and refusing to support Coastal Impact Assistance Program funding applications from the City until all aspects of the conditionally certified plan are in full compliance.

Beach Access and Dune Protection Program	The TCMP and GLO have worked with Galveston County to fully certify the County’s Beach Access and Dune Protection Plan.
Coastal Habitat	The TCMP and GLO have effectively coordinated multiple partners and multiple funding sources to achieve protection or restoration of significant coastal habitats. In addition, other goals such as erosion response and enhanced public access have been achieved through many of the projects.
Coastal Hazards	The GLO and TCMP are supporting the ongoing efforts of existing local community shoreline protection task forces and the creation of new task forces.
Federal Consistency and Program Changes	The TCMP and Council have opened and staffed a Permit Service Center (PSC) in Galveston to serve the upper coast of Texas, which complements the Permit Service Center in Corpus Christi for the lower coast. The Corpus Christi PSC presence and staff have helped to make the consistency and permitting processes become more effective and efficient.
Federal Consistency and Program Changes	The TCMP has completed and received OCRM concurrence for the first program change for the program’s administrative rules since TCMP approval.

In addition to the accomplishments listed above, the evaluation team identified several areas where the program could be strengthened. Recommendations are in the form of Program Suggestions and Necessary Actions. Areas for improvement include:

Issue Area	Recommendation
Coastal Coordination Council	PROGRAM SUGGESTION: The TCMP is encouraged to follow through with the self-assessment it has begun and to consider the composition of the Council and its Executive Committee and their roles and functions. The Council is also encouraged to continue discussions about new and emerging issues and policies and ways the Council can involve itself in more coastal planning and policy recommendations.
Grants Management	PROGRAM SUGGESTION: The TCMP and Coastal Coordination Council are encouraged to continue their efforts toward refining priorities for funding, streamlining the grants process, and seeking to involve entities that have not previously applied for TCMP funding.

<p>Program Identity and Visibility</p>	<p>PROGRAM SUGGESTION: The TCMP should develop ways to educate eligible grant applicants and recipients about the non-funding related activities, roles, and functions of the TCMP. This is a constituency that can play a role to help more clearly establish the TCMP's separate identity and visibility through educating its citizens and its local coastal legislative and congressional representatives.</p>
<p>Use of Technology, Data, and Research</p>	<p>PROGRAM SUGGESTION: The TCMP should look for ways to move research and data to implementation and to changes in coastal management. It should identify the needs of coastal managers for types of data and research, if necessary. It should define ways that the research and data collection it funds will be disseminated to appropriate coastal decision makers and will be linked with information showing how such research could be used to inform and influence coastal management decisions. The TCMP should serve as an intermediary or link, if necessary, between research and data collection and use of the results by an appropriate governmental entity. Entities such as Sea Grant and the newly designated Mission-Aransas National Estuarine Research Reserve, which will be developing a coastal training program, should be tapped for their expertise and resources in outreach and implementation efforts.</p>
<p>Open Beaches Act and Houses on the Beach</p>	<p>NECESSARY ACTION: The Open Beaches Act (OBA) is a core policy of the TCMP, and NOAA and the public expect it to be enforced. Houses have been located on the public beach in violation of the OBA since 1998. NOAA recognizes that any litigation or proposed legislation may affect resolution of this issue but still expects the GLO to proceed expeditiously with enforcement or other means to remove the houses on the beach that are in violation of the Open Beaches Act. The TCMP must:</p> <ul style="list-style-type: none"> A. Provide a report to OCRM every six months as part of the cooperative agreement award performance reports, detailing the status of: a) litigation and any proposed or adopted legislation involving the OBA; b) removal of houses on the beach; and c) implementation and enforcement of the OBA; and B. Provide a draft report to OCRM within six months of the date of passage of any legislation or of any resolution of any litigation, describing how these address the 116 houses on the beach. <p>Failure to show continued action and additional progress in removing the houses on the beach by the date of the next evaluation site visit could result in the imposition of sanctions, including the redirection of CZMA funds awarded to the TCMP toward resolution of the issue of houses on the beach.</p>

Beach Access and Dune Protection Program	PROGRAM SUGGESTION: OCRM suggests that the TCMP and GLO encourage those local governments that are required to develop dune protection and beach access plans but that have not established citizen advisory beach and dune task forces to do so.
Beach Access and Dune Protection Program	PROGRAM SUGGESTION: The GLO and TCMP should continue to work with and exert pressure on the City of Galveston to obtain full and timely certification of its dune protection and beach access plan.
Federal Consistency and Program Changes	PROGRAM SUGGESTION: The TCMP and OCRM should establish a prompt and immediate deadline for submission of the program change package for all the TCMP statutes and enforceable policies. The TCMP should submit that package by the deadline.

Appendix B. Response to Previous (2004) Evaluation Findings

Program Suggestion: To address grants management concerns, the TCMP should:

- 1) eliminate low-cost construction projects on private agricultural lands to comply with 2004 CNP funding guidelines. Any low-cost construction projects on private agricultural lands proposed in future cooperative agreement applications will not be authorized by NOAA, unless the project is in accordance with the funding guidelines;
- 2) work with the Natural Resources Conservation Service (NRCS) to elevate the state priority for farm bill funding distribution in coastal counties to encourage the continued implementation of BMPs; and
- 3) modify its partnership with soil and water conservation districts to focus on projects that conform to CNP funding guidance, including: CNP program personnel, development of 5- and 15-year strategies to address water quality needs, outreach and education, watershed planning, and tracking progress on implementation of BMPs within the coastal zone.

Response: FY 2004 (Grant Cycle 9) was the last year funds were distributed for low-cost construction projects on private agricultural lands under the Texas CNP grant program. The Grant Cycle 10 guidance document was revised to include text notifying potential grant applicants that CNP funds could not be used for this purpose. In addition, TCMP staff has notified the soil and water conservation districts that funding of low-cost construction projects on private agricultural lands would no longer allowed after FY 2004.

Presently, the GLO has membership on the State Technical Committee (STC), which develops funding recommendations for the NRCS, including Environmental Quality Incentives Program (EQUIP) funds. GLO membership, however, has not represented coastal interests; particularly regarding increased funding for the implementation of BMPs on private agricultural lands in coastal counties. To address this issue, TCMP staff has requested additional membership on the STC to petition for increased funding as suggested by this review.

The TCMP is working with the soil and water conservation districts to identify projects that meet the CNP funding guidance. However, a major issue for the districts is funding the state and local match. Previously, the private agricultural producers provided the match. With the change in the CNP funding guidance, projects must be located on public land and in areas that tend to be economically depressed. Because these areas are property and cash poor, local governments do not provide financial assistance for the installation of BMPs. Therefore, the districts' main sources of funding to implement projects come from other grant programs.

Program Suggestion: To enhance the state's efforts to protect coastal wetlands, the TCMP should:

- 1) review information from studies concerning coastal wetland status and trends that have already been funded;
- 2) consider the establishment of a database to formally track wetland loss and mitigation; and
- 3) consider establishment of a monitoring protocol with multi-year, post-construction monitoring for various natural resource restoration/enhancement projects and activities.

All three of these efforts could help the state and the TCMP to identify rare, ecologically significant, and priority wetlands for protection; evaluate the success of various natural resource

protection projects; prioritize projects seeking funding through the grants program; evaluate the direction of future initiatives and statutory and rule revisions; and enhance interagency coordination in permitting and planning.

Response: Information from four completed wetland status and trends studies on Texas barrier islands (Matagorda Bay to San Antonio Bay, Galveston and Christmas Bays, Freeport to East Matagorda Bay and South Padre Island, and the Coastal Bend) are being reviewed to help the TCMP identify priority wetlands for protection and restoration. A fifth study covering Padre Island National Seashore and the Chenier Plain along the upper Texas coast will be completed in FY 2007. The TCMP plans to build upon the status and trends work on barrier islands by extending that effort to inland environments on the Texas coast. Inland wetland status and trends data are of particular importance since palustrine or freshwater wetlands are no longer protected by regulations under the CWA. The loss of regulatory protection for these wetlands highlights the need to provide up-to-date information to local, state, and federal restoration and acquisition programs to ensure adequate protection for the resource.

The Section 309 Assessment and Strategies Report approved by NOAA in FY 2006 outlines Texas' strategy to undertake five inland wetland status and trends studies from 2006-2010. The Council has approved funds for the first study area covering the Corpus Christi-Coastal Bend region. To guarantee the application of the information generated by these studies, the TCMP will host regional workshops, in coordination with the project investigator, upon completion of each study to promote project findings to city and county officials, relevant state and federal agencies, NGOs, non-profit organizations, universities and other public and private interests. It is anticipated that these workshops will provide a venue for the exchange of information and ideas on how to best address the issues raised by this project, particularly at the local level. The workshops will also be used as an opportunity to promote findings from the completed barrier island status and trends studies.

In addition, findings from completed barrier island and inland wetland studies will be used by TCMP and GLO staff to update the Texas Coastal Estuarine Land Conservation Program Plan; update the Texas Coastwide Erosion Response Plan; work with the National Estuary Programs to prioritize protection and restoration efforts; inform grant programs such as the TCMP, CEPPA, and CIAP programs; update the Resource Management Codes; and inform the Permit Assistance Group (PAG), composed of the U.S. Army Corps of Engineers and state natural resource agencies, to better inform permitting and improve coastal decision-making. Project findings from the four completed barrier island studies were presented to the PAG members at the July 19, 2006 meeting.

The National Coastal Management Performance Measurement System (NCMPMS) requires the tracking of acres of wetlands disturbed by type due to a permitted activity and acres of wetlands created or restored through mitigation. GLO staff has requested funding through the Section 309 Enhancement Grants Program to support the implementation of the NCMPMS. Texas' implementation strategy includes the establishment of a database to track information collected for this program, including annual changes in wetland acreage resulting from permitted activities and required mitigation. Texas will begin tracking wetland loss and mitigation during FY 2007. The database will be operational by the end of that fiscal year. The database will eventually be linked to a web-based reporting system to allow agencies or other entities reporting data under

the NCMFMS to easily transfer data and manipulate the data collected for their own benefit.

The GLO, in consultation with other state and federal resource agencies, the Port of Houston, and USACE Galveston District, has developed the Marsh Monitoring Management and Maintenance (M3) Plan to monitor the performance of restored marshes constructed as part of the Houston-Galveston Navigation Channel widening and deepening project. This project will span 50 years of channel maintenance and include the beneficial use of dredge material to create approximately 4,250 acres of intertidal salt marsh. The M3 plan is an effort to provide long-term care to each Beneficial Use Site to yield maximum benefits at minimized costs. This is a massive interagency effort that will greatly facilitate our understanding of the monitoring and maintenance needs of coastal restoration projects. In addition, the CEPRA program is working with Texas A&M University-Corpus Christi to develop and implement monitoring protocol for several beach nourishment projects on the Texas coast.

Necessary Action: With regard to enforcement of the Open Beaches Act and the current moratorium prohibiting removal of 116 houses located on the public beach, the TCMP must:

- 1) provide a report to OCRM within six months of the date of these findings detailing how the Open Beaches Act is currently being implemented and enforced with regard to those houses on the beach NOT covered by the moratorium; and
- 2) provide a report to OCRM every six months as part of the cooperative agreement award performance reports, detailing the status of litigation and any proposed or adopted legislation involving the OBA, including the moratorium, removal of houses on the beach, and implementation and enforcement of the OBA; and
- 3) provide a draft report to OCRM within six months of the date of passage of any legislation or resolution of any litigation, describing how these address the 116 houses on the beach.

Items 2 and 3 of this Necessary Action will be repeated in future evaluation findings as a Necessary Action until OCRM determines that the situation with regard to houses on the beach no longer requires this.

Response: Letter dated November 30, 2005, to John King, Coastal Programs Division Chief, from Sam Webb, GLO Deputy Commissioner, Coastal Resources. The text of the letter is as follows:

Re: 2005 CZMA Section 312 Review – Necessary Action # 1: Texas Open Beaches Act

Dear Mr. King:

The final Section 312 evaluation findings for January 2001 through March 2004 (findings) for the Texas Coastal Management Program (TCMP) require, among other things, a response to the following directives, hereinafter referred to as Necessary Action # 1:

With regard to enforcement of the Open Beaches Act and the current moratorium prohibiting removal of 116 houses located on the public beach, the TCMP must

- (1) provide a report to OCRM within six months of the date of these findings detailing how the Open Beach [sic] Act is currently being implemented and enforced with regard to those houses on the beach NOT covered by the moratorium; and*
- (2) provide a report to OCRM every six months as part of the cooperative agreement award performance reports, detailing the status of litigation and any proposed or adopted legislation involving the OBA, including the moratorium, removal of houses on the beach, and implementation and enforcement of the OBA; and*
- (3) provide a draft report to OCRM within six months of the date of passage of any legislation or resolution of any litigation describing how these address the 116 houses on the beach (Findings, p. 20).*

This letter is responsive to paragraph (1) of Necessary Action # 1, as it includes the TCMP's report detailing enforcement of the Texas Open Beaches Act (OBA)¹ regarding those houses not covered by the moratorium. A report responsive to paragraph (2) of Necessary Action # 1 will be provided as part of the TCMP's regular cooperative agreement award performance reports. A draft report responsive to paragraph (3) of Necessary Action # 1 will be provided as directed within six months of any legislation or resolution of any litigation affecting the moratorium houses and houses that may be on the beach but not covered by the moratorium.

¹ TEX. NAT. RES. CODE ANN. §§ 61.001-61.254 (Vernon 2001 & Supp. 2005),
Stephen F. Austin Building • 1700 North Congress Avenue • Austin, Texas 78701-1495 Page 1 of 7

Post Office Box 12873 • Austin, Texas 78711-2873

512-463-5001 • 800-998-4GLO

www.glo.state.tx.us

I. The Texas General Land Office Implements the Texas Open Beaches Act.

The TCMP operates through its networked agencies, including the Texas General Land Office (GLO), which is also the agency responsible for administrative support for the Coastal Coordination Council (Council).² The GLO's actions in implementing the OBA are those of a networked agency, not those of the TCMP itself. Therefore, this report represents the response of the GLO on behalf of the TCMP as one of its networked agencies. The Council and TCMP have no independent statutory authority to enforce the OBA. While the GLO will provide the status updates detailed in Necessary Action #1, any OBA enforcement activity that is not part of a listed state action, such as litigation, is independent of the TCMP.

The statutory language of the OBA directs the Land Commissioner to "strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement."³ The Commissioner, through the GLO, administers the OBA and the Texas Dune Protection Act (DPA),⁴ primarily through oversight of the comprehensive beach access and dune protection plans adopted by coastal jurisdictions under regulations commonly known as the "Beach/Dune Rules."⁵ The Beach/Dune Rules provide a regulatory framework integrating the various legal requirements to ensure that local beach access and dune protection plans are consistent with the OBA and the DPA. The GLO reviews the adoption and amendment of local plans to determine whether the plans provide the beach access and dune protection required by law. If the GLO determines that a submitted plan is consistent with state law, the plan is certified through a notice and comment rulemaking process.⁶ The GLO's "certification of a subdivision beach access or dune protection plan" is one of the listed state actions that must be consistent with the goals and policies of the TCMP.⁷

The certification status of each of the current local beach access and dune protection plans in Texas is described in the Beach/Dune Rules.⁸ Under the Beach/Dune Rules, the GLO also provides ongoing oversight of the administration of local beach access and dune protection plans by reviewing and commenting on all local permits for beachfront construction under the local beach access and dune protection plans to ensure consistency with state law. In its review of submitted beach access and dune protection plans and local construction permits, the GLO works extensively to ensure public access to Texas beaches and to prohibit obstructions and encroachments on the public beach as required by the OBA.

II. The Land Commissioner Has Discretionary Authority To Enforce the OBA through Litigation.

² Texas does not have an independent coastal management agency. Rather, the TCMP is administered through the Coastal Coordination Council, which is composed of members of the networked state resource agencies and public members appointed by the Governor. TEX. NAT. RES. CODE ANN. § 33.204.

³ TEX. NAT. RES. CODE ANN. § 61.011(c).

⁴ TEX. NAT. RES. CODE ANN. §§ 63.001-63.181.

⁵ 31 TEX. ADMIN. CODE §§ 15.01-15.10, 15.12, 15.21-15.36.

⁶ TEX. NAT. RES. CODE ANN. § 61.015(b).

⁷ See TEX. NAT. RES. CODE ANN. § 33.2053(a)(10); 31 TEX. ADMIN. CODE § 505.11(a)(1)(J).

⁸ 31 TEX. ADMIN. CODE § 15.21-15.36.

Under the OBA, although “any county attorney, district attorney, or criminal district attorney” may initiate a lawsuit, in practice the Land Commissioner has taken primary responsibility for judicial enforcement of the OBA.⁹ In addition to its ongoing responsibility for the comprehensive and regulatory oversight of local beach access and dune protection plans, the Land Commissioner has the authority to request the attorney general to file a lawsuit to enforce the common law public beach easement along the Texas Gulf coast through the OBA. The filing of an enforcement action under the OBA is not a listed state action under the TCMP.¹⁰

The GLO, through the Office of the Attorney General, can sue to remove or prevent any improvement, maintenance, obstruction, barrier, or other encroachment on a public beach, or to prohibit any unlawful restraint on the public’s right of access to and use of a public beach.¹¹ The OBA provides that the GLO can ask the court to order the person to remove an obstruction or encroachment on the public beach easement, to bear the costs of litigation and removal, to pay attorneys fees, and to pay a penalty of \$50 to \$1,000 per day for the period of obstruction or encroachment. Enforcement of the OBA through litigation has been limited by necessity. Because of the costs and burdens of litigation on both the State and the private landowner, OBA removal lawsuits have typically been reserved for the following needs: (a) rapid response to stop or mitigate a newly created or under-construction encroachment; (b) compliance with compulsory counterclaim requirements in lawsuits filed by landowners against the state; and (c) as a last resort when other approaches to removing an obstruction or encroachment have failed. There have been fewer than twenty reported court decisions under the OBA since its inception in 1959.¹²

⁹ TEX. NAT. RES. CODE ANN. § 61.018.

¹⁰ The Coastal Coordination Act (Act) provides the statutory authority for the TCMP. TEX. NAT. RES. CODE ANN. §§ 33.201-33.212. The Act requires that a state agency or subdivision must comply with the goals and policies of the TCMP when taking one of the specific actions listed in the statute. TEX. NAT. RES. CODE ANN. § 33.205(a). Two lists of state agency and subdivision actions subject to the TCMP appear in the Act: (1) Certain agency rulemaking actions, TEX. NAT. RES. CODE ANN. § 33.2051; and (2) Certain individual agency or subdivision actions, TEX. NAT. RES. CODE ANN. § 33.2053. The specific actions of the GLO that are subject to the TCMP include the certification of a beach access and dune protection plan. TEX. NAT. RES. CODE ANN. § 33.2053(a)(10). The filing of an OBA enforcement action, however, is not a listed GLO action.

¹¹ TEX. NAT. RES. CODE ANN. § 61.018(a).

¹² See *Arrington v. Texas General Land Office*, 38 S.W.3d 764 (Tex. App.--Houston 2001, no writ); *Arrington v. Mattox*, 767 S.W.2d 957 (Tex. App.--Austin 1989, writ denied), *cert. denied*, 110 S. Ct. 1119 (1990); *Executive Condominiums, Inc. v. State*, 764 S.W.2d 899 (Tex. App.--Corpus Christi 1989, writ denied); *Feinman v. State*, 717 S.W.2d 106 (Tex. App.--Houston [1st Dist.] 1986, writ ref’d n.r.e.); *Villa Nova Resort, Inc. v. State*, 711 S.W.2d 120 (Tex. App.--Corpus Christi 1986, no writ); *Matcha v. Mattox*, 711 S.W. 2d 95 (Tex. App.--Austin 1986, writ ref’d n.r.e.), *cert. denied*, 107 S. Ct. 1911 (1987); *Moody v. White*, 593 S.W.2d 372 (Tex. Civ. App.--Corpus Christi 1979, no writ); *Gulf Holding Corp. v. Brazoria County*, 497 S.W.2d 614 (Tex. Civ. App.--Houston [14th Dist.] 1973, writ refused n.r.e.); *Seaway Co. v. Attorney Gen.*, 375 S.W.2d 923 (Tex. Civ. App.--Houston [1st Dist.] 1964, writ ref’d n.r.e.); *State v. Markle*, 363 S.W.2d 333 (Tex. Civ. App.--Houston [1st Dist.] 1962, no writ); *Mikeska v. City of Galveston*, 328 F.Supp.2d 671 (S.D.Tex., 2004), *vacated and remanded* 419 F.3d 431 (5th Cir. 2005), *motion for rehearing pending*; *Hirtz v. State of Tex.*, 974 F.2d 663 (5th Cir. 1992).

As a general matter of policy, unless the legislature specifically imposes mandatory action, an agency charged with enforcement of any legal requirement has broad discretion in selecting particular cases for enforcement through judicial action.¹³ Factors that affect the selection of cases for judicial enforcement include the nature and extent of the violation, the potential legal defenses, the availability and persuasive weight of the evidence, and the costs, burdens, and uncertainties of litigation. The Land Commissioner, in consultation with the Office of the Attorney General, exercises this discretion in determining whether a particular case should be pursued through OBA litigation.

III. Rapid Coastal Erosion Has Created Difficult Challenges For Governments Responsible for Maintaining Beach Access.

Erosion caused by several severe hurricanes and storms in the late 1990s and early 2000s¹⁴ put scores of houses, originally built landward of the natural line of vegetation,¹⁵ on the public beach.¹⁶ The difficult aftermath of these storms, including several lawsuits, created the urgency for coastal jurisdictions and the GLO to address the problem. The rapid retreat of the line of vegetation, increasing erosion, and the conflict between the rights of property owners and the rights of the public inherent in the rolling beach easement prompted the GLO to formulate a policy to address beach access in the present day environment of heavy shoreline development, rapid erosion, and increasingly active tropical weather.¹⁷

¹³ The complexity of regulatory enforcement requires that a state agency retain broad discretion in carrying out its statutory functions. *State v. Malone Serv. Co.*, 829 S.W.2d 763, 767 (Tex. 1992); *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

¹⁴ Max Mayfield, director of the federal National Hurricane Center, told a congressional panel on September 20, 2005, that he believes that the Atlantic Ocean basin is in a cycle of increased hurricane activity that parallels an increase that started in the 1940s and ended in the 1960s. *See* <http://www.msnbc.msn.com/id/9417904> (site last visited Oct. 28, 2005).

¹⁵ The “line of vegetation” is defined in the OBA as “the extreme seaward boundary of natural vegetation which spreads continuously inland.” TEX. NAT. RES. CODE ANN. § 61.001(5). The OBA provides that in most instances the line of vegetation will be “a [clearly marked] line immediately behind well defined dunes or mounds of sand and at a point where vegetation begins.” TEX. NAT. RES. CODE ANN. § 61.016(a). Other language in the statute clarifies that the line of vegetation “is not affected by occasional sprigs of salt grass on mounds and dunes or seaward of them and by artificial fill, the addition or removal or turf, or by other artificial changes in the natural vegetation of the area.” TEX. NAT. RES. CODE ANN. § 61.017(a).

¹⁶ For purposes of the OBA’s prohibition on interfering with the public’s right of access and use, the public beach is “any beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom.” TEX. NAT. RES. CODE ANN. § 60.013(c).

¹⁷ The location of the “line of vegetation” with respect to a particular encroaching structure is a crucial element of the enforcement of the public beach easement through the OBA. A house that is partially or wholly seaward of the line of vegetation on a Gulf beach where the public has a common law right of use or easement may be an encroachment for which the GLO can sue under the OBA for removal and fines. However, the line of vegetation is often difficult to measure with precision in a particular location, especially in areas where the natural vegetation is affected by hurricanes and tropical storms, high seasonal tides, hardened shore protection, development and human activities.

The OBA has no explicit provision to address rapid changes in the line of vegetation. Yet, because of the dynamic nature of the beach and dune system, areas that are hard hit by storms can recover over time. In some cases, the sand returns, and the vegetation grows back. Thus, a house placed on the public beach by a storm may end up behind the line of vegetation after the area has had time to recover in the natural dynamic beach and dune process. Moreover, homeowners who suddenly find their houses on the public beach after a storm often object to removal of their homes, citing private property rights and constitutional issues. In formulating policy to address these issues, the GLO has determined that resources used to pursue OBA remedies in court might, in many instances, be more effectively used in other ways.

IV. The Moratorium Legislation Gives Houses On The Beach a Two-Year Protection From OBA Removal Lawsuits.

The 78th Texas Legislature added the moratorium provisions to the OBA in 2003.¹⁸ The GLO had recommended the moratorium legislation in part to address the difficult issues surrounding the dynamic and often rapid movement of the line of vegetation following weather events. It was designed to give homeowners in areas affected by the landward migration of the line of vegetation a period of two years during which suits for removal under the OBA are prohibited. During that time, the line of vegetation may recover, or the homeowners can decide how to handle the property that has ended up on the beach.

In its implementation of the moratorium legislation, the GLO set out to determine which houses on the Texas Gulf coast were located wholly or partially seaward of the line of vegetation in the fall of 2003. Program staff conducted field investigations, viewed aerial photographs and surveys, and consulted meteorological records. Based on the available empirical data, the GLO attempted to identify houses seaward of the then-existing line of vegetation, and confirmed its findings with the University of Texas Bureau of Economic Geology. From the set of houses that could be determined as being seaward of the line of vegetation based on its empirical findings, the GLO selected for moratorium orders beach houses that were wholly or partially seaward of a determinable line of vegetation.¹⁹

On June 7, 2004, a moratorium order was issued for each of 116 houses in Galveston and Brazoria counties. The GLO has determined that the 116 houses were located partially or wholly seaward of the line of vegetation as of June 7, 2004. A small number of houses that appear to be seaward of the line of vegetation did not receive moratorium orders. This action is consistent with the moratorium legislation, which states, in part, that “issuance of an order under this section is purely within the discretion of the commissioner. This section does not create a duty on the part of the Commissioner to issue an order related to all or part of a house, regardless of any determination made.”²⁰ The GLO has several active OBA

¹⁸ TEX. NAT. RES. CODE ANN. § 61.0185.

¹⁹ The moratorium legislation directed the commissioner to determine the line of vegetation “in accordance with Section 61.016 and Section 61.017.” TEX. NAT. RES. CODE ANN. § 61.0185(b). In some areas, the determination of the line of vegetation is complicated by the effects of seaward-lying hard shore protection, such as geotextile tubes, rip-rap, and bulkheads.

²⁰ TEX. NAT. RES. CODE ANN. § 61.0185 (i).

enforcement cases currently ongoing,²¹ and the decision whether to file a removal suit against a house that is arguably on the beach and not subject to a moratorium order is solely within the Commissioner's discretion.²²

V. The GLO Is Developing Policies To Address Houses on the Beach.

As the end of the moratorium period approaches, the Land Office is exploring strategies to address the many difficult issues raised, including policies to encourage voluntary removal of houses that end up on the beach²³ The GLO disfavors an approach that requires the filing of a large number of lawsuits. While the GLO fully intends to initiate and pursue appropriate actions after the moratorium ends, a policy of wholesale divisive and costly litigation against a hundred or more property owners would be inefficient and would be unlikely to preserve and enhance beach access in a timely manner. The GLO, along with the coastal communities affected by the rapidly retreating shoreline, will work to create a more cooperative and cost effective way to remove houses from the beach.²⁴

²¹ *Aplin, et al. v. State*, No. 25269 (Dist. Ct. of Brazoria County, 149th Judicial Dist. of Texas) (suit filed by beachfront property owner opposing removal of and seeking to repair a bulkhead located on the public beach in Village of Surfside Beach); *Brannan, et al. v. State, et al.*, No. 15802-JG-01 (Dist. Ct. of Brazoria County, 239th Judicial Dist. of Texas) (beachfront property owners allege that they were denied the use of economic benefit of beachfront homes due to the GLO and/or Village of Surfside Beach permitting process and that imposition of the "rolling easement" for public use and access to the beach is a "taking;" state counterclaimed for removal of houses located on the public beach); *Jacobson v. State, et al.*, No. 25139 (Dist. Ct. of Brazoria County, 239th Judicial Dist. of Texas) (suit filed by beachfront property owner opposing removal of and seeking to repair a bulkhead located on the public beach in Village of Surfside Beach); *Palmer v. State*, No. 25208 (Dist. Ct. of Brazoria County, 149th Judicial Dist. of Texas) (suit filed by beachfront property owner opposing removal of and seeking to repair a bulkhead located on the public beach in Village of Surfside Beach); *State v. Domit Construction & Development*, No. GV504519 (Dist. Ct. of Travis County, 261st Judicial Dist. of Texas) (suit filed for temporary and permanent injunction to prevent encroachment on public beach for construction of 26-story condominium project and for damage to dunes on South Padre Island); *State v. Guiberson, et al.*, No. GV400584 (Dist. Ct. of Travis County, 201st Judicial Dist. of Texas) (suit for removal and relocation of three unauthorized structures located on state-owned submerged land and/or encroaching on the public beach easement in Treasure Island); and *State v. Teinert, et al.*, No. GV302969 (Dist. Ct. of Travis County, 353rd Judicial Dist. of Texas) (suit to enjoin unauthorized repair and require removal of bulkhead properties on the public beach in Village of Surfside Beach). See also *State v. Pryor, et al.*, No. GV302482 (Dist. Ct. of Travis County, 201st Judicial Dist. of Texas) (suit to enjoin construction of a fence encroaching on the public beach);

²² The same factors that complicate the GLO's determination of the line of vegetation discussed at Note 16, *supra*, make the development of favorable facts in a lawsuit problematic.

²³ Assistance to property owners could include financial assistance for relocation expenses. Section 33.603(b)(8) of the Coastal Erosion Planning and Response Act (CEPRA), TEX. NAT. RES. CODE ANN. §§ 33.601-33.612 (Vernon 2001 & Supp. 2005) was amended during the 79th Texas Legislature to allow CEPRA funds to be used to reimburse property owners for the cost of removal and relocation expenses for structures on the public beach.

²⁴ The State of Texas Mitigation Plan approved by the Federal Emergency Management Administration (FEMA) provides that the "highest priority mitigation projects [for purposes of requesting FEMA Hazard Mitigation Grants] will be the voluntary removal of primary residential structures. . . . The result will be a permanent land use change that includes a significant enhancement to the natural resource values and low-impact recreational opportunities for the public." State of Texas Mitigation Plan, October 2004, Office of the Governor, Governor's Division of Emergency Management, page 4-3, available at <http://www.txdps.state.tx.us/dem/mitigation/statemitplan.pdf> (last viewed Nov. 14, 2005). Moreover, the GLO, as a participating agency in formulating the State Hazard Mitigation Plan, has identified relocation of houses on the beach as a top priority for coastal hazard mitigation: "The homes located seaward of the line of vegetation

are the first houses to be affected by storms, and the debris from these homes could cause serious damage to other homes as well as costly damage to geotextile tube shoreline protection projects.” *Id.* at 3-20. Because these priorities are established in the State Mitigation Plan, local governments can apply for FEMA Hazard Mitigation Grants to address the relocation or removal of houses on the beach following a presidential disaster declaration.

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Program Suggestion: To address public access concerns, the TCMP should:

- 1) seek ways to provide more environmentally sensitive public access and related amenities that will lessen the impact to natural resources at project sites funded through the TCMP. The TCMP staff should continue to address this issue in grants workshops and in its work with applicants who submit draft applications. The Council is strongly encouraged to allow the TCMP grants staff to work with recipients to modify elements or the scope of work of approved projects to achieve a better balance between public access and natural resource impacts;
- 2) work with local governments and other appropriate entities to ensure that signage indicating access to public beaches is suitably located and that inappropriate signs are removed; and
- 3) work with the City of Galveston to expeditiously complete the process for approval and certification of Galveston’s dune protection and beach access plan without further delay or extension.

Response: The TCMP grants staff continues to work closely with applicants through the draft application process and in grant workshops on strengthening all types of projects that are submitted under the grant program. The Council has modified the grant guidance document this year to set aside \$1.2 million of the \$1.8 million that the Council passes through to eligible applicants for habitat protection, restoration and acquisition projects, and land acquisitions that increase public access to coastal bays and gulf beaches. The Council has also indicated the need for more projects that protect and improve the management of coastal natural resource areas.

The Beach/Dune Program and the GLO’s Coastal Dunes Manual promote the use of walkovers to access the beach from off-beach locations, such as parking areas. With regard to the concerns about access around geotextile shoreline protection projects, local governments are required to ensure that access is maintained according to their state-certified beach access plan. In addition, local governments must ensure that the width of the public beach is not decreased as a result of a shoreline protection project.

Both the beachfront construction area and the dune protection area are statutorily limited to 1,000 feet landward of the line of mean high tide of the Gulf of Mexico. Within the 1,000 feet, construction projects or projects that will impact dunes must obtain a beachfront construction certificate and/or a dune protection permit from the applicable local government, even if the local government is the applicant. These permits and certificates are reviewed by the GLO. In addition, these projects are required to follow the mitigation sequence as detailed in the

Beach/Dune Rules, 31 TAC §15.4, which requires the avoidance or minimization of impacts and the mitigation or compensation of any impacts that occur.

An additional measure that could be taken to provide more environmentally sensitive public access and related amenities would be to have qualified staff, such as Beach/Dune team members review construction plans for projects outside the jurisdiction of the DPA but within the TCMP boundaries, so that the same level of protection is offered to natural resources in all locations.

The primary area where beach access signage needs to be addressed is within the jurisdictions of the City of Galveston and Galveston County. The City of Galveston received conditional certification of its amended plan on July 16, 2004. In the new plan, many new beach access points were added which require new signage. In its plan the City of Galveston outlines an implementation schedule. In the 0-2 year phase of the schedule the City is required to address the “negative” signs and install signs for all 41 beach access points. The GLO has worked closely with the City to ensure that it had adequate funding to address the signage needs. Staff contacted the City when deobligated CIAP funds were available, offering them the funds to meet the needs of its 0-2 year implementation schedule.

To ensure the plan is being adequately implemented, GLO staff conducted a comprehensive inspection of all 41 beach access points in August 2006. Where signage was indicated to be lacking or in violation of the Texas Open Beaches Act, the City was notified. Furthermore, the GLO notified the City that CEPRAs grant funds were being withheld until all aspects of the conditionally certified plan were in full compliance. This action is currently ongoing with a meeting between the GLO and the City set for December 11, 2006.

The City of Galveston’s Beach Access and Dune Protection Plan was conditionally certified July 16, 2004 shortly after this 312 Review was completed. The portion of the City’s plan that was conditionally certified is the East Beach area, which includes Access Point 1 and the area between AP 1 and AP 2, which is essentially the area between Apffel Park and Stewart Beach. The City was required to provide off-beach parking and access points to the beach in compliance with the OBA and Beach/Dune Rules. This portion of beach has been closed to vehicular traffic for many years, but was not consistent with law due to the lack of access points and off beach parking. The area in question is under intense development. The East Beach area is approximately two and one-half miles long, and when the plan was conditionally certified two existing condominiums were located adjacent to this stretch of beach. Since the time of the plan’s conditional certification five more condominiums are either planned or currently under construction in this area. The City worked closely with the GLO to provide temporary parking during the construction phase of the projects, which would then convert to permanent parking with beach access points as required by law. When all phases of the permanent parking and access ways are in place the City will apply to have its conditionally certified plan fully certified.

Galveston County’s plan was certified September 8, 2006. The County will install signage reflecting the changes. A similar inspection that was completed for the City of Galveston will be conducted for Galveston County approximately six months after the plan is certified. As is the case with the City, where signage is indicated to be lacking or in violation of the OBA, the County will be notified, and the GLO will work with the County to correct any inadequacies.

Program Suggestion: The TCMP should address issues surrounding the use of geotextile tubes as shoreline protection structures against coastal erosion, particularly in terms of:

- a) whether private property primarily benefits from publicly funded placement;
- b) time frame for use and removal;
- c) location for placement;
- d) monitoring and repair;
- e) nonstructural alternatives;
- f) linkage to beach renourishment activity; and
- g) enforcement/mitigation/removal of illegally placed geotextile tubes.

Response: The Council promulgated rules under 31 TAC §501.26(b) addressing the construction of structural shore protection projects, including geotextile tube projects, in critical dune areas or areas adjacent to or on gulf beaches. The Council rules draw largely from the recommendations of the Texas Geotextile Tube Policy Committee, formed by the Council in December 2000, and are included in the report entitled “Evaluation and Recommendations for Using Geotextile Tubes for Shore Protection in Texas”(McKenna, 2001). The shore protection project rules were subsequently adopted by reference in the Beach/Dune rules at 31 TAC §15.6, and are discussed in greater detail below as they relate to the issues raised in this program suggestion.

Although there are instances where private property indirectly receives protection from certain geotextile tube projects, the primary purpose of those projects is to aid in the protection of infrastructure (roads, utilities, etc.) [31 TAC § 501.26(b)(2)]. For example, geotextile tube projects protect FM 3005, the only hurricane evacuation route from West Galveston Island. Furthermore, this indirect protection of private properties by shore protection projects preserves tax base and bolsters the local economy, which are assets to the public (e.g., finance of the public school systems, secondary spending of residents and visitors).

Geotextile tube projects constructed in critical dune areas or areas adjacent to or on gulf beaches must comply with the Council rules or be subject to removal. To remain in compliance, a project located parallel to the shore must be located landward of the boundary of state-owned submerged lands [31 TAC § 501.26(b)(3)]; the pre-project beach width must be maintained if the project is located on the public beach; existing public access in the area of a project must be replicated if not enhanced [31 TAC § 501.26(b)(15)]; where appropriate, a project must remain covered with sand and dune vegetation; the project sponsor must develop a long-term monitoring protocol to determine the effect on the beach/dune system and the project’s effectiveness. [31 TAC § 501.26(b)(14)] The project sponsor is responsible for the ongoing maintenance of the project and, if necessary, beach nourishment and/or removal. [31 TAC § 501.26(b)(12)]

The Council rules list the preferred order for locating a geotextile tube project [31 TAC § 501.26(b)(4)]. The preference is for projects to be located landward of the foredune ridge. Where no foredune ridge is present, the preference is for a project to be located landward of the line of vegetation. Where there is no other practicable solution, a project may be located at the most landward point of the public beach provided that the project sponsor has provided financial assurance that the pre-project beach width will be maintained through beach nourishment. Since

the adoption of the Council's shore protection rules, and the subsequent incorporation of these rules into the Beach/Dune rules, the only geotextile tube projects that have been constructed in Galveston County were located landward of the line of vegetation. Although the rules allow placement on the public beach if no other options exist, the requirement for beach nourishment has provided a disincentive for the projects in this location. Moreover, the requirement of a dune protection permit [31 TAC § 501.26(b)(8)] and a mitigation plan [31 TAC § 501.26(b)(8)] for any adverse effects on critical dune areas as a result of construction and presence of a shore protection project serve to ensure that adverse effects are minimized, rectified, and compensated for as provided in 31 TAC § 501.26(a)(2).

As previously mentioned, the Council rules require long-term monitoring of a geotextile tube project to determine its effect on the beach/dune system its overall success. Prior to construction, the project sponsor must collect scientifically valid baseline data for monitoring the line of vegetation, the extent of the dry beach, a beach profile, and any other characteristics necessary for evaluating the project's effectiveness. Again, the project sponsor is responsible for ongoing maintenance, including repair.

Three independent studies have been completed to evaluate the impact of geotextile tubes on the public beach and their effectiveness during coastal storms. Gibeaut and others (2003a) conducted ground and airborne LIDAR (LIght Detection And Ranging) topographic surveys and evaluated historical shoreline change data to assess the performance of the geotextile tubes in protecting property during storms (TS Allison and TS Fay) and to determine impacts to the public beach and adjacent shorelines. Shiner Moseley and Associates (2004) reviewed aerial photography and conducted a one-year wading-depth beach profile survey to determine changes in shoreline contour position following TS Grace and Hurricane Claudette in 2003. Dean (2004) evaluated the Shiner Moseley and Associates data and conducted a site visit to identify the differences between the beaches with geotextile tubes and those without them. These studies are discussed in detail at pages 28-31 of the Texas Coastwide Erosion Response Plan: 2004 Update prepared for the GLO by Kimberly K. McKenna, P.G. (http://www.glo.state.tx.us/coastal/cerp/pdf/TCERP_2004.pdf). They found geotextile tubes to be neutral factors in the overall sediment budget of the beach/dune system.

Section 501.26(a)(5) of the Council rules state "non-structural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods." However, due to a lack of funding and adequate sand sources, geotextile tubes have been used as an interim measure to mitigate the effects of erosion and provide protection against storm surges until large-scale beach nourishment projects can be funded. The GLO has undertaken numerous efforts to increase the feasibility of nonstructural alternatives, including funding nearshore sand source investigations on the upper Texas coast and partnering with the U.S. Army Corps of Engineers (USACE) to 1) identify Dredge Material Placement Areas (DMPAs) as potential sources for beach nourishment and 2) continue the beneficial use of dredge material from maintenance dredging in Rollover Pass and Brazos/Santiago Pass for beach nourishment projects (see the response to program suggestion 5 for more information).

As previously noted, the geotextile tube projects that have been constructed in Galveston County

since the adoption of Council's shore protection project rules were located landward of the line of vegetation and in compliance with those rules. With respect to projects that were constructed prior to their adoption, the Council entered into memoranda of understanding (MOUs) with the City of Galveston and Galveston County that bring projects in those jurisdictions into compliance with the Council's shore protection rules. The MOUs provide for long-term monitoring and maintenance of the projects, including beach nourishment. With respect to the geotextile tube project located at Treasure Island in Brazoria County on the south side of the San Luis Pass, the GLO sought but failed to achieve a memorandum of understanding with the Treasure Island Municipal Utility District (TIMUD) that had sponsored the project. The TIMUD did not possess the financial resources to undertake the long-term monitoring and maintenance that the Council rules require. Before the initiation of any enforcement action for removal of the project, the geotextile tube failed due to winter storms in 2004-2005. There are only fabric remnants of the tube left out in the water.

The GLO sponsored legislation in 2003 that amended the provisions of the Texas Natural Resources Code, § 61.022(a) to limit the type of local government that can legally sponsor a shore protection project on the public beach to municipalities and counties. This ensures that the governmental entity sponsoring the project will have the financial resources to undertake long-term monitoring and maintenance, including beach nourishment to preserve pre-project beach width.

Program Suggestion: In order to move toward sustainable, uniform, and comprehensive management of the Texas shoreline for multiple uses and objectives:

- 1) OCRM strongly encourages the state to actively consider all nonstructural options to address shoreline erosion, including regulatory and planning tools, direct land management, restoration and acquisition strategies, non-regulatory measures, research, technical assistance, and education and outreach strategies; and
- 2) the GLO should include at least one TCMP staff member as member of the Coastal Erosion and Planning Response Act (CEPRA) project selection committee as a means to improve program coordination and compatibility of CEPRA and TCMP projects and consistency of policies.

Response: The GLO continues to pursue and improve Texas' capacity to employ nonstructural options to address shoreline erosion through various programs and agency initiatives. The Land Commissioner recently released an eight-point "Plan for Texas Open Beaches", which includes requesting that the Texas Legislature grant counties the authority to establish setback requirements for new development and provides \$1.3 million in CEPRA funds to help homeowners move their homes off the public beach. The Commissioner's plan immediately preceded the expiration of the moratorium order that suspended the state's ability to file suit to remove 116 houses from the public beach and outlines the steps the Commissioner can take to mitigate the effects of erosion and maintain open beaches in Texas.

In addition, the 2006-2010 §309 Assessment and Strategies Report proposes to evaluate the cost/benefit of building setbacks from the coast for development. Findings from this study may support the Land Commissioner's effort to implement setbacks at the county level.

The §309 report also proposes to evaluate the status and trends of dune volume, morphology, and vegetative cover along the more developed portions of the Texas gulf shoreline. New and historic optical imagery will be analyzed and topographic lidar surveys will be conducted annually for five years to develop a time-series for analysis of the short-term dynamics of the beach/dune system. It is anticipated that this study will help the GLO identify areas of critical need, evaluate current erosion response efforts, and produce site-specific recommendations for beach nourishment and dune restoration projects. Furthermore, the trends data will enable the GLO to determine if Texas is experiencing a net loss of its dunes within the areas surveyed, which may provide the impetus for more protective regulations.

The GLO recently embarked on an initiative called Coastal Texas 2020 to unite local, state, and federal efforts to promote the economic and environmental health of the Texas coast. Issues facing Texas were identified through a series of public meetings held by five regional advisory committees. The final report emphasizes the need to address coastal erosion and shoreline management and recommends beach nourishment as the preferred response. One goal of Coastal Texas 2020 is to increase the state's share of federal funding, including CIAP and WRDA beach restoration funding, to fight coastal erosion. To this end, the final report was distributed to the 109th U.S. Congress and the 79th Texas Legislature.

The GLO held the Coastal Texas 2020 Technical Erosion Conference in September 2005 to further promote and discuss the issues surrounding this initiative. Over 250 participants from local, state, and federal government, non-profit organizations, universities, private interests, and the public attended the conference.

To better manage Texas' response to coastal erosion, the CEPRA Program periodically conducts a detailed review of coastal erosion projects and studies conducted through CEPRA and via other means, documenting the findings and recommendations in the *Texas Coastwide Erosion Response Plan*. The most recent update to the plan was completed in December 2004. Some examples of recommendations from the 2004 update include: acquiring threatened properties and coastal wetland areas prior to development; removing derelict structures along the shoreline and acquiring upland properties to allow natural marsh and shoreline migration; continuing to explore for offshore sand resources in Jefferson, Chambers, Galveston, and Brazoria County; initiating planning with navigation districts on wake control in vulnerable areas; and setting public education as a high priority for describing coastal issues such as shoreline erosion.

In addition to the physical beach nourishment and dune restoration projects that the GLO supports, numerous studies have been funded through the CEPRA program, TCMP grant programs (§306 and §309), and the Coastal Impact Assistance Program to investigate and identify sand sources to increase the potential for beach nourishment projects on the Texas coast. The GLO recently initiated several contracts with the USACE to access and investigate Dredge Material Disposal Areas (DMPAs) as potential sources of beach quality sand. The GLO has already identified useable sand in several DMPAs on Galveston Bay and is working to secure funds to extract the sand. Furthermore, the GLO continues to partner with the USACE to use dredge material from the maintenance dredging of Rollover Pass and the Brazos/Santiago Pass to nourish adjacent eroding beaches.

The Texas Coastal Erosion Data Network (TCEDN) was developed by Texas A&M University-Galveston through TCMP Cycle 6 and 10 funds as a centralized repository for engineering studies, reports, and research related to coastal erosion; particularly sand sources and beach nourishment activities. The purpose of TCEDN is to provide coastal managers, engineers, and other stakeholders with up-to-date information, including geospatial data, by which to base their decisions.

The USACE, with participation by GLO and local authorities, is completing the Sabine to Galveston Erosion Project Feasibility Study, which is a comprehensive evaluation of the upper Texas gulf coast erosion problems and potential solutions. The Land Commissioner is working to gain federal funding to complete this study and implement the recommended solutions (preliminary results indicate beach nourishment and dune restoration as the preferred solution). The Land Commissioner is also in the process of obtaining federal authorization and funding for a similar study of the entire coast of Texas (the Coast of Texas Erosion Project Feasibility Study), including both bays and gulf beaches. Furthermore, the Land Commissioner is working with Brazoria County to obtain federal funding for a reconnaissance study and follow-on feasibility study for the Brazoria County coastal erosion problems. At the same time, the Land Commissioner is working with the Texas Legislature to establish a permanent, dedicated funding source for the CEPRA program to provide match to federal erosion response funded projects. All of the above-mentioned feasibility studies are similar in scope and complexity to an environmental assessment.

It is important to make a distinction between all structural responses and those used in bay environments in Texas. Texas Parks and Wildlife Department, U.S. Fish and Wildlife Service, and the National Marine Fisheries Service agree that rock structures in bay systems are the most cost-effective, long-term erosion response and provide important habitat for marine organism growth. For example, there is a need for hard structures along some navigation channels where high energy cannot be adequately addressed by soft responses such as vegetative planting and other non-structural alternatives. When properly designed and placed, hard structures in bay systems are environmentally sensitive and do not increase impacts to coastal natural resources.

To improve the coordination and compatibility of CEPRA and TCMP projects, two members of the TCMP staff participated in the CEPRA project selection committee for the 4th biennium of funding under CEPRA Grant Cycle 4. In addition, one member of the CEPRA staff participated in the project review team for Section 306/306A projects proposed under TCMP Grant Cycle 11 and 12. The TCMP plans to continue this crossover of staff for future grant cycles under both TCMP and CEPRA.

Necessary Action: Within one year of the date of these findings, the TCMP must submit to OCRM an explanation discussing how CEPRA and any other policies, programs, or regulations that allow or authorize erosion control structures are consistent with the approved Texas coastal management program and Coastal Zone Management Act statements of policy regarding protection of and access to public beaches and other public coastal areas. This explanation may be the same analysis submitted as part of a program change to incorporate CEPRA and any other policies, programs, or regulations into the TCMP.

Response: This explanation was submitted as part of the TCMP's Formal Change Submission covering program changes from April 1997 through October 2004 that was submitted to OCRM in July 2006.

Necessary Action: As required by Section 306(d)(2)a of the CZMA, if the state of Texas wishes to spend CZMA funds for revitalization of urban waterfronts, the TCMP must identify, designate, and prioritize specific deteriorating and underutilized urban waterfronts and ports as areas of particular concern in order to use 306A funds in those areas. The TCMP must develop an appropriate criterion or requirement to link public access or public safety as it relates to shoreline hardening and stabilization, piers, and piling repairs in deteriorating and underutilized urban waterfronts and ports for projects receiving Section 306A funds. The designation and linkage criterion or requirement must be submitted as a program change to OCRM and receive concurrence that both meet the intent of Section 306A of the CZMA prior to submitting FY07 project proposals or expending any FY07 or later CZMA Section 306A funds.

Response: Letter dated December 16, 2005, to John King, Coastal Programs Division Chief, from Jerry Patterson, Chairman, Texas Coastal Coordination Council. The text of the letter is as follows:

“The Coastal Coordination Council (Council), in response to Necessary Action #3 of the final Section 312 evaluation findings for the Texas Coastal Management Program (TCMP), will not seek Coastal Zone Management Act (CZMA) Section 306A funding for the revitalization of deteriorating or underutilized designated urban waterfronts or ports at this time. Furthermore, criteria to identify or prioritize urban deteriorating and underutilized waterfronts and ports as areas of particular concern will not be developed.

Currently, no external guidance exists in Texas law or in a state program that provides appropriate criteria for designating deteriorating and underutilized urban waterfronts and ports. Moreover, Texas has not seen local community initiative to fund deteriorating and underutilized urban waterfronts and ports. Without such legislative, programmatic, or local community policy input, the Council cannot effectively identify, designate, or prioritize specific deteriorating and underutilized urban waterfronts and ports as areas of particular concern under the TCMP.

The Council understands that the lack of an appropriate designation of underutilized urban waterfronts and ports under the TCMP prohibits the program from using CZMA funds for shoreline stabilization. However, small-scale construction, land acquisition, and educational waterfront activities remain eligible for funding under the public access or public education and outreach funding categories of §306/306A.

If you have any questions or need additional information, please contact Sam Webb, Deputy Commissioner of Coastal Resources, at (512) 463-2718 or sam.webb@glo.state.tx.us.”

Program Suggestion: To continue effectively and efficiently implementing the federal consistency and permitting processes, the TCMP is urged to:

- 1) implement a phased plan to open the permitting assistance office in Galveston to serve the upper Texas coast;

- 2) encourage other federal agencies to take advantage of the ICT process; and
- 3) encourage the inclusion of each ICT's analysis, decision-making, and public comment responses as part of the documentation for a consistency determination.

Response: The upper Texas coast permitting assistance office opened in Galveston in May of 2006. Since that time, the Permit Service Center (PSC) has promoted the new office to local, state, and federal government; various coastal stakeholder groups; and the general public to ensure potential users are aware of this resource.

TCMP staff has encouraged federal agencies to participate in the ICT process. However, the USACE, Galveston District is responsible for organizing and appointing agencies to an ICT, according to the needs of each ICT.

The Council formed an ICT work group in 2003 to reconcile concerns regarding ICT reviews as they relate to consistency for federal agency activities. Changes recommended by the ICT work group have been approved and adopted by the Council and incorporated into the rules (31 TAC §506.28). The amended rules were adopted to be effective January 28, 2004, (29 Tex Reg 639) and were included in the program change packet submitted to NOAA in February 2005.

Additionally, each Environmental Impact Statement is a joint ICT/USACE document that includes the analysis and decisions made by the ICT, public comments, and responses to those comments.

Necessary Action: Within three months from the date of these findings, the TCMP must work with OCRM to determine: a) the specific Texas statutes, policies, and rules or regulations that are a part of the approved TCMP and are subject to the program change process; and b) whether there are new statutes, policies, or rules adopted by the state since program approval that should be considered for incorporation into the TCMP. If there have been amendments or revisions to any of these statutes, policies, and rules since program approval that have not been subject to the program change process and incorporated into the TCMP, or if there are new statutes, policies, or rules adopted by the state since program approval that should be considered for incorporation into the TCMP, the TCMP and OCRM must complete a mutually agreed upon schedule for submission of these changes as program changes.

Response: Letter dated September 9, 2005, to John King, Coastal Programs Division Chief, from Jerry Patterson, Chairman, Texas Coastal Coordination Council. The text of the letter is as follows:

“We have received the final Section 312 evaluation findings (findings) for the Texas Coastal Management Program (TCMP). Necessary Action #4 of the findings requires TCMP staff to work with the Office of Ocean and Coastal Resource Management (OCRM) to determine: 1) the specific Texas statutes, policies, and rules or regulations that are a part of the approved TCMP and are subject to the program change process; and 2) whether there are new statutes, policies, or rules adopted by the state since program approval that should be considered for incorporation into the TCMP. If there have been amendments or revisions to any of these statutes, policies, and rules since program approval that have not been subject to the program change process and

incorporated into the TCMP, or if there are new statutes, policies or rules adopted by the state since program approval that should be considered for incorporation into the TCMP, the TCMP and OCRM must complete a mutually agreed upon schedule for submission of these program changes.

The TCMP staff is currently in the process of preparing a final program change packet covering the TCMP from its inception through October 2004. A draft of that program change packet was submitted to OCRM in February 2005. In June 2005, TCMP staff received a letter from David Kaiser outlining OCRM's detailed comments on the draft program change packet. TCMP staff is working to address those comments and incorporate the changes into a final program change packet for submission in January 2006. In addressing Mr. Kaiser's comments, TCMP and OCRM staff members have been working together to identify specific Texas statutes, policies, and rules that comprise the TCMP and are subject to the program change process. Therefore, in light of this cooperative effort and the progress to date on the program change packet, OCRM staff has indicated that no additional documentation needs to be filed by September 10, 2005. It is agreed that the submission of the final TCMP program change packet, including the compilation of statutes policies and rules, no later than January 17, 2006, will satisfy the requirement of Necessary Action #4.

If you have any questions or need additional information, please contact Sam Webb, Deputy Commissioner of Coastal Resources, at (512) 463-2718 or sam.webb@glo.state.tx.us.”

Program Suggestion: The TCMP consistency review process should more clearly document in writing and as part of the official record the analysis and decision making that go into the review of projects for all goals and policies of the TCMP rather than just those under the jurisdiction of the reviewing/permitting state agency. The TCMP should take steps to make its processes and actions as transparent as possible to the public, including public participation efforts and all written representations that make up the record of decision-making.

Response: TCMP and GLO staff are working to more adequately address in writing the rationale behind consistency determinations for projects and rule amendments subject to the TCMP. For example, consistency findings for rule amendments to beach access and dune protection plans have included and will include a more thorough analysis than in the past.

The TCMP has developed a Consistency Review Manual that is available to state, and federal agencies and the public. The manual has been distributed to the USACE, Council and Executive Committee members, GLO Field Office staff, and TCMP staff. The TCMP is also considering adding a component to the annual Grant Workshops to discuss consistency requirements. In addition, general flowcharts that outline the consistency review process will be included on GLO's consistency web page. The current consistency statement, which is required for all projects that occur within the coastal zone and require a USACE permit, is being revised through the Permitting Assistance Group to include a series of questions to facilitate understanding of the TCMP goals and policies. Once this document is complete, it will be sent to the USACE offices and the Galveston and Corpus Christi Permit Service Center offices.

Appendix C. Persons and Institutions Contacted

U.S. Senators

Honorable Kay Bailey Hutchison
Honorable John Cornyn

U.S. Representatives

Honorable Ted Poe	Honorable John Culberson
Honorable Al Green	Honorable Ron Paul
Honorable Ruben Hinojosa	Honorable Sheila Jackson Lee
Honorable Nick Lampson	Honorable Lloyd Doggett
Honorable Solomon P. Ortiz	Honorable Gene Green

Texas General Land Office

Jerry Patterson, Commissioner
Sam Webb, Deputy Commissioner, Coastal Resources
Eddie Fisher, Director, Coastal Stewardship Division, Coastal Resources
Sheri Land, Director, Coastal Coordination Division, Coastal Resources
Allison Buchtien, Galveston Permit Service Center
Tammy Brooks, Coastal Resources
Tom Calnan, Coastal Resources
Lorrie Council, Coastal Resources
Mark Evans, Coastal Resources
Jeff Frank, Coastal Resources
Scot Friedman, Coastal Resources
Daniel Gao, Coastal Resources
Matt Mahoney, Coastal Resources
Ray Newby, Coastal Resources
Dave Parmer, Coastal Resources
Melissa Porter, Coastal Resources
Ben Rhame, Coastal Resources
Angela Sunley, Coastal Resources

Coastal Coordination Council and Member Agency Representatives

Rev. Robert Jones, local citizen representative
James R. Matz, local business representative
Victor Pierson, local government representative
Jose Dodier, Member, Texas State Soil and Water Conservation Board
Elizabeth Jones, Commissioner, Railroad Commission of Texas
Jack Hunt, Member, Texas Water Development Board
John W. Johnson, Chairman, Texas Transportation Commission
Dr. Robert R. Stickney, Director, Texas Sea Grant College Program
J. Robert Brown, Member, Parks and Wildlife Commission
Dianna Noble, Texas Department of Transportation
Cherie O'Brien, Texas Parks and Wildlife Department

Federal Agency Representatives

John Machol, U.S. Army Corps of Engineers, Galveston District
Heather Young, NOAA National Marine Fisheries Service, Habitat Conservation Division
Moni Belton, U.S. Fish and Wildlife Service
John Wallace, Refuge Manager, Laguna Atascosa National Wildlife Refuge

Local Government Representatives

Richard Ridolfi, Mayor Pro Tem, Town of South Padre Island
Bob Pinkerton, Mayor, Town of South Padre Island
Dewey Cashwell, City Manager, Town of South Padre Island
Clifford Rowell, Assistant City Manager, Town of South Padre Island
Raul Morales, Public Works Director, Town of South Padre Island
Carlos Cascos, Cameron County Judge-elect
Melissa Zamora, Assistant to Cameron County Judge-elect Carlos Cascos
David Garza, Cameron County Commissioner, Precinct 3
Sofia Benavides, Cameron County Commissioner, Precinct 1
Gavino Vasquez, Cameron County Precinct 1 Commissioner Administrative Assistance
Javier Mendez, Director, Cameron County Parks System
Joe E. Vega, Deputy Director, Cameron County Parks System
Jared Hockema, Former Cameron County Judge Administrator
Kelly Hamby, City Secretary, Village of Surfside
Ron Bottoms, City Manager, Freeport
Kelly Smith, Brazoria County, Precinct 1
Debbie Alongis, City Secretary, Quintana
John Lee, Office of Emergency Management, Galveston County
John Brick, City Manager, Jamaica Beach

Other Organizations and Representatives

Ray Allen, Executive Director, Coastal Bend Bays and Estuaries Program
Helen Drummond, Director, Galveston Bay Estuary Program
Stephen Johnston, Galveston Bay Estuary Program
Jeff DallaRosa, Galveston Bay Estuary Program
Bob Stokes, President, Galveston Bay Foundation
Paul Manarriz, Chairman, Town of South Padre Island Beach and Dune Task Force
Nancy Marsden, Town of South Padre Island Beach and Dune Task Force
Lucinda Wierenga, Town of South Padre Island Beach and Dune Task Force
Charles Brommer, Town of South Padre Island Beach and Dune Task Force
Alita Bagley, Town of South Padre Island Beach and Dune Task Force
Guy Blatnik, Town of South Padre Island Beach and Dune Task Force
Thor Lassen, President, Ocean Trust
Robert Cornelison, Port Director, Port Isabel-San Benito Navigation District
Laura Maxwell, Executive Director, Valley Proud Environmental Council

Academia

Tom Linton, Texas A&M University
Tim Dellapena, Texas A&M University-Galveston

Rusty Feagin, Texas A&M University-Galveston
James C. Gibeau, Bureau of Economic Geology, University of Texas at Austin
Tiffany Hepner, Bureau of Economic Geology, University of Texas at Austin

Appendix D. Persons Attending the Public Meetings

One public meeting was held on Tuesday, December 5, 2006, at 5:30 p.m. at the Club Padre, 5800 Padre Boulevard, South Padre Island, Texas. The following attended the meeting:

Gary Blatnik, Town of South Padre Island Beach and Dune Task Force
Charles Brommer, Town of South Padre Island Beach and Dune Task Force
Dewey P. Cashwell, City Manager, Town of South Padre Island
Javier Mendez, Director, Cameron County Parks System
Raul G. Morales, Director, Public Works Department, Town of South Padre Island
Paul Munarriz, Chairman, Town of South Padre Island Beach and Dune Task Force
Bob Pinkerton, Mayor, Town of South Padre Island
Richard R. Ridolfi, Mayor Pro Tem, Town of South Padre Island
Clifford Rowell, Assistant City Manager, Town of South Padre Island
Joe E. Vega, Deputy Director, Cameron County Parks System

A second public meeting was held in conjunction with a regularly scheduled meeting of the Coastal Coordination Council on Thursday, December 7, 2006, at 1:00 p.m. at the Stephen F. Austin Building, Room 170, 1700 North Congress Avenue, Austin, Texas. The list of registered attendees below does not differentiate between those attending for the purpose of one meeting or another:

Tom Brown, President, Texas Open Beaches Advocates
Lorraine Brown, Texas Open Beaches Advocates
Barbara Deane, Office of the Attorney General
David Hurlburt, Texas Public Utilities Commission
Walt Kittelberger, Chairman, Lower Laguna Madre Foundation
Jerry Mohn, President, West Galveston Island Property Owners Association
John Lee, Sr., Mitigation Coordinator, Galveston County
Isabel Gallahan, General Land Office
Caroline Ferguson, Nature Conservancy
Doug Beveridge
Jim Weatherford, General Land Office
Gordon Johnson, King Ranch
Rollin MacRae, Texas Parks and Wildlife Department
John Barrett

Appendix E. NOAA's Response to Written Comments

NOAA received written comments regarding the Texas Coastal Management Program. Each of the letters is part of the official record of the evaluation and is briefly summarized below, followed by NOAA's response.

Thomas E. Brown
President, Texas Open Beaches Advocates
Galveston, Texas

Comment: Mr. Brown raised concerns about public access to Texas beaches and the use of geotextile tubes as shore protection. He cited numerous examples in which he stated that the current land commissioner "apparently does not fully support the Texas Open Beaches Act...[and] has not vigorously enforced the Open Beaches Act...." Mr. Brown also noted his concern for the encroachment of existing structures on the beach due to erosion, and expressed his concern that it has been determined by the General Land Office that, using its operational definition, there are no private structures on public beaches. He also specifically noted concerns with the City of Galveston's beach access plan and apparent violations of the plan.

NOAA's Response: NOAA has no comment with regard to Mr. Brown's interpretation that the GLO commissioner does not fully support and vigorously enforce the Texas Open Beaches Act. Unless the evaluation team has misunderstood Mr. Brown's comment that the GLO has determined that there are no private structures on public beaches, there are in fact 116 private structures that the GLO recognizes as being on the public beaches. The section of this document on pages 12-14 discusses this issue, outlines the steps the GLO and the state have and are taking to address the situation, and includes recommendations made by OCRM. With regard to the City of Galveston's beach access plan, pages 14 and 15 of this document discuss that situation, the steps the GLO has and is taking, and recommendations made by OCRM. Mr. Brown's comments will be shared with the GLO staff.

Lorraine Brown
Texas Open Beaches Advocates
Galveston, Texas

Comment: Ms. Brown provided a lengthy written assessment of beach access points in the City of Galveston following an onsite inspection. She has included recommended actions in some cases.

NOAA's Response: The evaluation team appreciates the assessment and will provide a copy of it to the TCMP staff for their use in working with the City to obtain full certification of its dune protection and beach access plan.

Robert C. Cornelison
Port Director, Port Isabel San Benito Navigation District
Port Isabel, Texas

Comment: Mr. Cornelison wrote in support of the General Land Office, the Coastal Coordination Council, and the Texas Coastal Management Program. He indicated that development of the Program was originally viewed with suspicion by members of the marine

industry. However, the Program and the Council have provided clear guidelines and regulations to the business community and have elevated the level of public awareness about the finite nature of coastal resources and the need for stewardship of those resources.

NOAA's Response: No response necessary. The evaluation team thanks Mr. Cornelison for his comments and will share his letter with the Texas Coastal Management Program.