

**EVALUATION FINDINGS**  
**FOR THE**  
**LOUISIANA COASTAL RESOURCES PROGRAM**  
**MARCH 2002 THROUGH MARCH 2005**

**October 2005**

Office of Ocean and Coastal Resource Management  
National Ocean Service  
National Oceanic and Atmospheric Administration  
United States Department of Commerce



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## I. INTRODUCTION

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires NOAA's Office of Ocean and Coastal Resource Management to conduct a continuing review of the performance of states and territories with federally-approved coastal management programs. This document sets forth the evaluation findings of the Director of the Office of Ocean and Coastal Resource Management with respect to operation and management of the Louisiana Coastal Resources Program (LCRP) for the period from March 2002 through March 2005. It contains a description of the review procedures, a description of the program, evaluation findings, major accomplishments during the review period, recommendations, a conclusion, and appendices.

The recommendations made by this evaluation appear in **bold** type and follow the section of the findings in which the 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 LCRP approved by NOAA. These must be carried out by the date(s) specified;

**Program Suggestions** denote actions that the Office of Ocean and Coastal Resource Management 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.

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 Louisiana Coastal Resources Program.

It is the conclusion of this evaluation that the LCRP is successfully implementing and enforcing the federally-approved coastal management program. The evaluation found no need for Necessary Actions. This document contains seven (7) Program Suggestions that denote actions NOAA's Office of Ocean and Coastal Resource Management believes the State should take to improve the program, but which are not mandatory at this time.

## **II. REVIEW PROCEDURES**

### **A. OVERVIEW**

The NOAA Office of Ocean and Coastal Resource Management evaluation staff began its review of the LCRP in December 2004. The §312 evaluation process involves four distinct components:

- An initial document review and identification of specific issues of concern;
- A site visit to Louisiana, 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.

### **B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT**

The evaluation team reviewed a wide variety of documents prior to the site visit, including: the federally-approved program document; program approval findings; subsequent changes to the program; federal assistance awards; performance reports and work products; official correspondence between the program and NOAA's Office of Ocean and Coastal Resource Management; previous §312 evaluation findings; and other relevant information.

Based on this review and on discussions with the Office of Ocean and Coastal Resource Management Coastal Programs Division (CPD) staff, the evaluation team identified the following priority issues:

- Program accomplishments since the last evaluation;
- The effectiveness of the Department of Natural Resources (DNR) and other agencies in implementing, monitoring, and enforcing the core authorities that form the legal basis for the LCRP;
- Implementation of the federal consistency process, including adherence to procedural requirements;
- Status of changes to the core statutory and regulatory provisions of the LCRP;
- Effectiveness of technical assistance, training, and outreach to local governments and public outreach and education in order to further the goals of the LCRP;

- Status and effectiveness of development, support for implementation, and periodic evaluation of Local Coastal Programs;
- Implementation of the wetlands mitigation program; and
- The state's response to the previous evaluation findings dated October 28, 2002. These included program suggestions addressing: 1) LCRP, local coastal program, state, and federal agency coordination; 2) tracking data for exempted projects and local mitigation projects; 3) mitigation; and 4) training and educational materials for local coastal program officials.

### **C. SITE VISIT TO LOUISIANA**

NOAA's Office of Ocean and Coastal Resource Management sent notification of the scheduled evaluation to the Louisiana Department of Natural Resources as the lead agency, relevant federal agencies, and the Louisiana congressional delegation. The LCRP published notification of the evaluation and scheduled public meeting. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on November 18, 2004.

The site visit to Louisiana was conducted from March 21 - 24, 2005. The evaluation team consisted of L. Christine McCay, Evaluation Team Leader, Office of Ocean and Coastal Resource Management, National Policy and Evaluation Division; Josh Lott, Assistant State Liaison Team Leader, Office of Ocean and Coastal Resource Management, Coastal Programs Division; Carleigh Trappe, Program Liaison, Office of Ocean and Coastal Resource Management, Coastal Programs Division; and Janis Helton, staff member of the Alabama Coastal Management Program.

During the site visit, the evaluation team met with the Department of Natural Resources Acting Assistant Secretary of the Office of Coastal Restoration and Management (OCRM), other OCRM administrators and staff, other state agency representatives, federal agency representatives, local government representatives and agencies, academicians, and interest group members involved with or affected by the LCRP. Appendix A lists the individuals contacted during this review.

As required by the CZMA, a public meeting was held on Wednesday, March 23, 2005, at 7:00 p.m. at the Louisiana Department of Natural Resources, Griffon Room, LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana, where members of the general public were given the opportunity to express their opinions about the overall operation and management of the LCRP. Appendix B lists persons who attended the public meeting.

Written comments are also accepted. Appendix C contains responses to written comments received in response to the evaluation.

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

### III. COASTAL PROGRAM AND COASTAL AREA DESCRIPTIONS

The Louisiana Coastal Resources Program (LCRP) was approved by NOAA in September 1980. Louisiana developed the LCRP to manage significant land and water activities in a 5.3 million-acre area that includes all or part of 19 coastal parishes and 40 percent of the nation's coastal wetlands. The coastal boundary extends inland 16-32 miles and seaward three miles to the limit of state waters. The LCRP is based on the Louisiana State and Local Coastal Resources Act of 1978, as amended (Act 361), which authorized the development of a comprehensive coastal management program for the State. The legislation provided for:

- the development of the Coastal Use Guidelines, a set of comprehensive coastal policies governing various activities, including levees, linear facilities, dredged material disposal, shoreline modification, surface alteration, and activities related to the extraction of oil, gas, and mineral deposits;
- a new Coastal Use Permit system established as the principal means for implementing the guidelines (activities on lands five feet above mean sea level and within fast lands are exempted, unless the DNR Secretary finds that the activity would have a direct and significant impact in coastal waters);
- delineation of the inland coastal zone boundary;
- procedures for the designation of special management areas;
- provisions for the development of local coastal programs (LCP). Local governments (parishes) may assume management of uses of local concern by developing a local coastal program consistent with Act 361; and
- an organizational structure for coordinated LCP implementation.

The Secretary of the Department of Natural Resources (DNR) has delegated its authority for the implementation of the LCRP (and the administration of grants awarded by NOAA under the CZMA) to the Coastal Management Division (CMD) within DNR's Office of Coastal Restoration and Management (OCRM). The CMD is responsible for conducting a program of permitting, monitoring and enforcement, and of ensuring compliance with the policies of the LCRP by monitoring the actions of other agencies. The CMD is organized into Permit/Mitigation, Interagency Affairs, and Support Services programs and operates through a central office in Baton Rouge and field offices in Houma, Lafayette, New Orleans, and Lake Charles.

A number of other state agency activities have been incorporated by reference into the LCRP. The Office of Conservation in DNR conducts the in lieu permit process for the extraction of oil, gas, sulfur, and other minerals. Other state agencies involved in LCRP implementation include: the Department of Wildlife and Fisheries (DWLF); the Department of Environmental

Quality (DEQ); the Department of Transportation and Development (DOTD); and the Department of Health and Hospitals (DHH). Intra- and interagency relationships with these agencies are spelled out in a series of Memoranda of Understanding (MOUs) developed at the time of program approval.

Coastal Louisiana can be divided into two distinct ecosystems: the Chenier Plain, extending from Vermilion Bay, Louisiana, to Galveston Bay, Texas; and the Mississippi Alluvial Plain to the east. Both were formed by historic patterns of sedimentation and erosion from the Mississippi River and its distributaries and the Gulf of Mexico. The Chenier Plain contains highly productive inland lakes and wetlands behind oak covered ridges or cheniers, running parallel to the coast. The Mississippi Alluvial Plain is characterized by a vast system of low-lying wetlands and coastal barrier islands.

Louisiana contains approximately 40 percent of the nation's remaining coastal wetlands. These ecosystems are of national significance in terms of their ability to support substantial commercial and recreational marine fish and shell fisheries, and to serve as a haven for overwintering waterfowl and migrating neotropical songbirds in the Mississippi Flyway. The State is also a significant direct source of the nation's natural gas and crude oil supply. Although the rate of land loss has been reduced (from about 25,200 acres per year in the 1970s to about 15,300 acres per year from 1990 to 2000), it is estimated that Louisiana will continue to lose land at a rate of approximately 6,600 acres per year over the next 50 years. (U.S. Army Corps of Engineers New Orleans District; *Louisiana Coastal Area (LCA), Louisiana Ecosystem Restoration Study*, Final, November 2004; Volume 1: LCA Study-Main Report.) Historic hydromodification of the Mississippi River, dredging canals for oil and gas exploration and for pipeline installation, and dredging and filling for residential and commercial development combine with natural factors, such as hurricanes, to produce this condition.

Channelization of the Mississippi River through a system of levees, dams, and spillways for flood control and to maintain a navigable waterway to the Port of New Orleans has prevented the river's sediments from replenishing the flood plain of the Mississippi River Valley and coastal barrier islands. Instead, sediments are routed directly into the Gulf of Mexico. Subsequent wetland losses have resulted from subsidence, sea level rise, and erosion of barrier islands, leaving the leeward areas less adequately buffered from wind and tidal influences. The delta developing at the mouth of the Atchafalaya River, the largest distributary of the Mississippi River, is one of the few areas of the state where the shoreline (and associated marshland) is expanding.

Extraction and transport of crude oil, natural gas, and other minerals from state lands and waters and from the federally-controlled Outer Continental Shelf have required the development of an extensive network of access canals, pipelines, and drilling sites. These activities have contributed to land loss and to ecosystem alterations from salt water intrusion. Development pressure associated with the accommodation of population growth, particularly in the southeast portion of the state, poses an additional long-term threat to the state's wetland habitats.

State and parish governments have joined forces with the federal government to devise solutions to restore and create coastal wetlands through the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA), the Barataria-Terrebonne National Estuary Project, and through the LCRP. Hydrologic restoration brought about by large freshwater diversion projects are an effective means of making up for wetland losses. These partnerships call for the state to develop a comprehensive approach that also addresses ongoing human development in the coastal zone, for it is far more cost-effective to avoid damage to the environment in the first place.



## IV. REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS

### A. PROGRAM OPERATION AND COORDINATION

#### 1. Organizational Structure, Program Elements, and Operation

The LCRP is located within the Office of Coastal Restoration and Management (OCRM) in the Louisiana Department of Natural Resources. The lead role for the LCRP is assumed by the Coastal Management Division, whose primary role is the administration of a program of permitting, monitoring, and enforcement of the Coastal Use Guidelines. The Coastal Management Division is organized into Permit/Mitigation, Interagency Affairs, and Support Services programs. The Permit/Mitigation program is responsible for the issuance of Coastal Use Permits and the mitigation for unavoidable losses of wetland function and value due to permitted activities. The Interagency Affairs program is responsible for local coastal programs, consistency, and the coastal nonpoint pollution control program. The Support Services program is responsible for field investigations and the field offices, enforcement and monitoring, public outreach/education, and technical support to the division.

The Coastal Restoration Division, which is primarily responsible for restoring wetlands under the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA), was the only other division in the Office at the time of the 2002 evaluation. In 2003 the Coastal Restoration Division was split, creating the Coastal Engineering Division, whose major responsibilities include activities from the beginning of engineering design through public bidding up to the initiation of the construction phase for wetland restoration projects.

Since the last evaluation, the DNR, the OCRM, the Coastal Management Division (CMD), and the Coastal Restoration Division all have new leadership. With these changes in upper management and leadership, there has been increased support for the CMD and the activities of the LCRP. Some of this support is discussed in more detail in later sections of this document, but it is noted here that the CMD has received three new permanent professional staff positions and two permanent administrative staff positions. Two of the new professional staff positions are in the Permit Section. There has been increased attention and focus on permitting, which in turn has resulted in greater state funding to support improvements to permit streamlining, computerization, and website/online capability and accessibility.

Beginning July 1, 2004, the state increased its funding to the LCRP by providing 50 percent of the personnel costs of the CMD Mitigation Section from the Louisiana Wetland Conservation and Restoration Fund. The remaining personnel costs of the Mitigation Section were/are being paid from the Louisiana Coastal Resources Trust Fund. Thus, the Mitigation Section is fully state funded.

The CMD staff has been a stable and highly respected work force throughout the period covered by this evaluation. Everyone with whom the evaluation team met during the site visit

praised the professionalism and integrity of the staff. The local coastal programs, in particular, noted the accessibility, assistance, and support of the Interagency Affairs program and the CMD.

**ACCOMPLISHMENT: The Department has been very supportive of the LCRP during the period of this evaluation, providing five additional permanent staff positions and increased attention and support for permitting conducted by the LCRP. The LCRP staff are well respected, knowledgeable professionals who are meeting the challenges brought about by the emphasis on permit streamlining and related activities.**

## 2. Use of Technology

The LCRP continues to use technology to good advantage, particularly with an increased emphasis on permit streamlining and intergovernmental coordination. The Coastal Management Division maintains a substantial database to track all of the applications for permits (both coastal use and local program) and consistency authorizations as well as enforcement cases. The “PermitTrak System” is accessible to the public on the Office of Coastal Restoration and Management website, and the information in the database is live; as information is updated, the updates are immediately displayed on the webpages. The Coastal Use Permit database, for example, can be searched by CUP number, Corps of Engineers permit number, applicant name, well name, well number, or parish. Each individual permit file contains a wide range of information, including applicant and agent information, geographic/location information, project description, Corps of Engineers permit number, pertinent dates (application filed, issued appealed, etc.), fee information, public notice information, and the names of Corps and Department of Environmental Quality reviewers. (When implementation of the online permit application system is completed, the application itself will also be available through the database.) The other databases (local permits, consistency, and enforcement) contain similar information.

The database is essential for LCRP staff to monitor the large number of applications that are processed each year, but it is also used extensively by other state and federal agencies, local governments, academic institutions, industry groups, and other citizens to search for information.

The LCRP is in the process of completing an automated permit application system. This is in keeping with the DNR administration’s desire to establish a permit process that runs smoothly and quickly. The Coastal Management Division processes an average of 2,000 applications per year, but approximately 60 percent of the applications are incomplete. An on-line application system will allow staff to notify applicants about incomplete applications more rapidly, and the applicants in turn can provide the required materials more quickly using a web-based process. The on-line system will also show a time line of the entire permit application and review process, will generate letters to agencies requesting comments, and will allow those agencies to provide their comments electronically. At the time of the issuance of these findings the system was undergoing extensive beta testing. A select group of agents is submitting

applications using the system, and these applications are being handled by two CMD staff using the system. Problems are being discovered and corrected as these applications proceed through the new system.

Everyone with whom the evaluation team met – federal and state agencies, oil and gas interests, and nonprofit organizations alike – was very pleased at the prospect of an automated permit application system as well as the ability to access the permit tracking database. Not only do both aspects serve to increase intergovernmental coordination and streamline the permitting and regulatory process, but both are effective outreach and education tools.

The Department of Natural Resources has a very robust information and data access portal called SONRIS (Strategic Online Natural Resources Information System). It provides free, web-accessible information through three access modes: database, document, and GIS. (The CMD's PermitTrak System is also accessible through SONRIS.) The CMD Support Services Section has played an active role in developing and populating the elements of SONRIS. The GIS interactive map application, in particular, is helpful to other federal and state agencies and the public, providing for 45 different searches for 20 map layers and for its linkages to permit information. The Office of Coastal Restoration and Management continues to add elements to the GIS application. The Coastal Restoration Division contracted to have all the oyster leasing locational data collected and maintained by the Department of Wildlife and Fisheries (DWLF) provided in an Arc Info format. That lease information and the associated databases have been loaded onto the DNR server and are available to staff in CMD but not the general public. Since the time of the site visit, the DWLF has authorized DNR to place the data on the SONRIS in a public location. Oyster seed ground information is also provided by the DWLF directly to CMD. This information will also be made available on the public portion of SONRIS.

The CMP has taken the initiative to upgrade its technology, collect more information, and make that information accessible to the general public quickly. Now that this information is in place, CMD should ensure that the information is being used in the implementation of the LCRP. All these technological developments are moving the LCRP beyond data collection and increasingly are enhancing and expanding the LCRP's ability to provide solid science and data for management decision-making.

**ACCOMPLISHMENT: The LCRP has developed and almost completed the implementation of an on-line permit application system and has made its permitting, consistency, enforcement, and local program databases available to the general public through its website. This helps to streamline the permit application process and makes all permit and authorization procedures more transparent to the public and affected parties. The LCRP also uses a very robust, interactive, web-accessible geographic information system that provides a wealth of data and information to the staff and public.**

**PROGRAM SUGGESTION: NOAA encourages the LCRP to continue to make more of its GIS data available on the public portion of SONRIS. NOAA also encourages the LCRP to enhance the use of its GIS and database capabilities and information/data in day-to-day coastal management decision-making. The CMD should document how its data and information capabilities are improving its coastal management actions.**

### 3. Programmatic Coordination

In general, external coordination between and among the LCRP and agencies and stakeholders involved in the implementation of the LCRP is excellent. Throughout the site visit, coordination with state and federal agencies, local governments, non-governmental organizations, landowners, and oil and gas interests was generally cited as a strength of the LCRP.

With the creation of the Coastal Engineering Division as a third division within the Office of Coastal Restoration and Management, there has been increased and improved internal coordination among the three divisions, particularly in permit review and consistency. Both Coastal Engineering and Coastal Restoration divisions share office space in three field offices, and there is an effort to put Coastal Management Division field staff into the same offices where appropriate. All three divisions should continue to expand their internal coordination efforts with respect to restoration, mitigation, and permitting; and to cooperate in areas where each has expertise to share; e.g., issues of beneficial use of dredged material; navigational channel dredging; and engineering assistance with special projects.

The 2002 Evaluation Findings included a recommendation that dealt with improving coordination between the local coastal programs and state and federal agencies. Since that time, coordination between the local programs and federal agencies has improved. The CMD notifies the Army Corps of Engineers about local permits, and the Corps then deals directly with the local programs. In turn, the local programs and the New Orleans District Corps of Engineers have developed a programmatic general permit notification procedure. The Corps sends copies of local permit applications to federal agencies (the CMD also provides copies of all uses of local concern permits to the U.S. Fish and Wildlife Service). This procedure provides for the local coastal programs to receive National Marine Fisheries Service (NMFS) comments. There is a coordination process involving the Louisiana Department of Wildlife and Fisheries and uses of local concern. Finally, a procedure to coordinate local permitting and the state restoration program has been implemented.

Just prior to the site visit, the DNR and the Louisiana Department of Wildlife and Fisheries (DWLF) updated and executed the Memorandum of Understanding between the two agencies that addresses activities occurring in or affecting the Louisiana coastal zone. The revised memorandum clarifies agency roles and sets forth coordination procedures that will streamline permit processing and federal consistency determination comments. The DNR will

also provide funding to the DWLF for a full-time staff position to serve as “permit coordinator” at DWLF. These steps, coupled with the electronic permit application system, should strengthen the coordination between the two agencies.

The DNR and the Louisiana Department of Environmental Quality (DEQ) also have a memorandum of agreement (MOA) that addresses permit procedures and interagency coordination. The DEQ is responsible for water quality certification and state water quality standards, and the issuance of water quality certification is the DEQ’s mechanism for commenting on state coastal use permits. Both agencies indicated they have a good networking relationship, but the MOA addressing permitting is outdated (executed in 1980) and actually names DEQ’s predecessor entity. Staff from DEQ and DNR have indicated they are discussing the need to update this and other joint MOAs as part of the overall goal of permit streamlining and increased interagency coordination. NOAA supports and encourages this endeavor.

**ACCOMPLISHMENT: The LCRP has improved coordination among the varied entities involved in coastal resource management, including among the three divisions in the Office of Coastal Restoration and Management. It has worked with the local coastal programs and federal and state agencies to develop procedures to address areas where better coordination was needed. The Departments of Natural Resources (DNR) and Wildlife and Fisheries (DWLF) have executed a revised Memorandum of Understanding addressing permitting and consistency coordination, and under the terms of the memorandum, DNR will provide funding annually to DWLF for a full-time position to support permitting efforts.**

**PROGRAM SUGGESTION: NOAA encourages the Department of Natural Resources and the Department of Environmental Quality to revisit existing but outdated memoranda of agreement between the two agencies and revise them as part of permit streamlining and increased interagency coordination efforts. The revised MOA(s) should include all relevant coordination activities, including each agency’s responsibilities under the Louisiana Coastal Nonpoint Pollution Control Program. NOAA also encourages the three divisions within DNR’s Office of Coastal Restoration and Management to continue to expand their internal coordination efforts in as many areas as possible.**

#### 4. Local Coastal Programs

The Interagency Affairs program of the LCRP assists with the designation and implementation of local coastal programs (LCPs). There are 19 parishes within Louisiana’s coastal zone; ten parishes have approved LCPs, and two more parish programs are in development.

Parishes with approved programs have permitting authority for coastal uses of local concern, which are defined as those uses which directly and significantly affect coastal waters and are in need of coastal management but are not uses of state concern and which should be regulated primarily at the local level if the local government has an approved program (for example, bulkheads and piers; uses on cheniers, salt domes, sand dunes, or other elevated land forms, unless owned by the federal or state government; cattlewalks; or privately or or publicly funded projects that are not uses of state concern, such as a subdivision or municipal sewer system). Parishes with approved programs also receive funding from the LCRP to implement their programs. Another benefit, according to the LCRP staff, is that parish comments on state permits generally carry more weight from parishes with an LCP than those without.

During the previous evaluation site visit, there were concerns and a recommendation about coordination between the LCPs and federal agencies. As noted in the section of this findings document entitled “Programmatic Coordination,” the situation has improved. Several agency and non-governmental organization staff also noted that it is easier to coordinate and interact with those parishes that have local coastal programs versus those that do not.

The LCRP completed a periodic review of all the local coastal programs during the period covered by this evaluation. Louisiana regulations require that a periodic review be conducted at least every two years to ensure that an LCP remains consistent with the state program and is operating so as to achieve the objectives spelled out in the original local coastal program document. According to the LCRP’s periodic review report, mitigation issues were a top priority for discussion during periodic review meetings, and this was borne out in a discussion the evaluation team had during this site visit with the local coastal program administrators at their regular quarterly meeting. Many of their concerns and comments have been noted in the section of this findings document entitled “Wetland Mitigation.” Five of the ten LCPs have not yet officially incorporated a requirement into the program for mitigation for coastal wetland losses caused by permitted activities. Because of the pending revisions to the state’s mitigation rules, these five LCPs will, with the CMD’s permission, wait until the state’s revisions are complete before tackling their requirements. It is also possible that the other five LCPs may need to revise their mitigation requirements once the state’s rule revision is complete. As is recommended in the “Wetland Mitigation” section, the CMD is again urged to make drafts of the rule revisions available to the LCPs as soon as possible and before the revisions are made available to the public for comment.

The LCP administrators and parish staff with whom the evaluation team met were highly complementary of the CMD staff members, their professionalism, and willingness and responsiveness to assist the local programs in any way they can. Since the last evaluation, which included a recommendation about providing general education on wetland values and other management issues to parish coastal administrators, the CMD has provided the LCPs with a variety of educational opportunities (see Appendix D). Even other agency representatives commented on what good work the CMD does with local coastal programs.

**ACCOMPLISHMENT: The CMD has maintained its commitment to help the parish local coastal programs (LCPs) implement their programs. The CMD staff are very responsive to the LCPs and have worked with them to improve LCP/federal agency coordination.**

**PROGRAM SUGGESTION: Once the state's wetland mitigation rules become final, the LCRP should work with all 10 LCPs to develop and/or revise local mitigation requirements so that they are consistent with the new state rules.**

## **B. NATURAL RESOURCE PROTECTION**

### **1. Wetlands**

Louisiana's coastal wetlands are, arguably, the state's most significant natural resource, and coastal wetland loss is the state's greatest natural resource protection issue. Coastal Louisiana receives drainage from approximately two-thirds of the mainland United States; therefore, many of the activities in other states (flood control, nonpoint source runoff, etc.) over which Louisiana has no control still affect the state's coastal wetlands. The Louisiana coastal area contains nearly 40 percent of the coastal wetlands in the lower 48 states. Although estimates vary, it is generally agreed that 25-35 square miles of coastal wetlands are lost each year in Louisiana. The benefits of coastal wetlands are numerous at the local, regional, state, and national level; causes of the loss are a myriad of natural and human-induced factors also at all of those levels. As a consequence, many of the state's and the LCRP's efforts at natural resource protection are, and for many years have been, directed to slowing and mitigating for that loss. In fact, the Louisiana State and Local Coastal Resources Management Act (passed in 1978) established the state's coastal management program to emphasize controlling activities that cause wetland loss. In 1989 the Louisiana Legislature created the Coastal Restoration Division in the DNR OCRM and established the state's Coastal Wetlands Conservation and Restoration Fund. Income for this fund is a percentage of the state's mineral revenues and generally varies from \$13 million to \$25 million annually. The Coastal Wetlands Conservation and Restoration Authority (also referred to as the State Wetlands Authority) is composed of governor's office and state agency personnel (including DNR) who are responsible for developing an annual conservation and restoration plan that is submitted to the Louisiana Legislature for approval of funding requests for restoration projects and programs from the Wetlands Fund.

The national Coastal Wetlands Planning, Protection and Restoration Act of 1990 (CWPPRA), also referred to as the "Breaux Act" for its major author, former Senator John Breaux of Louisiana, recognized the national significance of wetland loss and provided authorization and funding for a multi-agency task force to take action to curtail wetland losses. The CWPPRA designates 70 percent of its authorized funds to Louisiana restoration projects.

Since 1991 CWPPRA has provided \$33 million to \$53 million per year in federal funding to Louisiana, for which the state has provided non-federal matching contributions. The Louisiana Department of Natural Resources is the local sponsor and cost-share entity for CWPPRA projects. The Breaux Act mandates that representatives from the U.S. Departments of the Army, Interior, Commerce, Agriculture, and the Environmental Protection Agency, together with the governor of Louisiana, work as partners and as a task force to prepare a Louisiana Coastal Wetlands Restoration Plan to assist in identifying and selecting the highest priority restoration projects in nine hydrologic basins, with a goal of no net loss of coastal wetlands from developmental activities. The plan was prepared in 1993, and the task force compiles a priority project list for design and construction annually. CWPPRA has been reauthorized through 2019, and the partners are beginning work on an assessment of the program and projects to date.

In 1997 it was determined that CWPPRA projects would address less than 25% of the projected wetland loss in Louisiana by the year 2050 (slideshow presentation to the Governor's Advisory Commission on Coastal Restoration and Conservation on March 11, 2005, available on line at [www.lacoast.gov](http://www.lacoast.gov)). With the involvement of the Breaux Act Task Force members and a broad spectrum of public representation, a strategic plan called "*Coast 2050: Toward a Sustainable Coastal Louisiana*" (the Coast 2050 Plan) was developed in 1998. The Coast 2050 Plan took a regional approach and divided the Louisiana coastal zone into four regions with a total of nine hydrologic basins. The ecosystem restoration strategies would result in efforts larger in scale than the relatively smaller CWPPRA projects. It was initially envisioned that a series of feasibility reports would be prepared over a 10-year period to seek congressional approval and funding through the Water Resources Development Act. However, in 2002 it was recognized that a more in-depth comprehensive study was needed to submit to Congress for a programmatic approval. As a result, the Louisiana Coastal Area (LCA) Comprehensive Coastwide Ecosystem Restoration Study was initiated. After authorization, detailed studies would be completed on features of the Comprehensive Plan and would result in project implementation reports, which in turn would be sufficient to prepare plans and specifications to implement the proposed projects.

The LCA Comprehensive Coastwide Ecosystem Restoration Study (often referred to only as the LCA) was completed in late 2004 and released along with the Final Programmatic Environmental Impact Statement by the U.S. Army Corps of Engineers. The LCA identifies the kinds of restoration features that could be implemented in the next 5-10 years that address the most critical human and natural ecological needs of the coastal area; establishes priorities among the identified restoration features; describes a process to develop, approve, and implement the priority near-term restoration features; looks at other feasibility studies that should be undertaken; and presents a strategy for addressing the long-term needs of coastal Louisiana restoration beyond the 5-10 year near-term focus.

The "mechanics" and implementation of CWPPRA and the LCA Ecosystem Restoration Study are interrelated, although to what extent is somewhat unknown at this time. As noted above, the CWPPRA partners (the CWPPRA technical committee) are beginning work on an assessment of that program and projects to date. The report is due at the end of the fiscal year. Both CWPPRA and the LCA look at the same nine hydrologic basins; CWPPRA projects are



generally smaller and provide more localized and partial coastal ecosystem restoration, while LCA projects will be at a basin scale. The LCRP has played and will continue to play a role in both programs by virtue of the Department of Natural Resources' involvement on both the CWPPRA Task Force and the LCA's Project Delivery Team and other committees. Any federal consistency concurrences and/or CUP authorizations for CWPPRA or LCA projects involve the CMD; the Coastal Engineering and Coastal Restoration divisions are involved in project planning and execution as well.

## 2. Wetland Mitigation

As occurs in many other state coastal programs, wetland mitigation is required by Louisiana and the LCRP when issuance of a coastal use permit authorizes development activity from which there will be loss of wetland ecological values. (The LCRP requires mitigation for coastal uses of state concern, while local coastal programs require mitigation for coastal uses of local concern.) Such state-level mitigation can generally be in the form of payments to the Wetlands Conservation and Restoration Fund based upon calculations according to specified mitigation values; on-site mitigation; monetary contribution to the affected landowner or affected parish (with an approved LCP) to implement an approved compensatory mitigation plan; or purchase of credits in a mitigation bank. Mitigation banks/mitigation areas in Louisiana are currently all private sector projects.

The LCRP staff, some federal agency staff, local coastal program administrators, and others with whom the evaluation team met discussed many of the difficulties inherent in mitigation. Many of these concerns have been discussed during previous evaluations. Mitigation is generally for vegetated wetlands. Mitigation for salt marsh habitat is particularly problematic in Louisiana. Only one marsh habitat mitigation bank exists right now because of the difficulty in establishing such a bank – it must be fully implemented before it is allowed to sell credits, and it often involves hydraulic modifications, which are generally not wholly acceptable to some federal agencies. The cost of marsh habitat development is estimated to be \$31,000 per acre. Even the cost of purchasing marsh acreage is estimated at approximately \$20,000 per acre.

Some of the local coastal program administrators as well as others indicated that state and federal agencies that require mitigation are inconsistent in terms of the cost per acre required to be contributed by developers, that there is a discrepancy between the assessed dollar value and actual cost of mitigation, and that mitigation values are calculated too low for Trust Fund contributions. Several of the local coastal program administrators also said they try to require onsite mitigation whenever possible, but in their experience, developers prefer to simply pay a donation instead. Oil and gas industry representatives also expressed concerns about mitigation, particularly their sense that the industry 'pays twice' – once to landowners for right of first refusal (that is, agreeing to a waiver if mitigation is not done on site); and then again for actual mitigation. Several agency and non-governmental organization representatives are concerned about the need for close collaboration between mitigation and restoration activities, the lag time between revenues collected in lieu of mitigation and the start of mitigation projects, and the

difference between state and federal requirements for number of years required to maintain mitigation projects.

During the period covered by this evaluation and in response to the previous evaluation findings, the LCRP has initiated revisions to the state wetland mitigation rules. Louisiana Sea Grant legal program staff are drafting and reviewing the mitigation rule revisions. The U.S. Army Corps of Engineers is also amending its wetland mitigation requirements, but the LCRP has had some trouble determining the direction and thrust of those amendments. According to the Corps New Orleans District staff, the major revisions are occurring at the national level and the District is not generally aware of the revisions until they receive updated guidance. The local coastal programs, in turn, want to know about the direction and thrust of the state rule revisions, so the local program mitigation rules can be consistent. NOAA urges the LCRP to make drafts of the rule revisions available to the LCPs for their review and comment before the draft revisions are made available to the public for general comment.

**PROGRAM SUGGESTION: NOAA encourages the CMD to complete mitigation rule revision development and to closely coordinate the revision development with the Corps of Engineers, the Coastal Restoration Division, and the Local Coastal Programs. In particular, the CMD should make drafts of the rule revisions available to the LCPs, CRD, and other appropriate agencies before the revisions are made available to the public for comment.**

### 3. Coastal Forests

The logging of coastal wetland forests, primarily cypress, has become an increasing concern to the state all along the coast, although Pontchartrain and Barataria basins are currently the ‘hot spots.’ The issue is not primarily about harvesting, because the forests are not first growth. Rather, because the cypress trees hold in the substrate, the concern is about the impacts to wetlands and the potential land loss if the trees do not regenerate after logging. Another concern is that logging will interfere with wetland restoration; that is, significant funds may be spent to restore an area, only to have it threatened by logging.

Whether the timber harvesting in coastal forests is exempt under the Clean Water Act is reviewed and determined by the Environmental Protection Agency (EPA). The EPA has issued an exemption in one case, and various interest groups have filed notices of intent to sue the EPA over that exemption, although none had filed suit at the time of the site visit.

Because of the increased activity and interest in coastal logging, in 2004 the Governor’s Office established both an advisory panel of stakeholders and a scientific working group to address the issue. The CMD is represented on the scientific working group. At the time of the evaluation site visit, the scientific working group’s report had not yet been released, although attendees at its meetings have indicated the group would recommend that cypress/tupelo forests be identified as either: 1) sustainable; 2) sustainable with artificial means; or 3) not sustainable.

Such a classification system based on scientific evidence could then form the basis for policies regarding timber harvesting. Once the scientific working group's report is released the governor's advisory panel will use that information to make recommendations to the governor.

The LCRP may be able to suggest or employ non-regulatory mechanisms or strategies to address the issue of coastal forest logging. The upcoming development of the Section 309 assessment and strategy could be used to evaluate potential mechanisms or strategies. Such research and information could prove useful to the scientific working group, of which the CMD is a member. For example, the CMD could also develop a Coastal Estuarine Land Conservation Plan that identified sensitive (non-sustainable) coastal forests as one of the priority areas for acquisition or purchase of easements.

Actual harvesting of coastal forest timber is exempt from state Coastal Use Permit requirements. The LCRP has been and will continue to be involved in the coastal forest logging issue, but until recommendations are made to the governor and any further action is taken by the Legislature, the Coastal Management Division has adopted a policy (in February 2005) regarding the LCRP jurisdiction for related logging activities in wetland forest habitat. The policy states that activities associated with the harvesting that are determined to require a permit by the Corps of Engineers under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act will be processed as state Coastal Use Permits. All such associated activities are deemed to be uses of state concern (not uses of local concern).

**ACCOMPLISHMENT: The CMD has adopted a policy to address its jurisdiction with regard to activities associated with the harvesting of coastal wetland forests. Such associated activities are deemed to be uses of state concern and require a coastal use permit.**

**PROGRAM SUGGESTION: The LCRP should consider using the Section 309 assessment and strategy to develop and implement mechanisms to address the issue of coastal forest logging. The CMD could also develop a Coastal and Estuarine Land Conservation Plan that identifies sensitive (non-sustainable) coastal forests as one of the priority areas for acquisition or purchase of easements.**

## C. WATER QUALITY

Nonpoint source pollution is the largest contributor to water pollution in the state (*Louisiana Coastlines*, Winter 2004-2005, p. 5), and the LCRP's coastal nonpoint pollution control program (CNPCP or nonpoint program) has received conditional approval from NOAA and EPA. Beginning in July 2003, the CMD began implementation and integration of the

CNPCP into the coastal use permit (CUP) process by requiring that permitted activities be consistent with CNPCP management measures, where appropriate. These permit changes have been implemented by both CMD and the local coastal programs.

Another implementation effort the CMD has developed is the Louisiana Clean Marina Program. This is a voluntary program to reduce nonpoint source pollution associated with marinas and recreational boaters. Marinas are designated as Clean Marinas when they have adopted and adhere to a set of pollution-reducing best management practices. The LCRP has worked with several marinas during the period covered by this evaluation, and just shortly after the site visit, the first two marinas (both in Orleans Parish on the south shore of Lake Pontchartrain) received Clean Marina designation.

The Interagency Affairs program staff of the CMD also produced an educational video about what citizens can do to help keep Louisiana's waters clean. Called *Rainwater Blues*, the video is free in both 15-minute and 30-minute versions. It was designed to be used by both teachers and civic leaders.

## **D. SITING OF ENERGY FACILITIES**

### **1. Liquefied Natural Gas (LNG) Terminals**

During the period covered by this evaluation, a number of liquefied natural gas (LNG) receiving terminals started the application and approval procedure (which includes a federal consistency determination because of the Federal Energy Regulatory Commission's licensing/permitting action), and the number is expected to increase. At the time of the site visit, approximately 12 applications were in process and almost that many more are anticipated in the next several years.

Newspaper articles, press releases, and opinions expressed by a range of people with whom the evaluation team met identified various benefits as well as concerns associated with LNG terminals. The most commonly cited concern involves the mechanism of taking minus-260-degree liquefied gas and warming it into gaseous form. An "open-loop" system (also called an open rack vaporizer system) would use millions of gallons of Gulf water daily, running it through a radiator-like structure to warm the liquefied gas, and returning the chilled water to the Gulf. Such a system would have impacts to organisms by taking them through the system or by exposing them to intense temperature changes, although there is considerable uncertainty about the amount and significance of those impacts. However, an open-loop system is generally less expensive than a closed-loop system, which uses natural gas to warm the LNG. The other frequently mentioned issue involving LNG terminals was the cumulative and secondary impacts that may arise from the 20 or more LNGs that could be sited in or near Louisiana's coastal waters.

Shortly after the evaluation site visit, Governor Kathleen Babineaux Blanco sent a letter to the Acting Maritime Administrator of the U.S. Department of Transportation regarding the development of LNG facilities off Louisiana's coast. In her letter she indicated that:

“As a state supportive of LNG development, we have tried to work within the current licensing system to allow offshore LNG development, but also protect our fishery resources. Despite our best efforts to work with your agency and LNG developers, based on the inadequacy of current data, we are unable to reach an acceptable comfort level with the potential risks presented by the cumulative impacts of multiple offshore LNG facilities that use the open rack vaporizer system. Considering these ongoing concerns, I will oppose the licensing of offshore LNG terminals that will use the open rack vaporizer system. Until studies demonstrate that the operation of the open rack vaporizer will not have an unacceptable impact on the surrounding ecosystem, I will only support offshore LNG terminals using a closed loop system having negligible impacts to marine life.”

Because LNG facilities are subject to the federal consistency process, that process offers the state an opportunity to press for closed loop systems in accord with Governor Blanco's policy statement above. This is included in a Program Suggestion under Section E. “Federal Consistency, Permitting, and Regulatory Authority.”

## 2. Oil and Gas, Oil Spill, and Pipeline Activities

In June 2000 the LCRP began work under a cooperative agreement with the Minerals Management Service (MMS) to conduct a pipeline mapping project. The project was completed in August 2003. There are over 22,000 pipelines mapped, extending more than 26,500 miles within the state's coastal zone. There is a total of approximately 75,000 miles of pipeline when federal waters adjacent to Louisiana (which were also mapped) are added to the state coastal zone. There are another 13,700 pipelines in Louisiana's OCS waters. The CMD continues to maintain and update this data set. Twice annually the updated data set is transmitted to MMS for its files and released to an approved list of agencies and companies. (The Louisiana Office of Homeland Security has requested the data not be released except to parties that have been investigated and cleared by the Office and only for those parties' internal use.) Nevertheless, this mapping is and can be of significant use to the LCRP and other agencies when authorizing permits, restoration projects, etc.

**ACCOMPLISHMENT: The LCRP has completed a pipeline mapping project, which identifies the location of over 22,000 pipelines within Louisiana's coastal management boundaries. This information should prove very valuable in conducting a variety of the LCRP's and state's regulatory, planning, and management activities.**

The number and placement of pipelines in Lake Pontchartrain are significant issues in Louisiana in terms of environmental impacts, user conflicts, and public perception. Currently there are four major interstate pipelines in the lake, but concerns about boat anchoring and other uses with regard to the location of new pipelines led to consideration of ways to limit their geographic expansion. For those reasons, the LCRP contracted for a project to develop pipeline policies for the lake. The LCRP took delivery of the “pipeline corridor study” in December 2003. Based upon the information and recommendations in the study, the Coastal Management Division developed Lake Pontchartrain pipeline corridor policies, generally referred to as the ‘corridor policy.’ Effective July 1, 2004, all pipelines installed in Lake Pontchartrain must be processed (via permit application and issuance) according to the corridor policy. There are specific design and construction criteria/constraints that must be incorporated into pipeline projects and that will be included in permit specifications and/or conditions. The policy identifies a north/south corridor and an east/west corridor as preferred routes for pipeline installations in Lake Pontchartrain. For any proposed pipeline outside either corridor, the applicant has the burden to demonstrate why the situation is exceptional and deserving of an exemption to the siting. The CMD holds a public hearing for every case proposed outside of a corridor, and public comments at the hearing are considered in CMD’s review and evaluation of the permit.

The policy is a good management tool to minimize environmental impacts to previously unaffected areas and resources and to minimize user conflicts as well. For those reasons, the CMD should consider whether the pipeline corridor concept could be applied to other areas of the Louisiana coastal zone. The Lake Pontchartrain Basin Foundation, the only non-governmental citizen organization whose sole focus and advocacy is a healthy lake and basin, expressed its satisfaction with the CMD’s development of the corridors and corridor policy in a meeting with the evaluation team.

**ACCOMPLISHMENT: The LCRP has developed and is implementing a corridor policy for Lake Pontchartrain through the coastal use permit program to minimize user conflicts and impacts to resources by restricting the design, construction, and placement of pipelines crossing the lake.**

**PROGRAM SUGGESTION: NOAA urges the LCRP to consider whether the pipeline corridor concept applied to Lake Pontchartrain could be applied to other areas of the Louisiana coastal zone.**

Between 1991 and 2000, Louisiana had 18 percent of the total number of oil spills in the nation and 21 percent of the volume spilled. For this reason, as well as the amount of oil drilling and associated activities in Louisiana’s coastal zone and the potential for adverse impacts to natural resources, NOAA and the state of Louisiana (acting in their capacities as federal and state natural resource trustees) began development of the first statewide comprehensive Regional

Restoration Planning Program (RRP Program). The RRP Program applies existing natural resource damage assessment authorities to expedite restoration of resources harmed by oil spills and to cut process costs. It is based on a strong state-federal partnership, cooperation with responsible parties, early identification of restoration projects, and expedited settlement approaches. An overall programmatic document will address the major provisions of the RRP Program, while nine regional plans (corresponding to the same regions identified in the Coast 2050 plan) will identify region-specific potential injuries to natural resources, suitable types of restoration, and available projects that can be implemented at the local level.

The draft programmatic document was well-received, and few, if any, comments on the document were submitted. A draft of the first regional plan (Region 2) was then released in mid-2003, but significant comments were received from the oil and gas industry. In general, the comments indicated that the settlement cost proposal in terms of habitat types was not acceptable. NOAA and the state decided not to issue the final programmatic document at that time and began to work on resolving issues with the draft regional plan. At the time of the evaluation site visit, staff from the Louisiana Oil Spill Coordinator's Office and the LCRP indicated that the cost proposal issue and internal administrative and reorganization issues in NOAA's Office of Response and Restoration had brought activity on the regional plan to a halt. They were optimistic that the cost proposal issue could be resolved and hoped that the final programmatic document and final regional plan could be released at the same time.

## **E. FEDERAL CONSISTENCY, PERMITTING, AND REGULATORY AUTHORITY**

### **1. Federal Consistency**

The Interagency Affairs section staff members in the CMD are responsible for the federal consistency process in Louisiana. The LCRP reviews an average of 600-700 consistency determinations a year, most of which are coastal use permits for oil and gas-related activities. The DNR's SONRIS data access and information portal and the CMD's PermitTrak system both provide access for the public to the LCRP federal consistency database.

Minerals Management Service: The LCRP and the Minerals Management Service (MMS) have worked together during the period covered by this evaluation on a "CZM initiative" to implement changes and requirements as a result of amendments to the federal consistency regulations that became effective in January 2001. The state and MMS worked to streamline and make more efficient the process for oil and gas industry submittals, the state's and MMS's review and approval of outer continental shelf (OCS) permitted activities, and MMS' federal agency lease sale consistency determination process. As a result of these cooperative efforts, the information requirements for outer continental shelf lease sales and plans and pipeline right-of-way applications for consistency determination review by Louisiana have been standardized. The LCRP and MMS have also agreed to a tiered consistency determination format and approach for OCS lease sales. This approach allows the documents used in the determination for the first lease sale to be adopted as the base document for additional lease sales, as long as no new data is available or required.

These actions provide predictability for the oil and gas industry as well as for MMS and the LCRP. The MMS representatives who met with the evaluation team are beginning to see some activities for which federal consistency determinations might be needed but are currently not identified in the LCRP's list of federal activities, licenses, and permits to be reviewed for consistency (e.g., barging, offshore wind farms). Both the MMS and the LCRP have indicated they will continue the dialog and coordination needed in these new areas.

Beneficial Use of Dredged Materials and the Consistency Process: Because of the rapid rate of land loss in coastal Louisiana, the state and parishes are extremely interested in the beneficial use of appropriate dredged materials whenever possible. Navigation channel dredging in Louisiana's coastal zone is now done to deepen/maintain existing channels, not to construct new ones. According to the Louisiana Coastal Area (LCA) Ecosystem Restoration Study, Volume 1: Main Report, p. xi (U.S. Army Corps of Engineers, New Orleans District, November 2004), the Corps' New Orleans District has the largest annual channel operations and maintenance (O&M) program within the Corps. An annual average of 70 million cubic yards of material is dredged, and 14.5 million cubic yards of that amount is used beneficially in the surrounding environment. Funding comes from either the O&M program itself or the Continuing Authorities Program defined by Section 204 of the Water Resources Development Act for beneficial use of dredged material. Amounts of dredged material and material recovered for beneficial use vary considerably, based on the types of dredging operations being performed and their environmental settings. The LCA Plan recommends, and the Corps is seeking, a programmatic authorization for expanding the beneficial use of dredged material and authorization of \$100 million for the additional funding.

In a meeting with the Corps of Engineers New Orleans District staff during the site visit, they indicated that, although the future of dredging/beneficial use will be more positive if the LCA recommendations and authorization are accepted and granted, the current picture is more negative. The District's O&M budget is being cut, so there is little money available for dredging and, consequently, beneficial use. The District competes for WRDA Section 204 funds, but it has received no such funds for the past two years. According to the District staff, the Corps is running out of nearshore areas where it can place dredged materials; locations farther inland require more funds for transport, so offshore disposal may well increase.

As noted in the 2002 evaluation findings, dredged material management plans have been developed for the 10 Corps-maintained navigation channels within the state. During this current evaluation, some persons with whom the team met urged the LCRP to "push" the Corps whenever possible in the beneficial use arena and to use federal consistency as one of the tools to accomplish that.

The DNR Coastal Engineering Division looks at the implications of navigation channel dredging and gets involved with planning in early stages to place dredged material for beneficial use whenever possible. There is concern about avoiding the deposition of dredged material in oyster lease areas. The Coastal Restoration Division now has maps detailing oyster lease areas (see also discussion in the "Use of Technology" section above). The CMD's ongoing coordination with CED and CRD to deal with dredged material disposal for beneficial use is



vital, and the CMD is encouraged to stress and request beneficial use in its consistency reviews and coastal use permit activities whenever possible .

As was discussed earlier in several sections of this document, the LCRP has taken and is taking steps to improve interagency coordination as it relates to permitting, and therefore in many instances, federal consistency as well. In the upcoming months and years the federal consistency process presents the LCRP with the opportunity to encourage the beneficial use of dredged materials and, as noted in Section D. "Siting of Energy Facilities," the use of closed loop systems in LNG facilities.

**PROGRAM SUGGESTION: NOAA urges the LCRP to work with the Corps of Engineers through any available avenues to keep beneficial use of dredged material in restoration projects and for shoreline protection as a viable option. NOAA also encourages the LCRP to take advantage of the federal consistency process whenever appropriate to encourage the beneficial use of dredged materials and the use of closed loop systems in LNG facilities.**

## 2. Permitting

The Permit/Mitigation section of the CMD processes approximately 1,800 - 2,000 coastal use permits annually, 60 percent of which are oil and gas related. During the period covered by this evaluation, the DNR administration's emphasis on enhancements to streamline the permitting regulatory process and improve intergovernmental coordination has also been mentioned in previous sections of this document. This focus has led to several positive actions: near completion of an automated, online permit application system; a live, publicly accessible permit tracking system; additional staff in the Permit section; and a revised MOU with the Department of Wildlife and Fisheries (DWLF) addressing permit and consistency coordination and DNR funding of a permit coordinator position in DWLF. According to CMD staff, permit processing times in 2004 decreased by a factor of 35 percent when compared to processing times in 2002. The number of problem (incomplete) permits has decreased as well.

The state also has developed a joint permit application with the Corps of Engineers, which several representatives from the oil and gas industry noted positively. They indicated they would like to see the joint application available electronically. The CMD and the Corps are coordinating to accomplish that.

In May 2002 the CMD implemented a new permit fee schedule that categorizes uses into residential and non-residential types. Residential uses are subject to a \$25.00 application fee and a \$0.04 per cubic yard processing fee, and non-residential uses are subject to a \$100.00 application fee and a \$0.05 per cubic yard processing fee. This fee schedule change resulted in an average annual increase in fee revenue to the statutorily dedicated Coastal Resources Trust Fund (CRTF) of about \$225,000.

**ACCOMPLISHMENT: Permit streamlining efforts have resulted in several improvements in the LCRP's permit process. The CMD has implemented a new permit fee schedule, resulting in additional revenue to the Coastal Resources Trust Fund. A joint Corps of Engineers/CMD permit application was developed and has been implemented. Permit processing times have been significantly decreased. As noted elsewhere, additional staff have been added to the Permits/Mitigation Program, and the LCRP's online permit application system is nearing full implementation.**

The Support Services section in CMD is responsible for permit monitoring and enforcement and maintains four field offices with field investigators to conduct those activities. The field investigators regularly monitor by vehicle, boat, and airplane (through contracted flights). Violations are often discovered through field monitoring, although “neighbors” of projects also report violations, which generally become enforcement cases because a project was initiated without a permit or exceeds the scope of a permit. Selected projects are designated for followup field inspections. CMD's permit database is also used for monitoring purposes to track all permits requiring mitigation and all permits requiring submission of photos, reports, etc. To bring enforcement cases into compliance, CMD is statutorily authorized to issue administrative fines and/or assess mitigation or the costs of mitigation; suspend, modify or revoke an existing permit; require restoration of the site; or seek relief through the civil court system.

### 3. Regulatory Authority

Barricades across Private Canals: During the period covered by this evaluation, the issue of barricades across private canals has been raised by landowners and fishermen. Landowners have been placing fence gates across private canals to prevent people from passing through for navigation or fishing. By law, landowners are not allowed to block access to state waters, but fence gates are allowed in private waters. The Louisiana State Land Office is charged with delineating state waters and private waters, and the Land Office and Sea Grant are developing a map of private and state waters.

Landowners have been erecting the fence gates because increased boat traffic causes increased erosion and a loss of landowner property. Landowners are also concerned that accidents or actions in a private canal (for example, a boat hitting a pipeline or obstruction), may result in suits against the landowner. There have been some unsuccessful attempts to sue landowners who block access, arguing that people have had access into a private canal for 30 years, thus creating a “traditional” right of access. Some landowners are constructing barricades now to ensure that the “traditional” access is never established.

It appears that this issue is beyond the scope of the LCRP regulatory authority. However, the program continues to get inquiries on this issue, and the CMD hopes for a state policy interpretation that will clarify whether the issue is or is not within the jurisdiction of the LCRP.

## F. PUBLIC OUTREACH AND EDUCATION

The Support Services Program is generally responsible for public outreach and education about the Louisiana Coastal Resources Program. The CMD publishes *Louisiana Coastlines*, a quarterly newsletter of the Department of Natural Resources (now available on-line exclusively); has a website; has held seminars and workshops; and has educational CDs available for a variety of school age children on wetlands and natural resource topics. Because both funding and manpower available for outreach is limited, the staff works with partners on many projects. Education efforts are also directed toward science teachers, with teaching guides available for distribution with lesson plans to use in the classroom.

As a result of recommendations from the evaluation process conducted to streamline the coastal use permitting process, several outreach seminars and meetings have been conducted. In December 2004 the CMD and the Louisiana MidContinent Oil and Gas Association co-hosted an interagency pipeline permitting seminar to exchange information and ideas between agency and industry personnel who are involved in permitting issues. In January 2005 the CMD hosted the first of several small group workshops designed to acquaint new permit agents with the structure of the agency permitting establishment in Louisiana.

The CMD is also planning to hold training sessions for the new on-line permit application system. There will be three to four initial sessions, with other sessions scheduled on a routine or as-needed basis. Oil and gas industry applicants and representatives will be the primary targets, but other agencies will also be invited to attend.

During the period covered by this evaluation, the State of Louisiana launched the largest public awareness initiative in its history. Called *America's WETLAND: Campaign to Save Coastal Louisiana*, the campaign is intended to increase national awareness of the state's dramatic coastal land loss and how that loss impacts the nation and the world. This is not an initiative of DNR or the LCRP, but DNR and other state agencies, as well as corporations, non-governmental organizations, and local parishes and governments are all partners, and the public awareness will benefit the LCRP and its goals.

## V. CONCLUSION

Based upon the recent evaluation of the LCRP, I find that the state of Louisiana is adhering to its approved program and is making satisfactory progress in implementing the provisions of its approved coastal management program. The LCRP has made notable progress in the following areas: (1) Program Operation and Coordination; (2) Natural Resource Protection; (3) Siting of Energy Facilities; and (4) Federal Consistency, Permitting, and Regulatory Authority.

The evaluation team identified the following three areas where the LCRP could be strengthened or improved: (1) Program Operation and Coordination; (2) Natural Resource Protection; (3) Siting of Energy Facilities; and (4) Federal Consistency, Permitting, and Regulatory Authority.

These evaluation findings contain seven (7) recommendations, all of which are Program Suggestions that should be considered by the LCRP prior to the next §312 evaluation of the program.

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

October 17, 2005

Date

/s/ Douglas Brown for

Eldon Hout, Director

Office of Ocean and Coastal

Resource Management

**LIST OF PERSONS CONTACTED**

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Donna Hollier, Tim Norton & Associates, Inc.

Bradly DeHart, C. H. Fenstermaker & Associates, Inc.

R. Michael Lyons, Louisiana Mid-Continent Oil and Gas Associates

Don Briggs, Louisiana Independent Oil and Gas Association

Greg Ryals, Eric G. Ryals, Inc.

Michael Bourgeois, Louisiana Land Owners Association

**PERSONS ATTENDING THE PUBLIC MEETING**

The public meeting was held on Wednesday, March 23, 2005, at 7:00 p.m. at the Louisiana Department of Natural Resources, Griffon Room, LaSalle Building, 617 North Third Street, Baton Rouge, Louisiana.

NAME

Randy Moertle  
George Strain

AFFILIATION

Randy Moertle & Associates, Inc.  
Continental Land & Fur Co., Inc.



**WRITTEN COMMENTS RECEIVED AND RESPONSES**

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

**Mr. Jody Chenier****Local Coastal Program Administrator****St. James Parish**

**Comment:** Mr. Chenier attended the meeting of local coastal program administrators who met with the evaluation team during the site visit. He provided additional comments about the problems with mitigation and mitigation banking that he has experienced in St. James Parish.

**NOAA's Response:** NOAA thanks Mr. Chenier for his comments. There was quite a lengthy discussion at the meeting with LCP administrators, and the issue came up in several other discussions with other groups during the site visit. The issue is not one that is easily resolved, but NOAA believes that the adoption of CMD's mitigation rule revisions, the Army Corps of Engineers mitigation rule revisions, and then ultimately the adoption of mitigation rules by the local coastal programs may provide some clarity to the issue.

**RESPONSE BY THE LCRP TO PREVIOUS 2002 EVALUATION FINDINGS**

**PROGRAM SUGGESTION:** NOAA encourages CMD to consider ways to improve coordination between the local coastal programs and the state and federal agencies. This could be accomplished through emphasis in existing training efforts or with more formal guidance to the local programs. We also encourage the inclusion of wetlands restoration plans such as Coast 2050 into the LCRP to improve coordination between permitting and restoration activities. We also would encourage outreach activities to inform a variety of interested parties about coordination between the permitting and restoration programs. CMD should also include the plans and state legislation relating to beneficial use of dredged material in the LCRP to ensure adequate coordination. Where possible NOAA should work with the Corps to support the state's efforts. Also, CMD and NOAA should work with EPA and DEQ to ensure that they provide necessary leadership to the Coastal Nonpoint Pollution Control Program.

**Response:** The coordination between local programs and federal agencies has improved. In the case of permit coordination, the Local Programs and New Orleans District Corps of Engineers have developed a programmatic general permit notification procedure. This procedure also provides for the LCPs to receive NMFS comments. The CMD provides copies of all uses of local concern to the USFWS, and there is a coordination process involving the Louisiana Department of Wildlife and Fisheries and uses of local concern. Further, a procedure to coordinate local permitting and the state restoration program has also been implemented.

Instead of incorporating Coast 2050 into the LCRP in order to improve coordination between permitting and restoration activities, the CMD used other methods, especially since the Coast 2050 incorporation concept did not seem to be an option which would actually address the perceived problem. Further, CMD did not feel it was necessary to incorporate the Coast 2050 document into the LCRP, furthermore the Louisiana Coastal Wetlands Conservation Plan (LCWCP) has already been incorporated into the LCRP. In any event, during the review period, the functions of CMD and the restoration program have become more integrated, the database has been improved, and intra-office coordination procedures have been refined.

The CMD did not incorporate the plans and state legislation relating to the beneficial use of dredged material into the LCRP, because the rules have never been promulgated; CMD, however, stresses beneficial uses in its consistency reviews and coastal use permit activities.

The CMD and DEQ did work together to some extent during the review period on the CNPCP and the CNPCP received conditional approval.

PROGRAM SUGGESTION: NOAA encourages CMD to make improvements to the Local Coastal Program that would improve the tracking of exempted projects to increase understanding of their cumulative impacts on Louisiana's coastal resources. These improvements should include better communication between local programs and the Corps better monitoring and tracking of local mitigation projects, and the provision of assistance to local programs to strengthen local planning and decisionmaking abilities. Also, CMD should consider expanding the GIS to show and quantify areas where wetlands were filled pursuant to an exemption. Such a cumulative impacts analysis may provide direction for prioritizing watersheds in need of wetland restoration mitigation.

Response: Three years ago CMD began to enter habitat loss data for exempted projects into the GIS. This data includes uses of state and local concern. The CMD made the database changes retroactive to 1996 and updates the database as new applications are processed.

PROGRAM SUGGESTION: NOAA encourages CMD to reevaluate the methodology used to calculate the in-lieu fees for mitigation projects and to seek regulatory changes to better compensate for the impacts of wetland loss. CMD should also examine the efficacy of the standard plat design used for permitting canal projects, as well as the standards by which mitigation for projects of local concern are determined by the parish coastal programs. CMD should provide technical assistance to ensure that the mitigation standards are being enforced at the local level. CMD should also work closely with other state agencies to establish state-owned tidal marsh mitigation banks. Also, CMD should consider expanding the permit tracking system to capture local permits.

Response: The CMD does not concede that existing mitigation rules do not adequately compensate for wetland loss. However, CMD has undertaken a Section 309 Task to improve mitigation. The task is presently underway and includes draft mitigation rules and assistance to local programs in the development of mitigation standards for uses of local concern which are equivalent to those for uses of state concern. The draft rules also include proposed changes to the way mitigation banking will be done, as well. The permit tracking system now captures local permit and associated mitigation.

It should be noted that CMD has considered the issue of the standard canal permit plat design and has determined that such a course of action would be inappropriate. The existing state of oil and gas industry standardization was achieved by much hard work by CMD over many years. In the early years of LCRP implementation, there was no industry-wide standardization of canals, drilling slips, pipeline ditches, and oil and gas access roads. The CMD worked with industry to develop standard dimensions for all of these activities in order minimize impacts to coastal waters. Proposed activities which exceeded the standard dimensions were not approved by CMD unless extensive justifications were provided. It was generally agreed to by the agencies and industry

representatives at that time that the drawings were to be considered to depict, in a representational manner, the construction phase of a project and not the ultimate state of the project site after years of erosion and subsidence. There is also a danger that drawings which depict a post-construction impact area might be misconstrued by a contractor who would then construct the project to those post-construction dimensions. This concern is based on CMD's experience that there have been several actual examples of contractors misinterpreting drawings and disturbing more area than allowed by the permit.

**PROGRAM SUGGESTION:** NOAA encourages CMD to develop a series of short courses on coastal management and wetlands values for parish coastal program officials. The development of general education materials should also be explored. These activities could be accomplished in partnership with Louisiana Sea Grant and other interested groups.

Response: The CMD has provided the parish local programs with model urban ordinances for stormwater runoff, technical and workshop information from the LGEAN website, and a NEMO project in Cameron Parish. The CMD has also involved the parish programs in several workshops on the Wetland Value Assessment methodology used to determine wetland impacts and mitigation, wetland identification classes, and individual training and assistance as needed. Further, CMD has provided the parishes with many opportunities to attend classes, symposia, workshops, and meetings on issues such as pipeline safety, agency coordination, wetland values, coastal restoration and engineering, and beneficial use of dredged material.

## LIST OF ACCOMPLISHMENTS AND RECOMMENDATIONS

### ACCOMPLISHMENTS

#### Program Operation and Coordination

- **Organizational Structure, Program Elements, and Operation:** The Department has been very supportive of the LCRP during the period of this evaluation, providing five additional permanent staff positions and increased attention and support for permitting conducted by the LCRP. The LCRP staff are well respected, knowledgeable professionals who are meeting the challenges brought about by the emphasis on permit streamlining and related activities.
- **Use of Technology:** The LCRP has developed and almost completed the implementation of an on-line permit application system and has made its permitting, consistency, enforcement, and local program databases available to the general public through its website. This helps to streamline the permit application process and makes all permit and authorization procedures more transparent to the public and affected parties. The LCRP also uses a very robust, interactive, web-accessible geographic information system that provides a wealth of data and information to the staff and public.
- **Programmatic Coordination:** The LCRP has improved coordination among the varied entities involved in coastal resource management, including among the three divisions in the Office of Coastal Restoration and Management. It has worked with the local coastal programs and federal and state agencies to develop procedures to address areas where better coordination was needed. The Departments of Natural Resources (DNR) and Wildlife and Fisheries (DWLF) have executed a revised Memorandum of Understanding addressing permitting and consistency coordination, and under the terms of the memorandum, DNR will provide funding annually to DWLF for a full-time position to support permitting efforts.
- **Local Coastal Programs:** The CMD has maintained its commitment to help the parish local coastal program (LCPs) implement their programs. The CMD staff are very responsive to the LCPs and have worked with them to improve LCP-federal agency coordination.

#### Natural Resource Protection

- **Coastal Forests:** The CMD has adopted a policy to address its jurisdiction with regard to activities associated with the harvesting of coastal wetland forests. Such associated activities are deemed to be uses of state concern and require a coastal use permit.

## Siting of Energy Facilities

- **Other Oil and Gas, Oil Spill, and Pipeline Activities:** The LCRP has completed a pipeline mapping project, which identifies the location of over 22,000 pipelines within Louisiana's coastal management boundaries. This information should prove very valuable in conducting a variety of the LCRP's and state's regulatory, planning, and management activities.
- **Other Oil and Gas, Oil Spill, and Pipeline Activities:** The LCRP has developed and is implementing a corridor policy for Lake Pontchartrain through the coastal use permit program to minimize user conflicts and impacts to resources by restricting the design, construction, and placement of pipelines crossing the lake.

## Federal Consistency, Permitting, and Regulatory Authority

- **Permitting:** Permit streamlining efforts have resulted in several improvements in the LCRP's permit process. The CMD has implemented a new permit fee schedule, resulting in additional revenue to the Coastal Resources Trust Fund. A joint Corps of Engineers/CMD permit application was developed and has been implemented. Permit processing times have been significantly decreased. As noted elsewhere, additional staff have been added to the Permits/Mitigation Program, and the LCRP's online permit application system is nearing full implementation.

## RECOMMENDATIONS

### Program Operation and Coordination

- **PROGRAM SUGGESTION (Use of Technology):** NOAA encourages the LCRP to continue to make more of its GIS data available on the public portion of SONRIS. NOAA also encourages the LCRP to enhance the use of its GIS and database capabilities and information/data in day-to-day coastal management decision-making. The CMD should document how its data and information capabilities are improving its coastal management actions.
- **PROGRAM SUGGESTION (Programmatic Coordination):** NOAA encourages the Department of Natural Resources and the Department of Environmental Quality to revisit existing but outdated memoranda of agreement between the two agencies and revise them as part of permit streamlining and increased interagency coordination efforts. The revised MOA(s) should include all relevant coordination activities, including each agency's responsibilities under the Louisiana Coastal Nonpoint Pollution Control Program. NOAA also encourages the three divisions within DNR's Office of Coastal Restoration and Management to continue to expand their internal coordination efforts in as many areas as possible.

- **PROGRAM SUGGESTION (Local Coastal Programs):** Once the state's wetland mitigation rules become final, the LCRP should work with all 10 LCPs to develop and/or revise local mitigation requirements so that they are consistent with the new state rules.

### **Natural Resource Protection**

- **PROGRAM SUGGESTION (Wetland Mitigation):** NOAA encourages the CMP to complete mitigation rule revision development and to closely coordinate the revision development with the Corps of Engineers, the Coastal Restoration Division and the Local Coastal Programs. In particular, the CMP should make drafts of the rule revisions available to the LCPs, CRD, and other appropriate agencies before the revisions are made available to the public for comment.
- **PROGRAM SUGGESTION (Coastal Forests):** The LCRP should consider using the Section 309 assessment and strategy to develop and implement mechanisms to address the issue of coastal forest logging. The CMD could also develop a Coastal and Estuarine Land Conservation Plan that identifies sensitive (non-sustainable) coastal forests as one of the priority areas for acquisition or purchase of easements.

### **Siting of Energy Facilities**

- **PROGRAM SUGGESTION (Other Oil and Gas, Oil Spill, and Pipeline Activities):** NOAA urges the LCRP to consider whether the pipeline corridor concept applied to Lake Pontchartrain could be applied to other areas of the Louisiana coastal zone.

### **Federal Consistency, Permitting, and Regulatory Authority**

- **PROGRAM SUGGESTION (Federal Consistency):** NOAA urges the LCRP to work with the Corps of Engineers through any available avenues to keep beneficial use of dredged material in restoration projects and for shoreline protection as a viable option. NOAA also encourages the LCRP to take advantage of the federal consistency process whenever appropriate to encourage the beneficial use of dredged materials and the use of closed loop systems in LNG facilities.