

**Evaluation Findings
For the
Mississippi Coastal Zone Management Program
From
January 2002 through December 2004**

August 2005

Office of Ocean and Coastal Resource Management
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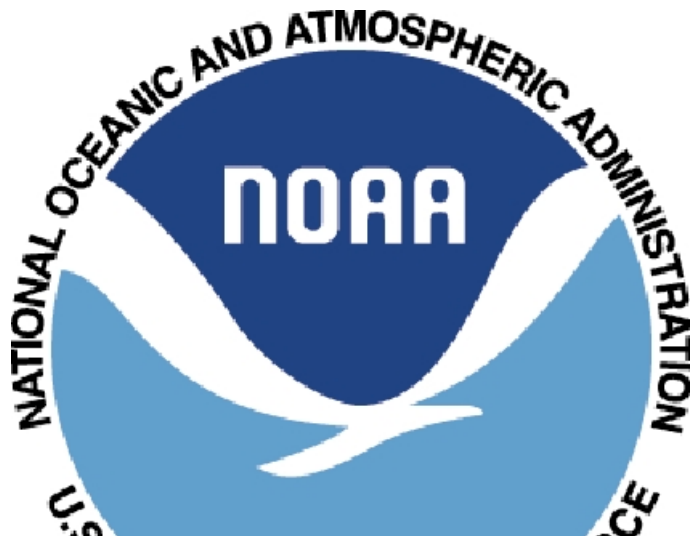


TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
I. INTRODUCTION	6
II. PROGRAM REVIEW PROCEDURES	7
III. PROGRAM REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS	8
A. Department of Marine Resources Agencies	8
B. Beneficial Use of Dredge Material	9
C. Mississippi Gulf Coast National Heritage Designation	10
D. Stormwater Management Toolbox	10
E. Clean Marina Program	10
F. Coordination	11
G. Staffing	12
H. Geographic Information System	13
I. Permitting	13
J. Program Commitment	14
K. Mitigation	15
L. Non-Point Source	16
M. Federal Consistency	16
N. Program Document Development	17
O. Program Change	18
P. Wetlands Use Maps	19
Q. Program Challenges	20
R. Public Notice	21
IV. CONCLUSION	23
Appendix A: Persons Contacted During the Evaluation	
Appendix B: Persons Attending the Public Meeting	
Appendix C: Written Comments Received and Responses	
Appendix D: Response to the Previous Findings	

EXECUTIVE SUMMARY

A. OVERVIEW

Section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires NOAA's Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of state coastal management program implementation. This review examined how the State of Mississippi has implemented and enforced the Mississippi Coastal Zone Management Program (MCZMP), addressed the coastal management needs addressed in section 303(2)(A) through (K) of the CZMA, and adhered to the terms and conditions of the NOAA financial assistance awards the MCZMP received between January 2002 through December 2004.

B. PROGRAM REVIEW FINDINGS ACCOMPLISHMENTS AND RECOMMENDATIONS:

The Evaluation Team documented a number of areas where the MCZMP improved its management of Mississippi's coastal resources. These include:

- 1. Department of Marine Resources Agencies.** *The Department of Marine Resources is commended for its overall leadership in the implementation of the Mississippi Coastal Zone Management Program.* All elements of the Department of Marine Resources (DMR) combine to assure the implementation of MCZMP policies and procedures. This includes the Marine Patrol, the Office of Marine Fisheries, the Public Relations Office, the Derelict Vessel Program, Coastal Preserves and the Grand Bay National Estuarine Research Reserve.
- 2. Beneficial Use of Dredge Material.** *MCZMP is commended on the implementation of the new Beneficial Use of Dredge Material Program to support non-federal dredging needs.* The mission of the new Beneficial Use of Dredge Material Program is to "mitigate the adverse impacts to the Mississippi Gulf Coast's environment as a result of dredging in the Mississippi Sound and its associated rivers and other waterways in the coastal zone."
- 3. Mississippi Gulf Coast National Heritage Program.** *The Comprehensive Resources Management Plan Bureau of the Office of Coastal Ecology is commended for its work in bringing National Heritage Designation to Mississippi's Gulf Coast.* Congress designated the Mississippi Gulf Coast National Heritage Area (MGCNHA) in late 2004. It is a non-regulatory program which enjoys widespread public support from coastal area residents, businesses and elected officials. The designation will provide \$1 million from the Federal government for the next 10 years.
- 4. Stormwater Management Toolbox.** *The Comprehensive Resources Management Plan Bureau of the Office of Coastal Ecology is commended for its work to develop the Stormwater Management Toolbox.* During the review period a

Stormwater Management Toolbox which includes best management practices for stormwater management planning on a watershed basis and resource elements such as model ordinances was developed.

5. Clean Marina Program. *Implementation of the Clean Marina Program in Mississippi coastal marinas is an accomplishment during the review period.* The Alabama – Mississippi Clean Marina Program (AMCMP) is a voluntary program developed and implemented by Mississippi-Alabama Sea Grant Consortium and its AMCMP partners to promote environmentally responsible marina and boating practices.

6. Coordination and Communication. *It was found that there is good coordination between DMR and the networked State agencies and Federal partners; however, more can be done.* During the site visit meetings, discussions with Federal and State agencies indicated that they all shared a good working relationship with the MCZMP.

Program Suggestion: MCZMP should continue to foster and broker communication and coordination with appropriate Federal Agencies, the networked agencies, the public, and with all stakeholders. Coordination at the inter-agency and intra-agency levels should be routine as opposed to ad hoc.

7. Staffing. *It was found that the staffing issues of previous years remain, though the DMR has taken positive steps to remedy inequities in remuneration of employees relative to the prevalent job market.* Staffing levels within the DMR are currently adequate, but personnel are stretched. There should be no retreat from current staffing levels and in most cases, an increase would be desirable. Employee retention remains an issue.

8. Geographic Information System. *The DMR Geographic Information System (GIS) continues to evolve and is compatible with the systems of partnering agencies.* A new permitting database has been developed using Oracle software which has capabilities to track all projects and provide pertinent information

9. Permitting. *It was found that DMR is implementing its regulatory program consistent with the approved MCZMP and that staffing was adequate, if short tenured, to meet the needs of the office.* There are a number of issues confronting the permitting function. Given the scope it would be desirable to develop some engineering, economic and planning expertise within OCE to support the permitting function and provide technical, training and policy support. Also there is a need to correct the disparity in timing of permit review by DMR, DEQ and the Corps.

10. Program Commitment. *There needs to be a firm commitment to the approved program through Commission support of the fundamental principles of the MCZMP, through institutionalization of the program within the State administrative structure, through personnel*

support and through maintenance and increase of staffing levels. The issue of commitment to the program is a two fold topic. First is the commitment of the State to support the ongoing operation of the program in order to free the CZMA funding for other purposes. Second, is the commitment of the State and the appointed Commissioners to support the program through the decisionmaking processes.

11. Mitigation. *It is commendable that the MCZMP participates in the mitigation banking program, however, there may be cases where accepted mitigation may not be adequate for the impact.* A mitigation action may occur in one county for an impact that occurs in another. Often the mitigation is in a different regime from the regime impacted. Also, the preservation of existing wetland is deemed a mitigation rather than what it actually is; a preservation of wetland.

12. Non-Point Source. *The Non-Point Source program is progressing with DEQ and the U.S. Environmental Protection Agency working on the remaining issues.* The State is addressing the remaining recommendations in its program and implementing those approved areas.

13. Federal Consistency. **The last evaluation of the MCZMP contained a Necessary Action requiring a submission of the State’s Federal Consistency process to OCRM. The determination was made, and OCRM agreed, that this would be addressed as part of the effort to re-draft the Program document. That document has not yet been completed. In addition, there are a number of issues concerning the conduct of consistency that need to be addressed and fine tuned**

Necessary Action: MCZMP must document and submit its Federal Consistency process to OCRM immediately.

Program Suggestion: MCZMP should address the multiple issues affecting the exercise of Federal Consistency (all discussed in the previous evaluation) and seek changes to its processes where possible.

14. Program Document Development. **The previous evaluation of the MCZMP noted that changes in state organization and the changes in how the MCZMP was operating needed to be communicated to program constituencies. This was to be accomplished by updating the MCZMP program document which summarizes the structure, policies, management objectives and procedures and programs. This did not occur as anticipated.**

Program Suggestion: MCZMP should complete the development of a program document describing in a user friendly manner, its management objectives, how the program works,

its processes and procedures, and its legislative and regulatory underpinnings.

15. Program Change. During the review period there have been changes to State law and regulations that comprise elements of the MCZMP. Since some of these laws relate to the permitting process and consistency, it is important that they be submitted on a faster track than submission with the new program document.

Program Suggestion: MCZMP should develop a schedule to ensure that program changes are submitted to OCRM at least once every two years. It is further suggested that drafts of pending legislation that may impact the MCZMP be submitted to OCRM informally.

16. Wetlands Use Maps. During a discussion regarding the location, use and update of the wetland use maps it was clear that this program element has been “misplaced.” The maps, which identify defined wetlands in the coastal area, were to be maintained with amendments, changes, and variances updated and periodically provided to OCRM as a program change.

Program Suggestion: MCZMP should verify that the wetlands use maps exist and are maintained in office facilities and that any changes are being documented to the maps. As a matter of course, the wetland use maps should be digitized, a process for their update should be developed and implemented, and a process to assure that they are routinely submitted as program changes to OCRM needs to be implemented.

17. Program Challenges. It was clear from the site visit and the review of documentation regarding the operation of the MCZMP, that the Program and its staff are at the threshold of a number of opportunities which will challenge the implementation of the MCZMP. These include issues surrounding piers, docks and marinas, the emergence of condominium development, and pressures of development in freshwater wetlands.

Program Suggestion: MCZMP should consider conducting an analysis of freshwater wetlands (quality and functions), which if degraded or lost might have a direct or an indirect effect on coastal habitats, coastal water quality or coastal flood control issues and consider prioritizing those areas for conservation, protection, or

restoration purposes. This could be facilitated through the use of MCZMP GIS data and information. MCZMP should also establish an overall definition of success for their wetlands program.

18. Public Notice. Notice of permit applications are routinely advertised in specified newspapers within each coastal county in accordance with Mississippi State law. However, the opportunity exists to expand public notice on a regular basis through the use of the DMR's web page.

Program Suggestion: It is suggested that DMR use its web page to routinely post notices of individual permit applications with a statement of process and how to appropriately register an objection or comment.

I. INTRODUCTION

Section 312 of the Coastal Zone Management Act (CZMA) of 1972, as amended, requires NOAA's Office of Ocean and Coastal Resource Management (OCRM) 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 OCRM with respect to the Mississippi Coastal Zone Management Program (MCZMP) for the period from January 2002 through December 2004. This document includes an Executive Summary, Program Review Procedures, Review Findings Accomplishments and Recommendations, and a Conclusion.

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

(1) Necessary Actions address programmatic requirements of the CZMA regulations and of the MCZMP approved by NOAA, and must be carried out by the date(s) specified. There is one Necessary Action within this document.

(2) Program Suggestions denote actions which OCRM believes would improve the management and operations of the Program, but which are not mandatory at this time.

If no specific dates are given for carrying out a Program Suggestion or a Necessary Action, the State is expected to have successfully implemented the Necessary Action or Program Suggestion by the time of the next section 312 evaluation. The findings contained within this document will be considered by NOAA in making future financial assistance award decisions relative to the Mississippi Coastal Zone Management Program.

II. PROGRAM REVIEW PROCEDURES

The Office of Ocean and Coastal Resource Management (OCRM) evaluation staff began review of the MCMP in September 2004. This included an analysis of the approved MCZMP, previous and current award documents and performance reports, previous evaluation findings, correspondence relating to the MCZMP, and other relevant information. The OCRM National Policy and Evaluation Division (NPED) and the Coastal Programs Division (CPD) staff coordinated to determine the issues which would become the main focus of the evaluation. The Evaluation Team analyzed the State's responses to these specific issues and used them as primary sources of information for this evaluation.

The Evaluation Team gave special emphasis to the following issues:

- * The effectiveness of MCZMP authorities and procedures to address coastal resource needs;**
- * The effectiveness of monitoring and enforcing the State laws and authorities under the MCZMP;**
- * The effectiveness of the MCZMP Federal consistency process as a management tool and the status of the Necessary Action of the previous evaluation;**
- * Opportunities for public participation, both formal and informal, in permitting and planning decisions under the MCZMP;**
- * Any program changes to and impact of these changes on the MCZMP; and,**
- * Opportunities to use educational institutions or other initiatives to develop outreach focused on building programmatic support at all levels.**

John H. McLeod, Evaluation Team Leader, National Policy and Evaluation Division, Bill O'Beirne, Program Specialist, Coastal Programs Division, and Jim Rives of the Louisiana Coastal Program, conducted a site visit from December 6 through 10, 2004. The Evaluation Site Visit Team met with representatives of State and local governments, Federal agencies, interest group representatives, and private citizens during the site visit.

A Public Meeting was held on Monday, December 6, 2004, at 6:00 pm, at the Bolton State Office Building at 1141 Bayview Avenue in Biloxi, Mississippi. (Appendix A lists persons contacted in connection with the evaluation; Appendix B lists persons who attended the Public Meeting; Appendix C contains NOAA's response to written comments received.)

The MCZMP staff was instrumental in setting up meetings and arranging logistics for the evaluation site visit. Their support is gratefully acknowledged.

III. PROGRAM REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS

The true strength of any program lies in its supporting staff and Mississippi is fortunate in this regard. It is through their efforts that the significant accomplishments documented here came to fruition. During the period of time covered by this evaluation, January 2002 through December 2004, the Mississippi Coastal Zone Management Program has addressed many coastal issues. The results detailed below would not have occurred without committed leadership and staff. Ultimately, the actions of MCZMP personnel lead to the specific accomplishments detailed below.

A) Department Of Marine Resources Agencies.

The Department of Marine Resources is commended for its overall leadership in the implementation of the Mississippi Coastal Zone Management Program. All elements of the Department of Marine Resources (DMR) combine to assure the implementation of MCZMP policies and procedures. Significant activities include the following:

1. Marine Patrol. The Marine Patrol continues to provide strong enforcement for the MCZMP on the water and on the land interface to the water. State law mandates that all Marine Patrol officers are constituted peace officers of the State with full police power and jurisdiction to enforce all laws of the State. Also, all Marine Patrol officers are duly appointed United States Law Enforcement Officers. Assets include 39 sworn law enforcement officers, 28 Reserve law enforcement officers, 30 patrol boats, 1 fixed wing aircraft, a boat and water safety program, a public outreach and education program, a special investigation/covert program, and a search and recovery dive team. During routine patrol officers identify, document and enforce permit violations, non-permitted activities, spill incidents, derelict vessels and illegal dumping. Using GPS, the locations of violations, incidents and illegal/non-permitted incidents are documented.

2. Office of Marine Fisheries. The Plant Sanitation was found to be in conformity with all Food and Drug Administration requirements of the Program Element Evaluation Report (PEER) for the third year in a row. The Bureau of Shellfish PEER report found no nonconformities with the NSSP Model Ordinance for the fourth year in a row. This is the highest finding of the PEER in both cases. The Shrimp and Crab Bureau was awarded EPA's Gulf Guardian Award for the derelict crab trap removal program which has led to the collection and recycling of over 5,000 traps along the coast. The program also received the Keep Mississippi Beautiful Award. In addition, the Office of Marine Fisheries works closely with NOAA's National Marine Fisheries Service (NMFS). Activities with NMFS include monthly collection of commercial landings by species, pounds and value, the interview of fish vessels for catch and effort data, and size frequency and otolith collection for selected finfish.

3. *Public Relations.* The mission of the Public Relations Bureau is to promote an “... awareness of the Department (of Marine Resources), its roles, responsibilities and programs in balancing economic interests with enhancing, protecting, managing and conserving Mississippi’s marine resources... (t)hrough a proactive program of community outreach, education, public information, and legislative and media relations...”

Publications of the Bureau during the review period include the Coastal Markers quarterly newsletter, the FY 2002, 2003 and 2004 Annual Reports, Exploring Mississippi’s Coastal Habitats brochure, DMR Marine Resources calendars, Marine Debris Activity folders, Marine Debris Awareness Iron-on Transfers, the annual Saltwater Fishing Regulations book, the Mississippi Boaters Guide, the Mississippi Seafood Industry Directory, and the Smart Oyster Harvest Tips brochure. Significant events of the Bureau are: Capitol Day where the activities of the DMR are displayed at the Capitol; Trash Splash; GINS Earth Day; the Mississippi Deep Sea Fishing Rodeo; Mississippi Coastal Cleanup; and, Celebrate the Gulf.

4. *Derelict Vessel Program.* The Derelict Vessel Program continues to effectively remove derelict vessels and dispose, or otherwise provide for the beneficial use of such vessels through the creation of artificial reefs.

5. *Coastal Preserves.* Accomplishments over the past three years include 3 new nature trails that may be used as outdoor classroom resources, the acquisition of 1,000 more acres, and working on a Coastal and Estuarine Land Grant Program (CELP) plan in anticipation of the acquisition element being funded.

6. *Grand Bay National Estuarine Research Reserve.* The Grand Bay National Estuarine Research Reserve (GBNERR) is directly managed by the DMR’s Office of Coastal Ecology. Recent employment for GBNERR has it positioned to implement its Coastal Training Program, its System Wide Monitoring Program and to support the MCZMP through decisionmaker workshops.

B) Beneficial Use of Dredge Material.

MCZMP is commended on the implementation of the new Beneficial Use of Dredge Material Program to support non-federal dredging needs. The mission of the new Beneficial Use of Dredge Material Program is to “mitigate the adverse impacts to the Mississippi Gulf Coast’s environment as a result of dredging in the Mississippi Sound and its associated rivers and other waterways in the coastal zone.” The Dredge Management Master Plan brings stakeholders together to identify sites that would be non-federal projects. These are then mapped so that priorities may be developed. DMR was mandated by the Legislature to fund some use of the dredged materials for wetland restoration purposes and two demonstration projects: Cedar Point in Hancock County where a ¼ acre site was identified; and Davis Bayou in Jackson County at a 10 to 12 acre site capable of receiving 50 thousand yards of dredged materials. In the case of the remaining 30 sites identified by the stakeholder group, the Corps has identified 9 sites that will be restored under a general permit.

C) Mississippi Gulf Coast National Heritage Designation.

The Comprehensive Resources Management Plan Bureau of the Office of Coastal Ecology is commended for its work in bringing National Heritage Designation to Mississippi's Gulf Coast. Congress designated the Mississippi Gulf Coast National Heritage Area (MGCNHA) in late 2004. The six (6) county region of southern Mississippi, led by the DMR's Coastal Resource Management Program Branch, worked in partnership with local governments, property owners, State and Federal agencies, businesses and non-profit institutions to develop the plan with the goal of creating a more livable and economically viable region. The MGCNHA is a non-regulatory program which enjoys widespread public support from coastal area residents, businesses and elected officials. The designation will provide \$1 million from the Federal government for each of the next 10 years to support local initiatives which assure preservation and understanding of the area.

D) Stormwater Management Toolbox.

The Comprehensive Resources Management Plan Bureau of the Office of Coastal Ecology is commended for its work to develop the Stormwater Management Toolbox. During the review period a Stormwater Management Toolbox which includes best management practices for stormwater management planning on a watershed basis and resource elements such as model ordinances was developed. The toolbox provides coastal cities and counties the necessary information to use in selecting best management practices and developing and implementing management programs. It is intended for use by coastal communities in selecting measures to employ as part of their stormwater runoff management program and to provide information to local decisionmakers to assist with stormwater runoff management decisions and provide long term benefits to the coastal community. As such, it is to be used as a resource document by city and county engineers, public works directors, developers and contractors, road maintenance crews, city and county planners, and professional engineers in everyday decisions.

E) Clean Marina Program

Implementation of the Clean Marina Program in Mississippi coastal marinas is an accomplishment during the review period. The Alabama – Mississippi Clean Marina Program (AMCMP) is a voluntary program developed and implemented by Mississippi-Alabama Sea Grant Consortium and its AMCMP partners to promote environmentally responsible marina and boating practices. The program, established to meet the requirements of the coastal non-point program and in support of the National Clean Boating Campaign, helps marina operators protect the resource that provides them with their livelihood: clean water. It is designed as an ongoing program to reduce water pollution and erosion in State waterways and coastal zones. The effort encourages boater education, coordination among state agencies and better communication of existing laws, as

well as offers incentives for creative and proactive marina operators. The AMCMP includes seven management measures that were identified by marina operators as priorities: Marina siting, design and maintenance; Sewage management; Fuel management; Solid waste and petroleum recycling and disposal; Vessel operation, maintenance and repair; Stormwater management and erosion control; and, Marina management/public education.

F) Coordination.

It was found that there is good coordination between DMR and the networked State agencies and Federal partners; however, more can be done. During the site visit meetings, Federal and State agency staff indicated that they all shared a good working relationship with the MCZMP. Several indicated that they attended interagency meetings on an “as needed basis.” The reported frequency of those meetings ranged from monthly to once every six months. Likewise, the subject of the meetings ranged from specific projects to the “hot topic” of each participating agency. The U.S. Fish and Wildlife Service (FWS) reported a close working relationship due, in part, to the fact that the contact person had been employed by DMR in its permitting section and had a full understanding of its procedures and processes; of what it could and couldn’t do. Likewise FWS interacts with DMR through the Estuarine Research Reserve and the Sand Hill Crane Refuge.

Coordination with the Mississippi Department of Environmental Quality (DEQ) occurs on a regular basis. Generally applicants for coastal wetlands and DEQ water quality certification projects go to DMR first and get assistance in the permit application process there. Once a complete application is made, it is forwarded to DEQ and the Corps (when determined complete by the Corps it is noticed). Sometimes DEQ will get involved in big projects in the pre-application process and come down for pre-application meetings. Some staff is in Biloxi at least every other week, though every week is the recent norm. Site visits are coordinated with all resource agencies. There are periodic meetings of all the resource agencies, with specific agendas on a monthly basis.

According to the U.S. Army Corps of Engineers (Corps), coordination with Mississippi is moving toward a “Regional Office” approach. Soon the Vicksburg Office will handle the policy issues and general permits for all of Mississippi including the coastal area. DMR now deals with Mobile, Vicksburg and New Orleans District Offices predicated on the location of the area under consideration. The Mobile Corps Office has oversight over most (95%) of the coastal area. Vicksburg has oversight over 5% of the Mississippi coast; an area that has a large amount of violations. It was noted that the Vicksburg office rarely, if ever, attends interagency meetings or becomes directly involved in enforcement actions. It was also pointed out that the change is administrative and that DMR would continue to work with the Mobile Corps Office, which will maintain its involvement in coastal permitting.

PROGRAM SUGGESTION

1. **MCZMP should continue to foster and broker communication and coordination with appropriate Federal Agencies, the networked agencies, the public, and with all stakeholders. Opportunities to coordinate at the inter-agency and intra-agency levels should be routine as opposed to ad hoc.**

Follow-up: MCZMP will continue to work on coordination and will track what is occurring with the administrative changes to its relationship with the Corps.

G) Staffing.

It was found that the staffing issues of previous years remain, though the DMR has taken positive steps to remedy inequities in remuneration of employees relative to the prevalent job market. Staffing levels within the DMR are currently adequate, but personnel are stretched. There should be no retreat from current staffing levels and in most cases, an increase would be desirable. Employee retention remains an issue. The retention of enforcement personnel has only partially been resolved. The Coastal Resource Management Specialist grade levels have provided some incentive because of the raise in pay as the grade level increases. This has resulted in longer tenure for personnel before they depart State employment for higher paying Federal and consulting positions. While the addition of additional enforcement personnel to a number twice that of several years ago is commendable, the retention rate has not been extended. On average, the term of employment for enforcement personnel in the Office of Marine Fisheries is around 11 months.

It is noted that DMR is less able to promote personnel in State funded positions than those on federally funded positions. In the Regulations Functions Division, the Coastal Resource Management Specialist (previously Biologist) has four levels, though no one is at the “IV” level, in part due to the fact that no one has stayed employed long enough to reach that level. Discussions during the site visit with current and past staff indicate that assignments are not always clearly different between the grade levels. One way to change things would be to have a level “I” employee work on the more simple general permits and a level “III” work on the more difficult individual permits. In addition it might be desirable to conduct an analysis of adjacent states and where other organizations have similar expertise needs. Currently the job appears to be unique to Mississippi and there is the need to demonstrate that this is a job that should be paid at a higher and hence more competitive level. The job also is a high pressure job that requires “multiple, high level negotiation skills” which demand higher level abilities of the incumbent than the skills required of one who just reviews information from a desk.

To increase staff numbers the DMR must get legislative approval for new positions. They can, however, contract for personnel support. The indicator of parity will be when they can employ personnel from the consulting area and the Federal area. In terms of obtaining “coastal zone management” entry level talent, there has been progress. Working with the Gulf Coast Community College, the DMR has fashioned an internship program and appropriate curriculum has been developed. In January, 2005 two students will begin a

two year internship in the enforcement area. Under a Hutton Scholarship a high school student participated in DMR last year carrying out field exercises, monitoring, permitting and other tasks. The participant has gone on to major in marine biology.

Follow-up: DMR has adjusted the pay scale for the Coastal Resource Management Specialists and provided incentives through yearly training opportunities.

H) **Geographic Information System.**

The DMR Geographic Information System (GIS) continues to evolve and is compatible with the systems of partnering agencies. A new permitting database has been developed using Oracle software which has capabilities to track all projects and provide pertinent information regarding applicant and agent, a description of the project and its impacts, an ongoing chronology of actions for an up-to-date status, and statistics of all types including types of files and number of files processed. Also, using funding from Mississippi Department of Health, individual septic tanks within the six county coastal area were located and placed into a new GIS data layer to support future planning and enforcement efforts. In addition, the DMR has funded 21 workstations for the 6 coastal counties and local governments, augmented with Arcview training, that are now providing GIS support for local permit applicants.

DEQ is in the process of changing their management structure and the water quality function is going to be merged into a new Environmental Permits Division. This will allow for the use of the permit tracking, GIS system which is defined by its ISSUE (for DEQ access to the full system) and INSIGHT (for general public access) elements. The system is Arcinfo, so that data from the two systems can be shared.

Follow-up: DMR notes the need to continue to develop and apply the system to support coastal decisionmaking.

~~Permitting~~
J) **Program Commitment.**

There needs to be a firm commitment to the approved program through Commission support of its fundamental principles, through institutionalization of the program within the State administrative structure, through personnel support and through maintenance and increase of staffing levels. There appears to be a trend of increasing Federal money to support MCZMP staff, rather than an increase in State support. While not an acute problem, the redirection of increasing Federal funds signals a somewhat lessened commitment by the State to the Program as well as limiting the use of Federal funding for other purposes.

General Fund support is becoming more and more difficult to obtain. Currently the

DMR annual budget is comprised of: \$1.9 million from the General Fund; \$.9 million from Licenses and Miscellaneous Revenues; \$5.9 million in Tidelands Funds; and \$3 million in off road fuel taxes. The Tidelands Funds provide some support as the DMR receives a small amount to allocate internally, however, the majority of funds are provided to local governments. This provides the program match for CZMA funds. However, it is difficult to make that match absent a commitment by the State to fund program personnel through what is admittedly diminishing State General Fund monies. This also relates to the staffing issue discussed above. It would be desirable to see more support on the State level for DMR personnel. A cut in general fund resources could bring with it the direction to decrease State funded staff. This is another stress on staff, particularly those that are State funded.

A number of individuals noted that the Commission grants a large number of variances. One person noted that “Everything gets a variance. The zoning doesn’t help. The laws don’t help. The policies don’t help. Sometimes the recommendation of the DMR staff doesn’t help. The Commission allows a variance.”¹ While in reality not that many variances are granted in the course of a year, it is instructive that the widely held belief is to the contrary. It is important that the basic understanding should be that part of the annual award of money the Federal dollars through the CZMA grant is predicated on adherence to the approved program and changes, or variances, should be at a minimum and predicated on sound scientific principles.

K) Mitigation.

It is commendable that the MCZMP participates in the mitigation banking program. However, in some cases mitigation may not be adequate for the impact. A mitigation action may occur in one county for an impact that occurs in another. This is due to the size of the mitigation service area, which could be narrowed to ensure more appropriate mitigation. Often the mitigation is in a different regime from the regime impacted (e.g. freshwater palustrine vs. brackish marsh). Also, the preservation of existing wetland is deemed “a mitigation,” which does not result in no net loss of the wetland resource.

The Mitigation Bank Compliance Program is an excellent program and reaches the private sector where public funding is not available. FWS is one of the members, along with DMR, of the Mitigation Bank Review Team (MBRT). They meet annually in October to review the viability of each site and have a tracking system and software for all sites in the area called RIBITS. It may be accessed from the outside through the Mobile Corps web site. The public can access some of the data; MBRT members can access all data. One emerging issue relates to the mitigation service area for the separate mitigation bank sites. The service area may be too large allowing mitigation of one resource type by another. An effort to redefine the area is desirable, at least to get a handle on long term need. There are existing efforts at DMR to support this but it needs to be put together as a package for all of the partners, some of whom are not in support of such an effort, to consider.

¹ Field notes of the evaluation site visit.

L) Non-Point Source.

The Non-Point Source program is progressing and DEQ and the U.S. Environmental Protection Agency are working on the remaining issues. The State is acting on elements of its program needed to bring about Federal approval. The largest issue relates to on-site disposal. It is the DEQ practice to emphasize the on-site assessment for the on-site disposal system accepted and permitted. On another issue, they are preparing legal opinions on the State's Water Pollution Act as a potential backup authority and whether it would satisfy a number of conditions to the program document. Once completed by DEQ staff, the legal opinion will go to the Mississippi Attorney General for review and submission to NOAA and EPA.

M) Federal Consistency.

The last evaluation of the MCZMP stated in part "Within 30 days of the receipt of the final findings the State will submit for approval its schedule for analysis and review of its consistency process to OCRM." Within that time frame the determination was made, and OCRM agreed that this would be addressed as part of the effort to re-draft the Program document. That document has yet to come to fruition. At this point, it is important that the MCZMP provide OCRM with the current Federal Consistency process for review as soon as possible.

NECESSARY ACTION

- 2. MCZMP must document and submit its Federal Consistency process to OCRM immediately.**

Follow-up: MCZMP has agreed to submit the Federal Consistency process as soon as possible. OCRM has agreed to provide a quick review of the document to assure that it will be available for inclusion in the program document.

Other issues related to Federal consistency that need to be addressed include: extended permit application times, the issuance of provisional permits by the Corps, a disconnect in the permit process under the Clean Water Act, and the decision time table of the DMR, the Corps and DEQ. State wetland permit applications must be acted upon within 3 years; after that an extension may be requested for one year every year. For several such permits an extension has been granted for a number of years. There is no provision to open the permit file to see if reasons for granting the permit have changed or not, particularly as they relate to economic and demographic justification.

Another technical issue relates to Corps issuance of "provisional permits." To meet internal processing time guidelines, the Corps now processes a permit within 120 days (this is generally a longer period than the State requirements) to be consistent with the MCZMP that activities must receive a State 401 certification. However, the Corps sometimes issues a

“provisional permit” prior to receipt of the State 401 certification requiring the applicant to acquire the appropriate State permits before taking any action on the permit. The problem is two fold: the permittee does not always follow the instructions assuming the Corps permit to be the only controlling permit and goes ahead with the action; and, issuing a provisional permit places additional and inappropriate pressure on the State to approve the action since the Federal agency has already approved it.

An issue regarding Clean Water Act Section 401 certifications relates to post construction tied to Section 402 stormwater requirements which are driven by the structural requirements of the 401 certifications. With a 401 certification the application deals with the 401 issues, though there is a collateral 402 action. This is ignored because it is an adjacent site, not site specific to the 401 application or is ancillary to the 401 permit. DEQ needs to look at the 402 on land issues relative to the water actions. A project with a large impervious area requires that they look at the stormwater as a part of the overall project impact and not just as a part of the wetland impacted by construction.

Finally, the DMR timetable to make a decision is often ahead of DEQ’s ability to make a decision. For DMR the Federal consistency clock starts when they make the determination that the permit is complete (when it is forwarded to the Corps). DEQ awaits the joint notice considerably later to begin action and rarely is aware that a permit action is pending in DMR. The issue is related to when the State permit timetable starts, at the completed application call or at the joint notification. DEQ and DMR reviews need to start closer to the same point in time.

PROGRAM SUGGESTION

- 3. MCZMP should address the multiple issues affecting the exercise of Federal Consistency (all discussed in the previous evaluation) and seek changes to its processes where possible.**

Follow-up: The MCZMP will address these issues.

N) Program Document Development.

The previous evaluation of the MCZMP noted that changes in State organization administering the MCZMP, its programs, operations and procedures, needed to be communicated to program constituencies. The changes in the MCZMP were such that a new program document to explain the changes, new directions and processes, new laws and ordinances, and, generally, new ways of doing business was required. This led to the following Program Suggestion:

“As the State moves to revamp the coastal program document, making it “friendlier” and more descriptive, it should provide some discussion regarding future directions of the MCZMP such as performance indicator development, continuing

education for professionals and development of staff, marsh creation and restoration, and mitigation compliance. As part of the process, new legislation, old statements of working relationships and emerging problems of enforcement should be reviewed.”

As a result, the MCZMP undertook the task of re-writing the program document to reflect the programmatic changes. DMR contracted out the re-write and a review committee determined that the first draft was not what they had anticipated. The product went back to the contractor for more work. During the site visit, the issue was discussed and the following suggestion was agreed to.

PROGRAM SUGGESTION

4. MCZMP should complete the development of a program document describing in a user friendly manner, its management objectives, how the program works, its processes and procedures, and its legislative and regulatory underpinnings.

Follow-up: OCRM will work with DMR on the schedule for the analysis of the documents that will need reviewed to meet this deadline. DMR will provide the documents in pieces as they become available.

O) Program Change.

During the review period there have been changes to State law and regulations that comprise elements of the MCZMP. The State anticipated that these would be incorporated into the new program document, which would be submitted to OCRM for review as a program change when completed. Unfortunately, the development of the new program document has taken substantially longer than anticipated. Since some of these laws relate to the permitting process and consistency, it is important that DMR submit these changes on a faster track than the development of the program document will allow.

For instance, DMR revised the definitions of marina and there is no longer a requirement that 10% of dockage in marinas be set aside for transient users. As a practical matter, this has not been enforced in the recent past and the requirement change is clearly not a change in policy as it is applied in the real world. It is noted that the original requirement was put in place because of a lack of transient dockage. However, the change was made without a study to determine whether the need had been met or exceeded. This is a program change that needs to be submitted. DMR should work with NOAA staff to develop a schedule to submit these changes in a timely manner.

PROGRAM SUGGESTION

5. Program Suggestion: MCZMP should develop a schedule to ensure that program changes are submitted to OCRM at least once every two years. It is further suggested that drafts of pending legislation that may impact the MXZMP be submitted to OCRM informally.

Follow-up: DMR will identify the changes that are anticipated to OCRM and work on a schedule for their submission. There is a requirement that changes be updated with the Secretary of State on a two year basis. This has not been done.

Wetlands Use Plan/Maps.

During a discussion regarding the location, use and update of the wetland use maps it was clear that this program element needs attention. The maps, which identify defined wetlands in the coastal area, were to be maintained with amendments, changes, and variances updated and periodically provided to OCRM as a program change. The issue is fourfold:

- 1) The location of the maps needs to be discovered. Originally in hard copy only because when they were created the technology did not exist within the program to digitize them.**
- 2) Once the maps are located they should be digitized, if they have not been already. It could be possible that they have been digitized but lost within the system.**
- 3) Changes to the Wetlands Use Plan need to be identified on the maps and a system to track those changes as they occur and update the maps on a regular basis needs to be developed. It was admitted that variances to the maps have been allowed, but there was disagreement on the frequency with which this occurs and the numbers that have occurred. There was agreement that a correction to the maps was issued this year. Changes were maintained in a folder but no one knows the location of that folder. The ultimate location of and use of this data resource needs to be determined.**
- 4) Changes, variances and corrections, need to be submitted to OCRM as program change.**

An additional issue is that the Wetland Use Plan “use categories” still do not account for casinos - that is, the existing Use Categories (e.g. commercial, residential, recreational, conservation, etc.) do not make provisions to allow for, or restrict, the siting of casinos. If the consideration of casino development were included in the use plan categories they could be used to direct future casino applicants to areas more suitable for casino development and away from areas less suitable.

PROGRAM SUGGESTION

- 6. MCZMP should verify that the wetlands use maps exist and are maintained in office facilities and that any changes are being documented to the maps. As a matter of course, the wetland use maps should be digitized, a process for their update should be developed and implemented, and a process to assure that they are routinely submitted as program changes to OCRM needs to be implemented.**

Follow-up: Plans are being made to address this, once the maps are found. First they will be digitized so that an appropriate analysis of changes and variances can be conducted. After analysis, there will be submission to OCRM for consideration as a program change.

Program Challenges.

It was clear from the site visit and the review of documentation regarding the operation of the MCZMP, that the Program and its staff are at the threshold of a number of opportunities which may serve to strengthen the implementation of the MCZMP. These include issues surrounding piers, docks and marinas, the emergence of condominium development, and pressures of development in freshwater wetlands. The discussion at I. Permitting above mentions piers, docks, marinas and the emergence of condominium construction.

Greater pressure is occurring with the development of community piers and marinas. There is dictum to support the State position that riparian/literal rights are a mere license or privilege and subject to a higher public use, providing only the right of access. The greater issue is the construction of piers which can reach 1,000 feet and are headed by a 1,000 square foot structure. The piers are over tidal marsh and do have some effect on the wetland viability. In addition, smaller community piers and marinas are being proposed which encompass submerged State lands. In the case of the first community marina permitted, there is no lease applied to the State lands covered by the marina area. The rules for community piers and marinas have not been revised beyond specific requirements related to specific cases. Likewise there are more “super-sized” piers, mansion like boat houses, and community piers being proposed. There appears to be support for tightening up the standards for these uses but a great deal of work needs to be carried out before standards can be proposed.

Mississippi has a great amount of undeveloped wetlands and emerging development pressure will result in more wetlands being filled on the coast than in the past. While it will be rare that tidal wetlands would become involved, freshwater wetlands are at risk. Ancillary issues are of habitat, water quality and flooding concerns. While there is data on the tidal and freshwater wetland areas within the DMR's GIS, there has been no review of relative value of the wetlands. Thus the data is there to establish what wetlands are most critical to preserve. This type of assessment would tie to the Mitigation Bank and the Preserve Program and any planning efforts.

MCZMP should consider the development of a definition of success for their wetlands program. In doing so there may be the need to differentiate between tidal and freshwater wetlands and make the tie to the related storm water and water quality issues which support an MCZMP position on these resources. It might also be desirable to establish a goal regarding wetland net loss/gain as a programmatic direction.

PROGRAM SUGGESTION

7. **Program Suggestion:** MCZMP should consider conducting an analysis of freshwater wetlands (quality and functions), which if degraded or lost might have a direct or an indirect effect on coastal habitats, coastal water quality or coastal flood control issues and consider prioritizing those areas for conservation, protection, or restoration purposes. This could be facilitated through the use of MCZMP GIS data and information. MCZMP should also establish an overall definition of success for their wetlands program.

Follow-up: The MCZMP will address these issues.

Public Notice.

Notice of permit applications are routinely advertised in specified newspapers within each coastal county in accordance with Mississippi State law. However, the opportunity exists to expand public notice on a regular basis through the use of the DMR's web page and, or through an updated mailing list. This may further public awareness of proposed development in coastal areas and prevent situations where a project which should have a public hearing goes un-noticed because its formal notice in the news paper was overlooked. For example, a 90 boat slip marina tied to a condominium was appropriately noticed by the DMR, but since there was no concern raised during the comment period, there was no public hearing (public hearings are routinely held when there is a negative comment on an application). The public had generally been opposed to large uses in the area and had previously opposed successfully some other development proposals. However, because no one commented on the notices, the development was approved without a hearing.

PROGRAM SUGGESTION

8. It is suggested that DMR use its web page to routinely post notices of

individual permit applications with a statement of process and how to appropriately register an objection or comment.

Follow-up: The Louisiana Coastal Program will provide MCZMP with a copy of it process for web posting of public notices. DMR will pursue this course of action.

IV. CONCLUSION

Based on OCRM's review of the federally approved Mississippi Coastal Management Program and the criteria at 15 CFR 928.5(a)(3), I find that Mississippi is adhering to its federally approved coastal management program. Further advances in coastal management implementation will occur as the State addresses the program suggestions contained herein.

These evaluation findings contain one (1) necessary action which must be addressed within the time frames established. Also, seven (7) recommendations are program suggestions that the State should address before the next regularly scheduled program evaluation and which are not mandatory at this time.

This is a programmatic evaluation of the MCZMP that may have implications regarding the State's financial assistance award(s). However, it does not make any judgments on, or replace any financial audit(s) related to, the allocability of any costs incurred.

Date

Eldon Hout, Director

Mississippi Coastal Program
312 Evaluation

PERSONS CONTACTED DURING THE EVALUATION

Department of Marine Resources (DMR):

William W. Walker	Director, DMR
Fred Deegen	Deputy Director, DMR
Jan Boyd	Office Director, Office of Coastal Ecology (OCE), DMR
Mike Walker	Coastal Zone Management Manager, OCE, DMR
Jerry Brashier	Director, Regulatory Functions, OCE, DMR
Tina Hebert Shumante	Director, Comprehensive Resource Management Plan
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Marcia A. Garcia	Staff Officer, CRMP, OCE, DMR
Grant Larsen	Community Planner, GIS Specialist, CRMP, OCE, DMR
Jeff Clark	Coastal Preserves Program, OCE, DMR
Leah Bray	Dredge and Beach Nourishment Program, OCE, DMR
Jennifer M. Buchanan	Education Coordinator, Grand Bay National
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Joe Jewell	Director, Office of Marine Fisheries, DMR
Susan Perkins	Public Relations Representative, OCE, DMR
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Lt. Col. David Rose	Marine Patrol, DMR
Pat Daughdrill	Administrative Services Bureau Director, DMR

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Paul Necaise
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Chris LaGarde
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Cherie Arceneaux
Terese Collins
Nonnie DeBardeleben
(CCIP)

Becky Gillette
Reilly Morse

U.S. Fish and Wildlife Service
Chief, Regulatory Branch, U.S. Army Corps of

Special Assistant for Fisheries and Natural
Consultant

Gulf Island Conservancy (GIC)
Concerned Citizens to Protect the Isles and Point

Co-Chair, Sierra Club (SC)
Attorney for GIC, CCIP, and SC

**Mississippi Coastal Program
312 Evaluation**

PERSONS ATTENDING THE PUBLIC MEETING*

The Public Meeting was held on Monday, December 6, 2004, at 6:00 pm, at the Bolton State Office Building at 1141 Bayview Avenue in Biloxi, Mississippi. There were no attendees.

**Mississippi Coastal Program
312 Evaluation**

WRITTEN COMMENT RECEIVED AND RESPONSE

**Comments were received from: Reilly Morse
Attorney at Law
2400 14th Street Suite 102
Gulfport, Mississippi 39502**

The comments dealt with the issues of: extension of permit time; coordination, coastal program revision; restoration of resources; and, the validity of the oath taken by an applicant that information within a permit application is true.

Response: These issues are discussed within the evaluation document.

**Comments were received from: Becky Gillete
Co-Chair, Mississippi Chapter, Sierra Club
34 Davis Bayou Circle
Ocean Springs, Mississippi 39564**

The comments dealt with the issues of: a specific permit action (the Pine Island Golf Course); wetlands filling and after the fact permitting; and, training for the Commissioners.

Response: The specific permit action, while instructive, was not dealt with in these findings. The other two are.

**Mississippi Coastal Program
312 Evaluation**

RESPONSE TO PREVIOUS FINDINGS

1) Necessary Action: Within 30 days of the receipt of the final findings the State will submit for approval its schedule for analysis and review of its consistency process to OCRM. This should include any initial action which needs to be carried out and a proposed schedule for the review and approval of potential changes in process which may be required.

Response: This did not occur. See discussion at Program Review Findings, Accomplishments and Recommendations, M. Federal Consistency.

1) Program Suggestion: As the State moves to revamp the coastal program document, making it “friendlier” and more descriptive, it should provide some discussion regarding future directions of the MCP such as performance indicator development, continuing education for professionals and development of staff, marsh creation and restoration, and mitigation compliance. As part of the process, new legislation, old statements of working relationships and emerging problems of enforcement should be reviewed.

Response: This did not occur. See discussion at Program Review Findings, Accomplishments and Recommendations, N. Program Document Development.

2) Program Suggestion: Given the level of impact of DMR staff to Mississippi’s coastal lands and communities, it would be expedient to address the level of remuneration relative to that impact. A part of this formula should also take into account the amount of funds spent on training to carry out a job, relative to the amount of funds to be spent in retaining the employee in the job once trained.

Response: there was some movement to address this recommendation. See discussion at Program Review Findings, Accomplishments and Recommendations, G. Staffing.

3) Program Suggestion: DMR should explore the use of administrative fines for violations as a mechanism to enhance enforcement. Likewise, mechanisms to support enforcement of permit compliance for coastal permits, regardless of the permitting agency should be explored.

Response: There was some consideration of this suggestion.

4) Program Suggestion: The DMR should plan for the ongoing continuity of operations in the event of a significant closure event.

Response: This is an ongoing part of the administrative process.

5) Program Suggestion: The DMR is encouraged to seek out mechanisms to expand inter-agency coordination and cooperation as it seeks resolution of the technical issues it shares with the Federal regulatory agencies.

Response: See the discussion at Program Review Findings, Accomplishments and Recommendations, F. Coordination and Communication.

6) Program Suggestion: A set of products which clearly defined program elements and responsibilities may prove a useful tool for new Commission member orientation as well as a tool for continued support for current members.

Response: This is under development as part of the program re-write process and is a part of the ongoing program of public awareness and outreach.

Mississippi Coastal Program
312 Evaluation

TABLE OF RECOMMENDATIONS

Evaluation Recommendations For: Mississippi
Evaluation Findings Issued: (Date)

Number/Type of Recommendation		Recommendation Text	Required Date
Number	1	MCZMP should continue to foster and broker communication and coordination with appropriate Federal Agencies, the networked agencies, the public, and with all stakeholders. Opportunities to coordinate at the inter-agency and intra-agency levels should be routine as opposed to ad hoc.	
Necessary Action			
Program Suggestion	X		
Number	2	MCZMP must document and submit its Federal Consistency process to OCRM immediately.	Now
Necessary Action	X		
Program Suggestion			
Number	3	MCZMP should address the multiple issues affecting the exercise of Federal Consistency (all discussed in the previous evaluation) and seek changes to its processes where possible.	
Necessary Action			
Program Suggestion	X		
Number	4	MCZMP should complete the development of a program document describing in a user friendly manner, its management objectives, how the program works, its processes and procedures, and its legislative and regulatory underpinnings.	
Necessary Action			
Program Suggestion	X		
Number	5	MCZMP should develop a schedule to ensure that program changes are submitted to OCRM at least once every two years. It is further suggested that drafts of pending legislation that may impact the MCZMP be submitted to OCRM informally.	
Necessary Action			
Program Suggestion	X		
Number	6	MCZMP should verify that the wetlands use maps exist and	

		are maintained in office facilities and that changes are being documented to the maps. As a matter of course, the wetland use maps should be digitized, a process for their update should be developed and implemented, and a process to assure that they are routinely submitted as program changes to OCRM needs to be implemented.	
Necessary Action			
Program Suggestion	X		
Number	7	MCZMP should consider conducting an analysis of freshwater wetlands (quality and functions), which if degraded or lost might have a direct or an indirect effect on coastal habitats, coastal water quality or coastal flood control issues and consider prioritizing those areas for conservation, protection, or restoration purposes. This could be facilitated through the use of MCZMP GIS data and information. MCZMP should also establish an overall definition of success for their wetlands program.	
Necessary Action			
Program Suggestion	X		
Number	8	It is suggested that DMR use its web page to routinely post notices of individual permit applications with a statement of process and how to appropriately register an objection or comment.	
Necessary Action			
Program Suggestion	X		