
Executive Summary

Most significant activities which occur in the Galveston Bay system will have some federal involvement (e.g., dredging, highway construction, and channelization). These activities have the potential to conflict with the goals and policies of *The Galveston Bay Plan*, a Comprehensive Conservation and Management Plan (CCMP) developed under the Water Quality Act of 1987 by the Galveston Bay National Estuary Program (GBNEP). Conversely, federal activities also have the potential to enhance beneficial bay management activities identified in *The Galveston Bay Plan*. Section 320 of the Water Quality Act provides National Estuary Programs (NEPs) with authority and responsibility to conduct "consistency" reviews of federal assistance projects and direct federal actions in Estuaries of National Significance.

The Water Quality Act's provision for consistency review is the basis for creation of an effective and efficient process to help assure that federal activities are compatible with the aims of *The Galveston Bay Plan* during its implementation. This report summarizes the consistency review activities to be undertaken during implementation of *The Galveston Bay Plan*, and is written to be a supplement for *The Plan*, as submitted to The Governor of Texas and Administrator of EPA.

In addition to the implementation of NEPs, various federal laws authorize reviews by state and local governments of federal actions for consistency with state and local plans. Consistency review under Section 320 does not grant NEPs the authority to deny a federal project, rather the federal agency involved must consider the NEP's recommendations and accommodate its concerns or explain why accommodation is not accomplished. This contrasts with federal consistency review under the Coastal Zone Management Program (CZMP), which grants consistency review authority over permits as well as federal assistance and development projects. Thus, Texas' developing Coastal Management Program (CMP) will allow for potential "veto" of certain federal actions that are not undertaken in a manner consistent with the CMP's enforceable goals and policies. Upon acceptance of Texas' CMP into the federal CZMP, consistency review for *The Galveston Bay Plan* could occur through the CZMP consistency review process. This process is to be based on future possible designation of some elements of *The Galveston Bay Plan* as "enforceable policies," an action to be deliberated upon by the Galveston Bay Council

Contained within this report are the following elements outlined in guidance provided by EPA to NEPs:

- An **inventory** of federal programs and development projects that may affect the ability to meet the goals and objectives of *The Galveston Bay Plan* (Part II; APPENDIX V). Future activities proposed under these

selected programs and projects are the activities to be reviewed for federal consistency;

- A **one-time assessment** which identifies current inconsistencies between these federal programs/development projects and the objectives of *The Galveston Bay Plan* and describes how these specific inconsistencies will be resolved (Part III); and
- A **strategy for continuing consistency review** of the activities proposed in the future under programs identified in the inventory, and for review of new federal programs and projects that are established in the future (Part IV).

In establishing a federal consistency review program, an important goal of the GBNEP was to avoid duplication of efforts with other existing and developing consistency review and certification programs. Therefore, special attention was paid to consolidating the proposed activities with these other programs.

Inventory of Federal Programs. A review was conducted of all the federal financial assistance programs listed in the Catalog of Federal Domestic Assistance, direct federal development projects, and federal license and permit programs (APPENDIX V and TABLES IA and IB). Based on this compilation, deliberation by the Management Conference narrowed the list to programs which meet the guidance requirements and which have the potential to be inconsistent with *The Galveston Bay Plan*. This activity provided a list of programs for use in making the consistency determinations themselves.

One-Time Assessment of Federal Consistency. Consistency review criteria were developed by the Management Conference which were based on the goals, objectives, and actions of *The Galveston Bay Plan*. Using these criteria, the Federal Program Inventory was reviewed to identify federal programs that may be inconsistent with *The Galveston Bay Plan's* purposes and objectives. Numerous programs and projects were identified that have the future potential to conflict with or further the goals of *The Galveston Bay Plan* (see APPENDIX V), but only several were singled out for their potential to be inconsistent at the current time.

The Management Conference has determined that the following current activities have the *potential* to be inconsistent with the goals and objectives of *The Galveston Bay Plan* depending on design/implementation methods:

- Houston/Galveston Navigation Channels, Texas Project
- Buffalo Bayou Project: Brays Bayou, Greens Bayou and Cypress Creek
- Wallisville Lake Project
- Interstate 10 at: Turtle Bayou, Wallisville, Cedar Bayou and Trinity River
- NASA Road 1 Construction from I-45 to SH 146
- Expansion of the Strategic Petroleum Reserve to One Billion Barrels
- Maintenance Dredging of the Intracoastal Waterway

Future activities associated with these programs and projects will be reviewed for consistency with *The Galveston Bay Plan* as part of the ongoing review strategy (below).

Development of an Ongoing Federal Consistency Review Strategy. The federal consistency review strategy proposed in this report has the following broad attributes:

- The Galveston Bay Program (GBP) of the Texas Natural Resource Conservation Commission (TNRCC) will have the responsibility for conducting federal consistency reviews. Review activities will include a notification process, compilation of comments, technical staff review, and preparation of formal findings. This activity will generally occur for projects within the lower watershed of Galveston Bay, encompassing parts of five counties.
- The Galveston Bay Council (an agency/stakeholder group appointed to facilitate implementation of *The Galveston Bay Plan*) will serve in an advisory capacity to the GBP in consistency review, and once convened, will formulate policies concerning how it will advise the GBP.
- Federal consistency review by the GBP, to the maximum extent practicable, will be merged with the existing Executive Order (EO) consistency review process carried on by the Texas Review and Comment System (TRACS). This will involve linking review of bay-related activities to the ongoing review activities of the H-GAC and the Texas Office of State/Federal Relations under the existing state program.
- The GBP will coordinate with other existing review and certification programs, including TNRCC programs for 401 Certification and State Non-Point Source consistency reviews, for proposed federal activities within the geographic project area. These are ongoing activities of the TNRCC and would be coordinated within the agency with *Galveston Bay Plan* activities.
- Upon adoption of the Texas Coastal Management Program (CMP) into the federal Coastal Zone Management Program (CZMP), *The Galveston Bay Plan* and related enforceable policies and advisory policies (if any) will be forwarded to the Coastal Coordination Council (CCC) possible for adoption as a Special Area Management Plan (SAMP). If adoption occurs, the stronger federal consistency review associated with the CMP can potentially be used to review the consistency of federal actions with *The Galveston Bay Plan's* enforceable policies.

Elements of the process to be utilized in carrying out on going consistency review include:

- Receipt of Project Letters. Project notification letters will be forwarded to the GBP from either the Texas Office of State and Federal Relations (SFR) or the Houston-Galveston Area Council (H-GAC) under procedures of the Texas Review and Comment System and as described in this report.
- Review Policy and Guidelines. The Galveston Bay Council may establish review policies and guidelines needed in addition to those established in *The Galveston Bay Plan*. This may include a procedure or threshold for Council consideration of projects, either by establishing some minimum threshold for project size or impact, or by circulation of staff-prepared comments to Council members for adoption in lieu of any request for full Council review by a Council member.
- Consistency determination. The GBP, acting with the advice of the Galveston Bay Council, will issue a consistency recommendation. The recommendation could be: 1) The project is **consistent** with the Galveston Bay Plan and consistency review criteria; or 2) The project is **inconsistent** with the Galveston Bay Plan and the consistency review criteria (reasons for inconsistency will be cited) or 3) The project is **consistent** with *The Galveston Bay Plan*, but could be improved in specific ways to improve its benefit to the Bay. The GBP may waive review of projects with limited or no impact on the Bay.
- Forwarding Comments to Federal Agencies. After clearing the GBP's review process, comments on projects covered by the Texas Review and Comment System will be forwarded to federal agencies through H-GAC or the Texas Office of State/Federal Relations. Comments on projects not included in that list will be forwarded directly to the federal agency.
- Resolving Inconsistencies. Under the state review and comment system the GBP may request that a federal agency "accommodate" its comments and findings. A request for accommodation should be made explicitly, and is not simply assumed whenever a finding of inconsistency is made. The request is forwarded to the Office of State/Federal Relations, which makes the request on behalf of the State. This formal process does not preclude the GBP from entering into informal discussions with the federal agency in attempts to resolve consistency issues.