
IV. Federal Consistency Strategy

This section discusses a strategy for continuing future review of federal actions for consistency with *The Galveston Bay Plan* and the procedure by which this strategy was developed. This strategy defines a process for reviewing activities and the mechanism for coordination with other review programs, and establishes a mechanism for conflict resolution of inconsistencies. The strategy includes the following elements:

- Geographic area to be covered by the consistency review process;
- A procedure for obtaining proposals for direct development projects or federal assistance programs from federal agencies;
- Designation of a Galveston Bay Program Point of Contact.
- Criteria for determining consistency of programs and projects with the CCMP (see preceding chapter);
- A time line for the review process;
- A description of the roles of the GBP and Galveston Bay Council
- Rules for resolving Conference disagreements or providing comments in the absence of consensus;
- Identification of who will conduct the review, including rules for eligibility to participate in the review.

The other federal consistency review processes existing in Texas are described and the mechanisms for coordinating the GBP review process with those existing processes are discussed.

Since Texas does not yet have a federally approved CZM program, the consistency strategy presented in this chapter does not involve coordinating the process with the CMP. However, since Texas is in the process of developing a CZM program, the last chapter of this report provides a contingency plan for modifying the Federal Consistency Review Strategy when the Texas CMP is approved.

Existing Review Processes

Several processes for reviewing federal actions already existed in Texas prior to creation of the GBNEP. In the development of the consistency review strategy for proposed use by the GBP during implementation of *The Galveston Bay Plan*, it was acknowledged as important to coordinate with existing processes to make best use of existing mechanisms and avoid duplication. The following paragraphs briefly discuss the existing review programs.

Federal Executive Order 12372. EO 12372 was issued by President Reagan in 1982 (APPENDIX II). It gave the states the authority to review most federal assistance programs and direct development projects for consistency with state policies, programs, and regulations. The states do not have the authority to deny a federal project, but they must be given the opportunity to review and make

recommendations on projects. The federal agency must consider the state's recommendations and accommodate its concerns or explain why accommodation is not accomplished. EO 12372 allows states to establish their Single Point of Contact (SPOC) and the review process. The SPOC is responsible for reviewing the federal application and coordinating the state's review and response on the application. The states are allowed to use their discretion in determining which federal programs they wish to review and comment on. The states are required to submit a list of those programs to the Office of Management and Budget (OMB). The states are allowed to revise this list whenever necessary. Texas developed the TRACS for implementing the EO 12372 review.

TRACS. Texas established the TRACS system under 1 TAC Section 5.191-5.196 (see APPENDIX III) for the purpose of providing state and local officials opportunities to review and to comment upon state plans, applications for federal or state assistance, and environmental impact statements related to projects. A flow diagram of the TRACS process is included in APPENDIX III. The SPOC is the Director of Intergovernmental Coordination in the Texas Office of State-Federal Relations.

There are three types of applications affecting Galveston Bay which TRACS receives from the federal government for review under EO 12372:

- Statewide programs and project applications;
- Local programs and project applications; and,
- H-GAC applications.

Statewide federal assistance program applications and direct development project notices of intent received by the SPOC are sent to the affected state agencies and all the COGs, including H-GAC. The state agencies and COGs review and send their comments to the SPOC. The SPOC assimilates the comments received, prepares an official state process recommendation (SPR), and sends it to the federal agency.

The EO 12372 review of federal assistance applications for local projects and notices of intent for local projects has been delegated to the COGs. Therefore, local programs and project applications located within the Houston-Galveston region which are received by the SPOC are sent to the H-GAC. Then H-GAC reviews the application, prepares the SPR (unless there is a request for accommodation), and sends it to the federal agency. If there is a request for accommodation, the H-GAC forwards the request and H-GAC's comments back to the state SPOC. The state SPOC then prepares the official SPR.

If H-GAC is the local applicant, then review and comment authority is retained by the SPOC. H-GAC's applications for federal assistance which are received by the SPOC are sent to the affected state agencies. The state agencies send their comments to the SPOC. The SPOC prepares an official SPR and sends it to the federal agency.

In order to coordinate the GBP federal consistency review process with the existing TRACS, meetings and discussions with the state SPOC and the H-GAC staff were conducted. Resolutions for all complications were developed and letters from the GBNEP Management Committee were sent to the SPOC (APPENDIX VI) and H-GAC (APPENDIX VII) to describe in detail the following elements:

- The mechanism by which GBP will be receiving the federal applications and notices of intent;
- The agreed upon process and paper flow; and,
- The mechanism for assuring that GBP comments are adequately included in the official SPR.

These elements of the review process will also be presented in more detail below in the section describing the Consistency Review Process.

Section 401 Certification. Section 401(a)(1) of the Clean Water Act requires that any applicant for a federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into navigable waters, shall provide the licensing or permitting agency with a certification from the state that any such discharge will comply with the applicable water quality standards. In Texas, these certifications are issued by the TNRCC. While Section 320 does not give National Estuary Programs any authority to review and comment on federal licenses or permits, the GBP may be able to address concerns over a particular permit or license by coordinating with TNRCC during their review of such permits or licenses. The TNRCC reviews numerous projects, and has a well-developed internal process for review. The GBP of the TNRCC will therefore make use of the existing TNRCC mechanisms where practicable.

Any applicant for a federal license or permit which may result in any discharge into navigable waters must include in its application a complete discussion of several issues as described in Guideline Considerations for State Water Quality Certification (APPENDIX VIII). Some of the issues addressed include wetland disturbance, discharge of pollution, proper material disposal, adequacy of sewage facilities, turbidity, suspended solids, soil conservation and beneficial use/disposal of dredged materials. These issues are also discussed in *The Galveston Bay Plan*.

When an application to conduct such an activity is submitted, the permitting agency and the TNRCC issue a joint public notice which describes the activity for the benefit of potentially affected persons or governmental entities. Public comments can be submitted for a period of thirty days after the publication of this notice. The GBP will be specifically notified of any such activities in the Galveston Bay area. During the evaluation of the project by TNRCC, the applicant may be required to submit additional information to aid in determining if certification should be issued. The TNRCC will inform the permitting agency and the applicant of its decision to certify, conditionally certify or to deny certification.

Nonpoint Sources. Section 319 of the Clean Water Act requires states to identify and assess water bodies affected by Nonpoint Source (NPS) pollution and to develop programs to control NPS pollution (see APPENDIX IX). Section 319(b)(D) of the Clean Water Act requires states to provide the legal authority to the designated entities which is necessary to implement the NPS programs. In Texas, this authority is divided. The TNRCC is the lead agency for water quality in the state and is responsible for regulation of all nonpoint sources except agriculture and silviculture. Section 201.026 of the Texas Agriculture Code makes the State Soil and Water Conservation Board the lead agency for planning, implementing and managing programs and practices and abating agricultural and silvicultural NPS pollution.

Section 319(b)(2)(F) requires that each state NPS program contain a federal consistency review process. The authority provided in that paragraph is very similar to that in Section 320(b)(7). That is, under the programs, states are required to review federal assistance programs and direct development projects for their effect on water quality, to determine whether such activities would be consistent with, and further the purposes and objectives of, the NPS programs. The federal assistance programs and direct development projects which were subject to these reviews included:

- Those listed as eligible for review under EO 12372;
- Any other program listed in the most current Catalog of Federal Domestic Assistance; and,
- Direct development projects.

The NPS programs were given the authority already available to the states through the EO process and, additionally, the authority to review any programs in the catalog. The NPS program implementing agencies have identified the federal programs and projects which will be reviewed for consistency (see APPENDIX X). The lack of adequate funding for the implementation of these NPS programs has apparently affected the level of effort which can be directed toward the consistency review process.

Texas Coastal Management Program. In 1991 the state legislature passed Senate Bill 1053 and Senate Bill 1054 to provide the authority for, and require the development of, a Texas CMP. This authority was delegated to the GLO and the Coastal Coordination Council (CCC). Texas does not currently have a federally approved coastal management program. Concurrent with the preparation of this Federal Consistency Report, the CCC and GLO are developing the CMP federal consistency review process, which will only be implemented if the CMP is granted federal approval.

The Director of the Coastal Management Division of the GLO is an active participant and member of the Management Committee of the GBNEP. Efforts were made to coordinate closely with the GLO staff to ensure the proper cooperation between these programs. Consideration of the GBNEP was reflected in the CCC's Draft Federal Consistency Review Rules and Final Special Area Management Plan (SAMP) Rules (see APPENDIX XI and XII).

Anticipating the probability that the CMP will be implemented in the near future, a special section at the end of this report is dedicated to the contingency plan for revisions which will be made to this report upon CMP approval. Both the Policy Committee of the GBNEP and the CCC have requested that consistency review under *The Galveston Bay Plan* and the review occurring under the CMP be coordinated to the greatest extent possible.

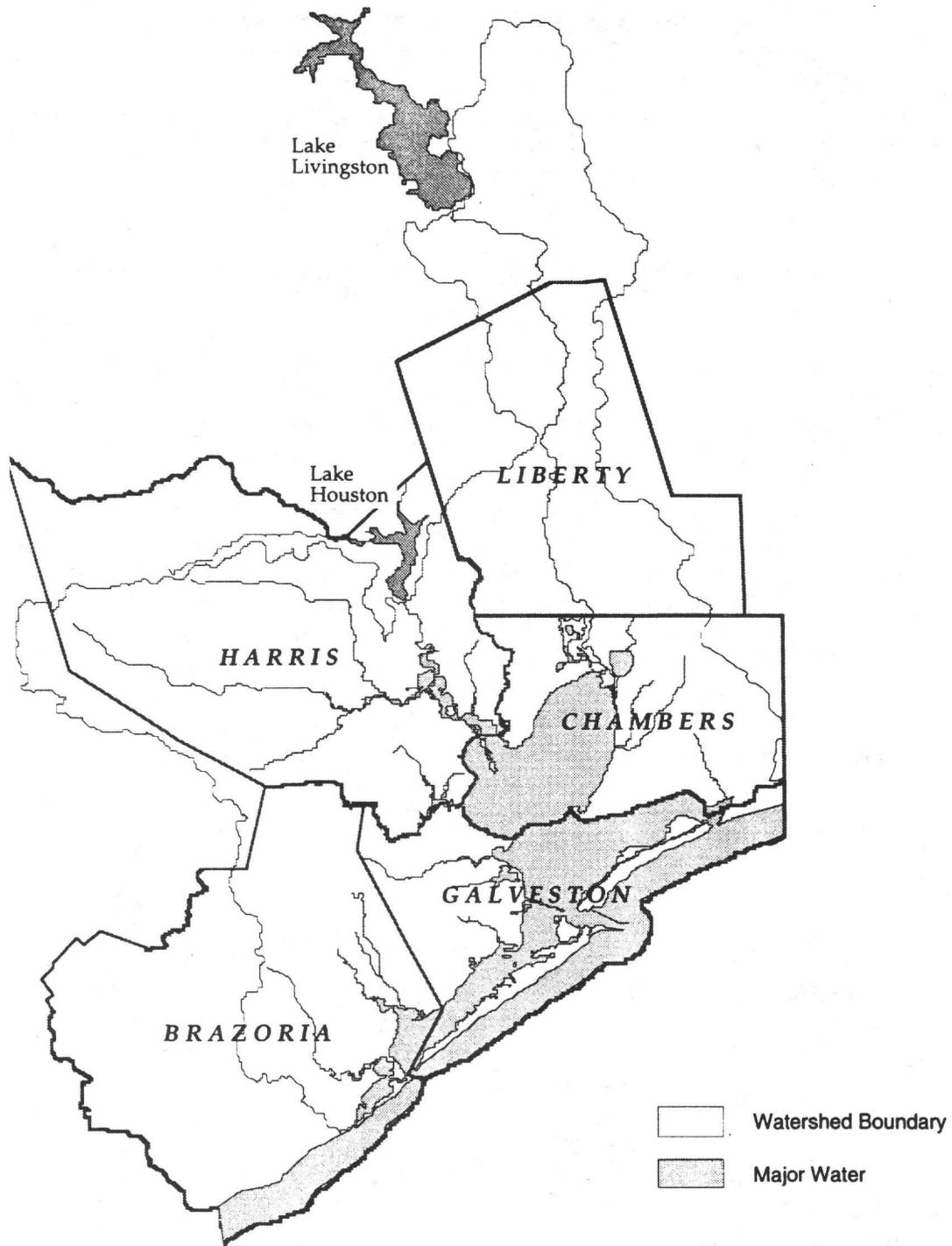
Proposed Galveston Bay Consistency Review Process

This section discusses the proposed consistency review process to be adopted by the GBP. It includes a description of the geographic area to be covered by the consistency review process, the criteria by which a consistency determination will be made, the mechanisms for coordinating the review process with the EO 12372 process, and how the review will be conducted by the GBP.

Geographic Area Subject to Consistency Review. The Management Conference designated that portion of the Galveston Bay watershed downstream from Lake Livingston (on the Trinity River) and Lake Houston (on the San Jacinto River) as the planning area for development of *The Galveston Bay Plan*. This same area is being adopted as the region for consistency review for most elements of the program. The five counties included in the planning area are Brazoria, Chambers, Galveston, Harris, and Liberty (see FIGURE 2). Projects in the upper watershed or offshore could also be reviewed if they are identified as potentially able to significantly alter the bay. Criteria for inclusion of such projects include those that could significantly alter the quality, quantity or timing of freshwater inflows to the estuary; or those activities offshore from the five county area that could result in impacts to the estuary (e.g., pipelines and related shore-based facilities).

Procedures for Obtaining Federal Applications and Proposals. Some federal agencies submit the applications and proposals to the state SPOC and some submit the applications to H-GAC. Still others have not previously been subject to review under EO 12372 and will need to be made aware of the new review requirement under Section 320 of the Clean Water Act. Arrangements have been made with the state SPOC and H-GAC to forward copies of the applications and proposals (which GBNEP has indicated they wish to review for consistency) to the GBP. Those federal programs and projects which have not been subject to EO 12372 but will now be subject to the GBNEP consistency review process are listed in TABLE II. The sponsoring federal agencies will be notified of the developing GBP Consistency Review Program and will be requested to submit future applications for these programs to the state SPOC. The state SPOC will then forward them to the GBP. The state will need to notify Office of Management and Budget about revisions to the list of programs to be reviewed for consistency.

Galveston Bay Program Point of Contact. The Director of the GBP will serve as the point of contact. The director will be responsible for the following duties:



Adapted from HGAC

FIGURE 2.
Area subject to federal consistency review by the Galveston Bay Program.

TABLE II
Federal Assistance Programs & Direct Development Projects Not Subject To EO 12372
But Eligible For Review Under GBNEP

Page 1 of 4

<i>FEDERAL ASSISTANCE PROGRAMS</i>	Cat #
Department of Agriculture	
Water Bank Program	10.062
Agricultural Conservation Program	10.063
Conservation Reserve Program	10.069
Grants for Agricultural Research, Special Research Grants	10.200
Low Input Farming Systems - Research and Education	10.215
Emergency Loans	10.404
Farm Operating Loans	10.406
Watershed Protection & Flood Protection Loans	10.765
Watershed Protection & Flood Protection	10.904
Resources Inventory	None
Department of Commerce	
Sea Grant Support	11.417
Financial Assistance for Marine Pollution Research	11.464
Department of Defense - U.S. Army Corps of Engineers	
Emergency Rehabilitation of Flood Control Works of Federally Authorized Coastal Protection Works	12.102
Department of Defense	
Military Construction Army National Guard	12.400
Department of Housing and Urban Development	
§ Interest Reduction Payments - Rental and Cooperative Housing for Lower Income Families	14.103
§ Rehabilitation Mortgage Insurance	14.108
§ Manufactured Home Loan Insurance - Financing Purchase of Manufactured Homes as Principal Residences of Borrowers	14.110
§ Mortgage Insurance for Construction or Substantial Rehabilitation of Condominium Projects	14.112
§ Mortgage Insurance - Group Practice Facilities	14.116
§ Mortgage Insurance - Homes	14.117
§ Mortgage Insurance - Homes for Disaster Victims	14.119
§ Mortgage Insurance - Homes for Low and Moderate Income Families	14.120
§ Mortgage Insurance - Homes in Outlying Areas	14.121
§ Mortgage Insurance - Homes in Urban Renewal Areas	14.122
§ Mortgage Insurance - Housing in Older, Declining Areas	14.123
§ Mortgage Insurance - Cooperative Projects	14.126
§ Mortgage Insurance - Manufactured Home Parks	14.127
§ Mortgage Insurance - Hospitals	14.128
§ Mortgage Insurance - Nursing Homes, Intermediate Care Facilities and Board and Care Homes	14.129
§ Mortgage Insurance - Purchase by Homeowners of Fee Simple Title from Lessors	14.130
§ Mortgage Insurance - Purchase of Sales Type Cooperative Housing Units	14.132
§ Mortgage Insurance - Purchase of Units in Condominiums	14.133
§ Mortgage Insurance - Rental Housing	14.134

§ Only if seaward of the Oil Spill Prevention Response Act (OSPRA) line and within the 100 year flood plain.

TABLE II
Federal Assistance Programs & Direct Development Projects Not Subject To EO 12372
But Eligible For Review Under GBNEP

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FEDERAL ASSISTANCE PROGRAMS (cont'd)		Cat #
§	Mortgage Insurance - Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Interest Rate	14.135
§	Mortgage Insurance - Rental Housing in Urban Renewal Areas	14.139
§	Mortgage Insurance - Special Credit Risks	14.140
§	Section 106(b) Nonprofit Sponsor Assistance Program	14.141
	Property Improvement Loan Insurance for Improving All Existing Structures and Building of New Nonresidential Structures	14.142
§	Rent Supplements - Rental Housing for Lower Income Families	14.149
§	Supplemental Loan Insurance - Multifamily Rental Housing	14.151
§	Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects	14.155
§	Supportive Housing for the Elderly	14.157
§	Section 245 Graduated Payment Mortgage Program	14.159
§	Mortgage Insurance - Combination and Manufactured Home Lot Loans	14.162
§	Mortgage Insurance - Single Family Cooperative Housing	14.163
§	Operating Assistance for Troubled Multifamily Housing Projects	14.164
§	Mortgage Insurance - Homes - Military Impacted Area	14.165
§	Mortgage Insurance - Homes for Members of the Armed Services	14.166
§	Mortgage Insurance - Two Year Operating Loss Loans, Section 223(d)	14.167
§	Land Sales - Certain Subdivided Land	14.168
§	Housing Counseling Assistance Program	14.169
§	Congregate Housing Services Program	14.170
§	Manufactured Home Construction and Safety Standards	14.171
§	Mortgage Insurance - Growing Equity Mortgages	14.172
§	Adjustable Rate Mortgages	14.175
§	Nehemiah Housing Opportunity Grant Program	14.179
§	Supportive Housing for Persons with Disabilities	14.181
§	Lower Income Housing Assistance Program - Section 8 New Construction/Substantial Rehabilitation	14.182
§	Home Equity Conversion Mortgages	14.183
§	Mortgage Insurance for Single Room Occupancy (SRO) Projects	14.184
§	Home Ownership and Opportunity for People Everywhere	14.185
§	Mortgage Insurance - Equity Loans	14.186
§	Preservation of Affordable Housing	14.187
	Community Development Block Grants/Small Cities	14.219
§	Urban Development Action Grants	14.221
§	Mortgage Insurance - Experimental Homes	14.507
§	Mortgage Insurance - Experimental Projects Other Than Housing	14.508
§	Mortgage Insurance - Experimental Rental Housing	14.509
Department of the Interior		
	Fishery Research - Information	15.604

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TABLE II
Federal Assistance Programs & Direct Development Projects Not Subject To EO 12372
But Eligible For Review Under GBNEP

Page 3 of 4

FEDERAL ASSISTANCE PROGRAMS (cont'd)	Cat #
Environmental Contaminants	15.607
Fish and Wildlife Management Assistance	15.608
Wildlife Research Information	15.610
National Water Resources Research Program	15.806
National Natural Landmarks Program	15.910
Disposal of Federal Surplus Real Property for Parks, Recreation, and Historic Monuments	15.918
Bureau of Oceans and International Environmental and Scientific Affairs	
Fishermen's Guaranty Fund	19.204
Small Business Administration	
§ Economic Injury Disaster Loans	59.002
§ Loans for Small Business	59.003
§ Physical Disaster Loans	59.008
§ Small Business Loans	59.012
§ Local Development Company Loans	59.013
§ Bond Guarantees for Surety Companies	59.016
§ Handicapped Assistance Loans	59.021
§ Veterans Loan Program	59.038
§ Certified Development Company Loans (504 Loans)	59.041
§ Business Loans for 8(a) Program Participants	59.042
§ Women's Business Ownership Assistance	59.043
§ Veterans Entrepreneurial Training and Counseling	59.044
§ Microloan Demonstration Program	59.046
Department of Veterans Affairs	
§ Veterans Housing - Guaranteed and Insured Loans	64.114
§ Veterans Housing - Direct Loans for Disabled Veterans	64.118
§ Veterans Housing - Manufactured Home Loans	64.119
Environmental Protection Agency	
Water Quality Control Information System - Orientation/Training Seminars, Data and Monitoring	66.423
Nonpoint Source Reservation (State NPS Management Programs)	66.460
Department of Energy	
Renewable Energy Research and Development	81.087
Federal Emergency Management Administration	
Flood Insurance	83.100

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TABLE II
Federal Assistance Programs & Direct Development Projects Not Subject To EO 12372
But Eligible For Review Under GBNEP

Page 4 of 4

DIRECT DEVELOPMENT PROJECTS

Department of Agriculture - Forest Service

Recreation Development

Department of Commerce - National Marine Fisheries

Fisheries Management Plans

Department of Defense

National Guard Hazardous Waste Management

Spill Prevention and Response

Pesticide/Herbicide Management

Pollution Prevention Activities

Department of Defense - Army Corps of Engineers

Natural Resource Plans

Mitigation Banking

Beach Nourishment Projects

Reservoir Development Programs

Department of the Interior - Bureau of Reclamation

Irrigation Development Projects

Water Reservoir Diversion and Transfer Projects

Department of the Interior - Minerals Management Service

Irrigation Development Projects

Water Reservoir Diversion and Transfer Projects

Department of the Interior - Minerals Management Service

OCS Exploration Plans

OCS Operation and Production Plans, Including Pipeline Placements

OCS Lease Sales

OCS Five-Year Lease Sale Plans

General Services Administration

Disposal of Federal Surplus Real Property

Donation of Federal Surplus Real Property

Sale of Federal Surplus Personal Property

Disposal of RTC Properties

National Aeronautics and Space Administration

Construction Program

Hazardous Waste Management

Spill Prevention and Response

Pollution Prevention

Herbicides and Pesticides Management

- Receiving the federal applications, proposals, and notifications of proposed federal development projects;
- Notifying the Galveston Bay Council concerning pending reviews (according to notification policies to be established by the Council);
- Receiving and considering any advice from the Council concerning any individual reviews;
- Conducting technical reviews and drafting consistency review findings and forwarding responses to the appropriate parties

Criteria for Determining Consistency. Criteria for determining whether a federal activity is consistent with the goals and objectives of *The Galveston Bay Plan* were developed by the Management Conference. These criteria are listed in FIGURE 1. A federal program or project located in the geographic area will be determined to be consistent with *The Galveston Bay Plan* if it conforms to all of the criteria.

Roles of the Galveston Bay Program and Galveston Bay Council. The GBP of the TNRCC is being established for the purpose of implementing *The Galveston Bay Plan*. An advisory body called the Galveston Bay Council is also being established to help support integrated implementation. The Galveston Bay Council will consist of agencies and stakeholder organizations and individuals involved in or affected by implementation of *The Galveston Bay Plan*. The Council will advise the GBP concerning all *Galveston Bay Plan* activities including periodic re-direction of the *Plan* itself.

The responsibility for federal consistency review will reside with the GBP. Consistency review will be incorporated into the existing agency and state review processes under existing programs, with the GBP becoming involved with activities proposed for the geographic area of concern. Several hundred projects are reviewed annually by the TNRCC for Section 401 water quality certification and other programs in addition to those reviewed by TRACS. Depending upon adoption of the Texas CMP, the federal consistency review process will also be coordinated with the review process adopted by the CCC. The TNRCC, through its regular involvement with the CCC and CMP, will be the means by which CMP consistency actions occur under the authority of the CCC.

The GBP will involve the Galveston Bay Council in an advisory capacity. For this purpose, the GBP and Council will develop and adopt the following consistency review elements:

- Notification. The GBP will provide a routine, timely notification to the Galveston Bay Council concerning activities being reviewed for consistency. This notification will be accommodated within the time schedule driving the review process, as opposed to adding an additional review period.
- Deliberations by the Galveston Bay Council. Upon its formation, the Galveston Bay Council shall consider the means by which it will advise the GBP concerning consistency review activities. The Council will be able to appoint a Consistency Review Subcommittee if deemed necessary,

or it may wish to involve itself only when members raise a concern following a notification. The Council shall consider development of a policy concerning how it will deliberate on notifications it wishes to “flag” for development of advice to the GBP. However, any policy adopted by the Council shall assure that the Council’s review accommodates the time schedule constraints of the existing EO process with which the GBP’s review is being coordinated. These time constraints are discussed below.

- **Thresholds and default advisory action by the Council.** The majority of activities reviewed by the GBP for federal consistency are expected to be routine or small in scope. For example, those activities currently reviewed by the TNRCC include a high proportion of routine projects requiring only a routine response letter by the agency. Upon its formation, the Galveston Bay Council shall consider threshold criteria for adoption to determine whether reviewed activities are to be included in the notification process or considered by the Council. In the absence of Council action (for example for federal actions not meeting thresholds for Council review), GBP staff will carry out reviews according to TNRCC policy.

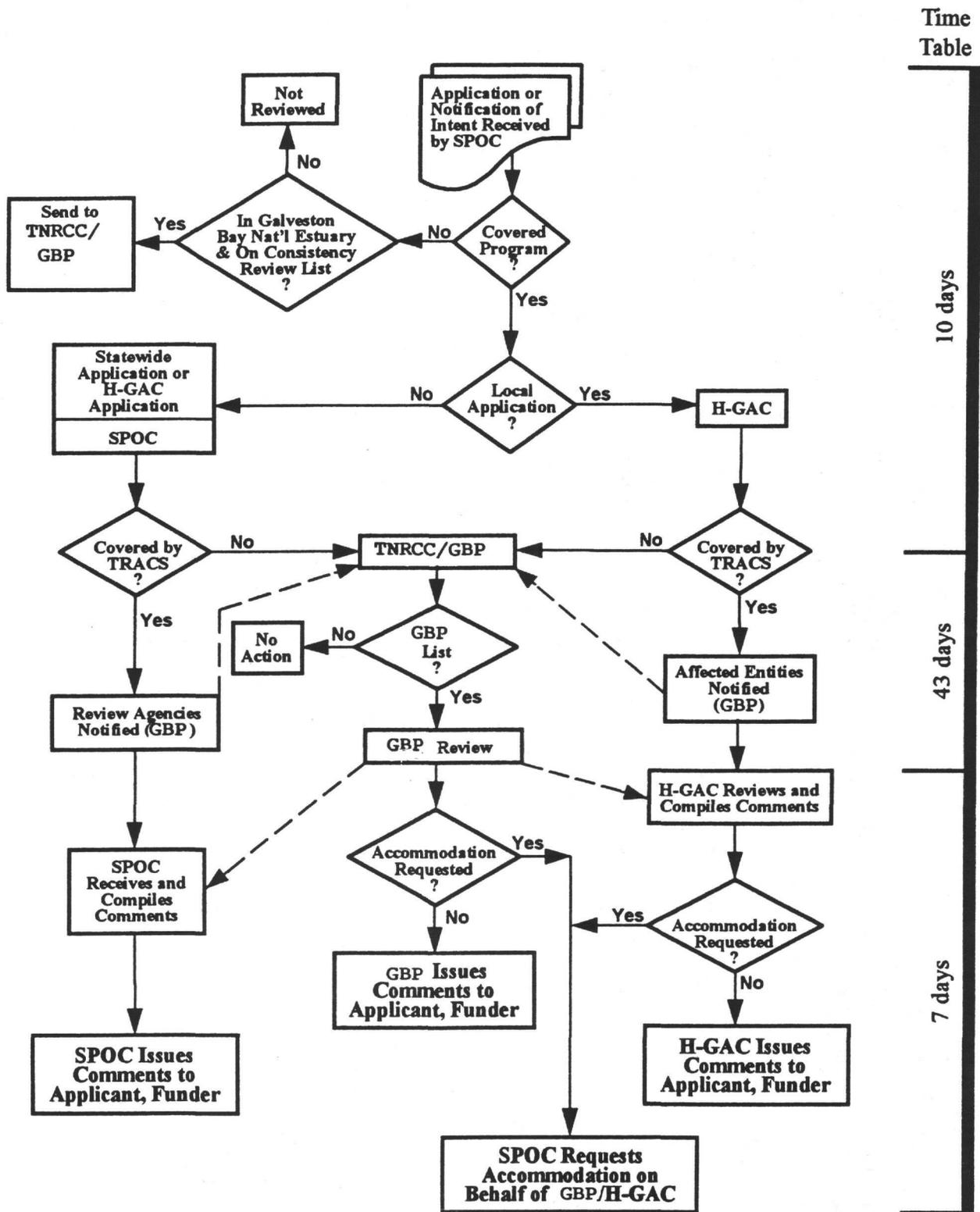
Recommendations by the Council. Information supplied by the Council to the GBP concerning any particular activity being reviewed for consistency shall be considered by the GBP in making its consistency finding. Particularly useful information from the Council would be recommendations to the GBP concerning how a reviewed activity of concern could be modified to make it consistent with *The Galveston Bay Plan*. In the event that either: 1) the GBP and Council disagree on a finding; or 2) the GBP and TNRCC headquarters disagree on a finding, the matter (including a minority opinion, if any) shall be referred to the Executive Director of the TNRCC for resolution.

Coordination and Time Line for Review. The process for transmitting, reviewing and commenting on the various federal activities is fairly complicated. A flow diagram of the process is presented in FIGURE 3 to help clarify discussion of the process. In an effort to make the process user-friendly for the applicant and the public, coordination with the existing EO 12372 process is important. The main objectives of this coordination effort are as follows:

- To minimize the number of entities to which the federal agency would have to submit the application; and,
- To minimize any duplication of effort among state and local agencies without compromising the authority given to GBNEP to assure federal consistency with *The Galveston Bay Plan*.

In order to accomplish this, a process was developed that will result in the Director of the GBP receiving applications and proposals from two different entities (the state SPOC and H-GAC) which will result in slightly different processing. The applications are potentially of the three types which TRACS receives from the federal government for review under EO 12372:

FIGURE 3.
Federal Consistency Review Process
(New Activities)



- Statewide programs and project applications;
- Local programs and project applications; and,
- H-GAC applications.

Statewide programs and project applications and H-GAC applications are sent straight to the SPOC for processing. When the applications are received by the SPOC, the official clock starts, requiring that the review be completed within sixty days on new activities and thirty days on amendments or modifications to existing projects. The SPOC will send notice to the Director of the GBP within five working days of his receipt and will notify the applicant that they are required to send a copy of the application to the GBP.

Local applications will either be sent directly to H-GAC by the federal agencies or the federal agencies will send them to the state SPOC who will send the applications to H-GAC. H-GAC will forward these applications to the Director of the GBP within ten days of receipt. The GBP will receive the applications within ten days of the starting of the official clock.

In any case, the state SPOC and the H-GAC will need approximately seven days to assimilate GBP comments and prepare the SPR. Therefore, the GBP federal consistency review process must be limited to forty-three days for the new activities and thirteen days for an amendment or modification to an existing project.

Once received by the director of the GBP, notification of the Galveston Bay Council will proceed according to policies to be developed by the Council. Concurrently, program staff will initiate technical review and recommendations will be developed. The Council will submit any comments to the Director of the GBP within a deadline set by the Director to allow completion of review within the time schedule allotted. Based on this process, the Director will assimilate Council recommendations (if any), determine the need for conflict resolution (if any), and prepare the GBP response.

If the activity is a modification or amendment to an existing project (30-day clock) accommodation of any lengthy deliberation by the Council will be difficult to accommodate within the response period. The Council will be informed of the time available for review by the Director, at the time of notification, and the Director will utilize any information received from the Council prior to their response being due.

Contingencies for disagreement among official response entities. Because the federal consistency review process is being coordinated to the maximum extent possible with the existing EO review process, contingencies must also be addressed concerning disagreement among the involved official response entities concerning review findings. These contingencies are addressed as follows:

- If the H-GAC does not concur with the GBP on a local project and the GBP is not willing to elevate the comments to the level of a request for

accommodation, H-GAC will attach the GBP comments to the official SPR and reference them in the text of the SPR.

- If H-GAC does not concur with the GBP and the GBP wishes to request accommodation by the federal agency, H-GAC will forward the request to the SPOC and the SPOC will prepare the SPR and request for accommodation. This process is depicted in detail in FIGURE 4.

This mechanism for assuring that the GBP's comments are adequately represented in the SPR is verified in letters from the GBP to the SPOC (APPENDIX VI) and H-GAC (APPENDIX VII) and is supported by regulations under 1 TAC Sections 5.251 and 5.253. FIGURE 4 illustrates these contingencies.

FIGURE 4.
Review Process If Non-Concurrence Between H-GAC & GBNEP

