
V. Upon Federal Approval of the Texas Coastal Management Program

In efforts paralleling the development of *The Galveston Bay Plan* as a CCMP under the Water Quality Act, the state has been developing a Texas Coastal Management Program (CMP) for federal approval by the U.S. Department of Commerce as part of the Coastal Zone Management Program (CZMP). The concurrent development of *The Galveston Bay Plan* and the CMP has resulted in early coordination of the two programs. Once both programs are approved, *The Galveston Bay Plan* may be incorporated into the CMP as a Special Area Management Plan (SAMP), providing the Galveston Bay Program with several benefits in implementing *The Galveston Bay Plan*. Benefits include making the GBP eligible for federal CZM funds and broadening the scope and enforceability of the program's federal consistency review. The process of potential adoption of *The Galveston Bay Plan* as a SAMP would occur through development of enforceable policies related to *Plan* actions, through a process of deliberation by the Galveston Bay Council (discussed below).

Federal Consistency Review

The federal consistency review authority granted to the state upon federal approval of the Texas CMP under the Coastal Zone Management Act of 1972, as amended, is broader than that granted to the GBNEP under section 320 of the Water Quality Act. Federal consistency review under the CMP applies to federal actions: federal licenses and permits, direct federal activities and development projects, Outer Continental Shelf activities, and federal financial assistance programs. In contrast, NEP federal consistency addresses only federal assistance and development activities. Additionally, the CMP's federal consistency review authority allows the state to "veto" most federal actions that are not undertaken in a manner consistent with the CMP's enforceable goals and policies. The NEP federal consistency review cannot result in a "veto" of a direct federal activity or development project, rather the process merely encourages accommodation by the federal agency.

Because of the stronger provisions of the CMP consistency in comparison to NEP consistency, the GBP anticipates possible adoption of the CMP process for *Galveston Bay Plan* consistency review, after Texas' program is federally approved. However, the application of CMP consistency is governed by adoption of "enforceable policies" (discussed below). The ultimate use of CMP vs NEP consistency (or a mixture of both processes) will depend upon deliberation of the GBP and Galveston Bay Council once final CMP rules have been adopted and enforceable policies have been considered by the Galveston Bay Council. An overriding goal of the GBP will be to minimize duplication of effort by Texas agencies, and encourage an effective role of the program in the context of state-wide coastal policy.

Special Area Management Planning and Incorporation of *The Galveston Bay Plan* into the CMP

Special area management planning (SAMP) is a unique provision afforded to coastal management programs participating in the federal CZMP. Under this program element, the CMP encourages the development of SAMPs that provide management tailored to particular geographic areas of the coast that have significant economic, social, and/or ecological values. The five-county GBP area meets this description.

SAMPs under the CMP and the CCMPs created by National Estuary Programs have much in common. Both help provide site-specific management to protect the economic, cultural, social, ecological, habitat, wildlife, aquatic, recreational, scientific, educational, research, or aesthetic qualities of particular geographic areas. Specific enforceable policies of the SAMP may be reviewed and adopted by the CCC as rules. A SAMP may also contain advisory policies, planning strategies, and public outreach activities to address specific management issues of the area.

The CMP has not been submitted for federal approval as of the writing of this report. However, upon approval of the CMP, the Galveston Bay Program will consider incorporation of *The Galveston Bay Plan* into the CMP as a SAMP. To accomplish this, the Galveston Bay Program and the Galveston Bay Council will review *The Galveston Bay Plan* and determine which of the actions should be translated into enforceable policies; that is, which goals, objectives, and actions should be drafted as policy statements that can be enforced through existing law or regulations.

Those actions that are not enforceable may be translated into advisory policies. The difference between enforceable and advisory policies is important with respect to the federal consistency review authority of the CMP. Under the CMP's federal consistency review, federal actions must be consistent only with the enforceable policies of the CMP. Federal actions must consider advisory policies but are not required to be consistent with such advisory policies.

When the relevant actions of *The Galveston Bay Plan* have been rewritten as enforceable and advisory policies, the Galveston Bay Council and GBP may submit *The Galveston Bay Plan* and its policies as a SAMP for possible review and adoption by the Coastal Coordination Council (CCC), the interagency entity that oversees the implementation of the CMP. If the CCC adopts the SAMP, its enforceable policies will be incorporated into the CMP by rule. The SAMP policies will be part of the CMP, with the enforceable policies forming the basis for the CMP's federal consistency review within the boundary of the SAMP (i.e., the five-county Galveston Bay Program area). While the SAMP advisory policies will not be enforceable, the GBP will be able to obtain federal CZMP funds to implement the advisory policies and other nonregulatory components of the CCMP at the local or regional level.

The incorporation of the enforceable policies and advisory policies (if any) into the CMP will enhance the protection of coastal natural resources and the economy of the GBP area. The incorporation of the GBP policies into the CMP will not result in two sets of policies for the five-county GBP area. Instead, the SAMP policies will supplement the original CMP policies, covering actions and resources not specifically addressed by the CMP policies, establishing different approaches for meeting CMP requirements, or in some cases providing for requirements more specific than those of a CMP policy. Hence, the policies will enhance the special management of the area without being duplicative, providing management custom-tailored to Galveston Bay issues.

It is important to note that the choice of policies drafted from the CCMP actions will be left to the GBP and the Galveston Bay Council. The GBP and Council will be solely responsible for deciding which of the actions will be drafted as enforceable policies, advisory policies, or which actions will not be included as part of the SAMP. This would take place in an open, public deliberation involving all stakeholders. The CCC's role will be to approve or disapprove the SAMP, not to dictate the specific policies of the SAMP.

In addition to developing enforceable policies for the SAMP, the Galveston Bay Council and GBP will identify which federal actions under the CMP consistency review authority (e.g., federal licenses and permits) are to be reviewed by the program for consistency with the SAMP policies. Listing the actions subject to federal consistency review is a requirement of the federal CZM program.

If *The Galveston Bay Plan* and its policies are adopted as a SAMP, the CCC will establish procedures to ensure the Galveston Bay Program's participation in the CMP federal consistency review process. Although the CCC will remain the entity responsible for issuing consistency decisions, the Galveston Bay Program's comments on federal actions within the GBP area will be solicited and considered by the CCC in issuing those consistency decisions.