CP-5 Agency Performance Review of the Wetlands Permitting Process

OBJECTIVES

1. To improve methods in which agencies administer existing wetlands regulations.

2. To determine if multi-agency cooperative efforts can simplify user permit application procedures.

DESCRIPTION

This pilot project will establish a periodic evaluation process that assesses effectiveness of the manner in which current wetland permitting regulations are implemented and administered by public agencies. The project will not determine the adequacy of a regulation's ability to protect a natural resource, but will focus on how existing regulations are implemented, the inter-relationships between regulatory bodies, data requirements and how the process can be streamlined. In addition, the evaluation process will also be used to determine whether more productive roles could be played by the various commenting agencies involved in the regulatory process. Parties that would be included in the evaluation process would be all federal or state resource agencies that have responsibility in the wetland permitting process, the regulated community, local government representatives, the environmental community and the general public.

The evaluation process will be specifically tailored for each of the represented groups of evaluators by the implementors of this plan: implementors are strongly encouraged to utilize the services of an independent contractor to develop objective and unbiased results. Possible evaluation methods would include written questionnaires, inventories, surveys and personal interviews and should be conducted at regular intervals. Upon completion of the evaluations, the regulating agencies would be responsible for implementing any agreed upon changes.

The initial regulatory process to be evaluated is the Section 404(b)(1) wetland permitting process of the Clean Water Act administered by the U. S. Army Corps of Engineers (USACOE). For the purposes of this plan, the Coastal Use Permit process administered by the Louisiana Department of Natural Resources (LDNR) and the Water Certification process administered by the Louisiana Department of Environmental Quality (LDEQ) have been included as part of the regulatory process to be evaluated.

BACKGROUND/MAJOR ISSUES

Environmental regulations are created to preserve, and in a few cases, enhance natural resources that are important to the general public. When these regulations are appropriately administered, the natural resource by design is subjected to fewer assaults. The effective application of regulations thus protects resources from potential abuse ensuring that renewable resources are not depleted or damaged beyond a level from which they can recover. It is the general consensus of the public that government agencies do not implement environmental regulations appropriately. Cases have been made by the regulated community that obtaining necessary permits is both time-consuming and involves an inordinate amount of paperwork. Cited also are similar requirements of different agencies which do not appear to communicate with each other or coordinate data requirements. At the same time,

there is the perception that environmental conditions are continuing to worsen in spite of the presence of an array of regulations to prevent further environmental degradation.

Agencies such as USACOE and LDNR have over time developed in-house procedures to meet legislative mandates on the environment. Procedures were a product of the existing organizational structures, physical location of offices and financial constraints. In most cases, legislation that affected several agencies did not automatically set in motion a process by which the agencies would cooperatively create procedures to develop the optimal application system. This evaluation of regulatory process and procedures should be recognized as only the first step towards accomplishing the objective of achieving highly effective implementation of existing wetland regulations. It is important that existing regulations be implemented with emphasis on the specific environmental conditions of this estuary and on the environmental priorities of the local and State communities. Effective implementation of environmental regulations affects virtually everyone in every community.

BENEFITS

By identifying specific activities within the regulatory process which could be changed, agencies will be able to more effectively apply regulations and lessen the frustration of the public in dealing with the regulatory process. Additionally, the evaluations could help balance and tailor Federal mandates with local conditions. These evaluations will also assist agencies with the difficult task of determining the most productive utilization of the limited staffs they have to accomplish their legislated mission. In the long-term, affected parties will gain more assurance that they will be involved in an ongoing evaluation process of the regulations that affect them. This will further reduce frustration levels and promote positive working relationships. These more productive relationships should encourage an increased support of the level of environmental protection and enhancement set forth in the BTNEP Shared Vision. Periodic evaluations will ensure that, as environmental conditions change over time, regulations will be implemented in such a way as to effectively address the highest priority issues of the communities at that time.

IMPLEMENTATION SCHEDULE

Initial steps have already been taken by the Regulatory Functions Branch at the New Orleans District office of the U.S. Army Corps of Engineers (USACOE), which has been working with USACOE Headquarters in Washington to begin development of a customer satisfaction questionnaire. The New Orleans District has already committed to distribute the questionnaire and has begun to suggest ideas for the most effective way to get the questionnaires to the target audience and to ensure a high percentage of questionnaire completion and return.

The Short-Term Plan (0-1 years) calls for all implementors to:

S 1.00 Work toward formalizing a commitment to participate.
S 2.00 Meet to determine evaluation procedures.
S 3.00 Develop and distribute questionnaires.
S 4.00 Review returned questionnaires.
S 5.00 Recommend changes to the process and agree on changes to be made.
S 6.00 Implement changes.
S 7.00 Communicate survey results and process changes to the public.

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The Medium-Term Plans (2-5 years) are:

M 1.00 Determine if other evaluators need to be brought into the process. If others are identified, the procedures outlined above as short-term plans should be applied (BTMC).
M 2.00 Develop and implement a plan for monitoring the short-term effectiveness of the process (All Implementors).

Long-Term Plans (5-10 years) include continuing monitoring the effectiveness of the changes that were implemented, and make determinations as to whether they should be continued, and exploring the possibility of expanding this evaluation process to other regulatory programs or permitting processes.

LEAD AND SUPPORT IMPLEMENTORS

The lead implementors for this action will be the U.S. Army Corps of Engineers, New Orleans District, Regulatory Functions Branch; the Louisiana Department of Natural Resources, Coastal Management Division; and the Louisiana Department of Environmental Quality. As the agencies respectively responsible for the administration of the 404(b)(1) wetland permitting process, the Coastal Use Permit program and the Water Certification process, it is appropriate that they be lead implementors. Support implementors will include the U.S. Environmental Protection Agency, Region VI; the U.S. Fish and Wildlife Service, Lafayette Field Office; the U.S. National Marine Fisheries Service, Baton Rouge Office; the U.S. Natural Resources Conservation Service, Louisiana Office; the Louisiana Department of Wildlife and Fisheries, Ecological Services Division; the Coalition to Restore Coastal Louisiana; the Louisiana Wildlife Federation; the Louisiana Landowners Association; the Louisiana Mid-Continent Oil and Gas Association; the Louisiana Independent Oil and Gas Association; local parish representatives; and, the BTMC. All of these entities can provide critical input to the evaluation process due to their role in the permitting process or because of the constituency they represent.

COSTS AND ECONOMIC CONSIDERATIONS

Table CP5-1 provides estimated costs for short- and medium term activities specified in this plan. It includes lead agencies and costs for short- and medium-term activities. Costs are broken down into those considered "new" (a direct product of CCMP recommendations) and "existing" (where plans coincide with existing responsibilities/activities). Acceptance of this plan by the agencies or entities listed as lead or support implementors does not commit that agency or entity to implement the plan. At a later date, parties identified as potential plan implementors will work with the Program Office, the BTMC and other plan implementors to formalize all commitments concerning implementation.

Table CP5-1. Estimated Costs.

	ACTION DESCRIPTOR	LEAD	EXISTING / NEW	SUBSUME	Y1 COSTS (Short Term)	Y2-5 AVG COSTS/YR (Medium Term)
CP-5					$16,120	$2,793
CP-5S1.00	*survey commitment*				$2,688	$0
CP-5S1.01	*survey commitment*	USACOE	E		$336	$0
CP-5S1.02	*survey commitment*	LDNR	E		$336	$0
CP-5S1.03	*survey commitment*	LDEQ	E		$336	$0

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	ACTION DESCRIPTOR	LEAD	EXISTING / NEW	SUBSUME	Y1 COSTS (Short Term)	Y2-5 AVG COSTS/YR (Medium Term)
CP-5S1.04	*survey commitment*	LGOV	E		$336	$0
CP-5S1.05	*survey commitment*	USNPS	E		$336	$0
CP-5S1.06	*survey commitment*	USDA	E		$336	$0
CP-5S1.07	*survey commitment*	LDWF	E		$336	$0
CP-5S1.08	*survey commitment*	USEPA	E		$336	$0
CP-5S2.00	*determine eval. procedures*			CP-5S1.00		$0
CP-5S3.00	*develop/distribute surveys*		E		$3,696	$0
CP-5S3.01	*formalization and evaluation*	USACOE	E		$1,596	$0
CP-5S3.02	*copying and support*	USACOE	E		$500	$0
CP-5S3.03	*distribution*	USACOE	E		$1,600	$0
CP-5S4.00	*review returns*	USACOE	E		$4,200	$0
CP-5S5.00	*recommend process changes*				$4,536	$0
CP-5S5.01	*meeting and discussion*	BTMC	E		$504	$0
CP-5S5.02	*review and discussion*	USACOE	E		$504	$0
CP-5S5.03	*review and discussion*	LDNR	E		$504	$0
CP-5S5.04	*review and discussion*	LDEQ	E		$504	$0
CP-5S5.05	*review and discussion*	LGOV	E		$504	$0
CP-5S5.06	*review and discussion*	USNPS	E		$504	$0
CP-5S5.07	*review and discussion*	USDA	E		$504	$0
CP-5S5.08	*review and discussion*	LDWF	E		$504	$0
CP-5S5.09	*review and discussion*	USEPA	E		$504	$0
CP-5S6.00	*implement rec. changes*		no estimate			
CP-5S7.00	*results to public*	LDNR/ LDEQ/ USACOE	E		$1,000	$0
CP-5M1.00	*determine if other evaluators*		no estimate			
CP-5M2.00	*effectiveness monitoring*					$2,793
CP-5M2.01	*effectiveness monitoring*	LDNR	E			$399
CP-5M2.02	*effectiveness monitoring*	LDEQ	E			$399
CP-5M2.03	*effectiveness monitoring*	LGOV	E			$399
CP-5M2.04	*effectiveness monitoring*	USNPS	E			$399
CP-5M2.05	*effectiveness monitoring*	USDA	E			$399
CP-5M2.06	*effectiveness monitoring*	LDWF	E			$399
CP-5M2.07	*effectiveness monitoring*	USEPA	E			$399

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FUNDING STRATEGY

Total Funding Necessary (Years 1-5): $26,800
Total Funding Existing (Years 1-5): $26,800
Total New Funding Necessary (Years 1-5): $0

Summary of new funding strategy: Existing funding for this action plan for the next five years has been identified and will come from department budgets, grants, and volunteer time. No new funding source is required.

EVALUATION METHODS

The following monitoring strategies are intended to serve as a statement of the most comprehensive and effective mechanisms to assess the effectiveness of projects implemented under the action plans. These strategies should only be used as a guide, not as a requirement. It must be recognized that the monitoring strategies outlined here will be expensive to implement and that, because all levels of government and much of the private sector currently have severe funding restraints, they may not be affordable without significant modification. It must also be recognized that these strategies are not intended to suggest that regulatory agencies require a higher level of monitoring by permit applicants than is currently required. The following monitoring strategies do not override or replace project monitoring that would be done by an agency related to specific agency-sponsored projects.

Components of Plan

1. Establish a process that periodically documents the effectiveness of the implementation and administration of current wetland permitting regulations.
   a. Initial efforts will focus on the process for the USACOE Section 404(b)(1) wetland permits, the LDNR Coastal Use Permit, and the LDEQ Water Quality Certification.

Interrelationships Among Components

All federal and state agencies that have responsibility in wetland permitting, the regulated community, local government representatives, the environmental community, and the general public will be involved in the development of the evaluation process. These participants will have the opportunity to recommend actions that result in a more effective and efficient system of processing wetland permits. At this time, the federal and state agencies and the BTMC will assign staff to this project. The BTMC and agencies will determine if a contractor will be utilized and how the contract will be funded.

Documentation of Plan Implementation and Success

The following criteria will be used to determine if plan implementation steps and project success were accomplished:

1. To improve methods in which agencies administer existing wetlands regulations.
   a. Invited parties agree to participate in this effort.
   b. The parties return the questionnaire in a timely fashion.
   c. The responses indicate a positive attitude to the effort.
   d. The parties agree to develop changes where the team feels such actions are needed.
   e. Evaluators are brought into the process as needed.
   f. The parties give serious consideration to public concerns during the evaluation process.
   g. The parties agree to implement the recommendations within the latitude for interpretation under existing legislation.

2. To determine if multi-agency cooperative efforts can simplify user permit application procedures.

a. The parties agree on a monitoring process which determines the changes do simplify user permit application procedures.
b. The BTMC and the involved parties will determine if other regulatory programs or permitting processes should be evaluated.

Methods

Measurable parameters

The measurable parameters include the criteria identified in the section: Documentation of Plan Implementation and Success.

Data collection methods

An independent Third Party will collect data by interviewing participants from the Coastal Management Division, LDNR, New Orleans District, USACOE, and LDEQ; observing activities of the agencies when they meet to discuss the effectiveness of the implementation and administration of current wetland permitting regulations; and examining agreements developed by the participants.

Sampling design and statistical methods

Each quarter, the monitor will interview by telephone or at their office representatives of the New Orleans District, USACOE, Coastal Management Division, LDNR, and the LDEQ. At a minimum, the monitor will attend four subcommittee meetings estimated to occur quarterly. Current published literature will be systematically reviewed for ideas on implementation and administration of wetland permitting regulations. The monitor will not use statistical methods in preparing the quarterly or annual reports.

Cost estimate

The level of effort projects the costs (in 1996 dollars) for an independent Third Party to accomplish the above described activities (quarterly BTMC meetings and reports, an annual report, and interviews and meetings with staff of the Coastal Management Division, LDNR, LDEQ, and New Orleans District, USACOE, attendance at quarterly subcommittee meetings, and review of materials). After the first year, the BTMC should assess the value of the monitoring process and adjust the scope of services and contractual arrangements to provide for the desired information. The scope-of-services for the 12 months estimates 272 person hours for the year. The estimated cost for the first year is $15,600 which includes salary, fringe benefits, overhead, and associated expenses.

Recommendations and Feedback to Program/Implementor

The USACOE in coordination with the LDNR and the LDEQ will distribute, collect, and compile the data derived from a questionnaire about the permitting processes (Section 404(b)(1), Coastal Use Permits, and Water Quality Certification). An independent Third Party will monitor activities of the Agency Performance Review of the Wetlands Permitting Process Action Plan. Monitoring will utilize the criteria presented in the section "Documentation of Plan Implementation and Success." The independent Third Party shall prepare a written quarterly report for the BTMC summarizing action plan activities, accomplishments, problems, issues of concern, and recommended solutions. The quarterly report shall be submitted at least 15 days prior to a regularly scheduled BTMC meeting. The independent Third Party should be available at the BTMC meeting for discussion of his/her monitoring report.

Quality Assurance/Quality Control

A Quality Assurance Plan shall be developed by the BTMC to assure the Monitoring Strategy accomplishes its actions and activities in an objective and systematic manner that provides the BTMC with information and

recommendations agencies can use to improve their permit processing procedures. The basic outline of a Quality

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Assurance Plan follows.

Objective of monitoring
1. To observe if the multi-agency cooperative procedure for evaluating the wetlands permitting process works.
2. To document if existing administration of wetland regulations can be improved.
3. To identify problems and issues of concern with the multi-agency cooperative procedure.
4. To recommend solutions to problems and issues of concern.

Data collection
1. Creation of a multi-agency team that includes representatives from the general public and special interests.
2. A questionnaire administered by the USACOE.
3. Regular meetings of the participants.
4. Basic data:
    a. The proposed procedure allows for programmatic changes in a timely manner.
    b. Agency staff seriously work to involve the regulated community and prepare a document that uses non-technical language.

Data evaluation
The USACOE, LDNR, and LDEQ will develop a procedure for reviewing data that provide stakeholders with the information needed to determine the impacts of the wetlands permitting process.

Review of monitoring documents
The BTMC shall receive the monitoring document quarterly. The BTMC shall discuss the monitoring document and may take actions it feels appropriate.

Problems, recommended actions, and responsible party
The monitoring document shall identify the causes of problems observed during the reporting period, describe the short and long-term consequences of these problems, recommend actions to address the problems, and identify possible parties to implement these actions. The monitoring document shall also propose a schedule for accomplishing the recommendations.

Schedule
A quarterly monitoring report will be prepared by an independent Third Party for the BTMC. An annual monitoring document summarizing the previous calendar year shall be submitted to the BTMC no later than January 30 of the following year.