FEDERAL, STATE, AND LOCAL

ENVIRONMENTAL REGULATORY AND REVIEW RESPONSIBILITIES

within the

PONTCHARTRAIN BASIN, LOUISIANA

Prepared for:

Lake Pontchartrain Basin Foundation
Post Office Box 6965
Metairie, Louisiana 70009-6965

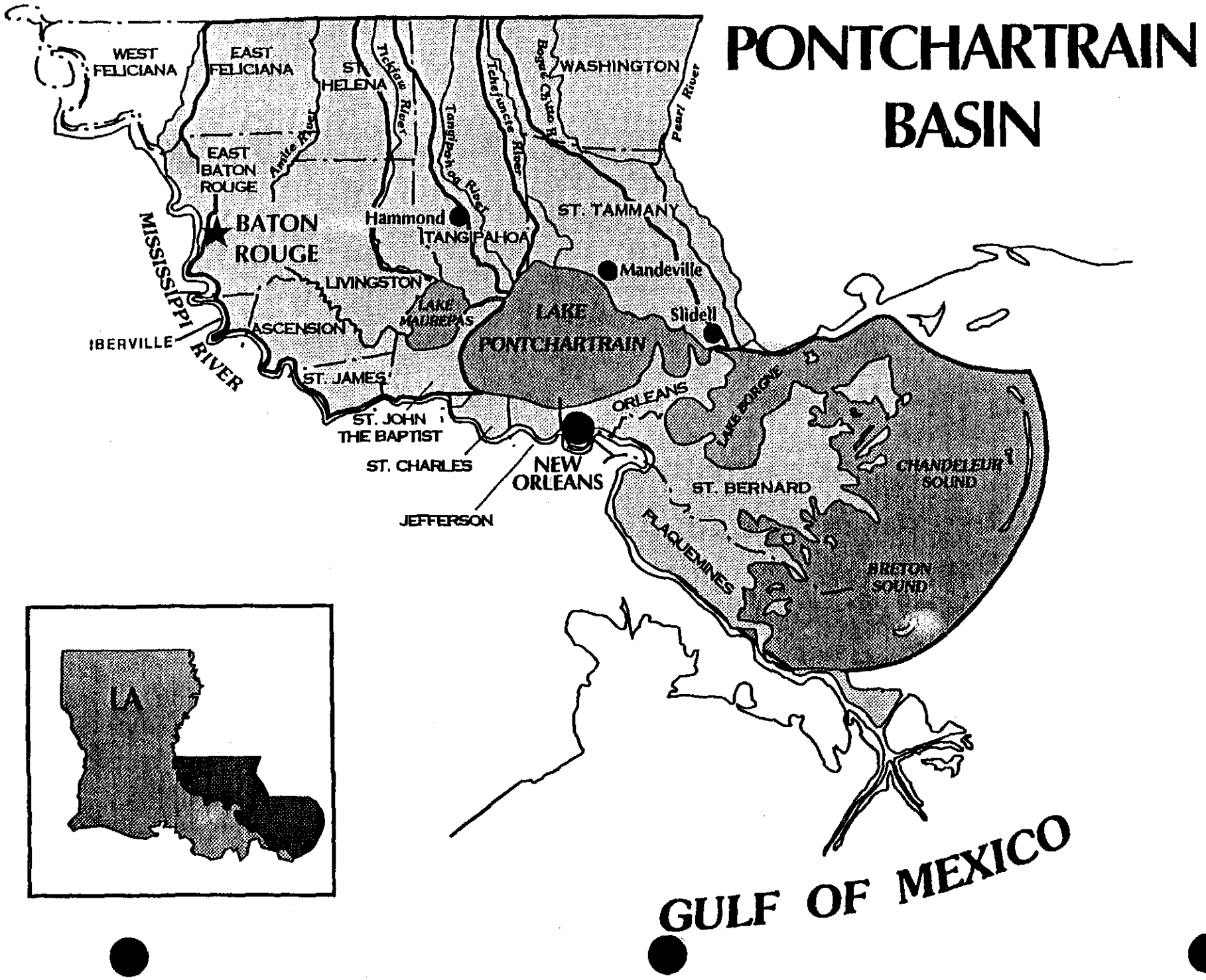
as part of:

The Pontchartrain Basin Comprehensive Management Project

By:

Rod E. Emmer, Ph.D. and Linda Stone Calvert
University of New Orleans
College of Urban and Public Affairs
New Orleans, Louisiana 70148

March 1992
in partial fulfillment of
EPA Grant
No. X006710-01-0


PONTCHARTRAIN
BASIN
WEST FELICIANA
EAST FELICIANA
ST HELENA
WASHINGTON
Amite River
Tickfaw River
Tangipahoa River
Tchefuncte River
Bogue Chitto River
Pearl River
EAST BATON ROUGE
BATON ROUGE
Hammond
TANGIPAHOA
ST. TAMMANY
Mandeville
LIVINGSTON
LAKE MAUREPAS
LAKE PONTCHARTRAIN
Slidell
MISSISSIPPI RIVER
IBERVILLE
ASCENSION
ST. JAMES
ST. JOHN THE BAPTIST
ST. CHARLES
NEW ORLEANS
ORLEANS
LAKE BORGNE
CHANDELEUR SOUND
ST. BERNARD
PLAQUEMINES
BRETON SOUND
JEFFERSON
LA
GULF OF MEXICO

FEDERAL, STATE, AND LOCAL

ENVIRONMENTAL REGULATORY AND REVIEW RESPONSIBILITIES

within the

PONTCHARTRAIN BASIN, LOUISIANA

Prepared for:

Lake Pontchartrain Basin Foundation
Post Office Box 6965
Metairie, Louisiana 70009-6965

as part of:

The Pontchartrain Basin Comprehensive Management Project

By:

Rod E. Emmer, Ph.D. and Linda Stone Calvert
University of New Orleans
College of Urban and Public Affairs
New Orleans, Louisiana 70148

March 1992
in partial fulfillment of
EPA Grant
No. X006710-01-0

Funding for this publication and the planning process has been made possible through a $500,000 grant (#X-006710-01-0) from the U.S. Environmental Protection Agency (EPA) covering 95% of the costs of the project.

Any opinions, findings, and conclusions in this publication are the authors' and do not necessarily reflect the views and policies of the EPA, the Lake Pontchartrain Basin Foundation, or the University of New Orleans.

TABLE OF CONTENTS

LIST OF TABLES

PREFACE

The Lake Pontchartrain Basin Foundation (LPBF), in a cooperative effort with the U.S. Environmental Protection Agency, has been granted a $500,000 congressional appropriation which covers 95% of the costs of a project to develop and implement a Comprehensive Management Plan (CMP) for the restoration and cleanup of the Pontchartrain Basin.

Within the Pontchartrain Basin (frontispiece) there are at least 98 governmental entities, at six levels of government (federal, state, regional, parish, municipal, and special districts), working to protect the basin's renewable resources and prevent degradation of the physical and biological systems, while at the same time encouraging economic growth and development. The efforts put forth by these entities are commendable. However, there is no accepted universal means of coordinating the governmental programs.

Environmental degradation in the basin must be addressed through a systematic methodology incorporating the legal responsibilities of each governmental entity. An effective plan for restoration and enhancement of renewable resources, protection of public health and safety, and economic growth within a basin should incorporate institutional and structural components in a coordinated fashion. To have a realistic chance of implementation in a timely manner, the CMP must take all components into consideration from the initiation of the program.

This report delineates the legal mandates of those federal, state and local agencies with regulatory authority or oversight responsibility in the Pontchartrain Basin. It provides a background from which to coordinate agency programs, and is useful for clarifying those areas in which regulations are

lacking or enforcement is not occurring. As such, it is an important starting point in the creation of a CMP.

I. INTRODUCTION

The 1970 National Environmental Policy Act (NEPA) dramatically changed the implementation process for engineering projects, physical development, and programs. NEPA requires governments, individuals, and companies to consider the environmental suitability of projects and to report on expected environmental impacts. Since NEPA's passage, federal and state legislatures have implemented hundreds of programs to conserve natural resources, protect public health and safety, and limit pollution. As a result, numerous federal, state, and local agencies are involved in decision-making and/or regulation of activities such as the release of potentially toxic substances into the environment or the modification of waters of the United States. Some agencies have a direct regulatory role through the permitting process, while other agencies have review and comment responsibilities. As might be expected, the attempt to address environmental issues on an almost ad hoc basis for twenty years has resulted in a largely uncoordinated development of regulations and programs at federal, state, regional, and local levels of government.

Agencies at all levels of government and with varying degrees of authority are working to protect public health and safety and prevent degradation of the physical and biological resource base, while simultaneously encouraging economic growth and development. The effort put forth by these agencies is commendable. However, there is no accepted universal means of coordinating the agencies' individual actions. Matters are further complicated because the basin includes coastal lowlands and Pleistocene terraces and uplands, each of which must be considered individually because of its unique physical characteristics.

The Pontchartrain Basin is a 4,700 square mile watershed in southeastern Louisiana, ranging from over 300 feet in elevation along the Mississippi state line to sea level in the coastal lowlands. The older Pleistocene terraces and uplands form the northern half of the basin, an area locally known as the Florida Parishes. South of the terraces are the coastal lowlands, the marshes, swamps, and waterbodies of the Pontchartrain estuary. Many small rivers within eroded valleys drain the Florida Parishes and introduce most of the freshwater into Lakes Maurepas and Pontchartrain, the great mixing zone of fresh and saline water. The largest of these rivers is the Amite with its headwaters in the counties of southwestern Mississippi. Bayous and tidal channels of slow moving water characterize the coastal lowlands.

Pines dominate the uplands, while in the river valley and sloughs are hardwoods. Coastal vegetation includes natural levee and bottomland hardwoods, cypress-tupelo swamp, and fresh to brackish marshes. The distribution and composition of vegetation associations are undergoing rapid changes. Small farms and wooded uplands have been converted into suburban houses, shopping centers, and small businesses. Along the Mississippi River are petrochemical plants, grain elevators and refineries that have turned the river into an industrial corridor from Baton Rouge to New Orleans. Surrounding the industries are subdivisions and malls covering abandoned sugar cane fields. Finally, Orleans, Jefferson, and St. Bernard Parishes have defined their maximum extent of expansion with the construction of an elaborate hurricane levee protection system. Located in the center of this basin is the state's largest waterbody, Lake Pontchartrain.

Lake Pontchartrain was formed 5,000 years ago and covers almost 630 square miles. The shallow lake (average depth 14 feet) is brackish, receiving freshwater from many sources,

including the Tangipahoa and Tchefuncte Rivers, Bayous Lacombe and Bonfouca, as well as drainage canals. Salt water from the Gulf of Mexico enters the lake through the Chef and Rigolets passes and the Industrial Canal. For many years, the basin's wetlands have been channelized, drained and filled, with Lake Pontchartrain serving as the receiving waters for a variety of contaminants. The cumulative effects of wetland degradation and discharge of pollutants into the lake result in eroded shorelines, dwindling wetlands and grassbeds, diminished shellfish and fisheries, closed beaches, and the occasional occurrence of "dead zones" in the lake.

The Lake Pontchartrain Basin contains a rapidly increasing human population. The continuing push of urbanization into the wetlands conflicts with the natural values and functions of wetlands, with commercial fishing and recreation, and contributes a variety of impacts (Emmer et al. 1984). Municipal runoff, sewerage from humans and farm animals, and industrial and agricultural discharges exemplify several problems currently facing the lake. Commercial ventures such as shell dredging, oil and gas exploration and development, and the maintenance of the Mississippi River Gulf Outlet (MRGO) and Inner Harbor Navigation Canal (IHNC) affect the basin as well.

Exploitation of the valuable resources within the Pontchartrain Basin, has resulted in conflicts among the many users. Unfortunately, existing government programs do not permit a comprehensive approach for resolving these confrontations. Lack of an overall plan for addressing issues in the basin was identified in the Houck and Wagner report (1989). In partial response to this void, the Lake Pontchartrain Basin Foundation (LPBF) was created.

The LPBF is a non-profit, publicly supported organization which was established and incorporated September 19, 1989. The purposes of the LPBF, as stated in its charter, are the restoration and preservation of the environmental and ecological balance of the Lake Pontchartrain Basin. A fundamental goal of the LPBF is the creation and implementation, for the first time, of a plan to address these purposes. This plan is to bring together the federal, state, and local agencies with responsibilities and/or regulatory authority affecting the basin's environment. The LPBF is guided by a 13 member board representing the parishes surrounding Lake Pontchartrain and the state agencies with specific basin-related responsibilities.

In 1990 Congress appropriated $500,000 to the Lake Pontchartrain Basin Foundation (LPBF) to cover 95% of the costs of developing and implementing a Comprehensive Management Plan for the restoration and cleanup of the Pontchartrain Basin. The grant was provided to the LPBF through the U.S. Environmental Protection Agency (EPA), the oversight agency for the project. The final product of the first year's effort will be a twenty year Comprehensive Management Plan (CMP) containing implementation strategies for the first five years. The second year of the project will focus on implementation of the plan.

The CMP will be developed by an Interagency Working Group (IAWG) consisting of federal and state agencies, parishes, and a municipal component, all of whom have significant regulatory authority in the basin. The LPBF will serve as a representative of the general public. Each participant will have one vote. Federal and state resource agencies and local governments, as well as members of the private sector will serve as advisors to the IAWG and be actively involved in IAWG subcom-

mittees. The plan and strategy will be developed through a series of six workshops, scheduled to begin in March, 1992.

This report is divided into five parts presenting information that will serve as a basis for developing the institutional component of a comprehensive plan. It begins with a review of the comprehensive planning process to illustrate the place of institutional elements within the overall effort. Secondly, federal environmental programs having a significant regulatory impact on activities within the basin are described. Next, the mission and roles of state agencies are presented. The fourth part examines the level of decision-making closest to the general public, local government. The last section summarizes the information compiled and presents the conclusions of the study.

II. THE PLANNING AND REGULATORY PROCESS

There are three basic characteristics of a Comprehensive Management Plan (CMP): first, it is an official document that has been adopted by government as a policy guide to decisions about a particular area; second, it is a physical plan which encompasses all geographical parts of an area and all functional elements which influence physical development; and third, it is a long-term plan that usually indicates in a general way how government wants an area to develop in the next 20 to 30 years. That is, the plan sets goals and objectives, such as growth or conservation and how they will be achieved.

Originally, as conceived during the early part of this century, the CMP depicted static future land uses. Communities focused on achieving these idealistic configurations and support systems. Gradually, the CMP evolved into a dynamic process including documents and maps, and more importantly, embodying a procedure for continuously adjusting the plan to meet the needs of a changing community. Today, when planners initiate a CMP, their first step is to assemble background information describing community characteristics and interactions among various elements. Generally, tables, figures, maps and text are compiled on data that includes, but is not limited to: land use; community facilities; transportation routes; housing and public facilities; public utilities; rights-of-way and open spaces; and economic and environmental issues and problems (Levy 1988).

Based on the information collected during the first step, the planning staff, with public participation, identifies the problems and issues of importance. Goals and objectives can than be developed that will result in the community achieving its aspirations and desires (So and Getzels 1988). The third

step is generally the preparation of alternative scenarios for accomplishing the community goals and objectives. Each scenario proposes general land use patterns with approximate boundaries, but does not specify sites or facilities, information that is far too detailed for a CMP.

The concluding phase of the planning process is implementation. The time needed to complete a plan varies from one effort to another and depends on several variables, such as financing, availability of staff, and/or public acceptance of the plan. The final step of the comprehensive planning process is reserved for review and revisions, including public hearings (Levy 1988). This last part is important because it allows for continual assessment of plan elements in a timely manner, and permits updating the parts as conditions in the community change, or to resolve conflicts (So et al. 1979).

Planning in Louisiana

The authority to plan for growth and development has been in place in Louisiana since 1926 when municipalities of 5,000 or more inhabitants could initiate the planning process. This opportunity was extended to the parishes in 1928, and to the state level in 1936 with the creation of the State Planning Commission (Emmer et al. 1990). The first planning efforts were limited in scope and required revisions to make them more effective. Changes came in 1942 with the formation of the Department of Public Works, and in 1946 when the legislature more precisely described parish and municipal planning, planning commissions, and the development of comprehensive plans.

In the early stages, administrative and financial support for planning was not very high, even among the few municipalities with populations of more than 5,000. The State Planning

Commission had a budget for only three people and worked on federally supported programs, not on a comprehensive plan as was mandated. The Department of Public Works did some planning at a gross scale for public works projects and assisted parishes and municipalities only when invited to do so. Except for the larger municipalities, such as New Orleans and Baton Rouge, little evidence exists to suggest that there was much of an attempt at organized planning offices.

Planning efforts radically changed with the passage of the Housing Act of 1954 (PL 83-560), as amended, when federal monies were made available for developing plans. Approximately 200 plans at the state, regional, parish, and local levels were prepared through the 701 program (Emmer et al. 1990). Attempts were made in the mid-1960s to better coordinate planning by defining regional planning districts and establishing a state planning office. Again, a lack of support resulted in the demise of both entities (Emmer et al. 1990).

The opportunity exists for parishes and municipalities to do comprehensive planning and to assure that elements of growth do not conflict with each other. Authority for planning resides in the Louisiana Revised Statutes (LRS 33:101-120, Physical Development of Parishes and Municipalities; LRS 33: 131-140, Regional Planning Commissions; LRS 33:140.61-140.64, State Planning and Development Districts). In fact, parish and municipal planning commissions, once they are created, "shall make and adopt a master plan for the physical development" of the jurisdiction (LRS 33:106). This appears to mandate a plan when a planning commission exists. Therefore, planning can be done and it is a governmental responsibility to determine how it will be accomplished and implemented.

A Comprehensive Management Plan for the Pontchartrain Basin

The Pontchartrain Basin CMP will address real world issues of public health and safety, community well-being, and the degradation of natural systems, as well as economic concerns such as growth and development. Like any management plan, the Pontchartrain Basin CMP will focus on agency coordination and will offer strategies for addressing community concerns.

The planning process previously described will direct the creation of a CMP for the Pontchartrain Basin. There will be a few minor differences. Step one, data compilation, builds on existing studies and reports describing the basin's environmental status. Technical reports on the Pontchartrain Basin existed prior to formation of the LPBF (Stone et al. 1980; Emmer et al. 1984; Houck et al. 1989). To augment the technical data, four public meetings were held in October of 1991 (Metairie, Mandeville, Destrehan, and Hammond) for identification of public desires. As a result of these meetings, an in-depth report listing basin-related concerns was developed. This completed step two, identification of the problems and issues of importance.

Step three, preparation of alternative scenarios for accomplishing community goals and objectives, will take place during Interagency Working Group (IAWG) subcommittee meetings. Subcommittees will be responsible for developing specific sections of the overall plan, and in so doing, will need to discuss various options. The plan will evolve from the efforts of the subcommittees. Finally, the Pontchartrain Basin planning process will include public hearing(s) to receive comments on the initial draft of the CMP, including implementation strategies and procedures for updating the CMP in a timely fashion.

III. FEDERAL GOVERNMENT

The federal government does not have direct control over private land use (Platt 1976). Federal lands, such as wildlife management areas, national parks, forests, and military reservations, are under direct federal supervision. This is not to imply that the federal government remains idle as other lands are developed. Federal programs and policies indirectly influence, and to a degree shape, activities or the planning for activities on private lands. Studies (Conner 1977; Goldman-Carter 1989; Goldstein 1988; Houck 1983; Kusler 1983; Masterson 1991; Office of Technology Assessment 1984; Office of Coastal Zone Management and Coastal Management Section 1980; Ransel and Fish 1989; Want 1989; Zinn and Copeland 1982) have identified those federal programs which significantly affect activities. The dominant federal agencies that must be considered in the Pontchartrain Basin because of their permitting authority and the breath of their jurisdiction are: the U.S. Army Corps of Engineers and the Environmental Protection Agency. The U.S. Coast Guard is the other federal agency with permit responsibility in the basin. In addition to the fact that every federal agency must comply with the provisions of the National Environmental Policy Act, many federal agencies have review and oversight responsibilities within the basin. These include: the U.S. Fish and Wildlife Service; the National Marine Fisheries Service; the Federal Emergency Management Agency; the Soil Conservation Service; the Agricultural Stabilization and Conservation Service; the Advisory Council on Historic Preservation; and the Council on Environmental Quality.

This section presents those federal programs that must be considered during the planning process for the Pontchartrain Basin. Table 1 identifies lead agencies and outlines authorities, statutes, actions required and regulations for those

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
U.S. Army Corps of Engineers (USACE)	CWA, as amended, Section 404	33 USC 1251-1376	Permit	Applies to dredged or fill material placed in wetlands and waters of the U.S.
USACE	Rivers and Harbors Act of 1899, Sections 9 and 10	33 USC 401-406	Permit	Prohibits obstructing by dams, dikes, bridges of navigable waters or excavating or filling in any wetlands and waters of the U.S.
Environmental Protection Agency (EPA)	Clean Water Act (CWA), as amended, Section 402	33 USC 1251-1376	Permit	Effluent limitations of point sources of pollution.
EPA	CWA, as amended, Section 404	33 USC 1251-1376	Identification of wetlands	Makes final determination on all wetland permit proposals; determines where 404 permit is applicable.
EPA	Resource Conservation and Recovery Act (RCRA)	42 USC 6901-6987	Permit	Regulations and standards for hazardous waste treatment, storage and disposal facilities.
EPA	Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)	42 USC 9601-9675	Permit	Superfund cleanup of abandoned waste disposal sites.

TABLE 1: SELECTED FEDERAL GOVERNMENT PROGRAMS AFFECTING THE PONTCHARTRAIN BASIN

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
EPA	PL 100-104, Section 319	33 USC 1251-1376	Planning	States must develop programs to reduce non-point sources of pollution.
EPA	Safe Drinking Water Act	42 USC 300f	Permit; review	Regulates deep well injection of wastes; establishes Sole Source Aquifer and Wellhead Protection Program.
EPA	Clean Air Act	42 USC 7401 and 7625-6; 15 USC 792	Permit	Prevention of significant deterioration of air quality.
U.S. Coast Guard (USCG)	Department of Transportation Act of October 15, 1966	49 USC 1155g(6)(A)	Permit	Permitting of bridges and causeways.
Advisory Council on Historic Preservation	National Historic Preservation Act	16 USC 470	Review and comment	Protection of National Register Sites and Archaeological Sites and recovery and preservation of data.
	Preservation of Historical and Archaeological Data Act of 1974	16 USC 469 et seq.		
Agricultural Stabilization and Conservation Service	Food Security Act of 1985	16 USC 3801-3845	Regulation and support	Protection of wetlands.

TABLE 1: CONTINUED

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
Council on Environmental Quality	National Environmental Policy Act, as amended	42 USC 4321-4347	Environmental impact statement	Preparation of environmental documents identifying alternatives considered and beneficial and adverse primary and secondary impacts.
Federal Emergency Management Agency (FEMA)	National Flood Insurance Program	42 USC 4001-4128	Review and floodplain management	Modification of land uses and structures in the flood plain to reduce flood damage to an acceptable level or eliminate damage.
National Marine Fisheries Services (NMFS)	Fish and Wildlife Coordination Act	16 USC 661-668c	Consultation in permit decisions	Integrates concern for fish and wildlife resources into permit process.
Office of Coastal Resource Management (OCRM)	Coastal Zone Management Act, as amended	16 USC 1451-1464	Develop coastal zone plan	States and parishes develop and implement long range management plan approved by federal government.
Soil Conservation Service (SCS)	Food Security Act of 1985	16 USC 3801-3845	Reduction and support	Protects wetlands from conversion to agricultural uses.

TABLE 1: CONTINUED

LEAD AGENCY	AUTHORITY	STATUTE	ACTION REQUIRED	REGULATION
SCS	Small Watershed Program, PL566	43 USC 422a-422h	Planning and support	Provides technical assistance for planning and implementing the protection, development and utilization of land and water resources in small watersheds.
SCS	Resource Conservation and Development Program	PL74-46, as amended	Grants	Advisory services and counselling for projects.
U.S. Fish and Wildlife Service (NMFS)	Fish and Wildlife Coordination Act	16 USC 661-668c	Consultation in permit decisions	Integrates concern for fish and wildlife resources into permit process.

TABLE 1: CONTINUED

federal actions applicable to the issues and concerns expressed by the public. Federal programs dominate the formulation of policies by establishing the scope of state and local programs. They provide funds for achieving program objectives. And, more importantly, federal programs define and set restrictions and prerequisites for what can take place in the basin and who can undertake an action. The section begins with a discussion of the two dominant agencies, the Corps and EPA. Following that, the Coast Guard and agencies with review and oversight responsibility are discussed.

United States Army Corps of Engineers

The U.S. Army Corps of Engineers (USACE or the Corps) achieves its regulatory authority from the Rivers and Harbors Act of 1899 (33U.S.C.A.401-406) and the Clean Water Act, Section 404 (33U.S.C.A.1251-1376 (1989)). Section 9 of the Rivers and Harbors Act prohibits the construction of dams or dikes across navigable waterways within a state unless the structure is built under the authority of the legislature and the location and plans are approved by the Chief of Engineers and the Secretary of the Army. A permit is issued for such an action. Section 10 of the Rivers and Harbors Act prohibits the unauthorized obstruction by structures or alteration of any navigable waters of the United States. Alterations include the excavation from or depositing of material in navigable waters or other actions that affect the course, location, condition, or capacity of navigable water. The Chief of Engineers can authorize works within navigable waters of the United States and issue a permit for the project.

Section 404 of the Clean Water Act establishes a program for regulating the discharge of dredged or fill material into waters of the United States. The Corps is responsible for the day-to-day administration of the program, including review of

permit applications and deciding whether to issue or deny a permit. Corps evaluations are based on project compliance with Section 404(b)(1) guidelines and public interest review. Public interest review requires balancing the project's public and private benefits against the expected adverse impacts. Among the considerations are aesthetics, economics, energy needs, flood damage prevention, historic values, recreation, water quality, and water supply.

Some projects, such as normal farming and ranching, silviculture, farm and stock ponds, and farm or forest roads, are exempted from the permitting process. Exemptions do not apply if the projects are designed to change the land use of the area or convert wetlands to dry land.

Environmental Protection Agency

The U. S. Environmental Protection Agency's (EPA) general charge is to protect and enhance the environment now and for the future to the fullest extent possible under federal law. EPA's mission is to control and abate pollution in the areas of air, water, solid waste, pesticides, radiation, and toxic substances. EPA has major responsibilities for management of water quality with the primary objective being to "restore and maintain the chemical, physical and biological integrity of the nation's waters." Its mandate is for an integrated, coordinated attack on environmental pollution in cooperation with state and local governments, making EPA's responsibilities and activities broad and often cooperative with other agencies.

Through Section 404(c) of the Clean Water Act (40C.F.R.231 (1989)) the EPA Administrator can prohibit or restrict the use of specified areas in waters of the United States as disposal sites for dredged or fill material. Restricted use occurs

when EPA determines that such disposal will have an unacceptable adverse effect on any of the following:

- municipal water supplies
- shellfish beds
- fishery areas (including spawning and breeding areas)
- wildlife areas
- recreational areas.

EPA can invoke a Section 404(c) action in the absence of a proposed project, prior to the receipt of a permit application, or following notification by the Corps of their intent to issue a permit that EPA believes may be unacceptable. Under Section 404(f), EPA has the final determination on the geographic extent of Section 404 jurisdiction.

Section 404(b)(1) of the Clean Water Act codifies the regulations establishing the substantive environmental criteria to be used in the review of Section 404 permit applications. No Section 404 permit will be issued if the project:

- violates any applicable state water quality standards;
- violates applicable toxic effluent standards or is prohibited under Section 307 of the Clean Water Act;
- jeopardizes threatened or endangered species;
- violates any marine sanctuary;
- significantly degrades waters of the United States;
- has a significant adverse effect on human health and welfare (for example, water supplies, shellfish, or wildlife sites);
- significantly affects the aquatic ecosystem, including polluting and loss of habitat;

- significantly affects recreational, aesthetic, and economic values of the area;
- has practicable alternatives available to the project sponsor that has fewer environmental impacts; or
- has not taken the appropriate steps to minimize unavoidable impacts to the environment.

A permit application must consider practicable alternatives that do not involve the discharge of dredged or fill material into waters of the United States. Alternatives are "practicable" if EPA determines that they can be accomplished considering the costs, existing technology, and logistics.

Section 401 of the Clean Water Act requires that an applicant for a federal permit or license for an activity that may discharge a pollutant into waters of the United States obtain a certification from the state that the discharge will comply with the applicable effluent limitations and water quality standards. Section 401 enables states to have broad review authority over a variety of activities affecting state waters (including wetlands). States have the authority to grant, deny, or condition water quality certification for federal permits or licenses which regulate discharges to state waters. Five federal permits and/or licenses may result in discharges to the waters of the United States: Section 402 for point source discharges; Section 404 for discharges of dredged and fill material; activities in navigable waters under Section 9 and 10 of the Rivers and Harbors Act of 1899; and hydroelectric projects licensed by the Federal Power Act. If a state denies certification of a permit or license, the federal agency cannot issue that permit or license.

Section 319 of the Clean Water Act of 1987 establishes a national program addressing non-point source (NPS) water pollution. Section 319 required states to develop an assess-

ment report detailing the effect of non-point pollution, and a management program specifying non-point source controls. In response to Section 319, the Louisiana Department of Environmental Quality has developed an assessment report detailing the extent of non-point pollution and proposing a management program specifying non-point source controls. Louisiana has an approved non-point source assessment and management program.

Section 402 of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) program, requires permits for a range of point source dischargers. Pollution discharges must meet specific criteria limits and industry specific technology based standards on the toxicity of the whole effluent in addition to that of a specific chemical. The approach is designed to address a wide variety of concerns, including, but not limited to: toxins, pathogens, dissolved oxygen depletion, nutrient enrichment and over-production, and bioaccumulation and exposure to humans. State water quality criteria and standards are the basis for the NPDES permits (Tetra Tech, Inc. and American Management Systems, Inc. 1991). Water quality standards define water quality goals for a waterbody or part of a waterbody. The uses of a waterbody are designated by setting criteria necessary to protect the use and by preventing degradation of water quality.

The EPA recently completed final rules for stormwater discharge permit applications under CWA part 402(p). The discharge of stormwater through any conveyance from an industry or a municipality is a point source discharge. The industries and cities which are required to apply for permits now are defined in the regulation which was published November 16, 1990. For the area of Lake Pontchartrain this would include the City of New Orleans and the urbanized areas of Jefferson Parish, as well as, all of the industries in the

basin which fall into the industrial classifications described in the final rule. Permits for stormwater discharges will emphasize source controls, but will be NPDES permits, and as such, must protect for water quality.

Federal agencies recognize that there is overlap in some of their programs (NOAA and EPA 1991):

> The primary overlap occurs between the storm water permit program (under section 402(p) of the Clean Water Act) and traditional urban runoff programs. Often, runoff may begin as a non-point source but ultimately be channelized and become a point source. A further complication arises because the Clean Water Act currently requires a permit for some municipal storm water sources while postponing regulatory coverage of other (generally smaller) municipalities' storm water. Although the section 6217(g) management measures guidance does include urban runoff management measures, state coastal non-point pollution control programs will only be required to implement these measures for storm water discharges that are not required to apply for and receive storm water permits.
>
> A second overlap occurs in connection with animal feeding operations. Concentrated animal feeding operations that meet particular size or other criteria are defined and regulated as point sources under the section 402 permit program. Other animal feeding operations are non-point sources and are not regulated under the NPDES program. State coastal non-point pollution control programs will only be required to implement the section 6217(g) guidance measures for confined animal production facilities for those facilities not currently subject to the NPDES permit program.

EPA Region 6 will be issuing a general permit for the facilities that are currently covered by 40 CFR, Part 412.

The Coastal Zone Reauthorization Amendments of 1990 (Section 6217) requires EPA and the National Oceanic and Atmospheric Administration (NOAA) to assist states with federally approved coastal programs to develop coastal non-point pollution