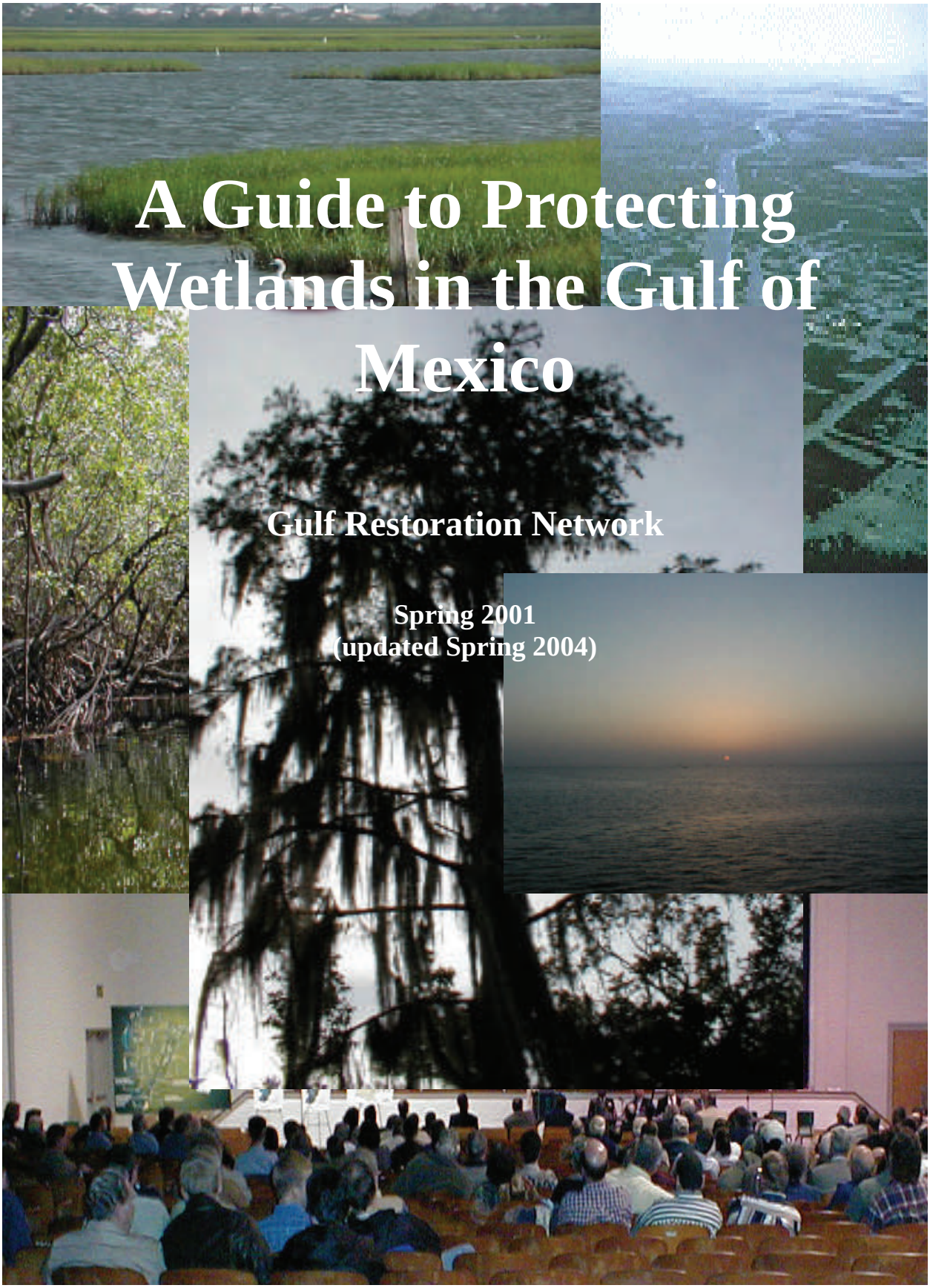

A Guide to Protecting Wetlands in the Gulf of Mexico

Gulf Restoration Network

Spring 2001
(updated Spring 2004)

Introduction

Local Citizens Lead an Environmental Victory

There was a time when Clara and Jerry Crawford did not know about state and federal wetland protection programs. They lived in a small home in the Big Branch community just east of Mandeville in St. Tammany Parish, Louisiana. Jerry was a commercial fisherman; he knew the waters of Lake Pontchartrain like the back of his hand. Clara also grew up along the shores of Pontchartrain, fostering a deep appreciation for the local lands and waters.

The Crawfords did not attend public meetings- and they would not have dreamed of making speeches. But in the spring of 1990, a newspaper article transformed the Crawfords from commercial fishermen to citizen activists. The article revealed that a developer proposed to construct a 24-lot subdivision directly across the road from their home. In addition, the developer wanted to dredge a small nearby stream deeper so that future homeowners could moor boats.

The subdivision was to be built on a 24-acre tract of wetlands along Bayou Cane, a waterway recognized by the state's Scenic Streams Program. Jerry and Clara knew the proposed development spelled trouble for the bayou and Lake Pontchartrain. They knew runoff from the subdivision would pollute the pristine bayou. The area was ecologically important, and the land clearing and dredging would destroy wetlands that provided important wildlife habitat. For the Crawfords, the proposed development threatened their livelihood and their community.

To voice their opposition, the Crawfords and their neighbors got a quick lesson in citizen involvement. They taught themselves how to become active in the process of state and federal natural resource management. They collected names of concerned citizens on petitions at local festivals, and took photographs of the pristine wetlands for environmental resource agencies and newspaper articles.

What the Crawfords and their neighbors learned helped them voice their opposition to the project, and eventually, the plan for the subdivision was halted. The developer began speaking with the community to learn about their concerns. Soon an agreement was reached with the owner to buy the 24-acre tract. This purchase ultimately led to the creation of the 16,000-acre Big Branch National Wildlife Refuge. The Crawford's success was a victory for all citizens of the Lake Pontchartrain Basin.

The Need for Public Participation

The Crawford's experience demonstrates the importance of public participation. It is a lesson that everyone should learn. The lands and waters that make the Gulf of Mexico so special and diverse. The lakes, rivers, bayous, and wetlands- belong to everyone. However, with the "ownership" of these precious public resources, comes responsibility and the need for proper stewardship.

Thus, it is important for fishermen, boaters, outdoor enthusiasts, developers, and all citi-

zens to have their say in how these resources are managed. While each of us has the right to use and enjoy these resources, the rights of all must be respected and considered. Yet, to have a voice, citizens must make the effort to educate themselves about natural resource protection. To make their concerns known, citizens must attend public hearings, write letters to state and federal agencies, and call their elected officials.

Citizen involvement helps to make environmental laws more effective in a number of ways: by ensuring that regulatory agencies have access to all relevant information, by drawing attention to violations of the law, and by monitoring the agencies charged with implementing the laws.

Public participation is key to protecting resources throughout the Gulf. Now, as more and more people make the Gulf their home and enjoy the area's rich natural resources, it is important for citizens to ensure that the wetlands in the Gulf are protected.

The Purpose of This Guide

There are many opportunities for you to help protect wetlands, and this guide is designed to provide a general understanding of how you can get involved in the process. For example, you can write a letter to a regulatory official expressing your concerns, attend planning and zoning meetings, or organize a neighborhood group to help stop a destructive development project. We encourage you to use this guide as a tool to get involved in wetlands protection, and be a part of the solution. Citizens play an important role in the regulatory process - you are powerful and can make a difference.

This guide attempts to present the citizens' role in the regulatory process in a simple, straightforward manner. Chapter 1 is devoted to familiarizing citizens with what wetlands are and why they are important. Chapter 2 discusses the laws and regulations that govern wetland protection, including a section on how local land use regulations can influence this protection. Citizen involvement is the core of this guide and the focus of the final chapter. This chapter will introduce you to key tools that you can use to influence the process. Finally, the accompanying appendices contain resource information to help you participate in the regulatory process and allow you to stay up-to-date with wetland issues.

This guide is a powerful tool to help you protect the natural treasures in your community. Your involvement ensures that decisions affecting public resources - the rivers, wetlands, bayous, and lakes - are made on behalf of all citizens. Use the concepts and ideas presented in this guide to join in the exciting effort to restore and protect the Gulf of Mexico.

Bald Cypress trees at Mandalay National Wildlife Refuge, LA

Chapter 1

Wetlands and Their Importance

What is a Wetland?

Unfortunately, there is no simple answer to this question. "Wetland" is a general term used to describe a variety of natural systems, including marshes, bottomland hardwood forests, and swamps, among others. Although each is different, these systems share certain characteristics. For example, some wetlands may be saltwater dependent and located near the ocean, while others may be located inland, near freshwater lakes and rivers. Some wetlands may have shrubs, some may have trees, and others may have no vegetation at all.

What do all wetlands have in common? The official definition of wetlands stated in the Code of Federal Regulations (33 CFR 328.3(b)) is as follows:

> *The term "**wetlands**" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.*

In other words, there are three basic characteristics that most wetlands share:

1. **SOIL CONDITIONS**; the presence of hydric soils (soils that remain waterlogged long enough to create low oxygen or no oxygen conditions);
2. **PRESENCE OF WATER**; a specific hydrologic regime (presence of water at or above the ground for more than seven consecutive days in the growing season); and
3. **PLANT TYPES**; hydrophytic plants (plants that are adapted to growing in waterlogged hydric soils).[1, 2]

Although these characteristics may appear relatively straightforward, it is not always easy to identify a wetland. For example, some types of wetlands may appear wet, inundated, or "saturated," for most of the year, while other wetland types such as bottomland hardwood forests may only become wet during the spring when a nearby river overflows. If you were to observe a bottomland hardwood forest during a dry winter, when the river is not flooding, you might mistake it for a mixed hardwood forest that is not subject to laws created to protect wetland systems. However, if the system matches the characteristics listed above, the dry forest you see in the winter is subject to the same federal wetland laws as a wetland that is wet all year round.

Types of Wetlands in the Gulf of Mexico

There are two very broad classifications of wetlands: inland and coastal. Both types are found throughout the Gulf of Mexico region. Inland wetlands generally include freshwater ecosystems such as bottomland hardwood forests, swamps, prairie potholes, playa lakes, pocosins, vernal pools, freshwater mangrove swamps, and freshwater marshes. Inland wetlands are commonly found in the floodplains along rivers and streams, in isolated depressions surrounded by dry land, and in other low-lying areas. Coastal wetlands are found at the interface

of the ocean and the land, and are comprised of plant species that have adapted to a saltwater habitat. The most common coastal wetlands include saltwater mangrove swamps, saltwater marshes, and non-vegetated areas such as sand bars, mud flats, and shoals. Saltwater marshes can be further subdivided based on the salinity of the water. They can be classified as intermediate (more fresh than salty), brackish (part freshwater, part saltwater), or saltwater (entirely saltwater) marshes.[3, 4]

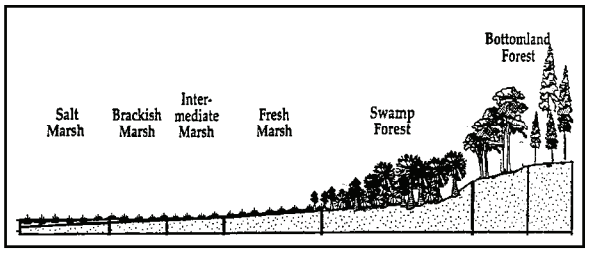

Figure 1: Six wetland types found in the Gulf of Mexico. Modified from the *Louisiana Coastal Wetlands Restoration Plan*, Main Report. November 1993. Pp. 15.

Both inland and coastal wetlands are characterized by the type of vegetation that grows within the wetland. Salinity, elevation (the height above sea level), and soil type are the most important factors that determine the types of vegetation that can survive in a particular wetland system.

For example, a salt-tolerant grass species, *Spartina alterniflora*, can be found in many of coastal Louisiana's salt marshes. Similarly, an oak tree, a species that cannot survive in water with high salt concentrations, will not be found in a saltwater marsh but may be found in a bottomland hardwood forest. Therefore, by looking at the types of vegetation that grow in a particular wetland, it is possible to identify and classify that wetland.

For more information about the wetland types named above, including where they are found and characteristic vegetation types, please refer to Appendix 1.

Why Are Wetlands Important?

Wetlands are dynamic ecosystems that provide a number of benefits to society, ranging from supporting the seafood industry to protecting communities from the disastrous effects of flooding associated with hurricanes. Wetlands provide an array of commercial, cultural, recreational, and environmental benefits to people, fish, and wildlife.

Despite the fact that the importance of wetlands is well established, millions of acres of wetlands have been lost throughout the nation. Recent studies show that over 644,000 acres of wetlands were lost in the conterminous U.S. between 1986 and 1997.[5] From 1780 to 1980, the Gulf region lost nearly 50% of its coastal and freshwater wetlands.[9] Coastal wetlands are being lost at an alarming rate of 20,000 to 25,000

Table 1. Wetland Loss in the Gulf of Mexico[6, 7, 8]

State	Percentage of Wetlands Lost (1780-1980)	Remaining Acres of Wetlands	Annual Loss
Alabama	50%	3.8 million	-
Florida	46%	11 million	-
Louisiana	46%	8.8 million	25-35 sq. miles
Mississippi	59%	4.1 million	-
Texas	52%	7.6 million	1,600 acres

acres per year in the state of Louisiana alone.[10] If the current rate of wetland loss continues, Louisiana will lose more than one million acres of coastal wetlands, an area larger than the state of Rhode Island, by the year 2050.[11] Table 1 presents total wetland loss in the five Gulf states.

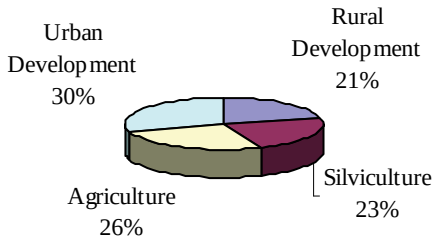

Figure 2: Percentages of 383,300 acres of freshwater wetlands lost to urban and rural development, agriculture, and silviculture between 1986 and 1997. Modified from Dahl, T.E. 2000. Status and Trends of Wetlands in the Conterminous United States 1986 to 1997. U.S. Dept. of the Interior, Fish and Wildlife Service, Washington, D.C. Pp. 46.

Natural events such as sea level rise or subsidence may contribute to wetland loss. However, an estimated 51% of freshwater wetland loss and 43% of coastal wetland loss between 1986 and 1997 can be attributed to urban and rural development.[12]

Although wetlands constitute only 5% of the land area in the lower 48 states, the functions and values that they provide are immeasurable.[13] At the current rate of wetland loss, it is critical that citizens recognize the many benefits provided by wetlands, and join in the effort to preserve these special areas for all to enjoy.

Water Quality

In the Gulf of Mexico, many bodies of water do not meet water quality safety standards for humans, fish, and wildlife. Pollution from point and non-point sources reaches these waters, harms aquatic life, and leaves the water un-swimmable or unfishable.

Point sources of pollution are those that have an easily identifiable source, such as a discharge pipe from an industrial facility. Non-point source pollution does not come from an identifiable, single source, but rather from multiple or unknown sources. For instance, nitrogen from fertilizer application on farms, which runs off the land into streams or estuaries would be an example of non-point source pollution.

Wetlands can protect water quality by filtering out pollutants and excess nutrients. Wetlands protect the shoreline of rivers, lakes, estuaries, and oceans from erosion, thereby decreasing the amount of sediment and other pollutants entering these waterbodies. Wetland vegetation helps by absorbing and filtering out the nutrient-rich, polluted water through its roots, acting as a natural cleansing system to promote clean water for the entire Gulf.

Flood & Storm Surge Protection

Wetlands have the natural ability to act like sponges and store tremendous amounts of water. As a result, wetlands help to prevent flooding from heavy rains or storm surges associated with tropical storms and hurricanes.

Figure 3: Flooding can threaten human safety. Picture from LACoast website: http://www.lacoast.gov/cwppra/slideshow/Washington/sld004.htm

Research has shown that for every mile of vegetative wetlands, the height of a storm surge can be reduced by one foot.[14] Wetlands can also withstand the repeated impact of waves, absorbing substantial

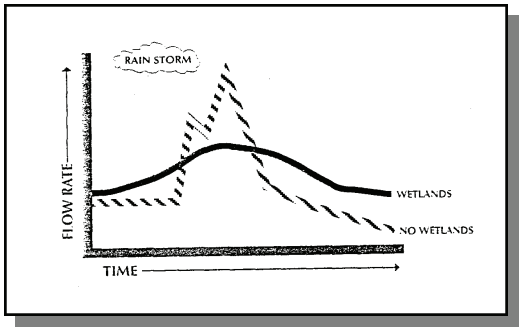

Figure 4: Wetlands reduce flood peaks and flow rates. From *Michigan Wetlands: Yours to Protect.* Second ed. 1992. Tipp of the Mitt Watershed Council. Michigan.

amounts of wave energy and minimizing shoreline erosion. In short, wetlands protect human safety and the integrity of coastlines in the face of damaging tropical storms and hurricanes.

Aquifer Recharge

In addition to playing an important role in ensuring clean water, wetlands are also critical in maintaining the quantity or volume of our water resources. Aquifers, underground geologic formations, hold large quantities of groundwater. The water absorbed by wetlands moves through the soil to replenish aquifers and groundwater that is used for drinking, agricultural, and industrial purposes. Research has shown that as much as 20% of the water found in a wetland may contribute to aquifer recharge.[15] Wetlands also help to maintain water levels in streams and rivers during low water periods and droughts. They do this by storing precipitation and surface water and then slowly releasing the water into nearby rivers and lakes. Wetland vegetation, soil type, and degree of soil saturation are some factors that determine the quantity of water a wetland may release to nearby rivers, lakes, streams, and groundwater systems.

Wildlife and Plant Habitat

Wetlands support enormous amounts of plant and animal life by providing essential habitat for a variety of mammals, birds, fish, reptiles, and amphibians. These habitats are used for breeding, feeding, and nesting grounds by animals. For example, wetland marshes offer important resting and feeding areas for migratory waterfowl such as geese and ducks. Wetlands also provide habitat for plant species such as submerged aquatic vegetation (SAV), which is one of the most productive plant communities in the world. SAV provides food and habitat to young, developing marine life. Simply put, SAV contributes significantly to the $2.8 billion that Gulf fisheries generate each year.[16]

Figure 5: Migratory waterfowl make use of the food and shelter that wetlands provide. From http://www.lacoast.gov/cwppra/slideshow/Washington/sld010.htm.

Wetlands in the Gulf of Mexico are also home to many endangered and threatened plants and animals, such as the West Indian manatee, bald eagle, Gulf sturgeon, loggerhead sea turtle, and the humpback whale. Go to http://fwie.fw.vt.edu/WWW/macsis/index.htm for a listing of bird, fish, invertebrate, mammal, reptile, and amphibian species that may be found in the Gulf.

Commercial Fishing

Commercial fishing contributes significantly to the economies of the Gulf states. The Gulf is home to the largest and most valuable shrimp fishery in the U.S. In 1997, Gulf fishermen harvested billions of pounds of fish and shellfish worth more than $750 million at dockside. The Gulf also provides 41% of the total U.S. oyster harvest.

Figure 6: Shrimp boats like this would go out of business without wetlands. From http://www.lacoast.gov/cwppra/slideshow/Washington/sld010.htm

In the United States as a whole, as much as 98% of the commercial fishing market consists of species that use coastal wetland areas at some point during their lifecycle.[17] The coastal wetlands surrounding the Gulf serve as valuable habitat for developing marine life such as blue crabs, shrimp, and the nearly 50 different species of fish and shellfish that are harvested from the Gulf of Mexico each year.

Aesthetics & Recreation

The public most often recognize wetlands for the recreational values they offer. Recreational activities that utilize wetlands range from hunting and fishing to ecotourism. As noted earlier, wetlands provide critical habitat for numerous game and non-game species including waterfowl and fish. The economic market created by recreational hunting and fishing opportunities is a significant part of the economy of the five Gulf states. In fact, the Gulf states support an estimated one-third of the nation's recreational marine fishing.

In more recent years, ecotourism has emerged as a significant component of the Gulf's economy. Ecotourism is tourism associated with environmental resources and can include activities such as canoeing, hiking, bird watching, and nature photography. Ecotourist activities generally do not greatly disturb the natural environment, which helps to preserve the delicate ecology of the resource and promotes further ecotourism.

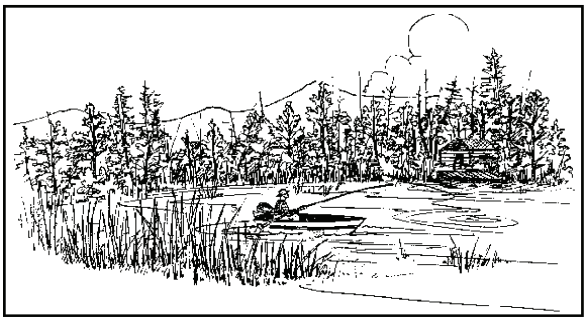

Figure 7: Wetlands provide many recreational opportunities in the Gulf. Picture courtesy of EPA.

Cultural Values

Wetlands have played a major role in shaping the history and culture of the Gulf of Mexico. The original settlers relied on the swamps and bayous for food, shelter, and other necessities. These critical ties to wetlands influenced the lifestyle and livelihood of the Gulf's early communities, allowing the Gulf region to develop and cultivate a culture all its own. Now visitors from all over the world flock to the region to experience and appreciate this unique, rich heritage.

Economic Values

As with most environmental resources, it can be very difficult to attach a dollar value to the benefits that wetlands offer. While there have been many attempts to calculate the monetary worth of a wetland, there is no universally accepted dollar amount. Recent research has recognized that, based on the services they provide to society, coastal marshes are valued at over $4,000 an acre per year as compared to $1,000 an acre per year for a tropical rain forest.[18] Understanding the economic value of a wetland is important when an agency, such as the U.S. Army Corps of Engineers, issues a permit for an activity that will impact wetlands. If a more appropriate monetary value of wetlands is included in the required economic analyses, less wetlands may be allowed to be destroyed through permitted activities. Accurate analyses may very well prove that the wetlands being lost are worth more monetarily than the proposed activity.

Clearly wetlands offer an array of important ecological, economic, cultural, and recreational benefits to communities throughout the Gulf of Mexico. By recognizing these values and using the tools for protecting wetlands described later in this guide, you can help to ensure that citizens throughout the Gulf region continue to benefit from and enjoy these valuable resources.

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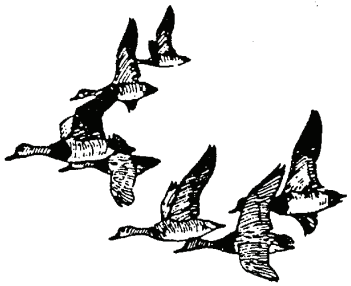


Chapter 2
Laws That Protect Wetlands

The use of wetlands is regulated by federal , state, and local governments. There are four general types of laws, including those specifically directed at:

- wetlands (administered by the U.S. Army Corps of Engineers (Corps) and U.S. Environmental Protection Agency (EPA));
- water quality (administered by EPA and the states);
- the protection of our nation's coasts (administered by EPA, the National Oceanic and Atmospheric Administration (NOAA), and the states); and
- local land uses (administered by states or local governments).

Each area of the law has its own permitting process, government administrators, and opportunity for public input. Therefore, it is important to have a general knowledge of each of these four areas of the law when dealing with any specific project or development. This chapter presents a brief overview of these laws and how they are related to wetland protection. Chapter Three will then provide instruction on how to become involved in the permit process under these laws.

I. Federal Laws and Regulations

The Clean Water Act (33 U.S.C. Section 1251 et seq.)

In 1972, Congress passed the Water Pollution Prevention and Control Act— known commonly as the Clean Water Act— to protect the quality of the nation's surface and ground waters including oceans, lakes, rivers and streams, aquifers, coastal areas, and wetlands. The Clean Water Act sets out broad rules for protecting the waters of the United States and gives the Corps and EPA the power to write more specific rules governing activity in or on water and wetlands. These more specific rules are known as 'regulations' and can be found in the Code of Federal Regulations. Sections 404 and 401 are two parts of the Clean Water Act that apply directly to wetlands protection. While Section 404 regulates activities that affect the filling of wetlands, Section 401 is concerned with maintaining good water quality in wetlands. More information on the Clean Water Act can be obtained at your local law library or at http://www4.law.cornell.edu/uscode/33/ch26.html.

Section 404 of the Clean Water Act

Section 404 of the Clean Water Act (often

referred to as 'Section 404' or simply '404') forbids the unpermitted "discharge of dredge or fill material" into waters of the United States. Section 404 does not regulate every activity in wetlands, but requires anyone seeking to 'fill' a wetland to first obtain a permit from the Corps. For example, if a person wishes to construct a building or other development and wetlands need to be filled to complete the project,

Types of Permits under Section 404 of the Clean Water Act

There are two types of permits that may be issued under Section 404 of the Clean Water Act: *individual permits*, those permits issued for a specific activity on a case-by-case basis; and *general permits*, those permits that authorize a category or categories of activity in specific geographic regions or nationwide. The opportunity for public participation in the Corps' decision-making process differs between the two types of permits.

I. Individual Permits

An individual permit is required any time a person wishes to place soil or other material (called 'fill') on a wetland or construct a building that will destroy wetlands associated with "waters of the United States," unless the activity falls within a *general*

Box 1. Federal Agency Roles in the Section 404 Permitting Process

U.S. Environmental Protection Agency (EPA): Responsible for protecting the nation's wetlands, water quality, public health, and fish and wildlife resources. The EPA sets standards that govern the U.S. Army Corps of Engineers' issuance of Section 404 permits, works with the Corps to define the areas covered by Section 404, and reviews permits issued by the Corps. If the EPA finds that a permit will have substantial and unacceptable impacts on waters or wetlands, it has the authority to 'elevate' the permit to Corps and EPA Headquarters for review. Additionally, if EPA determines that the permit will cause unacceptable harm to municipal water supplies, shellfish beds, fisheries (including spawning and breeding areas), wildlife or recreational areas, it has the power to undo (or 'veto') the Corps' decision to issue a permit.

U.S. Army Corps of Engineers (Corps): Has primary responsibility for the regulation of all dredge and fill activities. The Corps administers the regulatory program for wetlands, reviews Section 404 permit applications, accepts written and oral comments, holds public hearings, and decides whether or not to issue a permit.

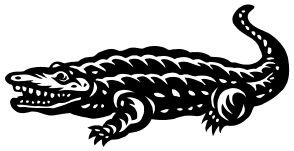
U.S. Fish and Wildlife Service (FWS): Responsible for the protection and management of fish, wildlife, and their associated habitat. The FWS receives notice of Section 404 permits and may file comments regarding potential damage to fish and wildlife and their habitat. The FWS also enforces the provisions of the federal Endangered Species Act. The Corps must 'consult' with the FWS before issuing any permit that could jeopardize an endangered or threatened species, including destruction of their habitat.

U.S. National Marine Fisheries Service (NMFS): Manages, conserves, and protects marine resources, including marine commercial fisheries, marine mammals, and essential fish habitat (habitat needed by fish for spawning, breeding, feeding, and growth). Under the Sustainable Fisheries Act, the NMFS must receive notice of Section 404 permit applications that may impact essential fish habitat and has the right to submit comments concerning those impacts.

permit (discussed below). Examples of activities that require an individual Section 404 permit include building a store, subdivision or shopping center; constructing a road; and installing a bulkhead in a wetland. The EPA has declared some practices exempt from a Section 404 permit. These activities include many normal farming, ranching, and silviculture (forestry) activities as long as they are part of regular, ongoing operations, and the construction of farm ponds, irrigation ditches, or the maintenance of existing drainage ditches.

Generally, a landowner will contact the Corps to ask whether a permit is necessary before an activity begins. The Corps will seek to determine whether wetlands falling within their authority under Section 404 exist on the property. On larger or more complicated projects, an environmental consultant is often hired by the landowner to examine the property to find out whether or not wetlands exist, the number of acres, and their location. The Corps will review the consultant's data as part of its initial permit review to determine whether wetlands on a property fall under federal jurisdiction (i.e. if it meets the Corps' definition of a wetland) and whether the consultant's estimate of the number of acres of wetlands on the property is accurate.

If the Corps determines that wetlands to be filled are under their jurisdiction, the applicant will be required to submit an application for a Section 404 permit. Box 2 and Figure 8 present the general process that is followed after the application is submitted to the Corps.



Box 2. <u>The Section 404 Permit Application Process</u>

- Once an application is complete, the Corps will do an initial review of the environmental impacts (called an 'Environmental Assessment' or 'EA') of the proposed activity and make a preliminary finding of significant impact or a preliminary finding of no significant impact.
- The Corps issues a public notice of the permit application, which indicates the preliminary findings of their Environmental Assessment, and accepts written comments from concerned members of the public. The Corps is also required by law to solicit comments from state and federal agencies that are involved in wetland permitting and water quality issues.
- Depending on the size and scope of the project, the comment period can last anywhere from 10 to 30 days (including weekends).
- Once the comment period ends, the Corps reviews all public comments received and forwards copies of the comments to the applicant.
- The Corps then decides, based on the submitted comments, whether a public hearing is necessary. Public hearings are rarely granted. If granted, notice of the public hearing is posted by the Corps at least 30 days before the hearing takes place. The public has an opportunity to submit additional comments at the public hearing and during a designated comment period after the public hearing is held.
- At the close of the comment period, the Corps evaluates all written and oral comments that were submitted.
- If the comments raise concerns

(continued on next page)

regarding significant environmental impacts of a project, the Corps may determine that an Environmental Impact Statement ('EIS') is necessary, and the permit will be placed on hold until the EIS is completed. Once the EIS is completed, the Corps will either make a 'Finding of No Significant Impact' (called a 'FONSI'), or it will conclude that the permit will have a significant impact on the environment.

- If the Corps decides the project is not in the public's interest, as a result of the findings of the EIS or otherwise, or violates the 404(b)(1) guidelines, the Section 404 permit is denied. At this point, the applicant can revise and resubmit a project application or terminate the proposed project.
- If the permit is found to be in the public interest, as a result of a FONSI or otherwise, the permit is issued.
- Under the law, EPA has the right to ask for review of a permit decision by Corps Headquarters (called 'elevation') and, under certain circumstances, can veto or undo any Section 404 permit issued by the Corps.

How the Corps Reviews Individual Permits

In reviewing a Section 404 permit application, the Corps tries to determine if the public interest in the project outweighs any reasonably foreseeable harm, often referred to as public interest review, and complies with EPA's Section 404(b)(1) guidelines.

(a) Public Interest Review

Public interest review involves an evaluation of the possible impacts of a project, including the combined or *cumulative impacts* of a single project and any other projects in the area, to determine if the project is in the 'public interest'. The Corps must balance any benefits that may result from the project against any foreseeable harm that may flow from the project. Corps regulations provide that no permit should be granted unless the benefits of altering a wetland outweigh the damage to that wetland resource. In completing this review, the Corps is required by law to consider:

(1) the relative extent of public and private need for the project;

(2) whether it is practical to use an alternative location or methods to accomplish the purpose of the project; and

(3) the extent and permanence of the good/useful and damaging effects that the project will have on public and private uses of the area in which the project is located.

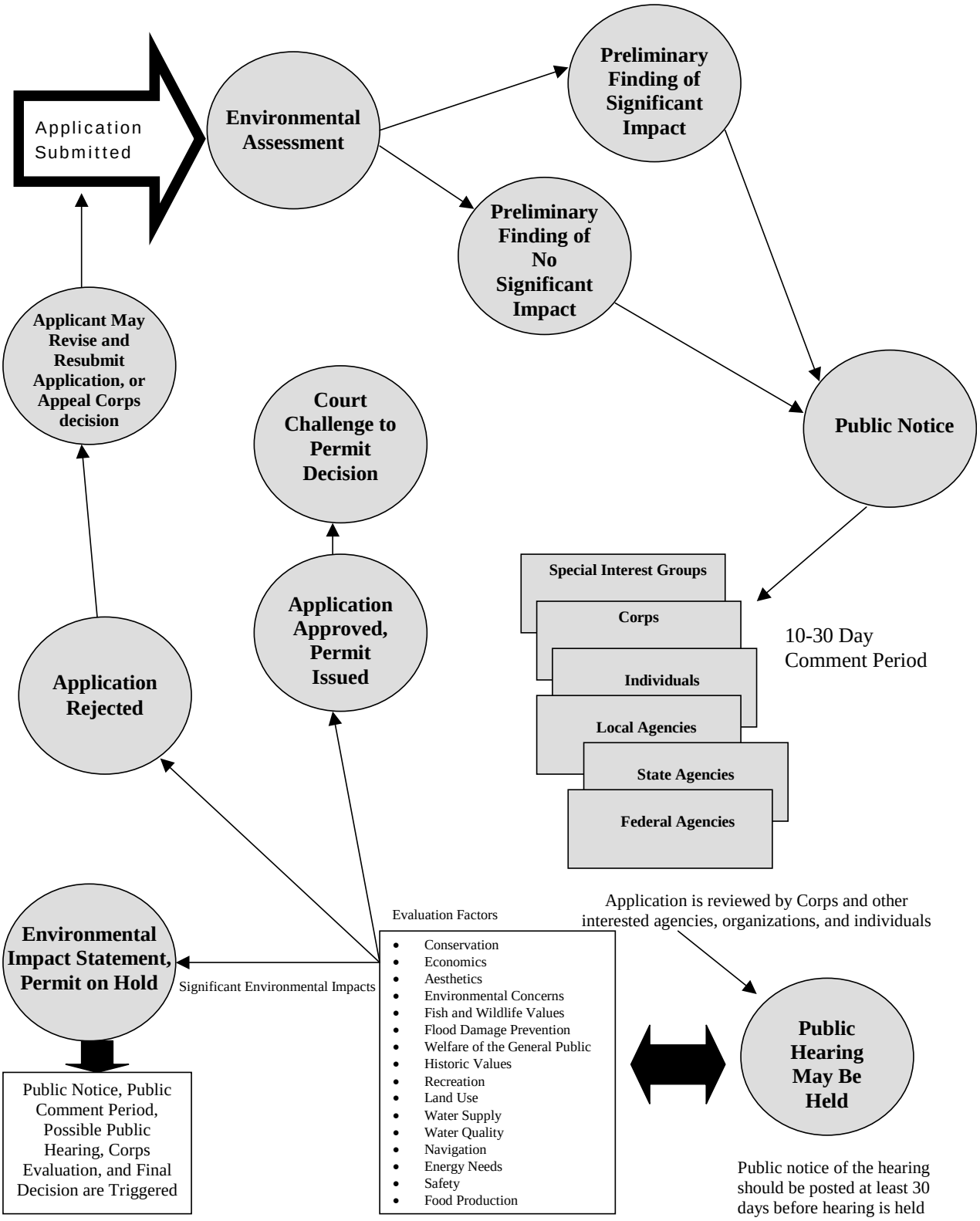
Factors the Corps must evaluate during the public interest review include economics, aesthetics, general environmental concerns, historic properties, fish and wildlife values, land use, navigation, flood hazards, wetlands, recreation, water supply, water quality, safety, energy needs, and in general, the needs and welfare of the public.

(b) Section 404(b)(1) Guideline Review

The Corps must also ensure that a project complies with the EPA's Section 404(b)(1) guidelines governing the issuance of Section 404 permits. In determining whether the project meets these guidelines, the Corps must consider several things:

- whether an alternative(s) to the project

Figure 8: **Corps of Engineers Section 404 Individual Permit Review Process**



exists that would not negatively affect wetlands, i.e. can the project be built in an area that would not negatively impacts wetlands? If there are practical alternatives, the permit should not be issued;

- whether the project is water-dependent (requires access to, proximity, or siting within a wetland or waterbody to fulfill its basic purpose). If it is not, then it is assumed that there are alternative sites for the project that are not in a wetland;

- whether or not the project has been designed in a way that avoids and reduces the impacts to the environment. Compensation for wetlands destruction may be required under 33 CFR Part 320(r). Refer to Box 3 for more information about mitigation; and

- whether the project will cause a violation of state water quality standards; jeopardize federally-listed endangered or threatened species; negatively affect municipal water supplies, fish, and shellfish; reduce the ability of a wetland to absorb nutrients, purify water, or reduce wave energy; or reduce the recreational, aesthetic, or economic value of the site.

Box 3. **Mitigation**

Whenever a project is approved that will negatively impact wetlands, the project applicant is required by law to first avoid and minimize the impacts to wetlands. For all 'unavoidable' impacts to wetlands, the applicant must compensate or *mitigate* for the wetlands and wetland functions that were destroyed. There are several ways for an applicant to do this.

The applicant may restore, create, or enhance an area of wetlands comparable to the ones that were destroyed. The ratio of impacted wetlands to required mitigated wetlands depends on the quality and quantity of the habitat impacted and is determined on a case-by-case basis. If the applicant chooses this method, he/she is responsible for the implementation and success of the mitigation.

The applicant may also give money to a 'sponsor,' (in most cases, a land owner) who is responsible for restoring, creating, or enhancing an area of wetlands comparable to the ones that were impacted. This is called *mitigation banking*, and it allows an applicant to purchase credits from a sponsor for wetlands that have already been restored, created, or enhanced. With mitigation banking, the sponsor, not the applicant, is responsible for the implementation and success of the mitigation.

Under recent federal guidance, applicants are required to submit a mitigation plan that describes, in detail, how the applicant will compensate for the wetlands that are destroyed. The plan should include, among other things, goals of the mitigation, success criteria, and a monitoring plan to ensure success of the mitigation project.

It is important to note that there is no way the project applicant can *completely* compensate for the wetlands destroyed because the mitigation will most likely take place away from the project site- sometimes even in a different state!- and may not prove successful in fully replacing the wetland functions that were destroyed by the project.

II. General Permits

The Clean Water Act authorizes the Corps to issue *general permits* that grant authorization for broad categories of activities in a specific geographic area if they have only minimal impacts on the environment. For example, the New Orleans District of the Corps issued a general permit that authorizes installation and maintenance of flowlines (small pipelines, with diameters ranging from two to six inches used to transport petroleum, natural gas, fuel, air, water, brine, and similar fluids within an oil and/or gas field) in man-made oil fields canals in the coastal zone. Therefore, until this permit expires on April 30, 2005, any project matching this description will be authorized under this general permit and will not have to apply for an individual Section 404 permit, as described in the previous section.

General permits include *regional permits*, issued by district offices of the Corps that apply only to a specific state or region, and *nationwide permits*, issued by Corps headquarters that apply nationwide (see Box 4 for details on nationwide permits). Once a general permit is in place, an individual permit is not needed for any project that meets the conditions set in that general permit. The public is only given the opportunity to comment on general permits when they are first written and when they are being considered for renewal. There is no opportunity for public comment on specific activities that fall under a general permit, and there is little or no review by the Corps of site-specific concerns.

Corps districts can override general permits on a case-by-case basis if there is sufficient reason to be concerned about the effects of the project (i.e. when several projects that qualify under a general permit are having a negative effect on a small geographic area). However, this is very rarely done.

To learn about regional and nationwide permits that affect your community, contact your local Corps district. Contact information is provided in Appendix 2.

Box 4. Nationwide Permits

The Corps reissued Nationwide Permits (NWP) established in 2000 effective March 18, 2002. All of the reissued NWPs will expire on March 19, 2007. These NWPs allow development of up to one-half acre of wetlands and most require that the Corps be notified of activities impacting more than one-tenth of an acre of wetlands. The NWPs also provide additional protections to 'critical resource waters', 100-year floodplains, and streams. Nevertheless, there is still significant concern about the cumulative impact of these permits to the remaining wetland acreage in the Gulf states. To learn more about NWPs, go to http://www.epa.gov/owow/wetlands/regs/ or contact your local Corps District office.

Section 401 of the Clean Water Act

Section 401 of the Clean Water Act requires that an applicant for a Section 404 permit obtain a certificate that the activity will not negatively impact water quality. The certificate (called 'Section 401 Water Quality Certification', '401 Certification', and 'Water Quality Certification') is issued by the state departments of environmental quality or environmental protection (see Appendix 5 for the state agency that issues 401 Certification in your state). Projects that will increase levels of pollutants such as pesticides, heavy metals, and sediments above acceptable levels, should not be issued a 401 Certification because the quality of the water may endanger the health of the public, fish, and wildlife that depend on that water. It should be noted, however, that acceptable pollutant levels have not been established for many wetlands. As a result, it is difficult for state agencies to determine if new projects will harm water quality, thus 401 Certifications are often issued without full consideration of a project's impact on water quality.

An applicant for a Section 404 dredge and fill permit must provide the state with information regarding how a project might affect water quality. *A Section 404 wetlands permit cannot be issued if the state refuses to issue a 401 water quality certification.* If a state fails to respond to a 401 Certification application within a reasonable time (no longer than one year), the requirement for a 401 water quality certification is automatically waived and the Corps can issue the 404 permit.

While the Section 401 Water Quality Certification process is separate from the Section 404 permit process, they often undergo agency review at the same time and may be listed together under a single public notice called a 'Joint Public Notice.' To learn more about public notices, see Chapter 3. Box 5 describes the general Section 401 Water Quality Certification process.

Box 5. The Section 401 Water Quality Certification Process

- An application for Water Quality Certification (WQC) is submitted to a state agency by an individual, organization, or business intending to carry out an activity that may impact water quality.
- The state agency reviews the application to make sure the quality of water resources in the project area will not be degraded, adversely affected, or violate water quality standards.
- A public comment period is held to gather comments from the general public that may have an interest in the project.
- After reviewing submitted comments, the state agency decides whether or not to hold a public hearing to obtain more information about the project. Hearings are *not* generally held unless requested by the public or other agencies, and even then only rarely.
- Following a review of written and oral comments, the agency can either grant the WQC, issue a WQC with conditions necessary to protect water quality, deny the WQC, or waive its certification authority.

Section 10 of The Rivers and Harbors Act (33 U.S.C. Section 403)

The Rivers and Harbors Act was created in 1899 to prevent navigable waters of the United States from being obstructed. [1] Section 10 of the Act requires that anyone wishing to dredge, fill, or build a structure in any navigable water and associated wetlands obtain a permit from the Corps. An activity that will affect wetlands may require a Section 404 and Section 10 permit, thus both sections are often included in a permit notice. Additionally, in certain circumstances a project that merely dredges a wetland but does not require the placement of fill in that wetland will require only a Section 10 permit. The permit process under Section 10 is virtually the same as that under section 404.

The Coastal Zone Management Act (16 U.S.C. Section 1456(c))

In 1972, Congress passed the Coastal Zone Management Act (CZMA) to protect the nation's coasts by helping states regulate activities in the coastal zone. The CZMA encourages states to develop a Coastal Zone Management Plan (CZMP) in which they define permissible land and water uses within the state's coastal zone. The coastal zone generally extends 3 miles seaward and inland as far as necessary to protect the coast. States with approved CZMPs receive federal funding to help them protect and improve the quality of their coastal areas. All five states bordering the Gulf of Mexico have approved CZMPs. See Appendix 3 for the agency in your state who can provide you with your state's CZMP and the location of your state's coastal zone).

The CZMA requires that an applicant for a permit to conduct an activity that may affect the natural resources (land, water, or other natural resource) of a state's coastal zone must obtain a determination from the state that the activity is consistent with its CZMP. No Section 404 permit that may affect a coastal zone can be issued unless the state certifies that the activity is consistent with that plan. The decision of whether or not a project is consistent with the state's CZMP is called a *consistency determination*. Each state has a review process for obtaining a CZMP consistency determination, which includes an opportunity for public comment. If a state fails to act on an application for a consistency determination within 6 months, it is presumed that the activity is consistent with the CZMP.

The Coastal Wetlands Planning, Protection, and Restoration Act (Public Law 101-646, Title III)

The Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA) of 1990 sets aside millions of dollars every year for voluntary wetland restoration projects in coastal states. The state of Louisiana receives approximately 70% of the funding from CWPPRA, while other states may receive money through wetland conservation grants from the U.S. Fish and Wildlife Service, or from the Secretary of the Interior under the North American Wetlands Conservation Act.[2] In Louisiana, a task force made up of federal, state, and local agencies and organizations is responsible for implementing the program. Citizens can take part in the CWPPRA process by proposing projects of local concern, providing input on proposed restoration projects by writing to a CWPPRA task force member, or attending public hearings held by the

CWPPRA task force. Contact your local Corps District office and your regional Fish and Wildlife Service office to find out about current projects being funded under CWPPRA.

The National Environmental Policy Act (42 U.S.C. Sections 4321-4347)

The National Environmental Policy Act (NEPA), passed in 1969, seeks to ensure that proper consideration is given to the environment before undertaking major federal action that could significantly affect the environment or the public.[3] The requirements of NEPA include preparation of an Environmental Assessment or Environmental Impact Statement. These are triggered whenever a federal agency, such as the U.S. Department of Transportation or the Corps, considers any large activity that may impact the environment, such as the issuance of a permit or the construction of a new highway, airport, or port facility.

Environmental Assessments

Corps regulations require that the Corps prepare an Environmental Assessment (EA) to evaluate the potential environmental impacts of a project, as well as any alternatives to the project. The EA determines if a project or activity will have negative environmental impacts and, if so, whether they will be significant. If an EA finds that a project or activity will not have significant impacts on the environment, the Corps will issue a Finding of No Significant Impact (FONSI). If, however, the EA finds that a project or activity may have significant impacts on the environment, the Corps *must* prepare an Environmental Impact Statement.

Environmental Impact Statements

An Environmental Impact Statement (EIS) must contain a broad description of the proposed action to be taken, alternatives to the proposed project or activity, and a detailed assessment of the environmental effects of the project or activity. When completing an EIS, the Corps must hold hearings and solicit comments from other federal agencies and the general public. Both oral and written comments are used to formulate the final version of the EIS.

The Sustainable Fisheries Act (16 U.S.C. Sections 1801-1883)

The Sustainable Fisheries Act of 1996 (SFA) includes provisions to protect habitat in the Gulf of Mexico essential to fishery resources. Pursuant to the SFA, all of the coastal wetlands of the Gulf region have been designated as essential fish habitat (EFH). The SFA requires that federal agencies (such as the Corps) that authorize, fund, or undertake actions which may adversely impact EFH consult with the National Marine Fisheries Service (NMFS) to assess and minimize those impacts. Under the requirements of the law, the Corps must complete an assessment that includes: (1) a description of the proposed action; (2) an analysis of the effects, including cumulative effects, of the proposed action on EFH, all life stages of managed species and associated species, such as major prey species; (3) the Corps' views regarding the effects of the action on EFH; and (4) proposed mitigation, if applicable. NMFS then reviews the project and recommends ways that the project can be modified to protect EFH. If the Corps disagrees with NMFS' recommendations and decides to issue the permit, it must state why they do not agree to take actions recommended by NMFS to reduce

the impacts on EFH. For more information about EFH, go to http://www.nmfs.noaa.gov/ess_fish_habitat.htm.

The Fish and Wildlife Coordination Act (16 U.S.C. 661, 666c)

The Fish and Wildlife Coordination Act protects the quality of the aquatic environment needed for fish and wildlife resources. Any time the Corps reviews a permit for an activity that will change any body of water, including their associated wetlands, the Corps must first consult with the FWS or NMFS to ensure that the environmental value of that water or wetland is taken into account in the decision-making process. The consultation is generally initiated when the Corps sends the FWS or NMFS a public notice of a Section 404 permit. FWS or NMFS may file comments on the permit stating their concerns about any negative impact the activity will have on the environment and will usually suggest measures to reduce that negative impact.

The Endangered Species Act (16 U.S.C. Section 1531 et seq.)

The Endangered Species Act (ESA) protects animals and plants threatened with extinction. Once a species is listed by the Secretary of the Department of the Interior, the ESA prohibits the 'taking' of that species, which includes harming that species through destruction of habitat that is important for its survival. When a proposed project affects a threatened or endangered (also called 'listed') species, the ESA requires the Corps to consult with the FWS prior to issuing a permit or taking any other action that would harm the listed species. Consultation between the Corps and FWS and NMFS will be initiated whenever a 404 permit application is received, or an agency receives information from an independent source, that indicates that a permit may affect a threatened or endangered species. The FWS and NMFS will then complete a formal consultation report to determine the impact of the project on that species and recommend measures, including possible denial of the permit, to reduce or eliminate the threat posed by the project or activity.

Overview of Federal Laws

As you can see, there are numerous federal laws that are related to projects that impact wetlands! The descriptions above are meant to inform you of what federal and state agencies are *required* to do by law. However, agencies may not follow these procedures exactly due to time and money constraints. It is important, therefore, for wetland activists like you to demand that the Corps, other federal agencies, and the state regulatory agencies follow the law and protect our valuable wetland resources.

II. State Laws and Regulations

State Wild and Scenic Rivers Acts

Many Gulf states have laws that protect rivers designated by the state's legislature as 'Wild and Scenic.' These laws are intended to preserve, protect, and enhance the wilderness qualities, scenic beauty, and ecology of free-flowing rivers, streams, and bayous. States generally consider a number of factors when determining whether a waterbody should be designated as a Wild and Scenic River, including fish and wildlife habitat; the presence of protected, rare, endangered, or threatened species; water quality; historic and archaeological features; scenic value; and recreation. Generally, a river that has been designated receives in-

creased protection from environmentally harmful activities. States usually require that proposed activities be reviewed to ensure that those activities will not unduly harm a designated river or stream. Some states require that a permit be obtained before the activity can proceed. Appendix 4 provides a listing of state Wild and Scenic River programs.

Permits Issued by the State

When a project involves the disruption of wetlands, project applicants may be required to obtain permits from state regulatory agencies in addition to the required federal permits. The permits issued by the state may fall under two categories:

1) The state may be given the responsibility to issue permits that fall under federal laws. For instance, the Section 401 Certification and coastal permits under the Coastal Zone Management Act are issued by state agencies in all five Gulf states. These are issued according to each state's own requirements for projects that impact coastal or inland wetlands.

2) The state may issue permits through separate state or local wetland permit processes.

Most of the permits issued by the state are issued in conjunction with the Corps' Section 404 permit. The project is usually reviewed for consistency with the state permit. If the state finds that the project does not comply with the state permit, the project cannot proceed. On the other hand, if the project is consistent with the state's permits, the project will likely proceed. Contact your state environmental protection agency to find out about state laws and programs that are concerned with wetland protection (see Appendix 5).

III. Local Land Use Regulations and Policies

The manner in which land is used, maintained, and developed is an important component of promoting and ensuring the integrity of land and water resources. Many areas throughout the Gulf have experienced significant declines in water quality and suffered substantial losses of important wetlands. Much of this loss can be attributed to the failure of local communities to sufficiently plan for growth, allowing development to occur unheeded, and in a way that does not protect important natural resources.

Local land use regulations, policies, and ordinances direct the way land can be developed by mandating the appropriate lot sizes in a subdivision, identifying areas suitable for commercial development, and establishing appropriate management practices for construction activities. Regulations can also identify unique open space areas that should be protected and remain undeveloped, or establish a requirement that buildings must be constructed a specific distance from a wetland or waterway, in order to protect sensitive habitat and water quality. Thus, local land use regulations *can* have a major impact on the quality of environmental resources.

Citizens have the potential to influence land use and zoning regulations. By participating in local planning efforts and commenting on local land use ordinances and policies, informed citizens can help ensure that regulations are developed to protect important environmental resources.

References

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[2] Phone conversation. Wes McQuoiddy. EPA Region 6. Monday, April 23, 2001.

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Protecting and Restoring Essential Fish Habitat. American Oceans Campaign. National Oceanic and Atmospheric Association. U.S. Department of Commerce.

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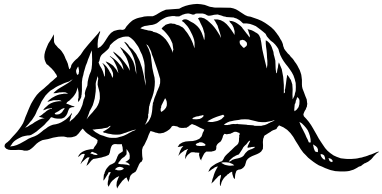

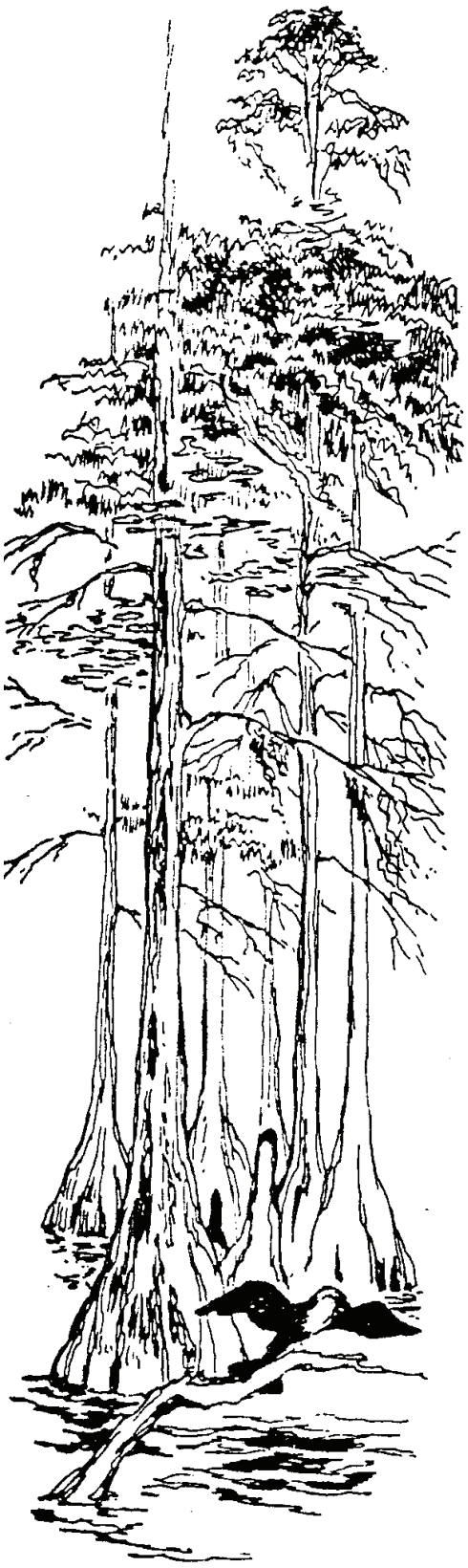

Chapter 3

Public Involvement in Wetland Protection

Protecting Wetlands Through the Permitting Process

The destruction of wetlands is more common than you may think. The construction of docks, piers, boat launches, residential subdivisions, oil exploration structures, maintenance dredging, and gas pipeline installation, are all projects which involve the dredging and filling of wetlands. Yet, as described in Chapter 2, any project that may destroy wetlands requires permits from both federal and state agencies. When deciding whether or not to issue a permit, these agencies are required by law to ask for public input to determine if the project is in the public's interest. Thus, one of the most effective ways to protect wetlands is to get involved in the permitting process. By providing your viewpoints on a proposed project, you may help stop the destruction of valuable wetlands.

As you learned in the previous chapter, there are many laws and regulations that require the applicants of projects to obtain permits before they begin a project that may affect wetlands. This chapter will provide you with tools to help you effectively participate in the permitting process.

Public Notice of a Permit Application

The Corps and some state agencies are required by law to publish a public notice of a permit application in the newspaper whenever a large project involving destruction of valuable natural resources is being proposed. Since you may not read the newspaper each and every day, you can stay informed of projects that destroy wetlands by placing your name on a public notice mailing list that is maintained by state and federal regulatory agencies that are involved in wetland-related projects. Unfortunately, there is not just one single source of permit application notices; the Corps, the state water quality agencies, and the state coastal agencies are each in charge of reviewing applications for activities that affect wetlands.

State Permits or Certificates

In order to receive free copies of public notices for Section 401 Water Quality Certification, you must call your state's water quality agency and request to be placed on their public notice mailing list. It is important to note that not all state water quality agencies maintain public notice mailing lists. Still, if you want more information about the 401 Certification of a project, get in touch with your state water quality agency. Contact information for these agencies is included in Appendix 5. For more information about permits that are issued by your state for wetland-related activities in the coastal zone or to be placed on their mailing list, write or call the agencies listed in Appendix 6.

Federal Permits

To receive free copies of public notices for Section 404 permits, write or call the Regulatory Division of the Corps of Engineers District in which you live or where the wetlands of concern are located and request to be placed on their public notice mailing list.

Each state is governed by one or more Corp districts, thus, it is important to determine which district oversees your region. For example, if you live in the state of Texas, there are four different Corps districts that are concerned with wetlands in your state: Tulsa, Fort Worth, Galveston, and Albuquerque. Refer to Appendices 7A-7E to determine the Corps district in which you live.

The federal register is another place to find permit public notices. The federal register is a daily publication of all federal government public notices. It is published by the National Archives and Records Administration and can be accessed at your local law library or at http://www.environmentallawnet.com/fed_reg.html.

The permit application public notices that you will receive will look similar to the one shown on pages 25 and 26. Note that this is only an *example* of a Section 404 Permit and Section 401 joint public notice from Louisiana; the format of these notices can vary from state to state. See Appendices 8A-8D to find examples of permit public notices from other Gulf States.

When reviewing the permit, there are several things you should consider: Who is applying for the permit? Where will the project take place? What is the nature and size of the project? How many acres of wetlands will be directly and indirectly impacted? Box 6 presents an information key

Box 6. Public Notice Information Key

1. Date the notice was released for public comment.
2. Corps district handling the permit application.
3. Addresses of agencies to which you should send your comments.
4. Application numbers for both the Corps 404 permit and State Water Quality Certification. Always include these numbers in your written comments!
5. Section describing the laws and permits that are applicable to the proposed project. Refer to Chapter 2 to learn more about the requirements of these laws.
6. Name of applicant and/or the company they represent appear in this section. Make sure to include this name in your comments!
7. Location of Work. This section gives a detailed description of where the project will take place.
8. Character of Work. This presents a general overview of the project and will normally indicate the amount of wetlands and waterways that will be impacted as a result of the project.
9. Expiration date. Your comments must be postmarked or delivered no later than the expiration date or, if no expiration date is listed, the number of days you are given to submit comments will be listed in the public notice. In this example, comments are due 20 days from the date of the notice. This section also directs you to which agency you should submit comments.
10. Section that provides direction on the subject of your comments, the scope of comments, and parties that are being solicited for comments.
11. Other reviews that are or have been initiated in the application process.
12. How to request a public hearing.
13. This section references the coastal use permit review required under Louisiana law.
14. Maps are usually attached to the back of the public notice that indicate the location of the proposed project.

Figure 9: Example of Joint Public Notice Issued by the New Orleans District Corps of Engineers

JOINT PUBLIC NOTICE

March 27, 2001

1

United States Army
Corps of Engineers
New Orleans District
Regulatory Branch
Post Office Box 60267
New Orleans, La. 70160-0267

2

(504) 862-2292 FAX (504)862-2117
Project Manager
Michael Farabee
Permit Application Number
EG-20-010-0492

3

State of Louisiana
Department of Environmental Quality
Office of Environmental Services
Post Office Box 82135
Baton Rouge, Louisiana 70884-2135

(225) 765-0664 FAX (225) 765-0888
Project Manager
Melanie Bauder
WQC Application
WQC # 010215-03

4

Interested parties are hereby notified that a permit application has been received by the New Orleans District of the U.S. Army Corps of Engineers pursuant to: [ ] Section 10 of the Rivers and Harbors Act of March 3, 1899 (30 Stat. 1151; 33 USC 403); and/or [X] Section 404 of the Clean Water Act (86 Stat. 816; 33 USC 1344).

5

Application has also been made to the Louisiana Department of Environmental Quality, Office of Water Resources, for a Water Quality Certification (WQC) in accordance with statutory authority contained in Louisiana Revised Statutes of 1950, Title 30, Chapter 11, Part IV, Section 2074 A (3) and provisions of Section 401 of the Clean Water Act (P.L.95-17).

MULTI-FAMILY RESIDENTIAL AND RETAIL/COMMERCIAL SUBDIVISION IN ST. TAMMANY PARISH

6

NAME OF APPLICANT: Stirling Mandeville, L.L.C., c/o Solutions, Inc., Post Office Box 820127, Vicksburg, Mississippi, 39182-0127.

7

LOCATION OF WORK: In St. Tammany Parish, near Covington, Louisiana, as shown on the attached drawings.

The work described below was partially completed prior to obtaining a Department of the Army permit and was in violation of Section 301 of the Clean Water Act. All legal issues concerning the unauthorized work have been deferred.

8

CHARACTER OF WORK: Clear, grade, excavate and place earthen and aggregate fill as necessary to construct access roads, building slabs, parking areas, detention ponds, utilities and other appurtenances all to implement a new high density residential and retail/commercial subdivision (Mandeville Commercial Development). The proposed project site is approximately 111 acres in size of which approximately 103.1 acres are jurisdictional pine savannah wetlands.

The applicant may be required to fully or partially restore the project site to pre-project conditions, if issuance of a permit is determined not to be in the overall public interest.

9

The comment period for the Department of the Army Permit and the Louisiana Department of Environmental Quality WQC will close **20 days** from the date of this joint public notice. Written comments, including suggestions for modifications or objections to the proposed work, stating reasons thereof, are being solicited from anyone having interest in this permit and/or this WQC request and must be mailed so as to be received before or by the last day of the comment period. Letters concerning the Corps of

Engineers permit application must reference the applicant's name and the Permit Application Number, and be mailed to the Corps of Engineers at the address above, **ATTENTION: REGULATORY BRANCH**. Similar letters concerning the Water Quality Certification must reference the applicant's name and the WQC Application number and be mailed to the Louisiana Department of Environmental Quality at the address above.

The application for this proposed project is on file with the Louisiana Department of Environmental Quality and may be examined during weekdays between 8:00 a.m. and 5:00 p.m. Copies may be obtained upon payment of costs of reproduction.

10

Corps of Engineers Permit Criteria

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

The U.S. Army Corps of Engineers is soliciting comments from the public, federal, state, and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the U.S. Army Corps of Engineers to determine whether to make, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

No properties listed on the National Register of Historic Places are near the proposed work. The possibility exists that the proposed work may damage or destroy presently unknown archeological, scientific, prehistorical, historical sites, or data. Copies of this notice are being sent to the State Archeologist and the State Historic Preservation Officer.

11

Our initial finding is that the proposed work would neither affect any species listed as endangered by the U.S. Departments of Interior or Commerce, nor affect any habitat designated as critical to the survival and recovery of any endangered species.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The applicant's proposal would result in the destruction or alteration of **N/A** acre(s) of EFH utilized by various life stages of red drum and penaeid shrimp. Our initial determination is that the proposed action would not have a substantial adverse impact on EFH or federally managed fisheries in the Gulf of Mexico. Our final determination relative to project impacts and

Figure 9 (continued): Example of Joint Public Notice Issued by the New Orleans District Corps of Engineers

the need for mitigation measures is subject to review by and coordination with the National Marine Fisheries Service.

If the proposed work involves deposits of dredged or fill material into navigable waters, the evaluation of the probable impacts will include the application of guidelines established by the Administrator of the Environmental Protection Agency. Also, a certification that the proposed activity will not violate applicable water quality standards will be required from the Department of Environmental Quality, Office of Water Resources before a permit is issued.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

The applicant has certified that the proposed activity described in the application complies with and will be conducted in a manner that is consistent with the Louisiana Coastal Resources Program. The Department of the Army Permit will not be issued unless the applicant received approval or a waiver of the Coastal Use Permit by the Department of Natural Resources.

You are requested to communicate the information contained in this notice to any other parties whom you deem likely to have interest in the matter.

Ronnie W. Duke
Chief, Regulatory Branch

Attachments

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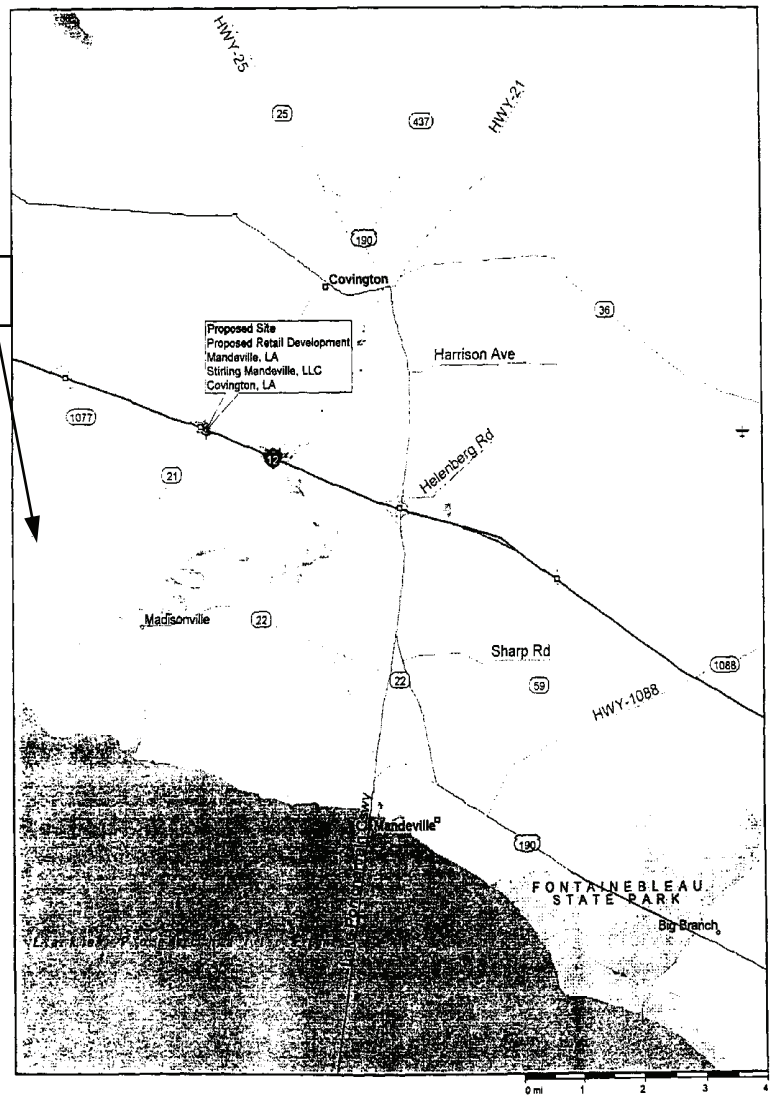

Proposed Retail Development
Mandeville, LA
Stirling Mandeville, LLC
Covington, LA

Freedom of Information Act (FOIA)

As a citizen activist, it is important that you have access to all information regarding wetland projects in your area. You can use information in government documents to submit stronger comments, speak knowledgeably with regulatory agencies, and accurately inform the media about the specifics of a proposed project. The Freedom of Information Act (FOIA) gives citizens the right to obtain and inspect copies of federal government documents. See Appendix 9 for a sample FOIA request letter. For instance, you may want to write a FOIA request to gather all comments that have been submitted to the Corps for a particular project by other federal agencies, such as the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

A request for this information must be made to the agency in writing. After receiving a written request, the federal agency has twenty days in which to respond to you. The response may only be an acknowledgement of receipt of your request and a statement that the information you requested will be sent to you. You are required to pay for the cost of copying the documents you request, unless you are requesting information in the public interest. For example, let us say you would like to obtain a copy of the final permit issued for a project located on a tract of wetlands that your local community uses to fish and boat. The FOIA request you submit would be considered to be in the public interest because the permitted project may degrade water quality and ultimately threaten public health.

Certain states along the Gulf, including Louisiana, have statutes similar to FOIA that give citizens the right to request and receive state government documents in return for covering the copying costs. If you are not mailed a notice of the agency's final permit decision, a records request can be used to obtain this information.

Making Oral and Written Comments

Written comments are used to present your views on a permit application to the reviewing agency. Your comments should include the permit application's file number and applicant's name that appears on the public notice. A public comment period extends from 10-30 days (including weekends) after a permit notice is posted. Therefore, it is important to read public notices carefully to determine when written comments are due to the regulatory agency.

Remember that the purpose of submitting comments is to build the public record of information on a particular project. Your comments should be based on and include facts, scientific evidence, personal experiences, photographs, and newspaper articles that illustrate the importance of wetlands that will be impacted. Also make use of historical stories and cultural activities that relate to the wetlands that will be affected. For example, if you know that your great-grandfather used a certain area of wetlands for fishing and hunting, it is important that you inform the Corps of this historic use of the wetland when they consider a permit application. The views that you offer may provide new insight for the permitting agency.

By submitting comments, you are building the public record and, in doing so, the case against the project. If you believe that the project is complicated and destructive

enough for the agency to hold a public hearing, you should request that one be held. Be sure to clearly explain why you feel a hearing is necessary and how the agency and public will benefit from it. You may also request an extension of the written comment period if you feel more time is needed for completing comments or if you received the notice close to the comment deadline. Extensions are not always granted, but some agencies may give you an additional 7-10 days to comment when a request is made.

There are several opportunities for you to make written comments during the permitting process:

- During the comment period after the permit is posted for public notice;
- At a *scoping meeting*. A scoping meeting is a meeting at which the Corps determines what issues will be covered in the formulation of an Environmental Impact Study. A scoping meeting is only held if the Corps determines that there is a preliminary "finding of significant impact;"
- After the Corps determines there is a preliminary "finding of no significant impact" and, therefore, the project does not require an Environmental Impact Statement (EIS). At this point, you can submit expert scientific or legal facts that support the need to complete an EIS;
- After the notice of availability has been published on the draft or final EIS;
- At a public hearing; and
- After a public hearing is held, there may be additional time for you to submit written comments.

There are several specific issues you should focus on when making comments on a project that affects wetlands (See Box 7). Keep in mind that these guidelines may be used for both written and oral comments.

Box 7. <u>Types of Issues to Address in Written and Oral Comments</u>

- **Do feasible and practical alternatives to this project exist? If you know of any alternatives that may avoid wetland destruction, submit them as alternatives to the proposed project and explain why they are less damaging to wetlands.**
- **Is the project water dependent? Does it need to be located in or near water?**
- **Is the project being proposed with the public's interest in mind? In other words, would the project benefit the surrounding community?**
- **Are there public and private resources that may be disturbed? For example, are there local fisheries or recreational fishermen who would be affected by this project? Is there a nursery ground for fish or shellfish that would be impacted?**
- **Are there threatened, endangered, or other important plant and animal species nearby that would be impacted by this project? (Go to <u>http://ecos.fws.gov/tess_public/TESSWebpageUsaLists?state=all</u> to find out which species are listed in your state.)**

(continued on next page)

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- **Are the impacts to the wetlands as small as possible (i.e. minimized)?**
- **Are the negative impacts to the environment being compensated for by the applicant (i.e. wetland mitigation)?**
- **Will the project degrade the water quality of water resources nearby?**
- **Have there been other projects that destroyed wetlands concentrated in the same geographical area (cumulative impacts)? If other projects have been permitted, the new project will only increase the amount of wetlands destroyed in the region.**
- **Will the project have a significant impact on wetland resources? If you think it will, you should demand that an Environmental Impact Study (EIS) be completed before the Corps issues a Section 404 permit.**

Written comments should be sent to the regulatory agency that is considering the permit. The name and address of the agency representative who should receive your comments will be listed on the public notice for the permit. Be sure to include the permit application number or other reference number listed on the permit in your letter. You can also carbon copy (cc) your comments to the head of the agency, your elected officials, the media, and other organizations or individuals that may have an interest in the project. Refer to Appendix 10 to view a sample comment letter.

You may also write to the other federal organizations that are involved in the decision of whether or not a permit is issued. As outlined in Chapter 2, the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), and the U.S. National Marine Fisheries Service (NMFS) all are given an opportunity to submit comments to the Corps for projects requiring a 404 permit. You should write or call these agencies and encourage them to submit comments that oppose projects that would unnecessarily destroy wetlands. See Appendix 11 for contact information for the federal agency offices in your area.

Public Hearings

The purpose of a public hearing is for the regulatory agency to obtain more information about the proposed project. Because of the time and expense associated with hosting a hearing, agencies are more likely to hold a hearing when the project is large, complicated, and there is controversy surrounding the permitting of the project. However, if a large number of people raise concerns about a project or request a hearing in their written comments to the regulatory agency, the agency may hold a hearing to give citizens and organizations an opportunity to submit oral comments. Here are some things to keep in mind about public hearings:

- The public hearing is usually held two weeks to 30 days after a public notice of the hearing has been issued.
- During the hearing, those who sign up to speak are allowed anywhere

from 3 to 15 minutes to present their viewpoints, depending on the number of people who have signed up to speak.

- If you do not wish to speak, you may submit written comments at the hearing.
- In general, written comments may be accepted by the agency for 10 to 30 days after the hearing. Since the hearing will most likely be recorded, it is important to request that an agency representative state on the record the deadline for sending written comments on the project.

Box 8. Oral comments

Oral comments presented at a public hearing should be considerably shorter than written comments because of the time restrictions you have when speaking. It is a good idea to speak briefly and concisely about your concerns at the hearing and support your testimony with detailed, comprehensive comments in writing about the proposed project.

If a request for a public hearing is not granted, citizens are free to organize their own public meeting. Such public meetings are important to share ideas and information about the project of concern. They may also be used to inform people in a community that may not otherwise know about a project that could negatively affect them. Make sure you have an agenda, rules for discussion, a designated leader, and a place to hold the meeting. In order to encourage as much participation as possible, use flyers, press releases, phone trees, and public service announcements to advertise the event.

Appealing Improper Decisions on a Permit

Both federal and state laws allow citizens to appeal a permit for which they feel an improper permitting decision was made. You can appeal a decision after the Corps has issued a permit, denied a permit, or ruled that no wetlands would be involved in the project. Concerned members of the public must appeal a permit in the federal court that presides over the area where the project will take place. You have 60 days to send the Corps a notice of intent-to-sue with information detailing the reasons for the appeal.

If you think that the project you are concerned about will require legal action, it is a good idea to get in touch with a lawyer before the permit is approved in order to get help in preparing your comments and to assist in the process of appealing a Corps permit decision. Refer to Appendix 12 for a listing of non-profit environmental law firms and for-profit law firms that work on wetlands-related issues in your state that may be able to assist you at little or no cost.

Monitoring the Activities of the Permit Applicant

Whether or not the permit is issued to the applicant, it is important to keep a watchful eye on the proposed project area. If a permit is granted, it is important to make sure that the applicant is following the rules or conditions stated in the permit. If the permit was denied, you should monitor the project site to ensure that the project does not move forward anyway. If you see any

unauthorized activity taking place in a project area, immediately contact the permitting agency so that they can investigate your concern.

Enforcement and After-the-Fact Permits

If you think a wetland has been filled without a permit or you see a discharge of pollutants in your local wetlands that you do not think is being regulated, contact the appropriate regulating agency as soon as possible. Refer to Appendix 13 for agencies to whom you should report a problem. It may turn out that a project that has not been permitted is contributing to these problems. Follow the guidelines outlined in Box 8 when reporting a problem.

After receiving a report of a problem, the agency will check to see if the activities in the area are covered by permits. If the agency finds that an activity is unauthorized and requires a permit, an investigation will be completed to determine what, if any, penalties are necessary. In many cases, an investigation may take as long as several months. If the activity continues while the investigation is being completed, you can ask the agency to issue a cease and desist order. A cease and desist order demands that the project be stopped immediately and threatens to fine and imprison the violator if the activity is continued.

If a cease and desist order is issued, it is important to keep up-to-date on the status of the case. Contact the regulatory agency every few weeks to receive updates on the case. Find out if the landowner or developer has applied for an *after-the-fact permit*. After-the-fact permits are used when the applicant is applying for the permit *after* the activity has already begun and have public comment periods just like other Section 404 permits. The applicant may or may not receive penalties for unpermitted activities. Whether or not penalties are assigned, the applicant may continue with his or her activities once an after-the-fact permit has been applied for and issued.

If the agency refuses to issue a cease and desist order, you may file a *citizen enforcement action* to stop a project. A citizen enforcement action allows a private citizen to stop dredge and fill activities in wetland areas that have not been permitted, nor stopped by the EPA or the Corps. It is important to proceed carefully with a citizen enforcement action. Before proceeding, contact a lawyer or an organization that specializes in environmental litigation. See Appendix 12 for legal organizations in the Gulf states.

Box 9. Guidelines for Reporting a Problem with Wetland Use

- Provide as much information as possible. The more information you can pass along to the agency, the faster the agency can respond to the problem.
- Provide the exact location of the problem. Use landmarks such as buildings, roads, highways, or river mile markers. Take photographs to document the problem. If possible, indicate the location on a map.
- Provide specific details. Tell the agency about on-going activities in the area such as: the type of materials dredged or dumped, the time and dates of the action, and the names of possible violators.
- Inform your community. Tell members of your community about the problem and urge them to report the activity to the regulatory agency.

Protecting Wetlands Outside of the Permitting Process

While citizen involvement in the permitting process can be an effective way to protect wetlands, there are other approaches that you may use to try to stop environmentally-destructive projects.

The Media

The media can be a very effective tool for informing the public about a particular project. A project may be brought to the attention of interested politicians, local government agencies, and other organizations and citizens through television, radio, and newspaper reports. The media can be your ally or it can be your enemy depending on how wisely you use the publicity it gives to you and/or your organization. If your position on a project is not well developed and lacks scientific or cultural facts to support it, your credibility with both the media and the public could be damaged. However, by developing a credible relationship with newspapers, TV, and radio stations, you can provide the public with valuable facts and perspectives that are presented thoroughly and accurately.

There are several ways to make use of the media. You can:

- Use public service announcements on radio and television to announce public hearing dates, comment deadlines, or public meetings for a proposed project. Public service announcements are usually free and need to be only 2-3 sentences long;

- Use a press release to inform the media of the 'who, what, where, why, and when' of a project and to explain how it relates to you and your community. A press release is a written statement, not more than one page long. Be sure to include your contact information at the top of the press release so that the media can reach you if they need more information (see Appendix 14 for a sample press release); or

- Use media events to give short presentations about the project and your views and question-answer sessions. Be sure to send an advisory to the media at least seven days prior to an event, or fax it three days prior to the event. A media advisory describes the time, location, and the nature of the event. Media events will attract more attention than a press release so it is important to use them when you have a lot of community support or have new information to share regarding a project.

For more ideas about how to make the best use of the media, attend media workshops sponsored by regional or national environmental groups and organizations. These workshops are often free and open to local activists.

Support Programs that Help to Protect Wetlands

There are a number of ways wetlands can be protected within and outside the regulatory arena. Keep in mind that both regulatory and non-regulatory approaches should be used to protect and restore wetlands. No one strategy is the sole solution to preserve these important habitats. All approaches should be used to complement one another. Some of these strategies are outlined below.

Local Programs

There are several different wetland protection programs that have been put into place by local, state, or federal policy makers. On the local level, zoning regulations or ordinances may exist to protect against the development of wetland areas. If local ordinances are not in place, you can meet with local policy makers and explain to them the need and support that exists for local wetlands protection.

There is a direct and critical link between land use and the quality of our environmental resources. Only by becoming aware and involved can citizens make sure that our lands and waters are improved and protected for this and future generations. There are a number of ways in which you can get involved in guiding the development of land use regulations and local land use decisions. Here are some ideas for you to consider:

- Learn more about and promote alternatives to unplanned development.

- Participate in planning efforts in your community. Become familiar with the planning and development processes and standards of your town, parish, or county.

- Ask your local officials to establish and support planning and zoning regulations.

- Make your voice heard! Get involved in local planning and zoning decisions. Testify at public hearings on specific development projects (good and bad) that may significantly affect water quality or promote unplanned development.

- Encourage your local officials to develop erosion and sediment control ordinances.

- Become an active member of a local organization that advocates environmentally sound growth and development.

- Encourage your local officials to support development projects that are environmentally sensitive and that promote low-impact recreation.

- When purchasing a home, avoid properties in rural locations that are not officially designated as growth areas by the local government.

Federal Programs

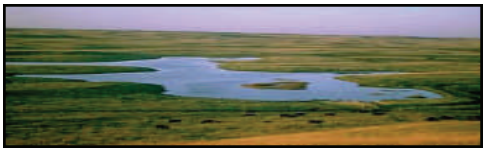
Non-regulatory federal programs for wetlands protection have also been created and are available to citizens on a voluntary basis. These programs include the Wetlands Reserve Program (WRP) and the Conservation Reserve Program (CRP), both of which are administered by the U.S. Department of Agriculture (USDA), Natural Resources Conservation Service. WRP allows interested landowners to develop a conservation easement or enter into a cost-share restora-

tion agreement with USDA to protect and restore lands.

CRP is another voluntary approach whereby landowners commit to establishing various long-term conservation practices for a 10 to 15 year period. Participating landowners receive annual rental payments for the land and cost-share assistance in return for protecting land through the CRP. Additional approaches to protect wetlands include donating land; using conservation easements, deed restrictions, or mutual covenants; land purchases; having the state assume ownership of a land parcel (known as eminent domain); and wetland restoration programs. Citizens can take part in these federal non-regulatory programs by contacting their state agencies to encourage their involvement.

Land Trusts

Land trusts are nonprofit, voluntary organizations that work with landowners to place land in protective programs using a number of different conservation tools. Land trusts often focus on protecting open space that is being threatened by development through conservation easements that permanently restrict the uses of land, land donations and purchases, and strategic estate planning. Throughout the country, local, regional, and national land trusts abound, working to preserve and protect open spaces, including wetlands, wildlife habitat, shorelines, forests, farms, historic estates, and recreational areas. Land trusts target all types and sizes of open space. See Appendix 15 for information on local, state, and national land



Prairie Potholes in Texas. Photo courtesy of the U.S. Fish and Wildlife Service.

Form a Wetland Monitoring Group

If you determine there is a need to form a group to protect and monitor wetlands in your community, it is a good idea to contact larger environmental organizations that are already established to determine:

1) If a local group is already operating in your area. You may want to join and/or volunteer for this group. See Appendix 16 for organizations that work on wetland issues in the Gulf region.

2) If no local group exists, existing organizations may be able to provide structure, guidance, and possible financial assistance to create your group. Also ask about workshops or training sessions that may be available for citizens who are interested in protecting local wetlands.

When establishing a group it is important to focus on a small geographic area that all your members are directly interested in (i.e., a watershed, river, or stream). A small geographic region will allow your group to monitor wetlands more closely and frequently. Being aware of new projects in that area will enable you to be *proactive* and organized about wetland protection, rather than *reacting* to a project that is already well into the permitting process.

Simple Ideas to Protect Wetlands

Whether you are part of a local wetland protection group or you are just someone concerned about the destruction of wetlands, you can help protect wetlands with these simple efforts:

- Receive and review public notices and submit comments when appropriate.

- Develop a network of contacts including, but not limited to, landowners, elected officials, regulatory agencies, citizen groups, environmental groups, and fishermen and sportsmen groups. Educate them about wetland projects in your area and what they can do to help protect wetlands.

- Monitor wetlands in your community on a regular basis. This will help you recognize projects that have not been permitted. (See the section entitled "Enforcement and After-the-Fact Permits" in this chapter for more information about what to do if you discover a new project in your area.)

- Gather information concerning the historical, cultural, and economic functions and values of the wetlands in your region. For example, were the waters historically used in baptism ceremonies? Are there commercial or recreational fishing opportunities in these wetlands? This will give you an information base that can be used when writing comments or speaking at a public hearing.

- Keep track of cumulative wetlands loss. In other words, if several projects have been permitted which each destroy a small area of wetlands, remember that the combination of all wetland losses may be quite significant. You can talk about cumulative impacts in written or oral comments that you submit to the regulatory agencies.

By following these simple guidelines, you can contribute to the protection and preservation of the Gulf's valuable wetland resources. Use this guide as a powerful resource to ensure that you and your children continue to enjoy the myriad of benefits that wetlands provide.

References

A variety of sources was used in the creation of this chapter. They include:

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An Interpretative Manual for Texas Coastal Wetlands: Laws Regulations and Policies. April 1993. Written by Mike Hightower, Deputy Director, Texas A&M Sea Grant College Program. Project manager: Thomas Calnan, Wetlands Coordinator, Coastal Division, Texas General Land Office.

Citizen's Guide to Louisiana Wetlands. 1995. Published by Sierra Club Legal Defense Fund. Written by Robert Wiygul and Amy Clipp.

Land Trust Alliance. http://www.lta.org. November 7, 2000.

Michigan Wetlands: Yours to Protect: A Citizen's Guide to Local Involvement in Wetland Protection, Second ed. 1992. Written by Wilfred Cwikiel, Environmental Policy Specialist. Published by the Tip of the Mitt Watershed Council.

Public Involvement in Environmental Permits: A Reference Guide. August 2000. United States Environmental Protection Agency: Office of Solid Waste and Emergency Response.

Acronyms Used in this Guide

CRP – Conservation Reserve Program. Established by Congress in 1985, the Conservation Reserve Program (CRP) pays farmers to use agricultural land for conservation activities for a ten to fifteen year period. The program is administered by the USDA, and seeks to achieve a variety of environmental aims, including improvements in water quality, reduction of soil erosion and restoration of habitat for wildlife.

CWA – The Clean Water Act (33 U.S.C. Sections 1251-1387). The CWA is the law that was passed by Congress that sets a goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. The CWA establishes a regulatory framework to protect water quality throughout the United States.

CWPPRA – The Coastal Planning, Protection, and Restoration Act. CWPPRA is federal legislation that funds coastal restoration projects. The majority of the funds (70%) go to the state of Louisiana for use by federal, state, or local agencies for projects dedicated to coastal restoration. The remaining 30% of the funds are divided evenly between Fish and Wildlife Service projects and the Secretary of the Interior for projects under the North American Wetlands Conservation Act. CWPPRA projects in Louisiana are designed for each basin and are approved by an inter-agency task force before they can be funded.

CZMA - The Coastal Zone Management Act (16 U.S.C. Sections 1451-1464). The CZMA seeks to obtain state coastal land use planning by providing monetary assistance to states to develop and implement management programs consistent with standards set forth in the Act. Once a state plan has been approved by the Secretary of the Department of Commerce, the Act requires that federal agencies, permittees, and licencees show that any proposed activity in or directly affecting a states coastal zone are, to the maximum extent practicable, consistent with that states' management plan.

CZMP (or **CMP**). – Coastal Zone Management Plan. The CZMP is a coastal land use plan created by states under the Coastal Zone Management Act. These plans are submitted to the Secretary of the Department of Commerce for approval.

EA – Environmental Assessment. The initial review by a federal agency, required under the National Environmental Policy Act, to determine if an activity will have significant impacts on the environment.

EFH- Essential Fish Habitat. EFH has been defined by Congress in the Sustainable Fisheries Act as "those waters and substrate necessary for [marine] fish for spawning, breeding, feeding, or growth to maturity."

EIS - Environmental Impact Statement. An EIS is a public document, required under the National Environmental Policy Act, which provides a full and fair discussion of environmental impacts of a federal action (including issuance of a permit) and alternatives to the proposed action.

EPA- The Environmental Protection Agency. The EPA is the agency charged with enforcing the Clean Water Act. Under Section 404 of the Act, the EPA is given the authority to establish guidelines (known as the 404(b)(1) guidelines), for issuance of Section 404 permits. The EPA has authority to review U.S. Army Corps of Engineers permitting decisions and can veto (overturn) a permit decision if it finds that the permit will have unacceptable impacts.

ESA- Endangered Species Act (16 U.S.C. Section 1536). The ESA protects animals and plants that are threatened with extinction. To be protected under the Act as species must first be "listed" (designated as endangered or threatened) by the Secretary of the Department of Interior (through the FWS).

FOIA- The Freedom of Information Act. FOIA gives citizens the right to inspect and obtain copies of many kinds of federal government documents, including those having to do with wetland decisions.

FONSI – Finding of No Significant Impact. A FONSI is a finding by a federal agency, after completion of an Environmental Assessment, that an activity will not have a significant impact on the environment and, therefore, no further environmental analysis of the activity is needed.

FWS – The U.S. Fish and Wildlife Service, a division of the Department of Interior. The mission of the FWS is to conserve, protect, and enhance fish, wildlife, and plants and their habitat for the benefit of the public. The FWS enforces federal wildlife protection laws, such as the Endangered Species Act (ESA). Their major responsibilities involve migratory birds, endangered species, certain marine mammals, and freshwater and anadromous fish.

NEPA – The National Environmental Policy Act. The NEPA is an Act adopted by Congress in 1969 intended to help federal officials make decisions that are based on an understanding of the environmental consequences of their actions. The goal of NEPA is to require an interdisciplinary consideration of environmental impacts of federal actions and alternatives to the proposed action(s).

NMFS – The National Marine Fisheries Service, also known as the National Oceanic and Atmospheric Administration (NOAA) Fisheries, a division of the U.S. Department of Commerce. The agency is responsible for managing and sustaining most living marine resosurces and their habitats in U.S. waters by: (1) rebuilding and maintaining sustainable fisheries; (2) promoting the recovery of threatened and endangered species; and (3) working with other federal agencies to protect and maintain the health of marine and anadromous fish habitats.

SAV- Submerged Aquatic Vegetation. SAV, one of the most productive plant communities in the world, is adapted to living in shallow, subtidal estuarine or marine environments and provides important habitat for nursery areas for fish and shellfish, plays an important role in nutrient cycling, and decreases shoreline erosion. SAV is found in all five Gulf states.

SFA- Sustainable Fisheries Act. The SFA, passed in 1996 to reauthorize and amend the Magnuson-Stevens Fishery Conservation and Management Act, sets strict requirements for the NMFS to stop overfishing , rebuild overfished stocks, minimize bycatch (the incidental take of non-target species), and protect essential fish habitat.

USDA – The United States Department of Agriculture. The USDA is the agency charged with administering laws and policies of the United States that govern agriculture.

WRP – Wetlands Reserve Program. The WRP, established by Congress is 1990, allows owners of farm land to receive payments for the establishment of permanent or long-term conservation easements. The program is administered by the USDA and is intended to restore the hydrology and vegetation on wetlands that have been converted to farmland.

Glossary of Terms

aquifer: underground geologic formations that hold large quantities of groundwater.

after-the-fact permits: permits that are issued after an activity has already begun.

cease and desist order: an order issued by a regulatory agency to immediately stop an activity that has not been permitted.

citizen enforcement action: a mechanism through which citizens may stop dredge and fill activities that are being considered for an after-the-fact permit.

Clean Water Act: the law that was passed by Congress that sets a goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. The CWA establishes a regulatory framework to protect water quality throughout the United States.

coastal wetlands: a broad category of wetlands that are found at lower elevations than inland wetlands, on the interface of the ocean and the land, and generally include all saltwater and brackish wetlands. Examples include saltwater and brackish marshes, and saltwater mangrove swamps.

Coastal Wetlands Planning, Protection, and Restoration Act: federal legislation that funds coastal restoration projects. The majority of the funds (70%) go to the state of Louisiana for use by federal, state, or local agencies for projects dedicated to coastal restoration. The remaining 30% of the funds are divided evenly between Fish and Wildlife Service projects and the Secretary of the Interior for projects under the North American Wetlands Conservation Act. CWPPRA projects in Louisiana are designed for each basin and are approved by an inter-agency task force before they can be funded.

Coastal Zone Management Act: a federal law which seeks to obtain state coastal land use planning by providing monetary assistance to states to develop and implement management programs consistent with standards set forth in the Act. Once a state plan has been approved by the Secretary of the Department of Commerce, the Act requires that federal agencies, permittees, and licencees show that any proposed activity in or directly affecting a states coastal zone are, to the maximum extent practicable, consistent with that states' management plan.

Coastal Zone Management Plan: a coastal land use plan created by states under the Coastal Zone Management Act. These plans are submitted to the Secretary of the Department of Commerce for approval.

comment period: the amount of time given to members of the public to submit written comments on a particular project. A comment period usually lasts for 10-30 days.

conservation easement: a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. It allows landowners to own and use the land and to sell it or pass it on to heirs.

Conservation Reserve Program: established by Congress in 1985, the Conservation Reserve Program pays farmers to use agricultural land for conservation activities for a ten to fifteen year period. The program is administered by the USDA, and seeks to achieve a variety of environmental aims, including improvements in water quality, reduction of soil erosion and restoration of habitat for wildlife.

consistency determination: a determination that a project is consistent with the rules and regulations of state

and federal laws or programs, specifically state Coastal Zone Management Plans.

Corps: short for the U.S. Army Corps of Engineers, the Corps is responsible for the regulation of dredge and fill activities in the waters of the United States, among other duties. These responsibilities include, but are not limited to, reviewing Section 404 permit applications, accepting and reviewing oral and written comments, and deciding whether or not to issue a Section 404 permit.

cultural values: those values associated with the historical and cultural uses of a wetland. Culture values may include the use of a creek for baptisms or a favorite fishing hole that has been used by a family for several generations.

cumulative impacts: the combined impacts of a proposed activity and any similar activities in the area. For example, the total amount of wetland acreage lost that results from the issuance of two or more permits.

deed restrictions: terms placed in the deed to a piece of property that restrict certain uses of the land by subsequent owners.

ecotourism: tourism associated with the use of environmental resources, including activities such as canoeing, hiking, and bird watching.

elevation: the height above sea level. The elevation of a wetland influences the type of plants and wildlife that can survive in a particular wetland.

elevation: the transfer of the permit review responsibilities to a level within an agency that has greater authority, such as the headquarters of EPA and the Corps.

eminent domain: the assumption of ownership of a piece of land by the state.

Endangered Species Act: a federal law that protects animals and plants that are threatened with extinction. To be protected under the Act, species must first be "listed" (designated as endangered or threatened) by the Secretary of the Department of Interior (through the FWS).

Environmental Assessment: the initial review by a federal agency, required under the National Environmental Policy Act, to determine if an activity will have significant impacts on the environment.

Environmental Impact Statement: a document, required under the National Environmental Policy Act, which provides a full and fair discussion of environmental impacts of a federal action (including issuance of a permit) and alternatives to the proposed action.

Environmental Protection Agency: the agency charged with enforcing the Clean Water Act. Under Section 404 of the Act, the EPA is given the authority to establish guidelines (known as the 404(b)(1) guidelines), for issuance of Section 404 permits. The EPA has authority to review U.S. Army Corps of Engineers permitting decisions and can veto (overturn) a permit decision if it finds that the permit will have unacceptable impacts.

essential fish habitat: defined by Congress in the Magnuson Stevens Fishery Conservation and Management Act as "those waters and substrate necessary for [marine] fish for spawning, breeding, feeding, or growth to maturity."

federal jurisdiction: a determination that a particular waterbody is subject to the rules and regulations set forth by the federal government.

federal register: a daily publication of all federal government public notices. It is published by the National Archives and Records Administration and can be accessed at your local law library or on the internet.

Finding of No Significant Impact: a finding by a federal agency, after completion of an Environmental Assessment, that an activity will not have a significant impact on the environment and, therefore, no further environmental analysis of the activity is needed.

Fish and Wildlife Service: A division of the Department of Interior. The mission of the FWS is to conserve, protect, and enhance fish, wildlife, and plants and their habitat for the benefit of the public. The FWS enforces federal wildlife protection laws, such as the Endangered Species Act (ESA). Their major responsibilities involve migratory birds, endangered species, certain marine mammals, and freshwater and anadromous fish.

Freedom of Information Act request: a written request made by citizens to a federal agency to inspect and obtain copies of federal government documents, including those having to do with wetland decisions.

general permits: permits that authorize a category or categories of activity in a specific geographic region. Activities that fall under these permits are not available for public review and comment.

groundwater: water that moves through the soil and replenishes aquifers.

habitat: the areas that provide breeding, feeding, and nesting grounds for animals and plants.

hydric soils: Soils that remain waterlogged long enough to create low oxygen or no oxygen conditions.

hydrologic regime: the amount and duration of water in a system. In wetlands, the hydrologic regime generally consists of the presence of water at or above the ground for more than seven consecutive days in the growing season.

hydrophytic plants: plants that are adapted to growing in hydric soils.

individual permits: permits that are issued by an agency on a case-by-case basis, are reviewed individually, and are available for public comment.

inland wetlands: a broad category of wetlands that are found at higher elevations than coastal wetlands, and generally includes all freshwater wetlands. Examples include bottomland hardwood forests, cypress-tupelo swamps, and prairie potholes.

intent-to-sue: a letter sent to the Corps at least 60 days prior to filing suit that contains specific information about the Corps' alleged violation of the CWA, NEPA, or any other statute.

joint public notice: a public notice issued jointly by two or more agencies for a permit application for a particular project. For example, Alabama Department of environmental quality and the Mobile Corps District may issue a joint public notice for a Section 401 water quality certification and a Section 404 dredge and fill permit, respectively.

land donation: a conservation strategy for a landowner to use if they do not wish to pass the land on to heirs; own property they no longer use; own highly appreciated property; have substantial real estate holdings and wish to reduce estate tax burdens; or would like to be relieved of the responsibility of managing and caring for land.

land trusts: non-profit, voluntary organizations that work with landowners to protect land using a number of different conservation tools such as conservation easements, land donations, and strategic estate planning.

local land use regulations, **policies, and ordinances**: rules that direct the way land is developed in a local community. For instance, land use regulations can prohibit business development in a certain area, identify unique spaces that should be protected, or establish appropriate management practices for construction activities.

mitigation: the requirement that permit applicants must "replace" all unavoidable losses of wetlands and wetland functions.

mutual covenants: an agreement by several land owners to restrict the uses of their land. This agreement is not necessarily binding to future owners of the land.

National Environmental Policy Act: adopted by Congress in 1969 intended to help federal officials make decisions that are based on an understanding of the environmental consequences of their actions. The goal of NEPA is to require an interdisciplinary consideration of environmental impacts of federal actions and alternatives to the proposed action(s).

National Marine Fisheries Service: a division of the U.S. Department of Commerce. The agency is responsible for managing and sustaining most living marine resosurces and their habitats in U.S. waters by: (1) rebuilding and maintaining sustainable fisheries; (2) promoting the recovery of threatened and endangered species; and (3) working with other federal agencies to protect and maintain the health of marine and anadromous fish habitats.

nationwide permits: a type of general permit for a category or categories of activities, which have "minimal environmental consequences", that applies to the entire United States.

non-point source: a source of pollution that does not come from a single, easily identifiable source. Instead, it is very difficult to determine where the pollution is coming from. Examples include agricultural runoff and atmospheric deposition.

nutrients: substances such as nitrogen and phosphorous that encourage plant growth. While nutrients are good in small amounts, the application of excess amounts of nutrients can severely disrupt a wetland system.

oral comments: comments submitted verbally at a public hearing held by a regulatory agency for a proposed project. Oral comments are added to the administrative record for a particular project.

point source: a source of pollution that comes from a single, easily identifiable source (i.e. a pipe).

pollutants: substances released into the environment that originate from human-related activities. Pollutants range from heavy metals to pesticides to excess nutrient concentrations.

press conference: a meeting with media representatives for the purposes of sharing a position and information on a particular project.

press release: a written statement that provides the media with a position and information on a particular project.

public hearing: a meeting, usually held by a regulatory agency, to allow the public to comment on a particular project. The information gathered at the hearing is used to decide whether a permit application should be approved, rejected, modified, or if an EIS should be completed.

public interest review: an evaluation of the possible impacts of a project, including cumulative impacts, by the Corps. The Corps must balance the public and private need for the project with the damaging effects the project will have on such things as aesthetics, environmental quality, fish and wildlife values, and the safety of the public.

public notice: a notice that is normally printed in the business section of the newspaper, among other places, to inform the public about an application that has been submitted for a proposed project. Public notices give a summary of the permit application and solicit comments from the public on the proposed project.

public notice mailing list: a mailing list maintained by the Corps, EPA, other federal agencies, and some state regulatory agencies, whose members receive mailings of public notices of proposed projects and/or agency activities.

public service announcements: announcements on the radio and television that can be used to inform the public about public hearings, comment deadlines, or public meetings for a proposed project. Public service announcements are usually free and are approximately 2-3 sentences long.

regional permits: a type of general permit that applies to a specific state or region of the country.

salinity: the degree of saltiness in the water. The salinity of the water influences the type of plants and wildlife that can survive in a particular wetland.

scoping meeting: a meeting at which the Corps determines what issues will be covered in the development or the analysis of an Environmental Impact Statement.

Section 404 permit: an agency sanctioned "discharge of dredge or fill material" into waters of the United States. Section 404 of the Clean Water Act requires anyone seeking to "fill" a wetland to first obtain a permit from the Corps of Engineers. Involvement in the Section 404 permit process is one of the most effective ways members of the public can reduce wetland destruction in their area.

Section 404(b)(1) Guideline Review: guidelines the Corps must follow when issuing Section 404 permits. Under these guidelines, the Corps must consider alternatives to the project that do not impact wetlands, whether or not the activity is “water-dependent”, impacts water quality, and mitigates for the lost wetlands and wetland functions.

Section 401 Certification: certification issued by state departments of environmental quality or environmental protection that a proposed activity will not negatively impact the water quality of the state. A Section 404 permit can not be issued until a Section 401 Certification has been granted or waived.

Section 10: a Section of the Rivers and Harbors Act of 1899, that requires anyone wishing to dredge, fill, or build a structure in any navigable water and associated wetlands to obtain a permit from the Corps. Section 10 permits are often applied for and issued at the same time as a Section 404 permit.

shoreline erosion: the removal of land from the shoreline by wave action.

subsidence: the natural settling of the land to a lower elevation, thus deepening the water and significantly changing the characteristics of a wetland.

submerged aquatic vegetation: one of the most productive plant communities in the world. SAV is adapted to living in shallow, subtidal estuarine or marine environments and provides important habitat for nursery areas for fish and shellfish, plays an important role in nutrient cycling, and decreases shoreline erosion. SAV is found in all five Gulf states.

Sustainable Fisheries Act: passed in 1996 to reauthorize and amend the Magnuson-Stevens Fishery Conservation and Management Act, sets strict requirements for the NMFS to stop overfishing , rebuild overfished stocks, minimize bycatch (the incidental take of non-target species), and protect essential fish habitat.

water dependent: a project that requires access to, proximity, or siting within a wetland or waterbody to fulfill its basic purpose.

water quality standards: levels of pollution in the water that are considered safe for humans, plants, fish, and wildlife.

waters of the United States:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
    i. Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
    ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
    iii. Which are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs (s)(1) through (4) of this section;
6. The territorial sea;
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (s)(1) through (6) of this section; waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States.

wetlands: those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Wetlands Reserve Program: established by Congress is 1990, allows owners of farm land to receive payments for the establishment of permanent or long-term conservation easements. The program is administered by the USDA and is intended to restore the hydrology and vegetation on wetlands that have been converted to farmland.

Wild and Scenic Rivers Program: laws protecting rivers that are designated by the legislature as "wild and scenic" rivers. These laws are intended to preserve, protect, and enhance the wilderness qualities, scenic beauty, and ecology of the state’s free-flowing rivers, streams, and bayous.

written comments: comments submitted in writing to a regulatory agency that explain why a proposed project should or should not be approved. Written comments are added to the administrative record for a particular project.