

***State of Louisiana Coastal Protection
and Restoration Authority White Paper:***

***Environmental Review and Permitting Process
Challenges for Louisiana's Coastal Program***

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Executive Summary

The State of Louisiana, acting through the Coastal Protection and Restoration Authority (CPRA), requests that the Administration expedite permitting for critical infrastructure projects that help restore Louisiana's coastal ecosystem. Many of the projects do not need federal funds, will soon be ready to begin construction, and will stem the loss of Louisiana's coastal wetlands – a loss that our Governor has declared to be an emergency situation threatening U.S. national interests in energy production, wetland protection, maritime commerce and other economic and ecological issue areas.

With significant funding already in place and unanimous state legislative approval, the restoration projects included in Louisiana's Coastal Master Plan provide an ideal platform for this Administration to demonstrate how improvements to the environmental review and permitting process can prevent well-intentioned environmental protection laws from delaying projects designed to restore ongoing environmental losses.

Louisiana is Facing a Coastal Crisis, and Time is of the Essence

The State of Louisiana loses an unprecedented amount of land to coastal erosion every year. Since the 1930's, Louisiana has lost approximately 2,000 square miles of land to coastal erosion, a loss that is continuing at the rate of a football field of coastline lost every hour. No other state is facing such dramatic coastal land loss.

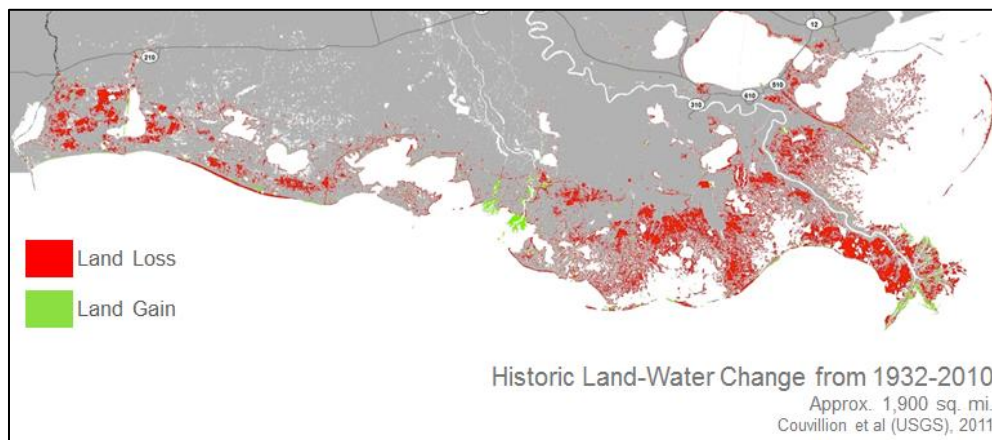


Figure 1: Historic Land-Water Change from 1932-2010.

The loss of Louisiana's coastal wetlands is a national crisis. The impacted area is home to half of the country's oil refineries and pipelines serving 90 percent of the nation's offshore energy production. Louisiana ships the most cargo in the nation along the Mississippi River and its waterways. Louisiana's wetlands today represent about 40 percent of the wetlands in the continental United States. Louisiana is also home to the most productive fisheries in the continental United States.

This land loss is ongoing and increasing. Without intervention, Louisiana's coastal estuaries will face collapse in the next 50 years, losing up to 4,000 additional square miles of wetlands. Likewise, this land loss will exacerbate flood damage, putting lives at risk and causing damage to billions of dollars of economic assets on an annual basis over the next 50 years.

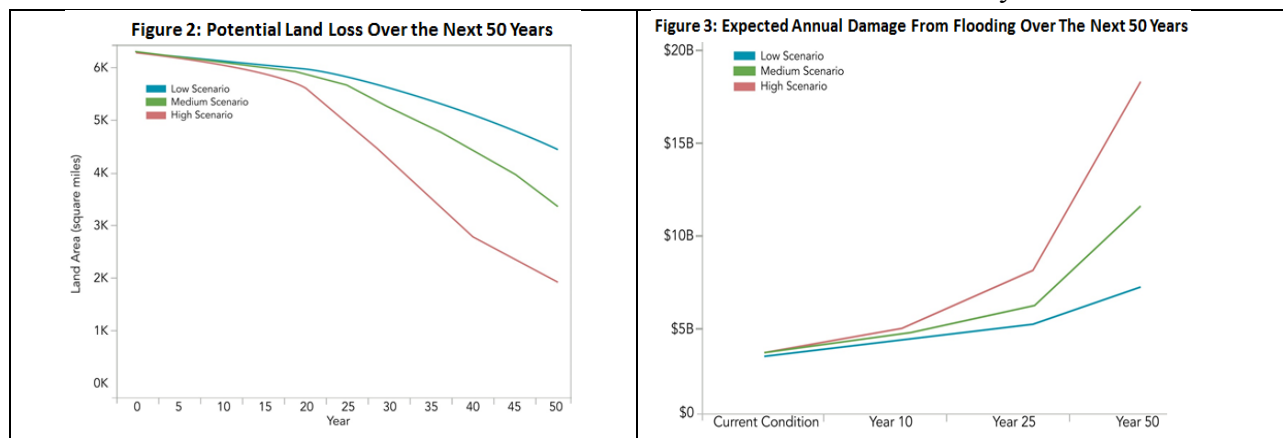


Figure 2 (Top Left): This graph shows the range of total land loss coastal Louisiana could experience over the next 50 years if we take no additional action.

Figure 3 (Top Right): This graph shows the range of direct economic damage from flooding coastal Louisiana could experience over the next 50 years if we take no additional action. Expected annual damage under initial conditions is ~\$2.7 billion. In 50 years, coast wide expected annual damage could reach ~\$6.7 billion under the Low Scenario, \$12 billion under the Medium Scenario, and \$19.9 billion under the High Scenario.

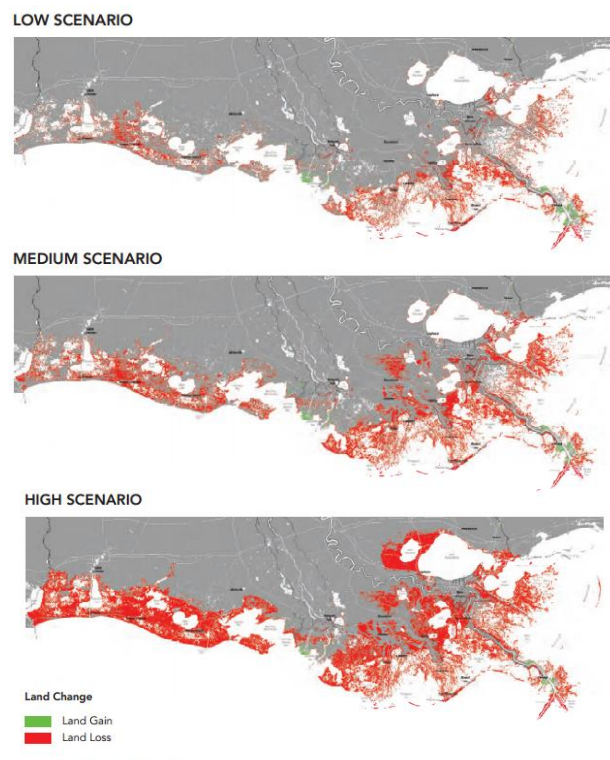


Figure 4: Shown above is land change 50 years from now under the Low, Medium, and High Environmental Scenarios if we take no additional action. Red indicates areas predicted to be lost, and green indicates areas where land would be created.

While there are many causes of this ongoing loss of coastal wetlands, two of the most significant are the construction of the Mississippi River levee system that began in the 1930's and the construction of canals through the wetlands to increase access for hydrocarbon exploration and commercial and recreational boat traffic. The massive Mississippi River levee system has virtually eliminated the introduction of river sediments to Louisiana's estuaries, instead discharging those sediments from the River mouth into the open water of the Gulf of Mexico. Canals have enabled salt water from the Gulf of Mexico to intrude into brackish and freshwater wetlands, resulting in the loss of the vegetation that helps to hold those marsh areas in place.

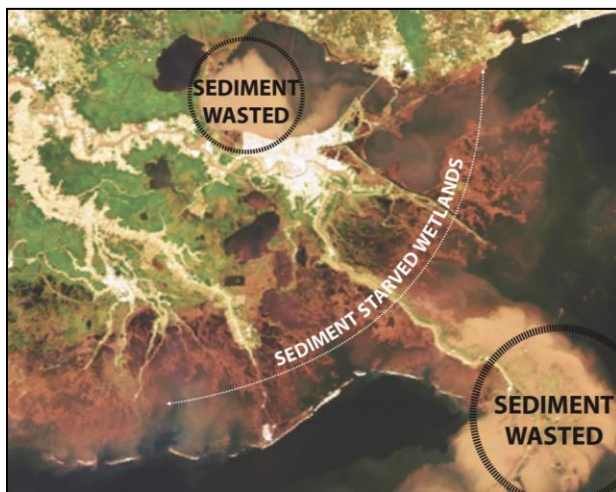


Figure 5: Satellite Photo of the 2011 Floods showing the sediment plume released from the Mississippi River into the Gulf of Mexico and Lake Pontchartrain rather than into the sediment-starved wetlands in Barataria Basin and Breton Sound.

Louisiana's Response: the Coastal Master Plan

Earlier this month, the Louisiana legislature unanimously approved Louisiana's 2017 Coastal Master Plan, the second revision of a 50 year, \$50 billion plan to restore Louisiana's coast and protect the State against hurricane storm surge. Completion of the projects in the plan would add or maintain over 800 square miles of coastal land and wetlands, compared to a future where no projects are built. By 2067 the projects in the plan would reduce flood damage by \$150 billion.

While not all of the projects in the plan are fully funded, we have secured approximately \$11.4 billion for our Coastal Master Plan over the next 15 years. This includes the Gulf of Mexico Energy Security Act of 2006 (GOMESA), a funding stream we are relying on to support our coastal program going forward. In 2006, the people of Louisiana adopted a constitutional amendment that committed all revenues received by Louisiana from federal oil and gas development offshore to the restoration and protection of the Louisiana coast. None of these funding sources are federal tax funds or ratepayer funds.

The Challenge: The Federal Permitting Process

While Louisiana stands ready to commit significant funding to restoring its coastline, the federal permitting process for coastal restoration projects presents major delays in project implementation. The proposed Mid-Barataria Sediment Diversion provides a good example of this challenge.

The scientific community, various environmental organizations, and the citizens of Louisiana agree that the best approach to saving and restoring Louisiana's coastal wetlands is to reintroduce sediment-laden waters from the Mississippi River into Louisiana's sediment starved estuaries. The Mid-Barataria Sediment Diversion is intended to re-establish a connection between the Mississippi River and Barataria Basin, thereby restoring a river/estuarine connection that mimics historic land building processes in the Basin. Barataria Basin was the coastal area most heavily impacted by the *Deepwater Horizon* oil spill, a disaster that significantly exacerbated the already dramatic land loss in that region. The Mid-Barataria Sediment Diversion is a critical step toward sustainably restoring those lost wetlands and protecting tens of thousands of acres of land.

Louisiana is not seeking new funding to construct the Mid-Barataria Sediment Diversion. Rather, the State is working with numerous federal agencies toward using BP settlement funds to construct the diversion. However, even though we have the funding to move these projects forward, we nevertheless have serious concerns that the federal process will slow our projects down.

In January, the White House Federal Permitting Improvement Steering Council approved the Mid-Barataria Sediment Diversion for inclusion on the FAST-41 Dashboard. Louisiana believed that the inclusion of the Mid-Barataria Sediment Diversion on the FAST-41 Dashboard was a significant achievement that would significantly expedite the permitting timeline for the project. Indeed, the State is collaborating well with the federal permitting agencies in the regulatory process. However, the FAST-41 Dashboard Coordinated Project Plan ("CPP") timeline ultimately adopted shows the permits issuing on October 31, 2022, approximately one year longer than expected. During that additional time, critical wetlands will be lost in Barataria Basin, significantly increasing the restoration needs for the Basin. And this assumes that no other natural or man-made disaster intervenes to accelerate such loss. It is unreasonable, unwarranted, and unacceptable for the people of Louisiana to be subjected to a prolonged permitting process for a key state-approved restoration project, which does not use federal funds.

The Solution: Revising the Permitting Approach to Large Scale Restoration Projects

The State of Louisiana supports and values the federal environmental review and permitting processes. However, the State has also learned that certain aspects of those existing processes make it difficult in some cases to quickly obtain regulatory approvals. In practice, these various

regulatory schemes evaluate the impacts of restoration projects using the same approach as they do when evaluating private development projects. They evaluate the impacts against current conditions, focusing on short term impacts, rather than long-term benefits and historic ongoing damages. However, large-scale estuarine restoration projects, like those included in Louisiana's Coastal Master Plan, are precisely designed to change existing conditions, because existing conditions represent an ongoing degradation of the environment. Thus, regulators' focus on reducing short-term environmental impacts to maintain pre-project conditions is inconsistent with the very purpose of many of our coastal restoration efforts.

In addition, each federal agency has jurisdiction over different natural resources, requiring each agency to view a project through the lens of a different resource. This makes it difficult for the Federal Government, as a whole, to evaluate the beneficial impacts of a federal action on a large-scale ecosystem basis, rather than on the scale of individual, siloed natural resources.

Louisiana believes that these concerns can be addressed under the existing regulatory regime. Ideally, when a major ecosystem restoration project involving actions from multiple federal agencies is proposed, front-end coordination through centralized, executive-level leadership could be used to guide and direct the various agencies toward a comprehensive and focused goal of efficient analysis and, ultimately, implementation. However, that efficiency has proven elusive. Louisiana would therefore like to explore potential avenues for modifying the existing regime as it applies to large scale ecological restoration projects.

The State of Louisiana urges the Administration to use all of the tools within its authority to provide executive-level leadership to expedite permitting of Louisiana's critical coastal restoration projects, including issuing an order declaring a national emergency for the Louisiana coast. The State is open to any and all potential solutions, from enhanced collaboration and coordination under existing laws and regulations, to modifying executive agency statutory interpretations that present roadblocks to expedited permitting, to legislative changes to address these critical projects.

State of Louisiana Coastal Protection and Restoration Authority White Paper: Environmental Review and Permitting Process Challenges for Louisiana's Coastal Program

Introduction

As follow up to transmittal to the President of Emergency Proclamation No. 43 JBE 2017 issued by Governor John Bel Edwards on April 18, 2017, declaring a state of crisis and emergency in coastal Louisiana, the purpose of this White Paper is to raise awareness to the highest level of government of the significant challenges faced by the State of Louisiana in its efforts to expedite the implementation of five of our largest scale integrated coastal protection (ICP) infrastructure projects (Priority ICP projects). These Priority ICP projects include: Mid-Barataria Sediment Diversion, Mid-Breton Sediment Diversion, Houma Navigation Canal Lock Complex, Calcasieu Ship Channel Salinity Control Measures, and the River Reintroduction into Maurepas Swamp. (See Appendix A, Priority ICP project fact sheets). These projects have been subjected to rigorous scientific modeling and are located in areas of critical need across Louisiana's coast. While much of the needed funding has been identified, the environmental review and permitting process remains the last significant hurdle to implementing these projects in a timely manner.

The costs of any delay to the implementation of the Priority ICP projects are significant, both in terms of dollars and the protection these projects can provide to Louisiana's citizens, as well as the coastal industries and infrastructure on which the nation relies.¹ Louisiana could lose up to 4,000 square miles of coast if nothing is done²; meanwhile, the cost per acre to rebuild marsh more than doubles over 20 years.³ Through flooding, hurricanes, and man-made disasters, our citizens continue to witness the disappearance of their property, livelihoods, well-being, and safety. Louisiana and the nation cannot afford to wait.

The State of Louisiana has been working diligently to address obstacles to the expeditious implementation of our Priority ICPs at the state and federal levels. Our biggest challenge has been the environmental review and permitting processes, which although based on strong policy,

¹ Louisiana's coast is home to more than 2.5 million people, or more than half of the state's total population. This fragile coastal ecosystem provides protection for infrastructure that services 90% of the Gulf's deepwater oil production, 20% of the nation's annual waterborne commerce, 26% (by weight) of the continental U.S. commercial fisheries landings, and winter habitat for five million migratory waterfowl. Louisiana, which has some of the highest rates of land loss in the world, has already lost at least 1,900 square miles of land over the past 80 years, and predictions show that if we do nothing, we stand to lose twice that amount of land over the next 50 years. Saltwater intrusion and reduced sediment flow from the Mississippi River and its tributaries are two of the primary causes for this land loss. Our Priority ICP projects are designed to specifically address these issues.

² In the lowest sea level rise scenario, the combined subsidence and sea level rise estimate is almost 1 ½ feet by 2067; the moderate scenario estimate is approximately 2 feet by 2067 and the high scenario is approximately 2.7 feet by 2067. See CPRA Coastal Master Plan at Appendix C, Ch. 4 pp. 137 & 143.

³ For the lowest sea level rise scenario, the cost per acre to rebuild marsh increases more than 100%. For the medium scenario, the cost per acre created increases almost 200% in 20 years and more than 600% in 40 years at 2% inflation. See The Water Institute of the Gulf (2016). Future Costs of Marsh Creation Projects in Coastal Louisiana Summary of Methodology. Baton Rouge, LA.

are often implemented inefficiently resulting in significant delay, unpredictable decisions, and limited accountability. We need assistance to streamline these processes and find efficiencies that will allow the State to move ahead now to provide a safer and more resilient coast for our citizens and the nation. Stronger state and federal collaboration will ensure the continued success of Louisiana's coastal program and fully meet the goals of the nation's environmental policy.

Louisiana's Coastal Master Plan and Coastal Program

After the devastation of Hurricanes Katrina and Rita in 2005, the Federal Government agreed to focus attention and money on Louisiana's coastal crisis, provided that the state met certain requirements. Instead of dealing with a myriad of state agencies, the Federal Government required Louisiana to establish one central authority that would represent the state, speak with one clear voice for the future of Louisiana's coast, be accountable for oversight of all activities and funds relative to coastal restoration and hurricane protection, and develop a coordinated plan of action with clear goals and achievable objectives. Louisiana responded by creating the Coastal Protection and Restoration Authority (CPRA) and *Louisiana's Comprehensive Master Plan for a Sustainable Coast* (Coastal Master Plan). (See Appendix B, 2017 Coastal Master Plan).⁴

This model has served Louisiana well and has greatly streamlined our ability to work with the Federal Government. Most importantly, this model has generated our Coastal Master Plan, the State's 50-year, \$50 billion plan to restore and protect our coast which is based on strong science and extensive public input. Nowhere in the nation is there a region that simultaneously offers globally critical habitat and the breadth of economic assets found in coastal Louisiana. Moreover, unlike other areas of the nation that will face similar challenges, we have freshwater and sediment from the Mississippi and Atchafalaya Rivers, which are essential tools in our toolkit that we can leverage in our fight against encroaching seas. We also have a comprehensive plan to implement these tools.

With our Coastal Master Plan, which is one of the biggest coastal restoration plans in the world, we can build or maintain more than 800 square miles of land⁵ and reduce flood damage by \$150 billion over the next 50 years. (See Appendix C for a map of what our Coastal Master Plan delivers). We have done a lot of the work ourselves, but we cannot implement our plan alone. To

⁴ A comprehensive electronic version of the 2017 Coastal Master Plan, with appendices, is available at <http://coastal.la.gov/our-plan/2017-coastal-master-plan/>.

⁵ Between 1932 and 2010, Louisiana's coast lost more than 1,800 square miles of land. See 2017 Coastal Master Plan Executive Summary, p. ES-2. From 2004 through 2008 alone, more than 300 square miles of marshland were lost to Hurricanes Katrina, Rita, Gustav, and Ike. *Id.* As explained in our Coastal Master Plan Brochure, "CPRA's goal is not, and has never been, to rebuild the coast of the 1930s or to maintain our current coastal footprint. We know that is not feasible. The 2017 Coastal Master Plan recommends a diversity of projects to build land and reduce flood risk in order to balance short-term needs with long-term goals. The reality is that this plan will not solve all the challenges facing coastal Louisiana. It will take an unprecedented effort by government, the private sector, and coastal communities to improve the sustainability of our coast. However, Louisiana's people are resilient, and we are up to the challenge." See 2017 Coastal Master Plan Brochure, p. 2, available at http://coastal.la.gov/wp-content/uploads/2016/08/2017-Draft-Master-Plan-Brochure-Final_For-Print.pdf.

accomplish our goals, we need the Federal Government as a partner to get our largest scale projects on the ground. We have the funds and the sediment, but need the Federal Government's help to ease the regulatory burden and shorten the permitting timeframes.

We have secured approximately \$11.4 billion for our Coastal Master Plan for the next 15 years. This includes the Gulf of Mexico Energy Security Act of 2006 (GOMESA), a funding stream we are relying on to support our coastal program going forward. In 2006, the State of Louisiana passed a constitutional amendment to protect the GOMESA funds and ensure that they go towards integrated coastal restoration projects. This also includes more than \$7 billion coming to us over the next 15 years for coastal projects as a result of the *Deepwater Horizon* oil spill settlement. Accordingly, we have largely secured the funds we need to implement our current list of Priority ICP projects.

We also have abundant sediment, the single most important resource needed to rebuild and maintain our wetlands. The Mississippi and Atchafalaya Rivers are key sediment sources, and we have developed methods to capture valuable sediment in sustainable and cost-effective ways. With funding secured and sediment available, our single biggest challenge to implementation of our largest scale projects is man-made – delays from complicated and inefficient environmental review and permitting processes.

The State of Louisiana continuously strives to expedite implementation of its Priority ICP projects at the state level by pursuing legislative updates to state law, implementing new forms of contracting, and maximizing funding for its coastal program. However, the identification and use of federal-level efficiencies is vital for Louisiana to “turn dirt” quickly. Moreover, the scale and amount of ecosystem restoration projects in the Gulf of Mexico region related to the *Deepwater Horizon* oil spill recovery effort over the next 5-15 years will put further strain on federal resources, potentially protracting the permitting and regulatory timeline of the Priority ICPs.

Assumptions and Alternatives within the Environmental and Regulatory Reviews

The environmental legal frameworks and processes within which the State and Federal Government must work to implement our Priority ICP projects have the capability to address complex ecosystem restoration projects with large-scale geographic benefits. For instance, the overall flexibility of the frameworks should make it easier to accomplish the objectives of environmental review and permitting in a timely manner; however, this has proven to be a challenging proposition in practice. Therefore, while we certainly support and value the environmental review and permitting processes, we also appreciate that there are certain aspects of the existing frameworks that make it difficult for our federal partners to maximize efficiencies in some cases.

First, the existing legal frameworks treat environmental restoration projects in much the same manner as industrial development projects. Although Louisiana needs both, there is obvious merit to expediting the review processes and simplifying the review criteria for restoration projects. In fact, the current system has at times made it *easier* to permit those projects that may create adverse environmental consequences than those that restore the damaged environment.⁶

Second, large complex restoration projects often involve numerous federal agencies with divergent missions. Each agency evaluates the restoration project through its particular lens. Consequently, this makes it difficult for the Federal Government to recognize and evaluate the beneficial impacts of restoration projects on a large-scale ecosystem basis. These issues are particularly apparent in the National Environmental Policy Act (NEPA) process. Under NEPA's implementing regulations, the purpose of an Environmental Impact Statement (EIS) is to inform decision makers and the public about the environmental effects of a proposed project and reasonable alternatives that would "avoid or minimize adverse impacts or enhance the quality of the human environment."⁷

The NEPA process supports the laudable goal of ensuring that the environmental impacts of Federal actions are fully taken into account. One mismatch between the standard NEPA process and restoration projects, however, concerns the environmental baseline. The NEPA implementing regulations start from the premise that current conditions are the appropriate baseline against which to evaluate a project's environmental impacts. In the case of Louisiana's ecosystem restoration efforts, our baseline conditions are dynamic and change on a daily basis. More importantly, our goal is to improve and restore conditions as compared to current conditions. Our Priority ICPs are specifically designed to restore environmental conditions over the long-term by restoring natural processes. Therefore, to the extent NEPA is interpreted by regulators to focus on the short-term maintenance of pre-project baseline conditions, this presents challenges to the very purpose of many of our coastal restoration efforts.⁸

Potential for Multiple Environmental Impact Statements

Given the number of different federal approvals that can be required for a single project, it is also possible for a project proponent to be faced with the daunting task of preparing multiple EISs for a single project. Although CPRA is working with all interested Federal agencies to avert this

⁶ That was the case with *Deepwater Horizon*, which benefited from a NEPA categorical exclusion, while CPRA's proposed Mid-Barataria Sediment Diversion Project ("MBSD"), which is designed to restore for the damage caused by the oil spill, has the potential under the current system to become bogged down in years of environmental and regulatory review.

⁷ See 40 C.F.R. § 1502.1.

⁸ Given the language of NEPA and its implementing regulations that a detailed environmental statement should include information about "the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity", the statutory language of NEPA should be able to account for long-term environmental benefits. 42 U.S.C. § 4332(C); 40 C.F.R. § 1502.16. However, in practice, the agencies are often reluctant to fully take into account long-term environmental benefits or the damages being repaired.

outcome regarding the MBSD project, for nearly a year it appeared likely that the Army Corps of Engineers (“Corps”) and the National Oceanic and Atmospheric Administration (“NOAA”) could require separate EISs for the project, even though the adoption of one federal agency’s EIS, or a portion of that EIS, by another federal agency is an efficiency provided by the White House Council on Environmental Quality’s (CEQ) NEPA Regulations.⁹ The potential of multiple EISs highlights the challenges of trying to implement large scale ecosystem restoration projects in a framework that was intended to protect the environment but is implemented in a way that *encourages but does not require* federal agencies, or even different bureaus within a federal agency, to fully coordinate with each other on environmental policy or to take a step back from their own particular areas of focus to look at the larger ecosystem that might be impacted by a given federal action.

Reconciling NEPA Alternatives and the Corps’ 404(b)(1) alternatives analysis

We have also encountered confusion and delay surrounding the different alternative analyses processes mandated by NEPA on the one hand, and the Corps’ 404(b)(1) alternatives requirements on the other. Section 1505.2(b) of NEPA’s implementing regulations requires that, in cases where an EIS has been prepared, the Record of Decision identify all alternatives that were considered, “specifying the alternative or alternatives which were considered to be environmentally preferable.” The environmentally preferable alternative usually means the alternative that causes the least damage to the biological and physical environment, but it can also be interpreted to mean the alternative which best protects, preserves, and enhances historic, cultural, and natural resources.¹⁰ As such, NEPA does not prohibit federal agencies from selecting alternatives with adverse environmental impacts, provided that the EIS identifies potential mitigation for those impacts.

On the other hand, the Clean Water Act 404(b)(1) Guidelines require the Corps to determine practicable alternatives to a proposed action that would minimize adverse environmental effects on the aquatic ecosystem.¹¹ Importantly, the State could face an argument that ***only*** the Least Environmentally Damaging Practicable Alternative (LEDPA) can be permitted under the Clean Water Act, ***even if*** the NEPA alternatives analysis shows that an alternative with significant environmental impacts in comparison to the LEDPA is reasonable, feasible to implement and provides the most long-term ecosystem benefits.

CPRA is concerned that these different mandates could lead to divergent outcomes – one where the NEPA analysis might conclude that a large scale sediment diversion is the preferred alternative because of its overall environmental benefits, and another where a Corps LEDPA

⁹ See 40 C.F.R. § 1507.3 and 40 C.F.R. § 1506.3.

¹⁰ 46 Fed. Reg. 18026 (1981), Memorandum to Agencies: Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, No. 6a., available at: <https://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>; see also 40 C.F.R. § 1505.2(b).

¹¹ See 40 C.F.R. § 230.10(a).

analysis could view dredge-only projects as preferred. That outcome would be disastrous because dredging alone does not compare with large-scale sediment diversions in providing long-term benefits to the ecosystem and Louisiana's coastal communities achieved by reconnecting the natural process between the Mississippi River and the basin.

NEPA Categorical Exclusions

NEPA's implementing regulations also provide for categories of actions "which do not individually or cumulatively have a significant effect on the human environment" and which therefore are excluded from environmental analysis, meaning no Environmental Assessment (EA) or EIS is required.¹² The purpose of categorical exclusions is to expedite the environmental review process for proposals that normally do not require additional analysis and documentation in an EA or EIS. As CEQ has explained, "categorical exclusions are not exemptions or waivers of NEPA review; they are simply one type of NEPA review" that can help reduce unnecessary paperwork and delays.¹³

Categorical exclusions provide efficiencies within the NEPA framework and a way to somewhat tailor the framework so that activities can be exempted from further environmental review. Nevertheless, while particular categorical exclusions do exist for activities that restore or enhance the natural environment, the implementation of categorical exclusions is left to each individual federal agency, or even to different bureaus within one agency,¹⁴ and there are no categorical exclusions that specifically relate to projects that provide long-term significant beneficial impacts on an ecosystem scale such as our Priority ICP projects. These disjointed and uncoordinated efforts can lead to absurd results where, for example, an industrial development project with a high likelihood of environmental harm may ultimately be granted a categorical exclusion by one agency bureau while the ecosystem restoration project needed to restore the very environmental harm created by that industrial development project could potentially be required to undergo multiple sets of environmental analyses, including formal consultation by a different bureau within the same federal agency. This is not an abstract, hypothetical notion. Indeed, this is exactly the scenario we face in the Gulf of Mexico.

On April 6, 2009, approximately one year before the *Deepwater Horizon* oil spill disaster, the Department of Interior (DOI) Minerals Management Service (MMS)¹⁵ reviewed BP's

¹² See 40 C.F.R. § 1508.4.

¹³ CEQ's Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, 75 Fed. Reg. 75628, 75631 (Dec. 6, 2010); 40 C.F.R. §§ 1500.4 & 1500.5.

¹⁴ See 40 C.F.R. § 1507.3.

¹⁵ Following the *Deepwater Horizon* oil spill disaster in 2010 DOI's MMS was reorganized and all operations except revenue collection activities were placed in the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). In fiscal year 2012 BOEMRE was divided into two bureaus – the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environment Enforcement (BSEE).

exploration plan for the Macondo Prospect, the site of the *Deepwater Horizon* oil rig, a categorical exclusion exempting BP from undertaking a more rigorous EA or EIS on its drilling operations. This particular categorical exclusion, referenced in Section 15.4(C)(10) of DOI's Departmental Manual, is specific only to the central and western Gulf of Mexico and excludes "[a]pproval of an offshore lease or unit exploration development/production plan or a Development Operation Coordination Document" from environmental analysis.¹⁶ This example illustrates a situation in which it is easier to permit a Federal activity with a possibility of significant negative environmental impacts versus a project with long term significant beneficial environmental impacts.

Given this, why should Federal agencies not also have categorical exclusions for projects like Louisiana's Priority ICP projects that are specifically designed to provide long-term significant beneficial impacts for the environment? Indeed, this example highlights the need to modernize the current use of categorical exclusions so that they can be applied in a logical and appropriate manner to ecosystem restoration projects.¹⁷

Federal Coordination and Accountability

In light of the hurdles that exist within the current environmental review framework and in an effort to move project implementation forward expeditiously, CPRA has been working to identify every opportunity to ensure that our projects are prioritized at the federal level. In October 2016, the Office of Management and Budget (OMB) and CEQ issued a memorandum to federal agencies titled "Federal Coordination, Permitting and Review of Gulf Coast Ecosystem Restoration Projects"¹⁸, which stresses prioritization of Gulf ecosystem restoration and collaboration due to significant degradation by natural factors, such as Hurricane Katrina, and human-caused factors, such as the 2010 *Deepwater Horizon* oil spill. This joint OMB-CEQ memorandum also emphasizes cooperation among federal agencies and across restoration efforts through the formalization of the Gulf Coast Interagency Environmental Restoration Working Group (GCIERWG).

As a result of both the federal commitment to prioritizing Gulf ecosystem restoration and the State's concern about the time potentially required to move priority projects through the federal regulatory process, Governor Edwards submitted a request to include the state's Priority ICP

¹⁶ DOI Departmental Manual, Part 516: National Environmental Policy Act of 1969, Ch. 15: Managing the NEPA Process – Minerals Management Service (Effective May 27, 2004), available at <https://elips.doi.gov/ELIPS/DocView.aspx?id=1729>.

¹⁷ This is a particularly relevant point because the EIS process for one of CPRA's largest-scale oil spill restoration projects – the Mid-Barataria Sediment Diversion – will require formal consultation to occur under Section 7 of the Endangered Species Act with a different bureau (Fish and Wildlife Service) *within the same federal agency that issued the categorical exclusion to BP for its drilling operations associated with the Deepwater Horizon oil rig*. This situation underscores the need for not only interagency coordination, but also intra-agency coordination in order to expedite environmental review, as well as a need for the Federal Government to be able to consider environmental impacts on an ecosystem basis, rather than on the basis of specific sets of natural resources.

¹⁸ Available at <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2017/m-17-01.pdf>.

projects on the Federal Infrastructure Permitting Dashboard¹⁹ (FAST-41 Dashboard). In January, the White House Federal Permitting Improvement Steering Council approved the Mid-Barataria Sediment Diversion for inclusion on the FAST-41 Dashboard. Then, in March, in response to President Trump's January 24, 2017 Executive Order 13755, "Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects", Governor Edwards submitted all five Priority ICP projects for inclusion on the President's priority infrastructure list.

The inclusion of the Mid-Barataria Sediment Diversion on the FAST-41 Dashboard is a significant achievement that has generated a publicly available regulatory and permitting process timeline for this project to which the Federal Government can be held accountable. However, while we now have a public commitment to a Section 10-404 timeline, this timeline is significantly longer than the State believes necessary.²⁰ Additionally, lengthy and seemingly over-estimated review times extend the permitting schedule dramatically. For example, the FAST-41 Dashboard Coordinated Project Plan timeline shows a 50-month timeframe for completion of the Final EIS, while CPRA has estimated the timeframe to be as short as 24-36 months. Given the strategies for realizing efficiencies by being listed on the FAST-41 Dashboard, the shorter timeframe would seem more practical and realistic.

Even in cases where we have been able to secure a publicly available regulatory and permitting timeline for a large scale integrated coastal protection project, as a practical matter there may exist various ways for this timeline to slip, few binding requirements on the relevant federal agencies to meet timelines, and a lack of strong incentives within the environmental review framework to engage in comprehensive front-end coordination. This problem is not unique to the MBSD, which is currently Louisiana's only Priority ICP project listed as a FAST-41 infrastructure project. The State fully anticipates facing the same hurdles with our other large scale ecosystem restoration projects, most notably the other four Priority ICP projects. Ideally, when a major ecosystem restoration project involving multiple federal agencies is proposed, front-end coordination through centralized, executive-level leadership would guide and direct the various agencies toward a comprehensive and focused goal of efficient analysis and, ultimately, implementation.

¹⁹ On December 4, 2015, the Fixing America's Surface Transportation (FAST) Act was signed into law. Title 41 of the FAST Act (FAST-41) (42 U.S.C. § 4370m) was designed to improve the timeliness, predictability, and transparency of the Federal environmental review and authorization process for covered infrastructure projects.

²⁰ CEQ's NEPA regulations call for lead agencies to "[r]equest the participation of each cooperating agency in the NEPA process at the earliest possible time" and to "[i]ntegrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively." Despite this, the regulations do not provide any enforceable mechanism to require lead agencies to take these steps. 40 C.F.R. §§ 1501.6(a)(1) and 1500.2(c). Therefore there are often cases, such as with the Mid-Barataria Sediment Diversion, where concurrent reviews and full front-end coordination may not occur in practice.

Potential Organizational Avenues for Expediting Regulatory and Permitting Processes

There are also various organizational avenues through which the Federal Government could further streamline its regulatory and permitting processes and which would be well within the original intent of NEPA. As discussed earlier, post-2005, the State of Louisiana established CPRA as the single state entity with the authority to articulate a clear statement of priorities and to focus development and implementation efforts to achieve comprehensive coastal protection for Louisiana. This model has created efficiencies in terms of our ability to work with the Federal Government and to integrate coastal restoration and protection efforts into one agency that can address integrated coastal protection efforts at an ecosystem level. This framework has also streamlined the State's ability to implement our priority coastal projects more quickly, meaning that our coast is more resilient and our citizens are safer today than ever before.

Similarly, NEPA's Section 102 policy statement calls for an integrated and coordinated effort and provides that all agencies of the Federal Government shall "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment".²¹ Consequently, one way the Federal Government could seek to ensure that stated NEPA policy is fulfilled would be to streamline some of its own efforts and create a "one stop shop" for its regulatory and permitting efforts for large scale ecosystem restoration projects. This could be done either on a regional Gulf Coast basis, or even targeted to other coastal vulnerability hot spots such as the Outer Banks of North Carolina, Virginia Beach, the Jersey Shoreline, New York City, and Miami, that are facing some of the same issues as the Gulf Coast region.

If done on a regional scale, one option could be to use the Gulf Coast Ecosystem Restoration Council ("RESTORE Council")²², which is an existing federal agency, as a platform for coordinating regulatory and permitting efforts relative to Gulf Coast restoration, or even more specifically for *Deepwater Horizon* oil spill restoration projects, including not only those funded with RESTORE dollars, but also Natural Resource Damage Assessment and National Fish and Wildlife Federation grant funds. Each of the relevant regulatory and permitting agencies, as well as the five Gulf Coast States are represented on the RESTORE Council, so the agency is well-positioned to serve in such a role. The RESTORE Council's 2016 Comprehensive Plan Update also contains numerous commitments to collaboration and coordination among its members, further underscoring the agency's unique position in the Federal Government to serve as a platform for meaningful regulatory and permitting reform. Additionally, the RESTORE Council

²¹ See 42 U.S.C. § 4332(A).

²² The RESTORE Council was created pursuant to the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies (RESTORE) of the Gulf Coast States Act of 2012 as a result of the *Deepwater Horizon* oil spill.

is working with the Gulf Coast Interagency Environmental Restoration Work Group (GCIERWG) to identify regulatory efficiencies for Gulf Coast ecosystem restoration projects; however neither entity currently has the authority to require implementation of regulatory efficiencies.

Another option could be to set up a co-located team in the Gulf to work only on regional Gulf environmental restoration projects. This co-located team could be responsible for activities such as coordinating within and among regulatory agencies, resolving regulatory issues pertaining to proposed restoration projects, developing regulatory tools to expedite coastal restoration, and drafting and/or reviewing environmental compliance documentation. Members of the team would also need to be able to effectively represent their agencies with minimal oversight, and to quickly coordinate with their agencies to identify lead contacts for specific issues and receive management feedback and direction from their respective headquarters.

This concept of a co-located team is not without precedent. In 2005, the greater New Orleans area was in a state of emergency after Hurricane Katrina caused widespread flooding. In order to respond to this emergency, the Corps' New Orleans District designed a unique alternative arrangement in cooperation with CEQ to achieve NEPA compliance using an expedited process pursuant to 40 C.F.R. § 1506.11, so that the repair and rebuilding of levees could be completed as quickly as possible given the emergency conditions in New Orleans.²³ This included a co-located team hosted by the New Orleans District including staff from multiple relevant federal agencies to help advance coastal restoration and assist with other activities. This co-located team helped develop the Louisiana Coastal Area Ecosystem Restoration Plan and helped expedite the regulatory review of the post-Katrina upgrades of the Greater New Orleans Hurricane Storm Damage Risk Reduction System (HSDRRS).

In either case, the designation of a “parent organization” or a single federal entity/team to be ultimately responsible for streamlining the regulatory process for Gulf Coast ecosystem restoration projects would represent significant progress in terms of reducing federal bureaucracy while also emphasizing Gulf Coast ecosystem restoration as a national priority. This designation would also be entirely consistent with NEPA’s original intent. Of course, regardless of whether this effort is undertaken on a regional or more national scale, in order to have the authority to implement meaningful federal change with respect to how environmental review and permitting processes are carried out, this entity or agency would need to be empowered to conduct certain

²³ Public Notice of Adoption of Alternative Arrangements under the National Environmental Policy Act for New Orleans Hurricane and Storm Damage Reduction System. 72 Fed. Reg. 11337 (March 13, 2007). *See also* U.S. Army Corps of Engineers New Orleans District “NEPA Compliance and Hurricane Rebuilding”, available at <http://www.mvn.usace.army.mil/Missions/Environmental/NEPA-Compliance-Rebuilding/>; CEQ’s Guidance on Emergencies and the National Environmental Policy Act (2016); and Memorandum from Nancy H. Sutley, Chair CEQ to Heads of Federal Departments and Agencies Regarding Emergencies and the National Environmental Policy Act (May 12, 2010) (discussing NEPA environmental review of actions proposed in response to an emergency situation, such as the ongoing Federal response to the oil spill in the Gulf of Mexico).

activities. For example, the entity should be empowered to: direct agencies facing multiple federal decisions on a particular project to use/adopt a single NEPA document as appropriate, require and incentivize agencies to complete as much permitting and consultation analyses as possible on the front-end, and work with CEQ to adapt the regulatory and permitting process to provide uniform NEPA guidance to federal agencies to ensure that ecosystem restoration projects with long-term beneficial environmental impacts are evaluated on the basis of their overall long-term impacts in a coordinated manner so that these projects can be implemented as quickly or more efficiently than industrial development projects with negative environmental impacts.

Louisiana's Efforts to Expedite Large Scale Integrated Coastal Protection Projects

The State of Louisiana has also been working diligently to identify ways it can act to expedite the implementation of its Priority ICP projects at the state level. In 2015 and 2016, CPRA spent some \$30 million on engineering and design and \$373 million on construction. Between 2017 and 2020, CPRA plans to spend an estimated \$350 million on engineering and design and \$2.8 billion on construction. While the vast majority of the *Deepwater Horizon* settlement funds will be paid out in installments over a 15 year period, the State of Louisiana is making every effort to cash flow the large scale projects so that they will be built sooner rather than later. Nonetheless, the regulatory challenges have the potential to eliminate the benefits of such efforts in expediting large scale restoration.

For example, CPRA is currently pursuing multiple ways to cash flow projects in advance of settlement payments. As one example, the Louisiana Legislature passed legislation on June 7, 2017 to authorize the use of outcome-based performance-based contracting. This is an alternative, full delivery model, under which the State would issue a single contract to deliver an ecosystem restoration or marsh creation project. Under this project delivery model, the State's contractor would be responsible for delivering all aspects of the project, including financing, acquisition of land rights and permits, engineering and design, construction, and monitoring and maintenance of the project. Unlike other more traditional project delivery models, including design build, payment for these contracts is based on successful performance of the completed project, through a series of performance objectives and criteria that must be successfully met in order for payments to be released to the contractor. Outcome-based performance contracting provides several benefits to the State, including opportunities for creative and innovative financing, better shared risks with the contractor since all parties are invested in a project's success, and better value in being able to deliver more projects faster, which has ecological as well as financial benefits for Louisiana's coast. Additionally, CPRA has been working to identify ways to leverage oil spill funding streams with other funding streams, such as GOMESA, to advance construction of our Priority ICP projects.

The State has also taken unprecedented steps to elevate our coastal crisis and the associated federal environmental review and permitting to the national stage. On April 18, 2017, Governor

Edwards issued Emergency Proclamation No. 43 JBE 2017, declaring a state of crisis and emergency in coastal Louisiana as defined by La. R.S. 49:214.2(4). This Emergency Declaration not only empowers Louisiana state agencies to expedite implementation of integrated coastal protection, but also requests the President and Congress to recognize the national significance of Louisiana's coast and to use all available means to expedite all federal permitting and environmental review, including creation of waivers, categorical exemptions, alternative measures or expedited processes, and assure cooperation and collaboration between federal, state, and local agencies and entities to clear regulatory hurdles. Governor Edwards' Emergency Declaration, in combination with a similar declaration by the President, would position the State well for the possibility of setting up an alternative arrangement for NEPA review, similar to what was done post-Katrina for the HSDRRS, to achieve NEPA compliance in an expedited process for Gulf Coast ecosystem restoration projects. Therefore, consideration of a Presidential declaration of an emergency for the Louisiana coast would be beneficial.

As discussed earlier, having the money and the projects today would mean key project savings over time and enhanced protection for our citizens sooner rather than later. This is an opportunity we cannot afford to miss.

Conclusion

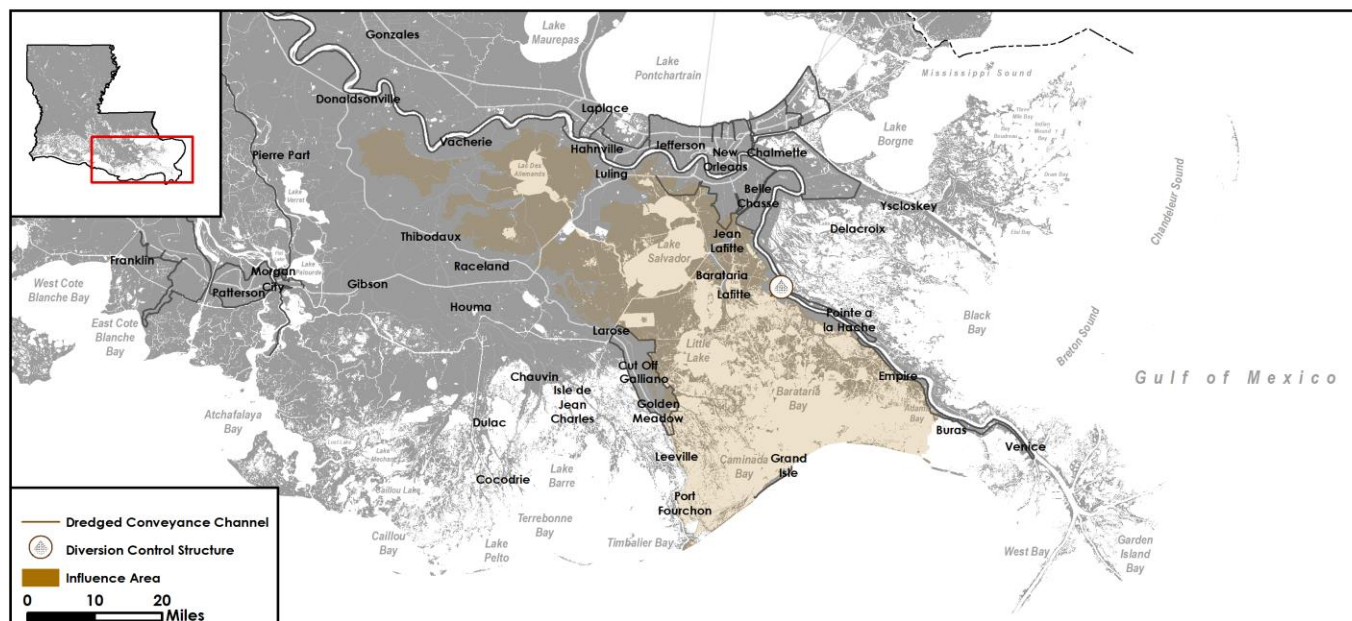
Current environmental review and regulatory processes meant to protect the environment are delaying the State of Louisiana from implementing large-scale integrated coastal protection projects. Coastal Louisiana is in an existential crisis and needless delay is not an option. We must work to identify all available efficiencies so that project implementation can move forward expeditiously. If the laws and processes that are intended to protect the environment ultimately operate as tools to delay or prevent implementation of the State's coastal restoration and protection projects, the resources we are trying to protect and restore will soon disappear.

The State of Louisiana is committed to using every tool in its toolbox to ensure that its Priority ICP projects are implemented quickly and efficiently. The State anticipates that it will seek implementation of up to five complex coastal restoration projects over the next few years. If efficiencies are not identified and implemented immediately, the simultaneous submission of these projects on top of the Federal agencies' existing workloads will exceed existing federal resources. We believe there are a range of measures that could be taken at the Federal level, from process streamlining to Federal reorganization, that could simplify the environmental review and regulatory process and generate a more rational way to proceed with project implementation that would more fully accomplish the goals and objectives of this country's national environmental policy.

Appendix A: Priority ICP Project Fact Sheets

Project ID: 002.DI.102

Project ID: 002.DI.102



Sediment diversion into Mid-Barataria near Myrtle Grove to build and maintain land, 75,000 cfs capacity (modeled at 5,000 cfs for Mississippi River flows below 200,000 cfs; variable flows to capacity between 200,000 and 1,250,000 cfs calculated using a linear function; diverts exactly 75,000 cfs when flows are at 1,250,000 cfs).

Local Sub-basin Basin **Regional**

Plaquemines Parish

Planning, Engineering, and Design is estimated to take 5 years.
Construction is estimated to take 3 years.

	<i>Estimated Cost</i>
Planning/Engineering & Design	\$39,400,000
Construction	\$821,400,000
Operations & Maintenance	\$138,000,000
Total	\$998,800,000

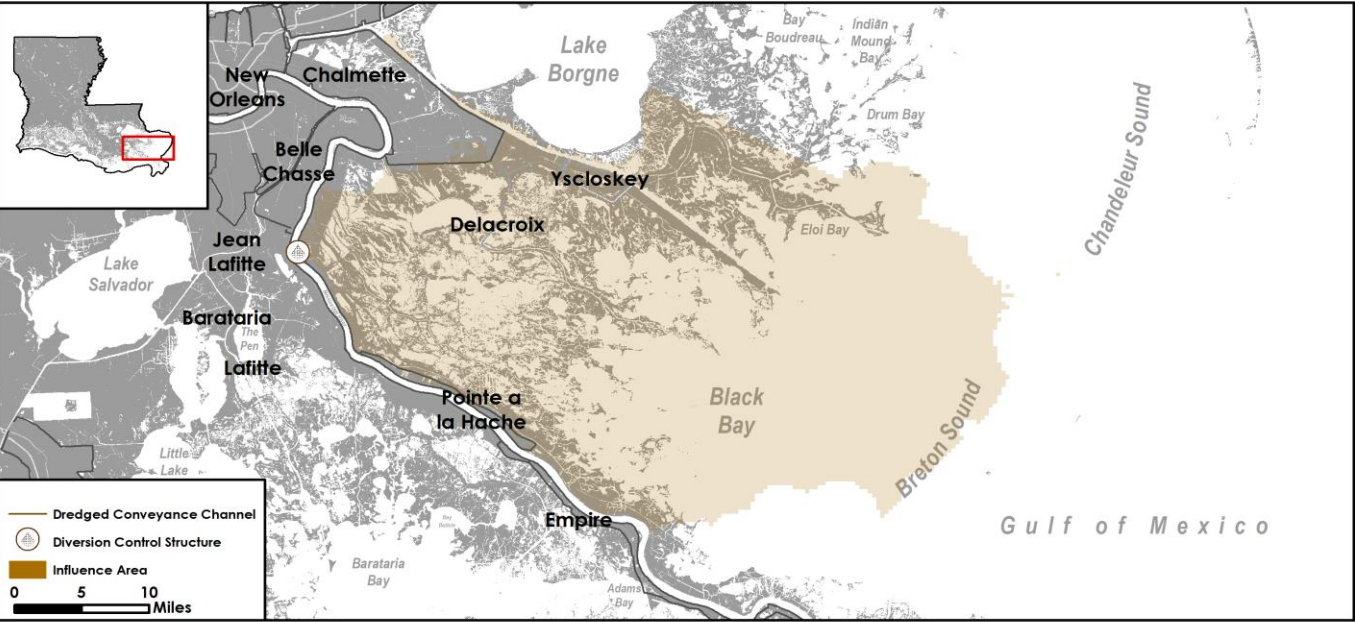
Near Term (Year 20)	8,041 acres
Long Term (Year 50)	29,686 acres

**Based on the most recent project-specific Delft-3D modeling analysis.*

Mid-Breton Sound Diversion

Sediment Diversion

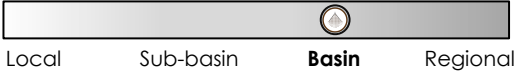
Project ID: 001.DI.104



Description

Sediment diversion into Mid-Breton Sound in the vicinity of White's Ditch to build and maintain land, 35,000 cfs capacity (modeled at 35,000 cfs when the Mississippi River flow equals 1,000,000 cfs; flow rate calculated using a linear function for river flow from 200,000 cfs to 1,000,000 cfs; flows variable above 1,000,000 cfs; 5,000 cfs minimum flow maintained when Mississippi River flow is below 200,000 cfs).

Scale of Influence



Project Location

Plaquemines Parish

Project Duration

Planning, Engineering, and Design is estimated to take 4 years.
Construction is estimated to take 2 years.

Project Cost Estimate

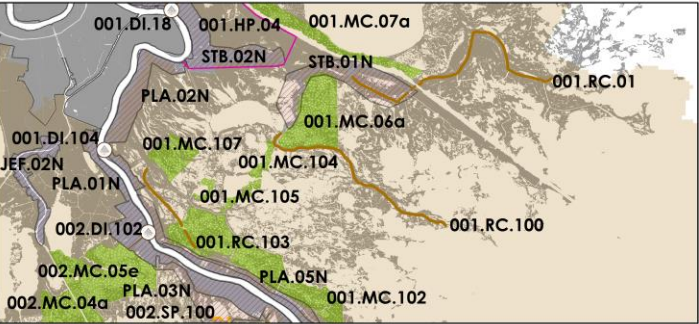
	Estimated Cost
Planning/Engineering & Design	\$30,500,000
Construction	\$381,400,000
Operations & Maintenance	\$67,100,000
Total	\$479,000,000

Land Area Built or Maintained*

Near Term (Year 20)	5,066 acres
Long Term (Year 50)	15,831 acres

*Based on the most recent project-specific Delft-3D modeling analysis.

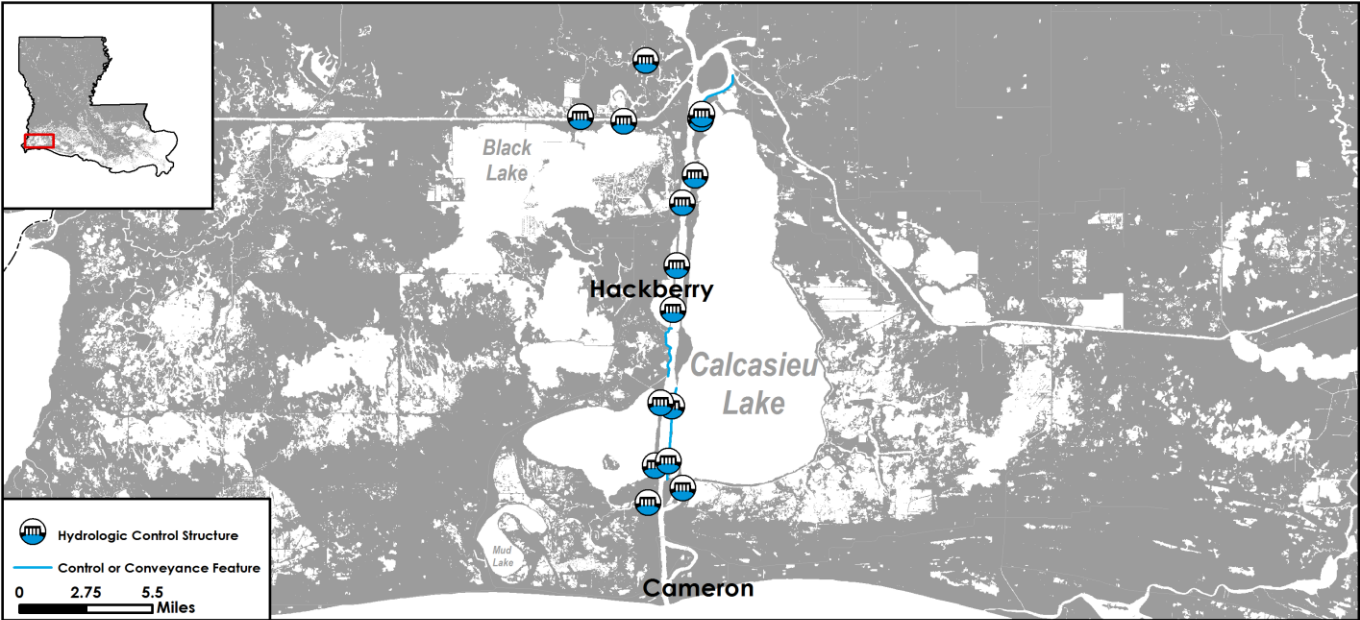
Other Nearby Projects in the Master Plan



Calcasieu Ship Channel Salinity Control Measures

Hydrologic Restoration

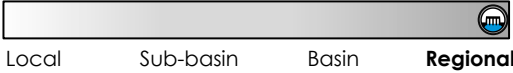
Project ID: 004.HR.06



Description

Construction of sill and wall structures in West Pass, East Pass, Lake Wall, Long Point Lake, Nine Mile Cut, Dugas Cut 1, Dugas Cut 2, Texaco Cut, Turner's Bay, Salt Ditch, Drainage Canal, and Choupique Bayou to prevent saltwater intrusion into the Calcasieu Ship Channel.

Scale of Influence



Project Location

Calcasieu Parish; Cameron Parish

Project Duration

Planning, Engineering, and Design is estimated to take 2 years.
Construction is estimated to take 1 year.

Project Cost Estimate

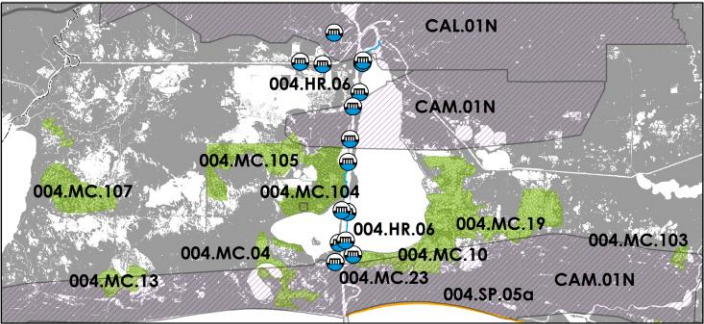
	Estimated Cost
Planning/Engineering & Design	\$18,800,000
Construction	\$234,700,000
Operations & Maintenance	\$8,800,000
Total	\$262,300,000

Land Area Built or Maintained*

Near Term (Year 20)	-1,458 acres
Long Term (Year 50)	12,685 acres

*Based on the most recent project-specific modeling analysis.

Other Nearby Projects in the Master Plan

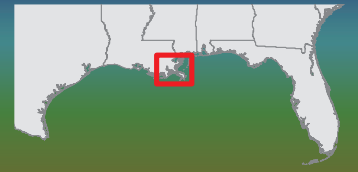




Gulf Coast
Ecosystem
Restoration
Council

Mississippi River Delta Watershed

Mississippi River Reintroduction into the Maurepas Swamp
(LA_RESTORE_005_000_Cat1)



Project Name: Mississippi River Reintroduction into Maurepas Swamp - Planning

Cost: Category 1: \$14,190,000

Responsible Council Member: State of Louisiana

Project Details: The Maurepas Swamp is one of the largest areas of forested wetlands along the Gulf Coast, encompassing approximately 57,000 hectares (approximately 140,850 acres) of bald cypress-tupelo swamp west of Lake Pontchartrain. Historically, the swamp received sediment and nutrient inputs from the Mississippi River during seasonal overbank flooding; however, reduced freshwater inflow and sediment input has caused land loss within the sub-basin and resulted in the periodic introduction of brackish water from Lake Pontchartrain into Lake Maurepas and the swamp.

Activities: The project would include engineering and design of the Mississippi River Reintroduction into Maurepas Swamp project, leading to construction-ready plans and specifications and the development of an adaptive management plan to guide decision-making for future project maintenance activities. If implemented in the future, the project would consist of the following major components designed to divert fresh water from the river into the Maurepas Swamp: a gated river intake structure; a box culvert through the levee; a sedimentation basin; a conveyance channel; and a drainage pump station. The maximum design flow is 2,000 cubic feet per second.

Environmental Benefits: If implemented in the future, in addition to restoring and enhancing a total of 18,300 hectares (approximately 45,220 acres) of forested wetland, the project would provide a host of other benefits to wildlife that are dependent on cypress-tupelo swamps. Increased primary productivity and water quality would increase food resources and subsequently increase secondary productivity of freshwater fish. Wading birds, migratory birds, bald eagles, alligators and other wildlife species would also benefit. The project could maintain stands of mature bald cypress and other woody vegetation, which would ensure that suitable nesting areas are available for numerous bird species. Bald eagles, for example, predominantly use bald cypress when nesting in Louisiana, and the Maurepas Swamp supports a large number of nests.

Duration: The timeline for this planning project is estimated to be three years for permitting and land rights. If implemented in the future, project construction would take four years.

More information on this activity can be found in Appendix D. Mississippi River Delta;

Unique Identifier: LA_RESTORE_005_000_Cat1.



Gulf Coast Ecosystem Restoration Council

Mississippi River Delta

Mississippi River Reintroduction into Maurepas Swamp

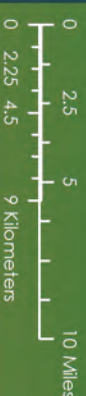
 Wetlands Restoration

Cost: Category 1: \$14,190,000

Sponsor: State of Louisiana

Project Status: Planning

Purpose: This project would include the engineering and design for the restoration and enhancement of the Maurepas Swamp – one of the largest areas of forested wetlands along the Gulf Coast – through the reintroduction of seasonal Mississippi River inflow.



Map Date: August 08, 2015

HOUMA NAVIGATION CANAL LOCK COMPLEX

Purpose

The Houma Navigation Canal Lock Complex is a hydrologic project that will provide several critical purposes in the Terrebonne Basin:

- One purpose of the project is to reduce salt water intrusion and distribute freshwater within the Terrebonne Basin.
- The project will also provide storm surge protection as a part of the Morganza to Gulf system.
- The structure will consist of a lock for everyday traffic and a wider flood gate for larger vessels as needed. The flood gate will have the ability to be opened or closed as needed to maximize freshwater distribution within the basin.

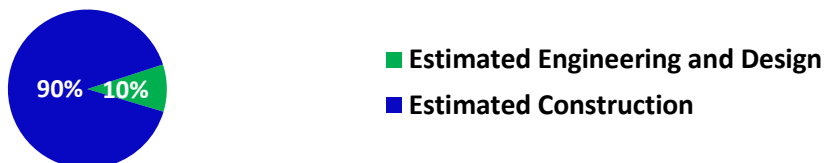
Ecosystem Outcomes and Economic Impacts

- The Terrebonne Basin is experiencing one of the highest rates of land loss in coastal Louisiana. By working synergistically with the TE-110 project this project will help to restore and protect this fragile ecosystem.
- This project will help to restore historic salinity regimes in the mid-Terrebonne basin.
- Operations to control freshwater distribution will be a key part of the project for the Increase Atchafalaya Flow to Terrebonne (TE-110) project.
- The structure is a part of the Morganza to the Gulf of Mexico (TE-64) hurricane protection system.
- Construction and Operation of the structure will be key to the success of the project purposes.

Costs¹

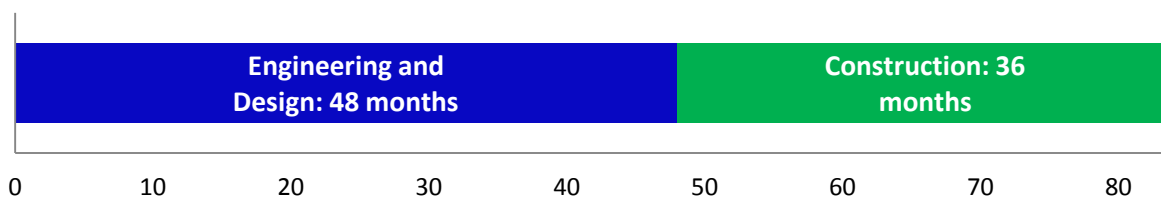
- Estimated Engineering and Design: \$34 million
- Estimated Construction²: \$350 million

1. estimate based off of alternative 3 from URS Optimization Study
2. construction costs do not include construction admin and inspection

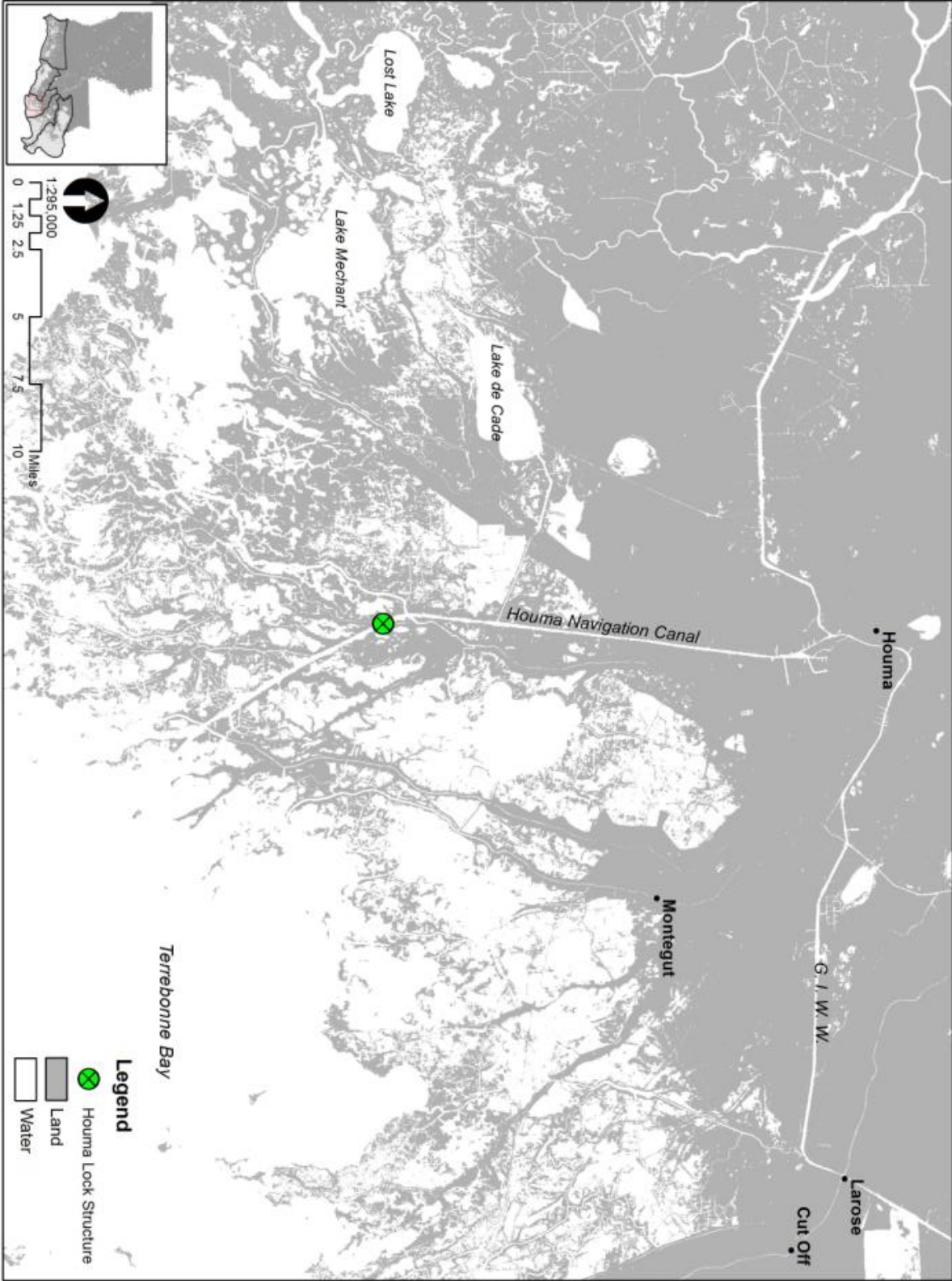


Implementation Timeline

Engineering and Design: Spring 2016 through spring 2019
Construction: Winter 2019 through winter 2022



Houma Navigation Canal Lock Complex



Appendix B: [2017 Coastal Master Plan](#)

Appendix C: Coastal Master Plan Results Maps

Below is a map of what Louisiana's Coastal Master Plan delivers:

