

# Appendix G3 – Environmental Compliance Overview

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Table 1. Potential Planning Strategies (Louisiana’s 2012 Coastal Master Plan)

**Please note this is a working-draft document currently undergoing review and revision. The final version will be posted in March 2012 along with the final version of the 2012 Coastal Master Plan**

## 1.1 Introduction

To ensure progress in implementing projects identified in the 2012 Coastal Master Plan, an environmental compliance process is needed for additional studies that support project development and future Congressional authorizations. Specifically, compliance with the National Environmental Policy Act (NEPA) is required for Federal actions such as permitting, licensing and funding and can be accomplished in several ways, as described in this document. Generally, federal agencies can exclude simple projects with minimal impacts on the environment under NEPA as Categorical Exclusions (CE). Projects that have a more-than-minimal environmental impact must prepare a more detailed Environmental Assessment (EA) if there is uncertainty over whether or not the impacts are significant. An Environmental Impact Statement (EIS) would be needed if the impacts are known to be significant (whether negative or positive). This section describes alternatives that could be used to implement projects identified in the 2012 Coastal Master Plan.

The options presented in this section are intended to establish a collaborative planning environment that offers a means to integrate disparate initiatives into a holistic, comprehensive approach. This approach is one that addresses all Federal, State, and local needs/interests. Further, given the urgency of the issues along the coast and critical ongoing efforts, the study duration must be substantially shorter than the time routinely taken by traditional studies. Stakeholders, resource agencies, partners and the public must maintain meaningful engagement throughout the process.

Solutions and any strategies envisioned and/or implemented should best fit the overall needs of the restoration and preservation of the coast and not be biased towards any particular agency or Federal projects. Moreover, these sentiments are increasingly tempered by the “reality” of tight Federal fiscal constraints.

Several critical factors must be embodied in the execution of both near-term and longer-term efforts. The following alternatives described in this document, and further defined in Table 1, could be utilized to implement the projects identified in the 2012 Coastal Master Plan.

## 1.2 Alternative Arrangements

Based on the need to react during emergency situations, the Council on Environmental Quality (CEQ) established provisions within the NEPA regulations that allow for Federal emergency actions to proceed without the inherent delay of a traditional EIS process. In such cases, the NEPA process follows project initiation. These provisions are referred to as Alternative Arrangements (AA). The involvement of CEQ and the lead regulatory agency may result in some conflicting approaches which would need to be resolved.

The CEQ regulations at 40 C.F.R. Section 1506.11 provide for Alternative Arrangements to comply with NEPA in emergency situations in which insufficient time is available to prepare an EIS. Alternative Arrangements can be approved by CEQ, upon the request of a lead agency, when the Federal agency action meets the following criteria:

- Necessary to protect human health or safety, or to protect natural resources, or both

- Results in significant environmental impacts

*Advantages:*

- Expedited process (according to the New Orleans Corps District, typical timeframe of 6 months for compliance with Alternative Arrangement #40, “New Orleans Flood Protection”);
- Increasing certainty of meeting the target date for project construction; and
- Ability to tailor the Alternative Arrangements to meet the unique needs and characteristics of the project.

*Disadvantages:*

- Most Alternative Arrangements granted for discrete actions of limited geographic/physical scope or limited duration;
- No ecosystem restoration programs have received Alternative Arrangements to date;
- Difficult to demonstrate emergency for projects to be implemented over time;
- Many environmental requirements must be complied with outside the traditional umbrella of NEPA, so there may be a less clear process for regular coordination; and
- Individual projects with Alternative Arrangements still must obtain other permits and approvals (e.g., Endangered Species Act consultations, National Historic Preservation Act) as in a normal environmental process.

### 1.3 Environmental Impact Statement

An Environmental Impact Statement (EIS) must be developed for any federal action that would result in “significant” impact(s) based on context and intensity (i.e., severity of impact (beneficial or adverse), is highly controversial, has cumulative impacts, or threatens to violate laws to protect the environment). A “federal action” may include funding, approval, permit (e.g., application for a US Army Corps of Engineers (USACE) Section 404 permit would trigger the preparation of a NEPA compliance document). CEQ guidance suggests that under NEPA regulations large complex projects require about 12 months for the completion of the entire EIS process. CEQ also recognizes that some projects will entail difficult long-term planning and/or the acquisition of certain data that of necessity will require more time for the preparation of the EIS. When USACE New Orleans District is the lead Federal agency, the typical timeframe for an EIS is 2-5 years.

*Advantages:*

- Individual projects will have addressed one of the main requirements to be approved for construction; and
- USACE District Commander would be authorized to enter into agreements with regional offices or other agencies that may serve to reduce review time for USACE Environmental Impact Statements.

*Disadvantages:*

- The collective effort involved to develop individual NEPA Environmental Impact Statements is more extensive and lengthy if compared to the collective effort needed for those same projects under a Programmatic Environmental Impact Statement.

## 1.4 Programmatic Environmental Impact Statement

More and more agencies are using or considering tiering to integrate planning, NEPA, and public participation and interagency coordination. CEQ regulations authorize tiering of EISs when determined to be appropriate by a Federal agency. The initial PEIS must present sufficient information regarding overall impacts of the proposed action so that the decision-makers can make a reasoned judgment on the merits of the action at the present stage of planning or development. Issues already decided or not ready for decision need not be acted on at this stage.

The initially broad Programmatic Environmental Impact Statement (PEIS) should identify data gaps and discuss future plans to supplement the data and prepare and circulate site specific EISs (or EAs if appropriate). The PEIS should identify actions (of a similar nature) within a geographic area and the potential environmental impacts if those actions are implemented. The typical timeframe for a PEIS with the Corps as the lead Federal agency is 3-5 years with subsequent EISs taking 2-5 years and EAs 1-2 years.

*Advantages:*

- Allows lead agency to focus on region-wide issues (reduces time required for agency approval on tiered NEPA documents);
- Identifies which actions may be implemented immediately, as well as which require further environmental analysis;
- Front-loads common information so that it is not duplicated as it would be for individual EISs;
- PEISs do not expire as long as the data are current; and
- Data in PEIS can be incorporated by reference into tiered NEPA documents.

*Disadvantages:*

- Labor intensive; tends to front-load evaluation process;
- Due to broad-scale analyses, environmental effects and mitigation would be required in subsequent tiered levels of documentation; therefore, no clear process for regular coordination; and
- Significant new circumstances or information relevant to environmental concerns bearing on the proposed action require a supplement to the PEIS.

Again, according to the Corps, tiered EIS documents require up to 5 years subsequent to a PEIS that takes 3-5 years of development (total up to 10 years)

## 1.5 Programmatic Permits-USACE 404/10 Programmatic General Permit

A Programmatic General Permit is designed to simplify the evaluation process, provide equivalent or enhanced environmental protection, and reduce unnecessary duplicative project evaluation. The Programmatic General Permit streamlines the process to authorize activities that result in minimal adverse impacts within the boundaries of the Louisiana Coastal Zone. Currently there is a Programmatic General Permit within the boundaries of the New Orleans District Corps of Engineers that is specific to the common types of minimal impact activities in the Louisiana Coastal Zone. Under Louisiana's Programmatic General Permit, a permit applicant would apply to the Office of Coastal Management (OCM), Louisiana Department of Natural Resources who would forward the application to the USACE, rather than applying to both agencies for permits for the same work. Louisiana Department of Environmental Quality would issue the Section 401 water quality certification.

Louisiana's Programmatic General Permit has two categories: Category 1 must have impacts less than 0.5 acre on special aquatic sites; and Category 2 includes non-oil and gas activities that cannot exceed two acres of tidal or three acres of non-tidal special aquatic sites; and oil and gas activities that cannot exceed 3.5 acres of tidal or non-tidal special aquatic sites. However, in order to streamline its use for wetland restoration and creation activities, re-issuance of the Programmatic General Permit is pending and will exclude the size threshold for such projects; it is expected to be re-issued in early 2012. The typical timeframe to develop Programmatic General Permit applications is 3-6 months and to receive approval is 35 days.

### *Advantages:*

- Offers greater flexibility for pertinent activities within Louisiana's coastal zone;
- Regional permit reduces duplication of regulatory control by having one general permit vehicle for common activities within Louisiana's coastal zone; and
- Regional or coast wide comprehensive Section 404 wetlands plan can be developed to offset wetlands mitigation needed for other projects.

### *Disadvantages:*

- The Programmatic General Permit is subject to periodic formal review by USACE and OCM in coordination with USEPA, US Fish and Wildlife Service, National Marine Fisheries Service, and Louisiana Department of Wildlife and Fisheries; and
- Permittee under a Programmatic General Permit would continue to be subject to terms of a Federal permit.

## 1.6 Watershed Planning Approach

Historically, the USACE's approach to water resources planning has been to focus problem solving and decision-making on specific types of water resources problems and at specific locations. However, in more recent years, the USACE has emphasized the use of a watershed approach to solving water resources problems; in 1999 the USACE issued Policy Guidance Letter (#61). It

describes the importance of managing all types of water resource activities in a watershed context. Further, the Civil Works Strategic Plan (March 2004) emphasizes the increased application of watershed principles. USACE Engineering Circular 1105-2-411, issued in 2010, describes the Watershed Plans process in detail.

Watershed planning accommodates multi-objective and multi-purpose planning and investigation, and assures the use of water resources in a sustainable manner (USACE, 1999). Watershed planning does not limit studies to just the USACE'S traditional mission interests; the watershed planning approach goes beyond project planning for specific USACE projects towards more collaborative and comprehensive evaluations and analysis for the watershed in question. Justification of potential new USACE projects is not the primary consideration. As a result of this newer approach, in conducting watershed planning the New Orleans District can use its planning capability in a broader sense to continue meeting the entire needs of the coast.

Funding beyond current New Orleans District levels is possible for a watershed study that is fully supported by other Federal agencies, the State of Louisiana, and other local agencies and stakeholders who are fully engaged in the study. This watershed study would be undertaken by a large number of Federal, state, local governments, and various other partners and stakeholders. The typical timeframe for development of a watershed plan is 3-5 years.

*Advantages:*

- Uses an integrated, systems-type approach to understand the connection between natural and man-made systems;
- Analyzes water resource problems on a larger geographic scale;
- Allows USACE to work collaboratively with affected entities;
- Uses broader interdisciplinary teams; and
- Applies adaptive management.

*Disadvantages:*

- Beneficial for identification of long-term projects, but may not result in expedited project authorization or implementation;
- Multiple watershed plans might be required; and
- Study only; not an actionable document.

## **1.7 Special Area Management Plan**

A Special Area Management Plan, as defined in USACE Regulatory Guidance Letter (RGL) 05-09, is a collaborative interagency regulatory planning process within a geographic area of special sensitivity that results in a definitive regulatory product. Typically the regulatory product will be a regional general permit(s), but can also be abbreviated processing procedure for activities in specifically defined situations, such as with the 2012 Coastal Master Plan. Special Area Management Plans tend to be pursued in areas with complex and/or contentious regulatory issues.

Two examples of Special Area Management Plans are the new Upper Yellowstone River Basin Special Area Management Plan in Montana and the older Bird Drive Basin Special Area Management Plan in Dade County, Florida. Based on the Special Area Management Plan analysis and EA results for the Yellowstone Special Area Management Plan, a specialized set of regional conditions for all USACE permits within the Special Resource Management Zone of the upper Yellowstone River will supersede all other the regional conditions in effect elsewhere in Montana. The Bird Drive Special Area Management Plan resulted in a much simpler regulatory product, which was a relatively simple regional general permit (RGP) for fill activities which was re-issued multiple times and became a highly effective regional permit vehicle.

The goal of a Special Area Management Plan in Louisiana's coastal zone would be to take the projects that will be used to implement the 2012 Coastal Master Plan and streamline the permitting process so that they can be implemented more efficiently. Due to the region's complexity and differing types of projects, if pursued, it may be necessary to define regulatory products by basin and types of activity. The pre-defined permits and permitting procedures will reduce permitting uncertainty and ensure more expedient implementation of the plan. The Special Area Management Plan process could dovetail with a PEIS process to streamline planning and regulatory ends. The typical timeframe to develop is similar to an EIS; once in place, permit approvals would be reduced to weeks instead of years.

*Advantages:*

- Abbreviated Federal and local permit approval processes for specifically defined situations;
- Reduces challenges associated with traditional case-by-case review;
- Can encompass multiple watersheds in the coastal zone;
- An EIS is not mandatory though the NEPA process must still be addressed;
- USACE Districts are encouraged to participate in Special Area Management Plans; and
- Individual and cumulative impacts are analyzed in the context of broad ecosystem needs.

*Disadvantages:*

- May require strong development activity to qualify for Special Area Management Plan treatment; and
- May need to segregate into multiple components and geographic areas.

## **1.8 Programmatic Permits-State Assumption of 404 Permitting**

“Assumption” of the Federal permitting associated with Clean Water Act (CWA) Section 404 has been explored by many states as a way to streamline wetland permitting by transferring Federal permitting responsibility to the state. The State would apply to USEPA to administer its own permit program for the regulation of dredge and fill activities in lieu of the permit program administered by USACE. This assumption would occur if the Louisiana Department of Natural Resources (DNR) entered into a Memorandum of Understanding (MOU) with the USACE that would authorize the state to carry out policies, regulations, and procedures needed to administer

Section 404 of CWA. USEPA would provide overall program oversight to ensure compliance with Federal standards and review the assumed program at various intervals for compliance and necessary updates. However, USACE would still retain permitting jurisdiction over wetlands adjacent to waters subject to Section 10 of the Rivers and Harbors Act. On waters subject to USACE permitting authority, both Federal and State permits would still be required (joint application between USACE and LDEQ). Because Section 10 jurisdiction encompasses virtually all of the coastal region waters and wetlands, this option would not serve to streamline 2012 Coastal Master Plan permitting, therefore, it is not recommended.

*Advantages:*

- Only high-impact wetland projects require USEPA and USACE participation (small percentage of permits);
- Simple review process resulting in quick permit approval (60 days);
- Where no Section 10 waters exist, assumption of the 404 permitting program is a more efficient approach to provide a greater protection of wetlands; and
- Reduction in duplicative State and Federal permits; eliminates potentially conflicting permit decisions, conditions, and mitigation requirements.

*Disadvantages:*

- To date, only 2 states have assumed 404 permitting program from the Federal Government: New Jersey and Michigan (Florida, New York and Kentucky have considered assumption, but it was never finalized, primarily due to cost, continued overlap with Section 10 waters and permit requirements, and the complexity and/or conflicts with State laws of such programs);
- Still need Section 10 permit when working in Section 10 waters, one of the major reasons Florida didn't finalize the assumption process;
- State assumes full legal and geographic jurisdiction; and
- USEPA oversight (ability to comment upon or reject state 404 permits per 404(g) process).

## **1.9 Beneficial Use of Dredged Material**

Coastal Louisiana suffers from chronic sediment deficit for ecosystem restoration projects. Dredged material disposal practices have been managed so as to dispose of this material in the least costly manner rather than conserve it for ecosystem restoration needs. Alignment of public and private resources is imperative to bolster the beneficial use of dredged material effort. Significant reforms must take place to ensure that material that is dredged for navigation and other purposes is beneficially used for ecosystem restoration.

The Office of Coastal Management (OCM) administers the Louisiana Coastal Resources Program (LCRP). The LCRP is the State's individual coastal zone management program that is approved by the National Oceanic and Atmospheric Administration (NOAA) under the authority of the Coastal Zone Management Act of 1972, as amended (CZMA). Since Louisiana has a Federally approved coastal program, Federal agencies are required to be consistent with the enforceable

policies of the State's program for all activities. Federal agencies may not issue a license or permit for any activity in the coastal zone until OCM has concluded that that activity is consistent with the LCRP. Using this tool to balance resource protection and appropriate development, Louisiana is able to require applicants to modify their proposals and/or perform compensatory mitigation for unavoidable impacts, in order to advance the goals of the LCRP.

It is important to note that 'Federal actions' include not just physical projects, such as the maintenance of navigation channels by the U.S. Corps of Engineers, but also planning and programmatic activities such as Outer Continental Shelf oil and gas lease sales, if they might have direct, indirect or cumulative effects on coastal uses or resources. Similarly, the Federal activity need not be in the Louisiana coastal zone; if the activity may have reasonably foreseeable effects on Louisiana's coastal uses or resources, consistency with the LCRP is required. When necessary, the authority of the CZMA is available to stop or modify proposals which may be detrimental to the goals of Louisiana's Master Plan.

Although the State has shown significant improvement in its beneficial use program in recent years, there is still an abundance of material that is dredged for navigation channels and other uses that is not being used beneficially. We have no sediment or fresh water resources to waste. In the long run, it is far more cost effective to beneficially use this dredge material than to dispose of it. The government must align its programs to provide safe passage for navigation AND effective use of the dredge material by no longer forcing these programs to compete for the same budget dollars at an overall higher cost to the State and the Nation for restoration efforts.

## 1.10 Compensatory Mitigation

Integrated coastal management requires a balance among the multiple, sustainable uses of coastal resources. The State of Louisiana recognizes that permitted development impacts and associated wetland mitigation are crucial considerations in the state's overall coastal restoration and protection efforts. The broad intent of Louisiana's State and Local Coastal Resources Management Act of 1978, the law upon which the state's current mitigation regulatory program is based, is to encourage multiple uses of resources and ensure adequate economic growth, while minimizing adverse effects from one resource use upon another and without imposing undue restrictions on any user. Louisiana's mitigation program must accomplish the balancing that is required by law while ensuring that wetland loss is compensated and the use of resources is maximized for all users.

The mitigation program must provide additional options for mitigation of public works projects, including hurricane protection projects, to ensure that the mitigation efforts work in concert with these projects to provide multiple lines of defense and establish additional wetland habitat. For example, if mitigation alternatives, like the creation of marsh adjacent to levees, have the potential to increase the surge protection and environmental benefits of a hurricane levee system, we must give serious priority to these alternatives. Similarly, creating coastal forest can reduce hurricane wind velocity and provide a certain measure of protection to coastal communities and facilities. Projects like these should be encouraged in Louisiana's mitigation policy.

Implementation of the 2012 Coastal Master Plan will be enhanced by allowing public entities such

as levee districts, ports, municipalities and public infrastructure facilities to protect the citizens of our great state by more effectively mitigating the impacts associated with these protection projects, in concert with the 2012 Coastal Master Plan.

Louisiana has made great strides over the past five years to coordinate its coastal restoration needs with its coastal protection needs. Louisiana's compensatory mitigation program should take into consideration the synergy between restoration and risk reduction needs. In an effort to both achieve this intent and complement the critical mission and objectives of the 2012 Coastal Master Plan, the State of Louisiana is recommending modifications to its compensatory mitigation program so that it will become a more effective programmatic tool. At this significant time in the State's coastal history, as many of our coastal communities contemplate the reality of "restore or retreat," it is more important than ever that mitigation not only meet the letter of the law, but more importantly, the spirit of the law. As such, the mitigation program must do more: it must now contribute to the comprehensive sustainability of our coastal wetlands and coastal communities, rather than simply compensate for wetlands impacted.

Several things can be done for mitigation activities to better align with and better complement the 2012 Coastal Master Plan objectives, ensure no net loss of wetlands due to permitted activities, provide mitigation for important coastal resources, such as coastal forests, sand dunes and shell resources, allow for multiple uses of coastal resources, and provide for the most effective use of public and private resources:

1. Provide flexible mitigation alternatives that are both timely and economically justifiable to businesses and are integrated among State, Federal, and local governmental bodies to avoid bureaucratic inconsistencies and conflicting priorities.
2. Revisions to laws, rules and procedures for the programs must be implemented accordingly. These policy improvements must be implemented in the best interest of the coastal environment and free of the special-interest influence that has often driven mitigation policy over the past 20 years.
3. Recognizing that Louisiana's Energy Coast generates more than 50 percent of the state's income, it is important that the revised mitigation program offer flexible mitigation options that respect economic development within our coastal zone while also promoting the sustainability of our coastal resources. An appropriate level of sensitivity is necessary to both ecological and socioeconomic needs of the coastal area.

As Louisiana pushes forward with an aggressive plan to restore and protect coastal wetlands and promote sustainability of coastal resources, it is critical that the state's compensatory mitigation program is closely coordinated with restoration and risk reduction initiatives. Therefore, legislative, policy, and regulatory modifications to the mitigation program are being proposed in 2012 that: continue our commitment to no net loss of wetlands due to permitted activities and mitigation for other important coastal resources; recognize the need for multiple use of coastal resources; encourage the most effective use of public and private resources; provide flexible mitigation alternatives that consider ongoing restoration/risk reduction projects; and prioritize mitigation options according to their meeting the objectives of the 2012 Coastal Master Plan. The

revised program will provide criteria for certain site specific mitigation projects, but with an emphasis on pooling resources through a state operated in-lieu fee system for use in major ecosystem restoration efforts supporting the 2012 Coastal Master Plan objectives and retaining certain mitigation bank options for continued flexibility. With implementation of these changes, a fair and ecologically sound, flexible mechanism for mitigating the loss of coastal wetlands will be achieved.

**Table 1. Potential Planning Strategies (Louisiana's 2012 Coastal Master Plan)**

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Type of Action	Regulation	Criteria/Approach	Basic Steps	Advantages/Disadvantages	Challenges	Recommendations
Alternative Arrangements (AA)	Council on Environmental Quality (CEQ) regulations for implementing NEPA  40 CFR 1506.11	Federal actions that meet one or more of the following: <ul style="list-style-type: none"> <li>Emergency circumstances exist</li> <li>Action is necessary to protect human health and safety</li> <li>Action is necessary to protect natural resources</li> <li>Result in significant environmental impacts</li> <li>Insufficient time to prepare Environmental Impact Statement (EIS)</li> </ul>	<ul style="list-style-type: none"> <li>Identify lead Federal agency</li> <li>Develop compliance strategy:                             <ul style="list-style-type: none"> <li>Establish sub-set of actions with significant environmental impacts that meet the CEQ criteria for Alternative Arrangements</li> <li>Relegate actions without significant environmental impacts to traditional NEPA process</li> </ul> </li> <li>Meet/coordinate with CEQ</li> <li>Prepare request and argument for Alternative Arrangements justification including:                             <ul style="list-style-type: none"> <li>nature and scope of the emergency;</li> <li>actions necessary to control the immediate impacts of the emergency;</li> <li>potential adverse effects of the proposed action;</li> <li>components of the NEPA process that can be followed and provide value to decision making (e.g., coordination with affected agencies and the public);</li> <li>duration of the emergency;</li> <li>potential mitigation measures.</li> </ul> </li> <li>Prepare environmental documents if required</li> </ul> <p><b>Timeframe:</b></p> <ul style="list-style-type: none"> <li>Compliance strategy /coordination with CEQ takes about 6 months with project approval within 1-6 months</li> <li>Other “non-emergency actions” related to the emergency action which are subject to NEPA analysis would be conducted after approved Alternative Arrangements per USACE New Orleans District guidance</li> </ul>	<p><b>Advantages:</b></p> <ul style="list-style-type: none"> <li>Expedited process (shorter timeframe)</li> </ul> <p><b>Disadvantages:</b></p> <ul style="list-style-type: none"> <li>Most Alternative Arrangements granted for discrete emergency actions of limited geographic/physical scope or limited duration; no ecosystem restoration programs have received Alternative Arrangements to date</li> <li>Difficult to demonstrate emergency for projects to be implemented over time</li> <li>Individual projects with Alternative Arrangements still must obtain permits and approvals (e.g., Endangered Species Act consultations, Section 106 Consultation)</li> <li>NEPA process components identified that can be followed for decision making (Alternative Arrangements do not complete or alter other environmental requirements; Alternative Arrangements to be completed for actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review).</li> <li>Alternative arrangements limited to actions necessary to control the immediate impacts of the emergency</li> </ul>	<ul style="list-style-type: none"> <li>Lead Federal agency must document emergency and insufficient time to complete EIS, then consult with CEQ about Alternative Arrangements</li> <li>Alternative Arrangements limited to actions necessary to control the immediate impacts of the emergency</li> </ul>	<ul style="list-style-type: none"> <li>Evaluate “future without action”; identify emergency areas in which health and safety of residents could be affected if projects are not implemented</li> <li>Identify emergency areas where natural resources are at risk</li> <li>Identify projects from portfolios that fulfill Alternative Arrangements criteria and are located in identified emergency areas</li> <li>Develop list of most urgent prioritized projects that would require an EIS and should be proposed for Alternative Arrangements</li> <li>Identify and approach likely lead Federal agency to discuss NEPA compliance strategy</li> </ul>

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EIS for Individual Projects	40 CFR 1502 ER 200-2-2	<ul style="list-style-type: none"> <li>Any Federal action that would result in "significant" impact(s) based on context and intensity (i.e., positively or adversely affects resources, highly controversial, or threaten to violate laws/requirements to protect the environment)</li> <li>Federal action may include funding, approval, permit (e.g., application for USACE Section 404 permit request would trigger NEPA compliance)</li> </ul>	<ul style="list-style-type: none"> <li>Identify individual projects or actions that have significant impact(s)</li> <li>Identify lead federal agency</li> <li>Prepare Purpose and Need</li> <li>Implement formal scoping and public involvement</li> <li>Evaluate reasonable alternatives to disclose impacts and mitigation requirements</li> <li>Prepare Draft EIS and Final EIS; provide opportunity for public review/comments for each</li> <li>Issue Record of Decision (ROD) identifying Recommended Plan and mitigation commitments to be implemented</li> </ul> <p><b>Timeframe:</b></p> <ul style="list-style-type: none"> <li>2-5 years (per the Corps, New Orleans District)</li> </ul>	<p><b>Advantages:</b></p> <ul style="list-style-type: none"> <li>Individual projects approved for construction</li> <li>USACE District Commander is authorized to enter into agreements with regional offices or other agencies which may reduce review time</li> </ul> <p><b>Disadvantages:</b></p> <ul style="list-style-type: none"> <li>Effort involved to develop individual NEPA EISs is extensive and lengthy.</li> </ul>	<ul style="list-style-type: none"> <li>State has limited resources to oversee very large projects</li> <li>Permitting requirements (time constraint)</li> <li>Mitigation requirements (time constraint)</li> </ul>	<ul style="list-style-type: none"> <li>Tier individual NRDA projects which are part of prioritized project portfolio from National Oceanic Atmospheric Administration (NOAA) PEIS (currently underway).</li> <li>Identify approved EAs and EISs associated with prioritized project list to include environmental evaluations in EIS (leverage/update permits issued for EAs and EISs to also include prioritized projects)</li> <li>Provide dedicated staff within regulatory agencies to facilitate review of prioritized projects</li> <li>Initiate early development of Public Participation Plan</li> </ul>

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Programmatic EIS (PEIS)	CEQ 1508.28 40 CFR 1500.4(o) 40 CFR 1506.4	<ul style="list-style-type: none"> <li>CEQ regulations authorize tiering when determined to be appropriate by Federal agency</li> <li>PEIS should identify actions (of a similar nature) within a geographic area</li> </ul>	<ul style="list-style-type: none"> <li>Follows EIS process</li> <li>Identify projects: ready for immediate implementation, requiring further study for implementation, to be evaluated at a later time</li> <li>Proceed with PEIS development following lead federal agency NEPA process if the project requires a Section 404 permit or if the project is Federally funded (define P&amp;N, alternatives, data gaps, mitigation)</li> </ul> <p><b>Timeframe:</b></p> <ul style="list-style-type: none"> <li>3-5 years plus up to 5 years for tiered EIS (per the Corps, New Orleans District)</li> </ul>	<p><b>Advantages:</b></p> <ul style="list-style-type: none"> <li>Allows lead agency to focus on region-wide issues and exclude issues already decided (reduces time required for agency approval on tiered NEPA documents)</li> <li>Identifies which actions may be implemented immediately, as well as which require further analysis;</li> <li>Front loads common information so that it is not duplicated as it would be for an EIS</li> <li>PEISs do not expire as long as data are current</li> <li>Data in PEIS can be incorporated by reference into tiered NEPA documents</li> </ul> <p><b>Disadvantages:</b></p> <ul style="list-style-type: none"> <li>Labor intensive; tends to front-load evaluation process</li> <li>Due to broad-scale analyses, environmental effects and mitigation would be required in subsequent tiered levels of documentation; therefore, no clear process for regular coordination</li> <li>Significant new circumstances or information relevant to environmental concerns bearing on the proposed action require a supplement to the PEIS</li> <li>Tiered EIS documents require up to 5 years subsequent to PEIS 3-5 years of development (total up to 10 years) per the Corps, New Orleans District</li> </ul>	<ul style="list-style-type: none"> <li>Permitting requirements (time constraint)</li> <li>Mitigation requirements (time constraint)</li> <li>NEPA analysis still required for individual tiered documents</li> </ul>	<ul style="list-style-type: none"> <li>Leverage LCA PEIS (2005), SWLa PEIS and any other broad PEISs.</li> <li>Identify EA’s with an approved FONSI and EIS’s with an approved ROD associated with prioritized project list to include environmental evaluations in PEIS (leverage/update permits issued for EAs and EISs to also include prioritized projects)</li> <li>Identify projects ready for implementation; indicate in P&amp;N language that these “Phase I” projects would be approved for construction but other projects would require tiered NEPA documents for approval</li> <li>Provide dedicated staff within regulatory agencies to facilitate review of prioritized projects</li> </ul>

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<p><b>Programmatic Permits -USACE 404/10 Programmatic General Permit</b></p>	<p><b>USACE Programmatic General Permit that authorizes for the purposes of Section 10 of Rivers and Harbors Act, Section 404 of Clean Water Act (CWA), and Section 103 of the Marine Protection, Research, and Sanctuaries Act (33 USC 1413)</b></p>	<p>Programmatic General Permit is designed to:</p> <ul style="list-style-type: none"> <li>Authorize states, local governments, tribes, or other federal agencies with regulatory programs comparable to the Corps' Section 10 or 404 Program to issue permits for specified activities in lieu of direct Corps' issuance of such permits</li> <li>Streamline the process to authorize activities that result in minimal adverse impacts within the boundaries of the Louisiana Coastal Zone</li> <li>Provide equivalent or enhanced environmental protection</li> <li>Develop a comprehensive plan for natural resource protection and economic growth including policies, standards and criteria to guide uses of lands and waters</li> <li>Follow these two categories:                             <ul style="list-style-type: none"> <li>Category 1 must have impacts less than 0.5 acre on special aquatic sites;</li> <li>Category 2 includes non-oil and gas activities that cannot exceed two acres of tidal or three acres of non-tidal special aquatic sites; oil and gas activities cannot exceed 3.5 acres of tidal or non-tidal special aquatic sites</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Submit complete application showing all work for which a permit is being requested</li> <li>For Category 1 activities, 10 days for USACE to determine if requirements are met – if met issue an authorization letter (if authorization is not granted within 45 days the USACE will be deemed to have granted authorization)</li> <li>For Category 2 activities, 10 days for USACE to notify the applicant if project to be evaluated as standard permit or forward to United States Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Louisiana Department of Environmental Quality (LDEQ, and EPA for review. Agencies have 5 working days to submit comments or request additional review time not to exceed 20 working days total. Concurrences may be forwarded to USACE via telephone or electronic mail; non-concurrences must be made in writing. Lack of responses from agencies within the 5 to 20 days will be considered as no objection. Within 15 working days following the comment period the USACE will either issue an authorization letter; issue an authorization letter with modifications requested by the resource agencies or the USACE; or issue a notice to the applicant that the project will be evaluated as a standard permit</li> </ul> <p><b>Timeframe:</b></p> <ul style="list-style-type: none"> <li>5 – 35 working days</li> </ul>	<p><b>Advantages:</b></p> <ul style="list-style-type: none"> <li>Offers greater flexibility for pertinent activities within Louisiana’s coastal zone</li> <li>Regional permit reduces duplication of regulatory control by having state approval for both state and federal authorities</li> <li>Regional or coast wide comprehensive 404 wetlands plan can be developed to offset wetlands mitigation needed for other projects</li> <li>The USACE-New Orleans regulatory program has developed a substantive update to the previous Programmatic General Permit, called “PGP-2”, that would allow marsh and land bridge creation/restoration projects to proceed under specified conditions with no acreage threshold. The state has provided a Coastal Zone Consistency Determination. The Programmatic General Permit is undergoing final internal review.</li> </ul> <p><b>Disadvantages:</b></p> <ul style="list-style-type: none"> <li>The Programmatic General Permit is subject to periodic formal review by USACE and DNR’s Office of Coastal Management in coordination with EPA, USFWS, NMFS, and LDWF</li> <li>Permittee under a Programmatic General Permit would continue to be subject to terms of a federal permit, unless the USACE does not respond to application within specified timeframes</li> </ul>	<ul style="list-style-type: none"> <li>The current Programmatic General Permit expiration date was in 2003; 5-year time extension is pending</li> </ul>	<ul style="list-style-type: none"> <li>Develop programmatic general permitting strategy (address repeating set of issues in a defined geographic area) to facilitate timely permitting of similar activities</li> <li>Define what type of programmatic general permits is required based on project type; define criteria.</li> <li>Prepare programmatic general permits based on project types.</li> <li>Pursue Programmatic Biological Opinion under ESA</li> <li>Draft Memorandum of Understanding (MOU)/Memorandum of Agreement (MOA) or resolution to address mitigation requirements and to establish regular agency coordination (e.g., CWA, Section 106, ESA)</li> </ul>

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<b>USACE Watershed Planning</b>	<b>Section 729 of Water Resource Development Act (WRDA) 1986; amended by Section 202 of WRDA 2000 and Section 2010 of WRDA 2007</b>  <b>EC 1105-2-411</b>	<ul style="list-style-type: none"> <li>Integrates water and related land resources management through partnership between affected Federal, State, Tribal, interstate, and local government entities</li> <li>Focuses on watershed (geographic area defined by drainage basin) to address problems in a holistic manner</li> <li>Systems approach including the following systems/resources: river and drainage, geomorphic and subterranean, weather, transportation, power grid, water supply, wastewater, economic, recreation, institutional, and legal framework</li> <li>Provides for a joint vision between agencies and the USACE to meet the water resources needs of the nation</li> </ul>	<p>General Watershed Plan:</p> <ul style="list-style-type: none"> <li>NEPA document not typically required because Plan usually falls short of generating a specific proposal for a major Federal action</li> <li>Plan must assess environmental impacts and effects</li> <li>USACE can be either lead or be a participating agency</li> </ul> <p><b>Timeframe:</b></p> <ul style="list-style-type: none"> <li>3-5 years</li> </ul>	<p><b>Advantages:</b></p> <ul style="list-style-type: none"> <li>Uses integrated systems-type approach to understand connection between natural and man-made systems</li> <li>Analyzes water resource problems on larger geographic scale</li> <li>Allows USACE to work collaboratively with affected entities</li> <li>Uses interdisciplinary teams</li> <li>Applies adaptive management</li> <li>Watershed approaches are the new paradigm in Federal planning</li> </ul> <p><b>Disadvantages:</b></p> <ul style="list-style-type: none"> <li>Beneficial for identification of long-term projects, but not for project authorization or implementation</li> <li>Multiple watershed plans might be required</li> <li>Study only; not an actionable document.</li> </ul>	<ul style="list-style-type: none"> <li>When USACE is Lead, dependent on identification of non-Federal sponsor willing to cost share at 72/25 (federal/state).</li> <li>Actionable document if expressly part of an authority; if Watershed Plan is not part of an authority, potential projects which are identified for USACE implementation must follow a separate feasibility study and NEPA for project implementation.</li> <li>Clear definition of watershed issues and their complexities and inter-relationships are needed to ensure a comprehensive, holistic plan</li> </ul>	<ul style="list-style-type: none"> <li>CPRA denoted as the non-Federal sponsor</li> <li>If the Corps does not lead, state can participate with section 22 Planning Assistance to States (PAS) program</li> <li>Obtain Congressional committee resolution to authorize study</li> <li>Obtain funding, perhaps through new starts</li> <li>Support incorporation into the WRDA 2007 Sec. 7002 Comprehensive Plan</li> </ul>
<b>Special Area Management Plan</b>	<b>Coastal Zone Management Act 1980 Amendments<sup>1</sup></b> <b>Army Corps RGL-05-09</b>	<ul style="list-style-type: none"> <li>Comprehensive plan for natural resource protection and economic growth including policies, standards and criteria to guide uses of lands and waters.</li> </ul>	<ul style="list-style-type: none"> <li>EIS not mandatory</li> <li>Identify local sponsoring agency</li> <li>Implementation, projects requiring further study for implementation, projects to be evaluated at a later time</li> <li>Proceed with process similar to PEIS development following USACE NEPA Process (define P&amp;N, alternatives, data gaps, mitigation)</li> </ul> <p><b>Timeframe:</b></p> <ul style="list-style-type: none"> <li>2-4 years, depending on complexity</li> </ul>	<p><b>Advantages:</b></p> <ul style="list-style-type: none"> <li>Abbreviated federal and local permit approval processes for specifically defined situations</li> <li>Reduces challenges associated with traditional case-by-case review.</li> <li>Can encompass multiple watersheds in the coastal zone</li> <li>EIS is not mandatory; NEPA process must still be addressed</li> <li>USACE Districts encouraged to participate in Special Area Management Plan</li> <li>Individual and cumulative impacts are analyzed in the context of broad ecosystem needs</li> </ul> <p><b>Disadvantages:</b></p> <ul style="list-style-type: none"> <li>May require strong development activity to qualify for Special Area Management Plan treatment</li> </ul>		<ul style="list-style-type: none"> <li>Identify area(s) and sponsoring agency.</li> <li>Define ecosystem area(s) and watersheds having special sensitivity.</li> <li>Analyze individual and cumulative impacts of broad ecosystem needs.</li> <li>Establish public involvement for Special Area Management Plan planning and development process.</li> <li>Department of National Resources (DNR) Office of Coastal Management (OCD) may want to consider implementing Special Area Management Plan in support of the State’s restoration effort and to preserve the State’s CPRA objectives and MP.</li> </ul>

<sup>1</sup> Originated in a 1980 amendment to the CZMA: “a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies, standards, and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in a specific geographic area within the coastal zone”

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Programmatic Permits-State Assumption of 404 Permitting	Section 404(g) of Clean Water Act: state assumption process (1977)	<p>“404 Assumption” through state primacy.</p> <ul style="list-style-type: none"> <li>State/DNR enters into a MOU with USACE</li> <li>MOU authorizes state to carry out policies, regulations, and procedures needed to administer Section 404 of CWA</li> <li>EPA approves program</li> <li>USACE retains permitting jurisdiction over wetlands adjacent to waters subject to Section 10 of the Rivers and Harbors Act</li> <li>State would apply to U.S. EPA to administer its own permit program for the regulation of dredge and fill activities in lieu of the permit program administered by USACE</li> <li>EPA provides overall program oversight to ensure compliance with federal standards</li> <li>EPA reviews the assumed program at various intervals for compliance and necessary updates</li> <li>On waters subject to USACE permitting authority, both federal and state permits required (joint application between USACE and LDEQ)</li> </ul>	<ul style="list-style-type: none"> <li>Letter from the Governor requesting program approval</li> <li>A complete program description to include a full description of the state’s permitting and enforcement programs, including regulatory authorities, staffing, organization, and basic procedures (summary of all materials used in the state dredge and fill permit program)</li> <li>An Attorney General’s statement as set forth in §233.12 certifying that the state has legal authority to meet all federal requirements</li> <li>A Memorandum of Agreement with the Regional Administrator of EPA</li> <li>A Memorandum of Agreement with the Secretary of the Army</li> </ul> <p><b>Timeframe of Program Approval Process:</b></p> <ul style="list-style-type: none"> <li>3-5 years</li> </ul> <p><b>Timeframe of State Permit:</b></p> <ul style="list-style-type: none"> <li>60 days with no EPA intervention</li> </ul>	<p><b>Advantages:</b></p> <ul style="list-style-type: none"> <li>Only high-impact wetland projects require EPA and USACE participation (small percentage of permits)</li> <li>Simple review process resulting in quick permit approval (60 days)</li> <li>Where no Section 10 waters exist more efficient regulatory program providing a greater protection of wetlands</li> <li>Reduction in duplicative state and federal permits; eliminates potentially conflicting permit decisions, conditions, and mitigation requirements</li> </ul> <p><b>Disadvantages:</b></p> <ul style="list-style-type: none"> <li>To date, only 2 states have assumed 404 permitting program from the Federal Government: New Jersey and Michigan (Florida, New York and Kentucky have considered assumption, but it was never finalized, primarily due to cost, continued need to obtain Sec. 10 permits in many cases, and the complexity and/or conflicts with state laws of such programs)</li> <li>Still need Section 10 permit when working in Section 10 waters, one of the major reasons Florida didn’t finalize the Assumption process.</li> <li>State assumes full legal and geographic jurisdiction</li> <li>EPA oversight (ability to comment upon or reject state 404 permits per 404(g) process)</li> </ul>	<ul style="list-style-type: none"> <li>State seeking primacy must understand that it needs the legal and administrative foundation to support a program (regulatory authority over wetlands); state program can be no less effective than federal program administered by USACE</li> <li>Program approval process (EPA) requires several years to complete</li> <li>State does not receive federal assistance for the program’s administration (staffing concerns)</li> <li>The DNR investigated 404 assumption under a U.S. Environmental Protection Agency grant but has elected not to pursue it at this time</li> </ul>	<ul style="list-style-type: none"> <li>Do not pursue due to complete overlap of Section 404 and Section 10 waters in the coastal region, so both the Assumed State permit and the USACE permit would have to be obtained.</li> </ul>

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Beneficial Use of Dredged Materials	Louisiana Coastal Resources Program	<ul style="list-style-type: none"> <li>Louisiana has a federally approved coastal program LCRP administered by the Office of Coastal Management (OCM)</li> </ul>	<ul style="list-style-type: none"> <li>Federal agencies are required to be consistent for all activities</li> <li>Federal agencies may not issue a license or permit for any activity in the coastal zone until OCM has concluded it is consistent with the LCRP</li> <li>Consider possible revisions to the Federal Standard</li> </ul>			<p>DNR recommends the following:</p> <ul style="list-style-type: none"> <li>Significant reforms take place to ensure that material that is dredged for navigation, and other purposes, is beneficially used for ecosystem restoration.</li> <li>An abundance of material dredged for navigation channels is not being used beneficially; more beneficial to use this material than to dispose of this material and expend additional funds to construct projects at a higher cost.</li> <li>Government must align programs to provide safe passage for navigation and effective use of dredge material so that programs do not compete for same budget dollars at an overall higher cost to the State and Nation for restoration efforts.</li> <li>Federal actions should not include just physical projects such as maintenance of navigation channels by USACE but also planning and programmatic activities such as Outer Continental Shelf oil and gas lease sales as they may have direct, indirect, or cumulative effects on coastal uses or resources.</li> <li>Authority of CZMA is available to stop or modify proposals which may be detrimental to the goals of the 2012 Coastal Master Plan.</li> </ul>

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Compensatory Mitigation	Louisiana’s State and Local Coastal Resources Management Act of 1978	<ul style="list-style-type: none"> <li>Encourage multiple uses of resources and ensure adequate economic growth</li> </ul>	<ul style="list-style-type: none"> <li>Louisiana’s mitigation program must accomplish the balancing that is required by law while ensuring that wetland loss is compensated and the use of resources is maximized for all users.</li> </ul>	<p><b>Advantages</b></p> <ul style="list-style-type: none"> <li>Currently, compensatory mitigation is typically accomplished by utilizing mitigation banks located in the same hydrologic basin in which the impact occurs</li> <li>Monitoring and accounting are not a drain on public resources when mitigation banks are utilized</li> <li>Banks have the ability to be sustainable once planted and the hydrology restored</li> <li>The State’s In-Lieu Fee Program may create more opportunities and become a vehicle/instrument for mitigation in high risk areas; projects can be located in an area to meet the objectives of the 2012 Coastal Master Plan where a positive impact may be made along the coastal zone.</li> <li>Projects built from funds collected through the In-Lieu Fee Program have proven to be sustainable.</li> </ul> <p><b>Disadvantages</b></p> <ul style="list-style-type: none"> <li>Compensatory mitigation usually occurs in an arbitrary manner and is not always located in an area that is fully consistent and complementary to the goals and objectives of the 2012 Master Plan</li> <li>There is currently an arbitrary hierarchy that requires permit applicants to use mitigation banks regardless of their location, rather than giving priority to mitigating for coastal projects along the coastal zone to provide a positive impact in the same area. Contributing to an In-Lieu Fee Program where monies could be pooled and/or banks established in the coastal zone, would wholly or partially fund restoration projects supported by the State’s Master Plan</li> </ul>	<ul style="list-style-type: none"> <li>Lack of mitigation banks in the coastal area</li> <li>Limited swamp and bottomland hardwood habitat in most coastal basins</li> <li>Currently, there are no marsh mitigation banks west of the Atchafalaya River</li> <li>USACE is currently transitioning to the Modified Charleston Method to calculate wetland impacts; applicants are concerned about increased costs to mitigate for higher ratios in order to account for cumulative and secondary impacts to aquatic resources</li> <li>Due to long term maintenance obligations and financial assurance requirements required by new Federal mitigation regulations, and the requirement to maintain certain banks in perpetuity for conservation reasons, mitigation banks are locating in the most northerly portions of the hydrologic basin/unit that have very minimal positive impacts on coastal resources. Banks are not being located in areas that are consistent with restoration projects outlined in the 2012 Master Plan because of over-burdensome Federal rules for mitigation.</li> </ul>	<p>The State recommends the following:</p> <ul style="list-style-type: none"> <li>Regulatory impediments be removed that prevent public and private resources from working in concert with the 2012 Coastal Master Plan.</li> <li>Public policy that removes regulatory impediments and provides incentives for projects that are aligned with the 2012 Coastal Master Plan is necessary for the goals of the Master Plan to be realized</li> <li>Mitigation should not only meet regulatory requirements but contribute to the comprehensive sustainability of coastal wetlands and coastal communities rather than compensate for impacted wetlands                             <ul style="list-style-type: none"> <li>Clearly define goals for compensatory mitigation program that align with and better complement the 2012 Coastal Master Plan objectives:</li> <li>Ensure no net loss of wetlands due to permitted activities</li> <li>Provide mitigation for important coastal resources such as coastal forest, sand dunes, and shell resources</li> <li>Allow for multiple uses of coastal resources</li> <li>Provide for the most effective use of public and private resources.</li> </ul> </li> <li>Adequately monitor the implementation of mitigation to ensure the program is achieving the desired results</li> <li>Revisions to laws, rules and procedures for programs must be implemented accordingly</li> <li>The revised mitigation program should offer flexible mitigation options that respect economic development within our coastal zone while promoting the sustainability of coastal resources</li> <li>Mitigation policy:                             <ul style="list-style-type: none"> <li>Flexible mitigation alternatives including use of an approved State In-Lieu Fee Program.</li> <li>Prioritized options that help to protect and restore the coast as identified by the 2012 Coastal Master Plan.</li> <li>Are timely and economically justifiable policy for users.</li> </ul> </li> </ul>

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Compensatory Mitigation (con’t)	Louisiana’s State and Local Coastal Resources Management Act of 1978			<ul style="list-style-type: none"> <li>Currently, due to long term Federal maintenance requirements and the need to operate banks into perpetuity, mitigation banks are locating in the most northerly portions of the hydrologic basin/unit that have little to no positive impacts on coastal resources. Banks are not being located in areas that are consistent with restoration projects outlined in the 2012 Master Plan</li> </ul>		<ul style="list-style-type: none"> <li>Are integrated among state, federal and local governments to avoid inconsistencies and conflicting priorities and provide accountability and transparency to ensure the goals are realized</li> <li>Coordinate coastal restoration needs with coastal protection needs</li> <li>Provide additional options for mitigation of public works projects including hurricane protection projects to ensure projects provide multiple lines of defense and establish additional wetland habitat</li> <li>“Artificial” mitigation priorities should be removed on the state and federal level and policies put in place to ensure the resources are aligned with coastal ecosystem restoration</li> <li>Impediments must be removed and incentives given that promote the location of mitigation in areas that are the focus of restoration efforts</li> <li>Public resources for restoration should be supplemented by private resources such as mitigation projects and shoreline stabilization efforts and public policy should promote and incentivize these efforts</li> </ul>