

# **Charlotte Harbor National Estuary Program**

## **Federal Consistency Report**

The Charlotte Harbor National Estuary Program is a partnership of citizens, elected officials, resource managers, and commercial and recreational resource users working to improve the water quality and ecological integrity of the greater Charlotte Harbor watershed. A cooperative decision-making process is used within the program to address diverse resource management concerns in the 4,400 square mile study area.

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NOTE: The action codes, such as FW-B and WQ-K, listed in the tables can be found in the Charlotte Harbor National Estuary Program *Comprehensive Conservation and Management Plan* (CCMP). This two-volume document is available from the program web site at [www.charlotteharbornep.com](http://www.charlotteharbornep.com).

## **SUMMARY**

The U.S. Environmental Protection Agency (EPA) requires a National Estuary Program (NEP) to have a Federal Consistency Review Process. Developing a federal consistency review strategy, a process to evaluate federal programs and activities for consistency with the goals of the Comprehensive Conservation and Management Plan (CCMP), is a required element of the Final CCMP of the Charlotte Harbor NEP. The Charlotte Harbor NEP proposes a two part strategy for facilitating this review process. The first and primary strategy is to encourage early coordination and review of projects that potentially conflict with or further the goals of the CCMP. The purpose of the early coordination step is to identify if and where conflicts exist and to explore options for resolving those conflicts at the earliest possible opportunity.

The second strategy is to incorporate the existing federal consistency review process of the State Clearinghouse and Florida Coastal Management Program (FCMP). These offices coordinate federal consistency reviews in Florida. On Tables 1 and 2 the Charlotte Harbor NEP identifies the types of federal activities and programs it wishes to review, and will receive specific proposals within these categories from the FCMP via the three Regional Planning Councils (RPCs) covering the Charlotte Harbor NEP Study Area; Tampa Bay RPC, Central Florida (CFRPC) and Southwest Florida (SWFRPC). The Charlotte Harbor NEP will determine if the activity is consistent with priority goals and objectives of the CCMP. If concerns arise, comments will be sent to the FCMP through the representative RPC, which accumulates all comments from local governments and forwards them to the FCMP.

## **BACKGROUND**

The Charlotte Harbor NEP was established in 1995 to assist communities in developing a comprehensive plan to restore and protect the Greater Charlotte Harbor Watershed. The Charlotte Harbor NEP is one of a national network of 28 estuary programs established under Section 320 of the Clean Water Act and administered nationally by the EPA. The program established a Management Conference or 'partnership' of federal, state, and regional agencies; the eight counties and 15 municipalities; affected industries; educational and research institutions; and the general public to address the problems facing the Greater Charlotte Harbor Watershed.

Through a consensus-building approach, the partners identified the problems; set reasonable, achievable goals for recovery; and determined how best to implement programs and coordinate new and ongoing management initiatives to reach these goals. This process culminates in the development of a Comprehensive Conservation and Management Plan (CCMP) for the Greater Charlotte Harbor Watershed. The CCMP will contain up to 300 action plans for the long-term restoration and protection of the study area addressing: hydrologic alterations, water quality degradation, and fish and wildlife habitat loss.

When establishing the National Estuary Program, Congress recognized that many recreational, commercial, agricultural, and industrial activities along the shores and in the drainage basins of estuaries potentially affect the quality of the environment in one way or another. Additionally, many of these activities are supported, directly or indirectly, by federal and state governments, and because these activities have a wide variety of objectives, they may or may not conflict with natural resource protection, and in particular, the goals established in a CCMP.

One way of addressing potential inconsistencies among these different activities is through the consistency review authority given to National Estuary Program Management Conferences. In general, federal consistency addresses the need for federal actions to adequately consider state policies for protecting natural resources. Under Section 320, Purpose 7 of the Water Quality Act of 1987,

the Management Conference is required to provide a federal consistency review strategy to evaluate federal assistance and development programs which may conflict with or strengthen the action plans contained in the CCMP.

In essence, this requirement was included because Congress recognized the need for coordination among government programs and program goals that could affect the success of the CCMP. The Purpose 7 review is intended as a means of negotiating and resolving potential conflicts between states and federal agencies by fostering early consultation, cooperation, and coordination.

To fulfill this requirement, each estuary program must develop a federal consistency report to be included in the CCMP or referenced in it. This report must contain:

- an inventory of federal programs which would be applicable to priority problems in the estuary;
- an evaluation or discussion (one-time assessment) of currently planned or on-going relevant federal programs which may conflict or be inconsistent with CCMP goals and objectives, and remedies to resolve inconsistencies; and
- a review strategy or process of how the Management Conference will review federal programs for consistency in the future.

A primary goal of federal consistency is to foster coordination among programs. Most NEPs tend to have a small staff acting primarily as facilitators for action in the region, and most NEP federal consistency strategies have tried to avoid duplication of efforts with other existing consistency review programs within their states. In the strategy for the Greater Charlotte Harbor Watershed, it is proposed that the Charlotte Harbor NEP coordinate efforts with the State of Florida Clearinghouse and Florida Coastal Management Program consistency review processes. These will be discussed in detail in following sections.

# INVENTORY OF FEDERAL PROGRAMS

The Statutory authority under Section 320(b)(7) specifies that the Management Conference is to--

"review all federal financial assistance programs and federal development programs in accordance with the requirements of Executive Order (EO) 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan [CCMP] prepared under this section."

The Section further states that the review shall not be limited to the EO 12732 programs, but--

"may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the [CCMP]."

The Charlotte Harbor NEP has reviewed the federal activities subject to EO review, and the Catalog of Domestic Assistance to identify which activities and programs may support or conflict with the priority actions identified in the CCMP. The following is a brief summary of the basic characteristics of each of these sources and programs.

## **Executive Order 12372**

Executive Order (EO) 12372 was implemented in 1983 and allows states and local governments to design their own processes to coordinate reviews of federal grants, cooperative agreements, and direct federal development activities that are proposed within their jurisdictions. Though the process differs from state to state, it is generally a clearinghouse through which state, local, or regional government entities can communicate concerns about proposed activities to be funded to the appropriate federal agency before final funding decisions are made.

Once a process is approved, the state selects which financial assistance programs and development programs it wants to review from the list of activities eligible for EO review, and notifies the federal agencies of its choices.

In Florida, the Single Point of Contact designated to coordinate EO review was originally within the Executive Office of the Governor, but as of 1996, pursuant to Gubernatorial Executive Order 95-359, it was moved to the Department of Community Affairs. Known as the Florida State Clearinghouse, Florida has elected to review all eligible programs, and review procedures closely resemble the State's former A-95 review system.

The Florida State Clearinghouse sends proposed federal assistance programs and development projects to each state agency and local government that has requested to receive the specified proposal. After a specified time frame, the Clearinghouse collects any comments, concerns, and recommendations and forwards them to the responsible federal agency. That federal agency must either (1) accept the recommendations, (2) negotiate acceptable solutions, or (3) explain in writing why the State's concerns cannot be accommodated.

## **Catalog of Federal Domestic Assistance**

The *Catalog of Federal Domestic Assistance* is an annual publication of federal programs, projects, services, and activities that provide technical or financial assistance benefits to the public. It currently contains well over 1,000 programs administered by 50 federal agencies. Such assistance includes, but is not limited to, grants, loans, loan guarantees, scholarships, insurance, counseling and other expertise, cooperative agreements, and property.

To assist Management Conferences in targeting programs found in the *Catalog* that are applicable to coastal environmental management, EPA has developed a compendium of federal financial assistance programs, entitled *Federal Financial Assistance Programs: Targeting Programs Applicable to Coastal Management*. Specific examples are provided in this guidance document.

### **Compiling an Inventory**

The Charlotte Harbor NEP used the above referenced documents, and reviewed the lists previously compiled by other National Estuary Programs. Then they compared these lists of federal assistance and development programs with priority actions contained in the approximately 300 CCMP action plans. Those federal assistance, development programs and direct federal actions that have the potential to directly conflict with or support these priority actions are listed in Tables 1 and 2.

This inventory also includes activities with indirect effects, cumulative impacts, and activities that *may* have an effect on the CCMP, as directed by EPA. This inventory will be the basis for the continuing review process, but will remain flexible in the future as the federal consistency review process proceeds.

<b>Table 1.</b>		<b>Federal Assistance Programs Related to the CCMP</b>		
CFDA #	Agency and Programs	Potential to support CCMP	Potential to conflict with CCMP	The federal programs have the potential to support/conflict with these actions
	<b>Department of Agriculture</b>			
10.062	Water Bank Program	x	x	Water Quality Degradation
10.063	Agriculture Conservation Program	x		WQ-B,WQ-C/D,WQ-E/M,WQ-N,WQ-P
10.069	Conservation Reserve Program	x		
10.416	Soil and Water Loans	x	x	Fish and Wildlife Habitat Loss
10.418	Water and Waste Disposal Systems for Rural Communities	x	x	FW-A,FW-B/P,FW-C,FW-I/T,FW-L,FW-Q,FW-S,FW-U
10.761	Technical Assistance & Training Grants	x		
10.763	Emergency Community Water Assistance Grants	x	x	Hydrologic Alterations
10.764	Resource Conservation & Development Grants	x	x	HA-A,HA-B,HA-C,HA-D,HA-E,HA-F,HA-G,HA-H,HA-I/J/K,HA-L,HA-M,HA-N,HA-P,HA-Q
10.765	Watershed Protection & Flood Protection Grants	x		
10.766	Community Facilities Loans	x	x	
10.769	Rural Development Grants	x	x	
10.770	Water and Waste Disposal Loans & Grants (Section 306C)	x	x	
10.901	Resource Conservation & Development	x	x	
10.904	Watershed Protection & Flood Prevention	x	x	
	<b>Department of Commerce</b>			
11.300	Economic Development - Grants for Public Works	x	x	Hydrologic Alterations
11.304	Economic Development - Public Works Impact Projects	x	x	HA-B,HA-D,HA-E,HA-G,HA-H,HA-M,HA-N,HA-O,HA-P,HA-Q
11.305	Economic Development-State and Local Economic Development Planning	x	x	Fish and Wildlife Habitat Loss

Table 1. Federal Assistance Programs Related to the CCMP				
CFDA #	Agency and Programs	Potential to support CCMP	Potential to conflict with CCMP	The federal programs have the potential to support/conflict with these actions
11.307	Special Economic Development & Adjustment Assistance Program	x	x	FW-B/P,FW-C,FW-D,FW-E,,FW-F,FW-G,FW-H,FW-I,FW-J/K/O,FW-L,FW-M,FW-R,FW-S,FW-U,FW-V,
11.405	Anadromous Fish Conservation Act Program	x		Water Quality Degradation
11.417	Sea Grant Support	x		
11.419	Coastal Zone Management Program Administrative Grants	x		
11.427	Fisheries Development, Utilization Research & Development Grants/Coop. Agreement Program	x	x	
11.413	Marine Fisheries Initiative (MARFIN)	x		
11.454	Unallied Management Projects			
11.463	Habitat Conservation	x		
11.464	Financial Assistance for Marine Pollution Research	x		
11.55	Public Telecommunications Facilities			
11.552	Telecommunications & Information Infrastructure			
	<b>Department of Defense, US Army Corps of Engineers</b>			
12.100	Aquatic Plant Control	x		Water Quality Degradation
12.101	Beach Control Erosion Projects	x	x	WQ-E/M,WQ-H,WQ-J,WQ-K,WQ-N,WQ-Q
12.102	Emergency Rehabilitation of Flood Control Works		x	Hydrologic Alterations

Table 1.		Federal Assistance Programs Related to the CCMP		
CFDA #	Agency and Programs	Potential to support CCMP	Potential to conflict with CCMP	The federal programs have the potential to support/conflict with these actions
12.103	Emergency Operations Flood Response and Post Flood Program	x	x	HA-A,HA-B,HA-C,HA-D,HA-F,HA-H,HA-L,HA-M,HA-N,HA-O,HA-P,HA-Q  Fish & Wildlife Habitat FW-A,FW-B/P,FW-C,FW-I/T,FW-L,FW-Q,FW-R,FW-V
12.105	Protection of Essential Highways, Bridge Approaches, & Public Works	x	x	
12.106	Flood Control Projects		x	
12.107	Navigation Projects	x	x	
12.108	Snagging & Clearing for Food Control	x	x	
12.109	Protection, Clearing and Straightening Channels		x	
12.110	Planning Assistance to States	x	x	
12.610	Joint Military/Community Comprehensive Land Use (Not ACOE)	x	x	
	<b>U.S. Department of Housing and Urban Development</b>			
14.182	Lower Income Housing Assistance Program-Section 8 New Construction/Substantial Rehabilitation	x	x	Water Quality Degradation
14.199	HUD Mortgage Insurance-Environmental Review	x	x	WQ-B,WQ-E/M,WQ-G,WQ-N,WQ-P

Table 1. Federal Assistance Programs Related to the CCMP				
CFDA #	Agency and Programs	Potential to support CCMP	Potential to conflict with CCMP	The federal programs have the potential to support/conflict with these actions
<b>Department of the Interior</b>				
15.503	Small Reclamation Projects	x	x	Water Quality Degradation
15.600	Anadromous Fish Conservation	x		WQ-A,WQ-C/D,WQ-E/M,WQ-J,WQ-L,WQ-N,WQ-Q,
15.604	Fishery Research	x		Fish and Wildlife Habitat Loss
15.605	Sport Fish Restoration	x		FW-A,FW-B/P,FW-C,FW-D,FW-E,FW-F,FW-G,FW-H,FW-I/T,FW-J/K/O,FW-L,FW-Q,FW-R,FW-S,FW-U,FW-V
15.607	Environmental Contaminants	x		
15.608	Fish & Wildlife Management Assistance	x		
15.61	Wildlife Research Information	x		
15.611	Wildlife Restoration	x		Hydrologic Alterations
15.612	Endangered Species Conservation	x	x	HA-C,HA-E,HA-Q
15.614	Coastal Wetlands, Planning, Protection, & Restoration Act	x		
15.615	Cooperative Endangered Species Conservation Fund	x		
15.616	Clean Vessel Act	x		
15.806	National Water Resources Research Program	x		
15.617	Wildlife Conservation and Appreciation	x		
15.916	Outdoor Recreation: Acquisition, Development, and Planning	x	x	
15.918	Disposal of Surplus Federal Real Property	x	x	
15.919	Urban Park & Recreation Recovery Program	x	x	
<b>Department of Transportation</b>				
20.001	Boating Safety	x		Water Quality Degradation
20.005	Boating Safety Financial Assistance	x		WQ-E/M,WQ-N,WQ-O,

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CFDA #	Agency and Programs	Potential to support CCMP	Potential to conflict with CCMP	The federal programs have the potential to support/conflict with these actions
20.106	Airport Improvement Program	x	x	Fish and Wildlife Habitat Loss
20.205	Highway Planning and Construction (ISTEA)	x	x	FW-A,,FW-B/P,FW-C,FW-H,FW-S,FW-U
20.500	Federal Transit Capital Improvement Grants (Section 3)	x	x	Hydrologic Alterations
20.509	Public Transportation-Nonurbanized Areas (Section 18)		x	HA-F,HA-L,HA-M,HA-O,HA-Q,
20.801	Development and Promotion of Ports and Intermodal Transportation		x	

Table 1.	Federal Assistance Programs Related to the CCMP			
CFDA #	Agency and Programs	Potential to support CCMP	Potential to conflict with CCMP	The federal programs have the potential to support/conflict with these actions
	<b>General Services Administration</b>			
39.002	Disposal of Federal Surplus Real Property	x	x	Water Quality Degradation WQ-E/M,WQ-G,WQ-J, Fish and Wildlife Habitat Loss FW-B/P,FW-S,FW-U
	<b>Interstate Commerce Commission</b>			
41.000	Railroad Bed Reconstruction and Abandonment	x	x	Fish and Wildlife Habitat Loss FW-B/P,FW-S,FW-U
	<b>Environmental Protection Agency</b>			
66.001	Air Pollution Control Program Support	x		Water Quality Degradation
66.418	Construction Grants for Wastewater Treatment (201 Facilities Plan)	x	x	WQ-B,WQ-C/D,WQ-E/M,WQ-F,WQ-G,WQ-H,WQ-I,WQ-J,WQ-K,WQ-L,WQ-N,WQ-O,WQ-P,WQ-Q,
66.419	Water Pollution Control-State & Interstate Program Support (Section 106)	x	x	
66.432	State Public Water System Supervision	x		Fish and Wildlife Habitat Loss
66.433	State Underground Water Source Protection	x		FW-B/P,FW-C,FW-D,FW-E,FW-F,FW-G,FW-H,FW-I/T,FW-L,FW-Q,FW-R
66.435	Water Pollution Control-Lake Restoration Cooperative Agreements	x		Hydrologic Alterations

66.438	Construction Management Assistance	x	x	HA-A,HA-B,HA-C,HA-D,HA-E,HA-F,HA-G,HA-H,HA-I/J/K,HA-L,HA-M,HA-O,HA-P,HA-Q
66.454	Water Quality Management Planning	x		
66.458	Capitalization Grants for state Revolving Funds	x	x	
66.460	Nonpoint Source Implementation Grants	x		
66.461	Wetlands Protection-State Development Grants	x	x	
66.463	National Pollutant Discharge Elimination Systems Related to State Program Grants	x		
66.464	Near Coastal Waters	x	x	
66.465	Wellhead Protection Demonstration Projects	x		
66.501	Air Pollution Control Research	x		
66.502	Pesticides Control Research	x		
66.505	Water Pollution Control-Research, Development and Demonstration	x		
66.506	Safe Drinking Water Research and Development	x		
66.507	Toxic Substances Research	x	x	

Table 1. Federal Assistance Programs Related to the CCMP				
CFDA #	Agency and Programs	Potential to support CCMP	Potential to conflict with CCMP	The federal programs have the potential to support/conflict with these actions
66.600	Environmental Protection-Consolidated Special Purpose Grants	x		
66.700	Consolidate Pesticide Compliance Monitoring Program Cooperative Agreements	x		
66.701	Toxic Substances Compliance Monitoring Program	x		
66.707	TSCA Title IV State Lead Grants Certification	x		
66.708	Pollution Prevention Grants Program	x		
66.801	Hazardous Waste Management State Program Support	x	x	
66.802	Hazardous Substance Response Trust Fund (Superfund)	x	x	
66.804	State Underground Storage Tank Program	x	x	
66.805	Underground Storage Tank Trust Fund Program	x	x	
66.806	Superfund Technical Assistance Grants for Citizen Groups at Priority Sites	x		
66.808	Solid Waste Management Assistance (RITTA)	x		
66.809	Core Program Cooperative Agreements			
66.900	Pollution Prevention Grants Program	x		
66.925	State/EPA Data Management Financial Assistance	x		
72.003	Americorps Volunteers in Service in America	x		
	<b>Department of Energy</b>			
81.000	Federal Energy Regulatory Commission (Gas Line)	x	x	Water Quality Degradation
81.050	Energy Extension Service	x		WQ-B,WQ-C/D,WQ-I,WQ-O,WQ-P
81.052	Energy Conservation for Institutional Buildings	x		Hydrologic Alterations
				HA-D,HA-F,HA-I/J/K,HA-Q

<b>Table 2. Direct Development Projects Related to the CCMP</b>			
Agency and Programs	Potential to support CCMP	Potential to conflict with CCMP	These programs have the potential to affect these actions in CCMP
<b>Department of Commerce - National Marine Fisheries</b>			
Fisheries Management Plans	x	x	FW-B/P,FW-R,FW-V
<b>Department of Defense</b>			
National Guard Hazardous Waste Management	x		WQ-E/M,WQ-Q
Spill Prevention and Response	x		WQ-E/M,WQ-Q
Pesticide/Herbicide Management	x	x	WQ-E/M,WQ-Q
Pollution Prevention Activities	x		WQ-E/M,WQ-Q
<b>Department of Defense - Army Corps of Engineers</b>			
Natural Resource Plans	x		FW-A,FW-B/P, FW-C,FW-R,FW-V
Mitigation Banking	x		FW-A,FW-B/P, FW-C,FW-S
Dredge & Fill Activities	x		FW-B/P,FW-C,FW-R
Beach Renourishment Projects	x	x	FW-B/P,FW-C,FW-R
Reservoir Development Programs	x	x	HA-A,HA-B,HA-C,HA-F,HA-H,HA-Q
<b>General Services Administration</b>			
Disposal of Federal Surplus Real Property	x	x	WQ-E/M,WQ-G,WQ-J,FW-B/P,FW-S,FW-U
Donation of Federal Surplus Real Property	x		WQ-E/M,WQ-G,WQ-J,FW-B/P,FW-S,FW-U
Disposal of RTC Properties	x		WQ-E/M,WQ-G,WQ-J,FW-B/P,FW-S,FW-U
<b>Department of Interior - U.S. Fish and Wildlife Service</b>			
Refuge Management	x	x	FW-A,FW-B/P,FW-C,FW-I/T,FW-R,FW-S,FW-U
Challenged Cost Share Program	x		FW-A,FW-B/P,FW-C,FW-I/T,FW-R,FW-S,FW-U
Coastal Ecosystems Program	x		FW-A,FW-B/P,FW-C,FW-I/T,FW-R,FW-S,FW-U
North America Water Fowl Management Plans	x		FW-A,FW-B/P,FW-C,FW-I/T,FW-R,FW-S,FW-U

## **REVIEW STRATEGY**

The Charlotte Harbor NEP has developed a continuing review strategy. This strategy defines the process for receiving and reviewing activities and programs for consistency with the goals of the CCMP, and establishes mechanisms for seeking resolution should a project be determined to be inconsistent.

The review process has two major components that build on several activities already underway within the region and the NEP. The first is to encourage early coordination and review of projects that potentially conflict with or further the goals of the CCMP. The second is to participate in the Florida Coastal Management Program federal consistency review processes. Each component is described below.

### **EARLY COORDINATION**

The first course of action to ensure consistency with CCMP goals is early consultation. Federal, state and local government partners in the Charlotte Harbor NEP will be encouraged to consult and coordinate as early as practical with the program office on relevant federal projects. Activities warranting early coordination will be selected from the list in Tables 1 and 2. Project types that pose potentially significant conflicts with CCMP goals would be included in the group selected for early coordination.

The purpose of the early coordination step would be to identify if and where conflicts exist and to explore options for resolving those conflicts. The intent would be to resolve potential conflicts with CCMP goals prior to the state clearinghouse review, when significant project modifications become more problematic. At the early coordination step, the applicant or federal sponsor of a proposed activity could use the forum of the Charlotte Harbor NEP program office to facilitate resolution of the potential conflict.

Local government and agency partners in the Charlotte Harbor NEP expect to sign an intergovernmental agreement pledging to achieve the goals of the CCMP. How those goals will be met will be left up to individual communities and agencies who may select from a range of acceptable alternatives. Many of the options may be described in the CCMP.

### **COASTAL ZONE MANAGEMENT FEDERAL CONSISTENCY REVIEW**

The Florida State Clearinghouse (SCH) is the Single Point of Contact for coordinating review of proposed federally funded programs and development activities. See page 3 for details of Executive Order (EO) 12372. The Florida Coastal Management Program (FCMP) is also housed within the Florida Department of Community Affairs.

Certified under the Federal Coastal Zone Management Program (CZM), the FCMP is granted consistency review authority over permits as well as federal assistance and development projects. Protecting the coastal zone is important. Therefore, the consistency review authority for the FCMP allows for a potential "veto" of certain federal actions that are not consistent with enforceable goals and policies that are spelled out within Florida's Coastal Management Plan.

The above consistency review authority differs from the Executive Order (EO) 12732 Clearinghouse Review Process and the NEP authority. Neither of the latter allows for a federal project to be denied. In these processes, the federal agency must consider the State and NEP recommendations and accommodate its concerns, or the federal agency is allowed to explain in writing why the concerns cannot be accommodated.

The most efficient way in which the Charlotte Harbor NEP could be involved with the CZM consistency review process is to be included in the local government review process coordinated by the three Regional Planning Councils (RPCs). These are the Tampa Bay RPC, Central Florida (CFRPC), and Southwest Florida (SWFRPC). Local government review is not required of the federal consistency process, however the State of Florida has chosen to have the SCH distribute proposed consistency projects to local governments and the RPCs so they can review the project for consistency with the local government comprehensive plan, the regional plan, or other local projects. If there are conflicts, assistance can be requested from the state to resolve the concerns. Local governments provide their comments, concerns and preferred alternatives or solutions to the RPC, which then includes all comments in its project report package to the SCH.

By including the Charlotte Harbor NEP in this loop, it would ensure that these projects and activities are being reviewed in relation to CCMP goals. This level of review is most important for activities proposed by agencies that are not CCMP partners and that have missed the benefit of the early coordination step. Although it would not necessarily stop an activity that is not consistent or supportive of these goals, it would cause the federal agency to be notified of the concerns, potential conflicts, possible solutions, consistent with CCMP goals.

The second avenue involves the possible inclusion of specific actions or goals into the Florida Coastal Management Plan. In this way, any proposed federal action would be reviewed by the Florida Coastal Management Program, or other state agencies with the authority, for consistency with the goals of the CCMP.

## **Florida's Federal Consistency Review Process**

There are four categories of federal activities that are reviewed for consistency, and the process for each category has some variations. The categories and some examples of each are:

- A) Direct federal activities, including federal licenses, or permits to federal applicants, and federal financial assistance to private applicants  
**Examples:** *Public works projects, fishery management plans, land acquisition and disposal, construction or waste disposal plans for federal facilities.*
- B) Federal licenses and permits to non-federal applicants  
**Examples:** *Army Corp 404 wetlands permits, NPDES permits, mineral mining or oil and gas development on public lands.*
- C) Outer Continental Shelf (OCS) exploration, development, and production activities

**Examples:** *Plans submitted to the Department of Interior for the above activities by OCS leases.*

D) Federal financial assistance to state or local governments

**Examples:** *Grants, loans, subsidies such as those listed in Table 1.*

The goals of the CCMP may be affected either negatively or positively by three of the categories of federal actions. However it is unlikely that Category C, Outer Continental Shelf activities, would have an impact. Therefore it is being excluded from the discussion at this time.

The Charlotte Harbor NEP would submit to the three RPCs a list of the federal activities, programs or permits it wishes to receive for review. This list would be compiled from Tables 1 and 2 which include activities or federal assistance programs that can potentially affect the goals of the CCMP.

When the RPC receives documentation on a project from the SCH which was on the Charlotte Harbor NEP list, it would notify the Charlotte Harbor NEP and provide a copy of the documentation requested. The RPC would collect all the comments from the local governments and the Charlotte Harbor NEP and return them to the SCH by the due date.

Reviewers generally have 21 days from the date the SCH received the project to initially respond. By the due date, reviewers may choose to comment, request more time, or not comment on the project. The total review period for general projects is 60 days, and 45 days for consistency projects. If the SCH is unable to forward a clearance letter by the 45th or 60th day, the applicant is notified in writing, and the due date is extended a maximum of 15 days.

The specific notification process, review timeline, and procedures for conflict resolution for each category are described in Florida's *Federal Consistency Evaluation Procedures* manual for all categories. The procedures for categories A, B, and C from this manual are summarized below.

### **Category A. Direct Federal Activities**

Direct federal activities are those that are conducted or supported by a federal agency, are conducted on behalf of a federal agency, and include development projects. The FCMP reviews these activities if they directly affect Florida's coastal waters and adjacent shorelines and are not included in other consistency categories. Some examples of activities that are presumed to directly affect the coastal zone include Army Corps of Engineers (ACOE) dredging, channel works, spoil disposal, beach renourishment, reservoirs, and other navigation works; location, acquisition and design of new or enlarged military installations; National Marine Fishery Service (NMFS) Fishery Management Plans; National Park, Seashore or Wildlife Refuge acquisition and management; highway or bridge construction, designed and constructed by the Federal Highway Administration (FHWA); and ocean dumping site designations or construction.

In general, the construction or development activities of the ACOE and FHWA can potentially affect water quality and coastal habitats, and therefore could negatively impact goals of the CCMP. However, development of a comprehensive dredging and dredged material management plan by the ACOE, that minimizes bay impacts, would directly support this goal of the CCMP.

Projects of the National Park, Seashore or Wildlife Refuge systems or NMFS are not likely to negatively impact CCMP goals.

### **Notification Procedures and Consistency Evaluation**

The federal agencies are "strongly encouraged to obtain the views and assistance of the state regarding CMP provisions...relevant to the proposed activity" prior to submitting a consistency determination. A consistency determination is conducted by the agency (not the state) and it must state either that the activity does not directly affect Florida's coastal zone, is consistent with Florida's CMP, or that it "is consistent to the maximum extent practicable with Florida's CMP." The latter statement must include the legal authority which limits the federal agency's ability to comply with the CMP.

Five copies of the consistency determination must be submitted to the state at least 90 days before final project approval, but it is expected to be submitted at the earliest practicable time in the planning process, once sufficient information is available to make a determination. The SCH routes the project proposal to the reviewers in the different agencies who forward comments back to the SCH. The state must respond to the applicant or request an extension within 45 days of receipt if more time is needed, and the federal agency is required to grant a 15 day extension. Agreement with the consistency determination is assumed if the state does not respond in the allotted time.

### **Conflict Resolution**

State disagreement with the proposed activity's consistency determination must describe how it is inconsistent with specific elements of the CMP. The federal agency is prohibited from taking action on the proposal until 90 days from the consistency determination to allow for intergovernmental consultation, which in most cases resolves any disagreement. If a disagreement continues, it is recommended that the Interagency Management Committee mediate the conflict or in the event of serious disagreement, mediation by the U.S. Secretary of Commerce can be sought by either party. In cases of continued disagreement, the federal agency is encouraged, but not required, to suspend implementation after the 90 period until the dispute is resolved.

The state's consistency determination may be appealed to the Governor and Cabinet, the Secretary of the U.S. Department of Commerce, or the courts.

### **Category B. Federal Licenses and Permits to Non-Federal Partners**

Federal permits or licenses sought by non-federal applicants are required for activities in wetlands, construction in navigable waters, transporting hazardous waste, oil and gas pipelines rights of way, and deep water ports. They also include permits and licenses issued under the Marine Protection, Research and Sanctuaries Act; Mineral Leasing Act; Nuclear Regulatory Commission; Federal Energy Regulatory Commission; and Department of Transportation. Such activities could potentially be inconsistent with CCMP goals.

In cases where an analogous state permit is required, no formal consistency statement is required. The issuance or denial of the analogous state permit constitutes the consistency certification. If no state permit is required, the applicant must certify that "the proposed activity complies with Florida's Coastal Management Program and will be conducted in a manner consistent with that program," and supply a copy of the federal application and supporting information.

### **Notification Procedures and Consistency Evaluation**

For federal licenses and permits that have analogous state permits, applicants must notify the state when an application is filed (this automatically occurs for Section 404 ACOE permits). Where there is no analogous state permit, the applicant must provide a consistency certification in the application to the federal agency and submit 10 copies to the SCH. The consistency evaluation period commences upon receipt of a complete application for the analogous state permit, or consistency certification where there is no analogous state permit. State and federal procedures allow for 90 days to review and process applications; the federal time

period may be extended to 6 months if the state notifies the federal agency before the end of the first 3 months. If the analogous state permit the applicant is seeking is through DEP, any state agency that finds the application to be inconsistent must notify DEP within 30 days of commencement of the evaluation period.

In Florida, the most common Category B application is for a Section 404 wetlands permit, for which there is an analogous state permit, the newly revised Environmental Resource Permit (ERP). The ERP, as one permit, has replaced several old permits dealing with waste water and other discharges, alterations to wetlands, navigation projects and other water-related activities.

Three state/regional agencies, the Department of Natural Resources, Southwest Florida Water Management District, and South Florida Water Management District share responsibility for the ERP in the Greater Charlotte Harbor Watershed, and for the specific activities that are analogous to a 404 permit. Each agency is responsible for distributing 404-analogous permit applications to other state and local agencies for consistency review, rather than the State Clearinghouse. Therefore, the Charlotte Harbor NEP must contact the three agencies and inform them of the types of projects it would like to review in relation to the CCMP.

In the case of activities without an analogous state permit, the federal agency may grant the license or permit if the state concurs with the consistency certification. If the state objects, the federal agency shall not grant the license or permit, and the state objection will state how the proposed activity is inconsistent, and include alternative measures (if any) which would make the application consistent.

### **Conflict Resolution**

If the applicant disagrees with the state's objection to the issuance of the federal license or permit, discussions among all parties are recommended as a first step, and "applicants are encouraged to re-examine their proposals in light of state remarks particularly when...alternative strategies" are suggested. It is expected that consultations between the parties will result in state concurrence or applicant agreement with the conditions that would allow state concurrence.

If agreement is not achieved, the Interagency Management Committee may be asked to mediate, or if there is serious disagreement between a federal or state agency, either party may request the U.S. Secretary of Commerce to mediate. If not resolved through mediation or if the applicant does not choose to go through mediation, appeals may be made to the Secretary within 30 days of receipt of the state's objection. Appeals may also be made to the Governor and Cabinet, or the courts.

If the state denies the analogous state permit, the applicant may seek administrative or judicial review, or may appeal to the Governor and Cabinet.

### **Category D: Federal Financial Assistance to State and Local Governments**

Federal programs that offer grants, loans, subsidies, or matching funds to state or local governments (including universities and community colleges) are subject to State Clearinghouse review, and federal consistency review if they affect Florida's environment. These types of projects that can potentially support or hinder the goals and actions of the Greater Charlotte Harbor Watershed CCMP are listed in Table 1 by agency, with the relevant CCMP priority issues listed in the adjacent column. Overall, federal assistance programs have a greater potential to support CCMP goals than to hinder them.

### **Notification Procedures and Consistency Evaluation**

In general, applicants are expected to submit at least eight copies of a project application to the State Clearinghouse (SCH) at the earliest feasible time, however for federal assistance applications, the Notification of Intent (NOI) is usually sufficient for most

reviewers, avoiding the need of submitting the entire detailed application. The NOI should include several Standard Forms that detail the budget information, how much is being requested and to which agency; a concise narrative for the proposal; and maps, an architect's narrative, and information regarding public works, stormwater management, hydrology, etc. for construction projects.

There are no formal consistency statements or evaluations submitted by the applicant for federal assistance, as in the other Categories A or B, although applicants are encouraged to contact the state to understand Coastal Management Program provisions and how they may relate to the project application prior to submission of the formal application. Once an application is received, the review period commences and follows the timeframes established under the E.O. The SCH distributes the application to the reviewing parties, which usually have 21 days to respond back to the SCH. The state has 45 days for consistency reviews to respond to the applicant, although time extensions may be requested if absolutely necessary.

If the state concurs, the federal agency may grant the federal assistance to the applicant agency. If it objects, the state must describe how the proposed project is inconsistent, and the alternative measures (if any) which would allow for consistency. Without state concurrence, the federal agency may not approve the assistance.

### **Conflict Resolution**

The conflict resolution provisions are essentially the same as those outlined for Category B, above.

## **Incorporation of CCMP Goals and Actions into the FCMP**

As previously described, the Florida Coastal Management Program reviews all federal activities for consistency with the *enforceable policies* of the federally approved Florida Coastal Management Plan. Advisory policies may also be included in a coastal management plan, however they cannot be used as a measure to determine consistency.

Actions undertaken by agencies and local governments to implement the CCMP may include changes to rules and laws. If revisions to rules or regulations occurs, then these actions would become enforceable and therefore candidates for incorporation into the Florida Coastal Management Plan. As with all enforceable policies in the coastal management plan, the agency responsible for that regulation would become responsible to review proposed federal actions for consistency with that regulation or standard.