

Report Highlights

Department of Natural Resources

Louisiana Coastal Resources Program

March 2004

Louisiana Legislative Auditor



The Department of Natural Resources' Coastal Management Division is responsible for implementing the Louisiana Coastal Resources Program (LCRP). The policies of the program strive to balance conservation and resources, resolve user conflicts, encourage coastal zone recreational values, and determine the future course of coastal development and conservation. In accordance with these policies, the Coastal Management Division administers the Coastal Use Permit Program to issue permits for development projects located in the coastal zone.

Audit Results

MANAGEMENT AND OVERSIGHT OF THE LCRP

- ◆ The Department of Natural Resources lacks sufficient management controls to ensure that:
 - The Department's permit database contains current and complete information.
 - The Department conducts regular monitoring of all individual mitigation projects and evaluates their success.
 - The Department employs all available enforcement tools.
 - The Department conducts formal monitoring of all mitigation banks and areas to evaluate their performance.
- ◆ Neither the Department nor the St. James Parish Government has used the contributions in the state and local trust funds (over \$1 million) to implement mitigation projects. Delays in the decision-making process and insufficient funds have caused difficulties in developing and implementing suitable projects. However, the Department has made significant progress over the last few years.
- ◆ The Department coordinates its coastal management responsibilities with its coastal restoration responsibilities when permitted activities are located near restoration projects.

COMPLETENESS AND ACCURACY OF PERFORMANCE DATA

- ◆ The LCRP performance indicators are valid because they are relevant to the program's mission, goal, and objective, and they are linked to a major function of the program.
- ◆ The performance data do not present a complete and accurate evaluation of state wetland mitigation policy because the indicators are not always clearly portrayed and did not always include all relevant data. Also, the indicator values were not always calculated in a consistent manner.

Is the Department providing effective management and oversight of the LCRP that ensures that damages to the coastal zone caused by permitted activities are mitigated?

WHAT WE FOUND

Maintenance of the Permit Database

- ◆ The Department did not enter the local coastal program information into the permit database because of insufficient policies and procedures.
- ◆ As a result, the Department cannot ensure that all damages to the coastal zone have been restored through mitigation or that performance data are complete and accurate.

RECOMMENDATION

- ✓ The Department should develop and implement policies and procedures requiring the collection and entry into the coastal use permit database of information for permits authorized by the local coastal programs.

Monitoring Efforts

- ◆ The Department did not always monitor mitigation projects on a regular basis or evaluate project effectiveness, as suggested by state law and federal guidance.
- ◆ Our review of 25 mitigation projects that required monitoring resulted in the following:
 - We could not find evidence in the permit files that three projects (12%) had been monitored.
 - Two additional projects (8%) had not achieved success at the time of monitoring, and we could not find evidence in the permit files of any subsequent monitoring. One project was not listed in the Department's monitoring database and the other had been closed out, which means that department staff will *not* be notified when monitoring is due.
 - Only four of 19 projects (22%) that had success criteria were evaluated based on these criteria.
- ◆ The Department does not maintain local coastal program monitoring information in its permit files or in its database.

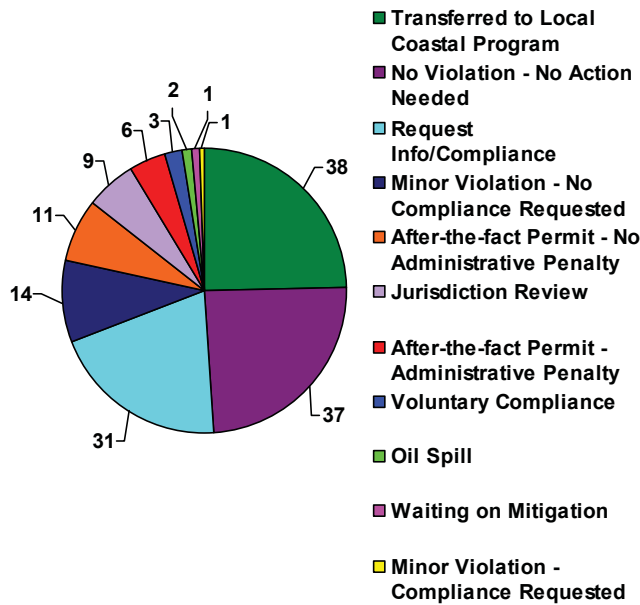
- ◆ The Department lacks sufficient policies and procedures that provide for the following:
 - Regular monitoring schedules
 - Success criteria
 - Evaluation of mitigation projects based on success criteria
 - Entry of all individual mitigation projects into the monitoring database
- ◆ In addition, Department staff said that they cannot effectively monitor mitigation projects with their current level of funding and staff. Without effective monitoring, the Department cannot be certain that damages to the coastal zone will be mitigated.

RECOMMENDATIONS

- ✓ The Department should develop and implement policies and procedures requiring specific monitoring periods, success criteria, and the evaluation of projects based on these criteria.
- ✓ The Department should develop and implement policies and procedures requiring that all mitigation projects, whether authorized by the Department or the local coastal programs, are entered into the monitoring database, along with monitoring schedules and appropriate success criteria.

Enforcement Actions

- ◆ The Department does not always exercise all of its enforcement authority available under state law. In addition, no state regulations exist governing enforcement. As a result, the Department's current enforcement efforts may not effectively deter individuals and businesses from violating the provisions of the LCRP.
- ◆ The Department is legally authorized to take the following actions when violations occur:
 - Issue cease and desist orders
 - Seek relief through the civil court system
 - Suspend, revoke, or modify permits
 - Assess costs of abatement or mitigation of damages and penalties
- ◆ We reviewed 153 enforcement files opened during fiscal years 2001 through 2003 and found that the Department took the following actions:



- ◆ In general, the Department relies heavily on the cooperation of the individual or business committing a violation. If a violator does not comply with the Department’s request for compliance, the Department may take no further action.
- ◆ The Department requires permit applicants with four or more open enforcement files to post a surety bond to receive any subsequent permits. However, state law does not require the Department to consider a permit applicant’s history of compliance when issuing permits.

RECOMMENDATIONS

- ✓ The Department should employ the enforcement tools available under R.S. 49:214.36(A). For example, the Department should actively use fines to deter individuals and businesses from violating the provisions of the LCRP.
- ✓ The Department should develop and implement policies and procedures requiring that a permit applicant’s history of compliance with the provisions of the LCRP is adequately and consistently considered before issuing a coastal use permit.
- ✓ The Department should draft and seek to implement state regulations governing the enforcement provisions of the LCRP.

MATTERS FOR LEGISLATIVE CONSIDERATION

- ✓ The legislature should consider revising R.S. 49:214.36 to calculate fines and penalties based on the extent to which an activity has damaged the coastal zone, using a quantitative habitat assessment

methodology, when dredging or filling is not involved and to allow the Department to assess fines and penalties when a permit is not warranted.

- ✓ The legislature should consider revising R.S. 49:214.30(C) to require the Department to consider a permit applicant’s history of compliance with the provisions of the LCRP before issuing a coastal use permit.

Monitoring of Mitigation Banks/Areas

- ◆ The Department does not formally monitor the mitigation bank and areas to evaluate performance because no state regulations exist governing the bank and areas.
- ◆ Banking agreements require bank and area sponsors to submit annual monitoring reports and accounting statements. However, the Department does not have a system in place to notify appropriate staff when annual reports are due, and department staff do not make an effort to obtain the reports.
- ◆ The Department has not conducted any formal inspections of the mitigation bank or areas nor has it obtained any documented inspections conducted by other state or federal agencies.

RECOMMENDATIONS

- ✓ The Department should develop and implement policies and procedures requiring the annual review of performance reports prepared by mitigation bank and area sponsors.
- ✓ The Department should develop and implement policies and procedures requiring the annual inspection of mitigation banks and areas, and/or the review of documented inspections conducted by other relevant agencies, to evaluate the banks’ and areas’ achievement of ecological success.
- ✓ The Department should draft and seek to implement state regulations governing the use, operation, maintenance, and monitoring of mitigation areas, as required by R.S. 49:214.27(A).

Decision to Use Mitigation Contributions

- ◆ The Department’s decision-making process for using the state and local trust fund mitigation contributions has caused delays in developing and implementing suitable projects.

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- None of the mitigation contributions, which now total over \$1 million, have been used to implement projects. However, the Department has made significant progress over the last few years.

Do the Department’s LCRP performance data present a complete and accurate evaluation of state wetland mitigation policy?

RECOMMENDATION

- The Department should streamline its decision-making process to develop and implement mitigation projects in a timely manner.

Use for Mitigation Contributions

- The Department has had difficulty in identifying suitable mitigation projects partly because of insufficient funds.
- The formula used to calculate the amount of each contribution, which is regulated by the state, does not result in sufficient funds to adequately offset the costs of mitigation.

RECOMMENDATIONS

- The Department should draft and seek to implement state regulations revising the formula for calculating the amount of mitigation contributions.
- The Department should consider using the mitigation contributions to fund, in whole or in part, restoration projects.

MATTER FOR LEGISLATIVE CONSIDERATION

- The legislature should consider amending R.S. 49:214.42 to allow the Department to use the mitigation contributions to fund, in whole or in part, restoration projects.

WHAT WE FOUND

Presentation and Consistency

- The performance indicators represent projected rather than actual results. Also, the indicator values do not include the local coastal program data.
- The Department lacks sufficient policies and procedures that provide for the consistent calculation of the values and a formal review of the calculations.

RECOMMENDATIONS

- The Department should revise its indicators to clarify that they represent projected, rather than actual, results.
- The Department should revise the local coastal program contracts to require that programs submit their permitting and mitigation information at least quarterly to be included in the calculation of the indicator values.
- The Department should enter the local coastal program data into its permit database and include these data in its indicator values.
- The Department should develop and implement policies and procedures requiring that the indicator values are calculated in a consistent manner and are formally reviewed for accuracy.

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