

# Galveston Marine Affairs Council

P. O. Box 2310  
Galveston, Texas 77553

September 10, 1976

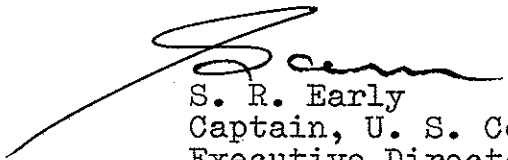
Dr. Joe C. Moseley, II  
Texas Coastal and Marine Council  
P. O. Box 13407  
Austin, Texas 78711

Dear Joe:

I am enclosing a copy of the memo report, "Texas Coastal Management Program: Ramifications for Galveston" which had been researched for this Council by Eli Ereli and Barbara Little. The Conclusions and Recommendations were revised by this Council to fit the intent and interest of this Council and the City. It was the latter which Shrub Kempner presented at the Texas Coastal Management Program public hearing in Galveston on August 20th.

The local coastal management studies are still in rough draft form and are being reviewed, discussed, and revised or amended as necessary by this Council. I will send you copies of the smooth draft when it is attained.

Sincerely,



S. R. Early  
Captain, U. S. Coast Guard (Ret.)  
Executive Director

SRE:jo  
Enclosure

RECEIVED SEP 14 1976

Phone (713) 765-9606

# Galveston Marine Affairs Council

P. O. Box 2310  
Galveston, Texas 77550

Acct # 4414

August 10, 1976

JB 07  
23PB

## TEXAS COASTAL MANAGEMENT PROGRAM:

### RAMIFICATIONS FOR GALVESTON

## Galveston Marine Affairs Council

P. O. Box 2310  
Galveston, Texas 77553

*Received  
JCM -  
Sept 19 - 1976*

August 23, 1976

Enclosed herewith is a copy of this Council's memorandum report titled "Texas Coastal Management Program: Ramifications for Galveston;" the conclusions and recommendations of which were presented by Council Chairman Harris L. Kempner, Jr., at the Texas Coastal Management Program's public hearing in Galveston on Friday, August 20, 1976.

*in context that*

The attached memorandum titled "Texas Coastal Management Program: Ramifications for Galveston" aims at a brief summary of the proposed Texas Coastal Zone Management Program in order to identify the effects it may have on Galveston and any coastal management activities that GMAC may want to undertake.

As part of the evaluation, the memorandum makes specific suggestions for the Council's consideration in case it decides to appear at the August 18 hearings. These recommendations are again summarized in the last part of the memorandum, as "Conclusions and Recommendations".

The recommendations are made so to:

- ✓ 1. Assure the City a more positive role in the state management program.
2. Assure the City that in case a local management plan is developed, the local plan be part of the State decision process.
3. Leave the Council free to determine the role it wants to assume in 1 and 2 above.

The present evaluation in no way substitutes for the study entitled "Texas Local Government in Coastal Area Planning and Management - An Overview" due at the end of August.

*this exhibit I  
want to see*

*See no problem - ~~hell~~ hell -  
TCMP does not put screws  
to loc. govt - I don't  
see loc. could  
ASK for more*

Phone (713) 765-9606

# Galveston Marine Affairs Council

P. O. Box 2310  
Galveston, Texas 77550

August 10, 1976

TEXAS COASTAL MANAGEMENT PROGRAM:

RAMIFICATIONS FOR GALVESTON

## TEXAS COASTAL MANAGEMENT PROGRAM:

### RAMIFICATIONS FOR GALVESTON

#### The Boundary of the Texas Coastal Management Area

The draft coastal management program, hereinafter referred to as the management program, proposes a management boundary consisting of coastal waters and the shorelands which are closely related to and directly affect or are affected by coastal waters. The seaward boundary of the management area extends to the full jurisdiction of the State of Texas, 10.5 miles into the Gulf of Mexico, and extends laterally from the Texas-Mexico boundary to the Texas-Louisiana boundary. ✓

The most significant boundary for local governments is the landward boundary of the management area which is based solely on geological-biological factors rather than on consideration of local political jurisdictions and divisions or the type of activities conducted in the area. Because the boundary is based on varying geological and biological conditions, such as tide levels and the location of dunes and salt water wetlands, the boundary is not intended to be permanent, but operational subject to modification to account for changing conditions in the coastal environment. } ✓

Coastal waters are defined as areas which are continually or periodically inundated by measurable amounts of salt water, including all lands influenced by the tides. The landward boundary under tidal influence includes not only those lands inundated by the 1-1/2 foot astronomical tide, but also the lands periodically inundated by recurrent wind driven tides.

The tidal range reached by wind driven tides is highly variable and differs along the Texas coast dependent upon the terrain and the prevalent direction and velocity of the wind.

In addition to the coastal waters, the management area includes those shorelands which directly affect or are affected by coastal waters. The determination of "direct effect" is also based on geological/biologic factors rather than particular activities. The shoreland areas included form a closely related biological system with the coastal waters so that any activity in the shoreland area directly affects the coastal waters or vice versa. Shorelands include active dune complexes, beach and shoreface areas, wind tidal flats, tidal marshes, active and potentially active washover areas and salt water wetlands (fresh water wetlands are not included).

The boundary proposed by the management program is narrowly restricted to the coastal waters/related shoreland area so that the boundaries or jurisdictions of local governments are of no consequence; indeed the boundary excludes most areas under local authority. Galveston is a notable exception since the entire island falls within the geologic/biologic definition of coastal waters and related shorelands and therefore is included in the boundary of the coastal management area. Galveston island is designated by the draft report (see Plate 1-A) as comprised of the composite resource areas of wind tidal flats, tidal marshes and grassflats, all of which are subject to tidal inundation and therefore included in the management boundary. Due to this inclusion, the role of local government in general policy decisions and specific permitting activity is paramount to Galveston.

Method for Assessing Permissible Activities Which  
Have a Direct and Significant Impact on Coastal Waters

The coastal management program envisions a tripartite test comprising the activity assessment routine as a systematic means to establish which

activities having a direct and significant impact on coastal waters are permissible. The Federal Coastal Zone Management Act requires that an approved state program include

"A definition of what constitutes permissible land and water uses within the coastal zone which have a direct and significant impact on coastal water" [16 U.S.C. §1454(a)]

The threshold question is which activities or uses will be subject to the activity assessment routine; the draft program is somewhat ambiguous on this important matter. The report states that state agencies are to employ the activity assessment process when issuing permits for activities taking place within the coastal management boundary and in reviewing (A-95 reviews) proposed projects subject to federal permits or funding within the coastal boundary. Apparently if an activity or use occurs in the coastal management boundary which is not currently regulated or reviewed under the statutory authority or regulations of one of the state agencies, that activity is not assessed at all for its impact on coastal waters. The draft report assumes that any activity which is not currently regulated will per se have no significant affect on coastal waters.

". . . it is assumed that present permitting mechanisms within the state or federal agencies [which would trigger the review function of the state] are sufficient to reach all activities that may have a direct and significant impact on coastal waters." Draft at p. 92.

Since the activity assessment procedure is applicable only to activities permitted by state or federal government, activity assessment is not required for local government permits or regulations, nor is it denied. For example, the draft does not answer the question whether Galveston when exercising its police powers affecting certain activities must or may employ the activity assessment process provided for in the coastal management program.

TRUE-  
give  
em  
Freedom

certainly this

NO!



Activity Assessment Process:

Assuming that the activity requires a permit from a state agency or is subject to review by a state agency, the draft management program sets up a three stage activity assessment process.

1. Does the activity have a direct effect, if so
2. Does the activity have a significant effect, if so
3. Is the activity permissible

1. Does the activity have a DIRECT effect:

The program narrowly defines activities having direct effects as only ✓ those activities which occur within the operational boundary, i.e. within the coastal waters or upon the adjacent shorelands.

"Only uses and activities occurring upon these shorelands or within coastal waters can have direct impacts." p. 78  
Hearing Draft, Texas Coastal Management Program

Activities on adjacent uplands and non coastal waters may have indirect and important effects on the coastal waters, but the management program has determined that the effects are indirect and thus beyond the scope of the program. If an activity is conducted outside of the management boundary, the coastal management program will have no effect on the regulation of that activity at all.

Therefore the determination <sup>whether</sup> of an activity or use qualifies as a direct impact is simply dependent on whether it takes place within the management boundary. The primary activities within the management boundary will thus be limited to dredging and filling activities, and discharges directly into coastal waters. (Specific source control of pollution upstream is not covered by management program, but left solely to Texas Water Quality Board).

Generally, siting of industrial and energy facilities will not take place within the management boundary and therefore would not be affected by the coastal management program. However, since Galveston is within the management boundary, any activity or use will be classified as having a direct effect. On the other hand, many activities outside Galveston which will affect the city are not within the coastal management boundary and thus not subject to the program. The program provides no specific mechanism by which local governments may voice their concern over activities in areas without the management boundary.

TRUE  
But  
raising  
hell?  
you do it  
how ICNRE  
would give  
you a better  
way

Since whether or not an activity affects coastal waters is dependent on whether or not it is located within the operational boundary of the management area, there must be detailed knowledge of both the exact location of the activity and the exact boundaries of the management area at a specific point in time. The draft program indicates that the operational management boundary fluctuates depending on changes in the physical features on which it is based, such as changes in the height of tides, the location of salt marshes and wetlands and subsidence. It is the duty of the restructured Interagency Council on Natural Resources [hereinafter ICNRE] to continually monitor and revise the management boundary to comport with physical changes. The draft does not state if alteration of the management boundary is automatic, changing each time the ICNRE so decides by drawing a new map, or whether a new management boundary can only be established after some formal procedure such as a public hearing and issuance of regulations. The draft program provides no input from the local government in determining fluctuations in the management boundary although the location of the management boundary determines whether activities within the city are regulated by the program or not.

NOR DOES  
IT DENY  
IT?  
BUT

what more  
could you hope  
for

The Adm. CmH will have 8 local elected  
officials from coast - THEY  
WOULD

If an activity is determined to have a "direct" effect since it occurs within the management boundary, the second stage of evaluation is to determine if the direct effect of the activity is significant.

2. Is the Activity Significant?

The determination of whether an activity has a significant effect on coastal waters is gauged by the degree of change caused in specific resource areas. The management program delineates eighteen resource areas<sup>1</sup> which are characterized by particular water characteristics, bathymetry, morphometry, substrata and biota. Evaluation of significance entails identifying exactly which resource areas are affected by a particular activity on a case by case basis. This evaluation is done by the appropriate state agency pursuant to issuing a permit for the activity or<sup>to</sup> a review of the activity. Each resource area has certain physical characteristics, such as salinity, temperature, turbidity, that must be maintained.

"If a proposed activity in a resource area would change the environment so that one or more of these requirements were not met, the proposed activity would be deemed 'significant'".  
p. 93

The Governor's Office is to provide the state agency with the necessary information for the assessment process - from the computer base, TN<sup>2</sup>RIS, the most recent maps of coastal waters and resource areas and other pertinent information. This information from the Governor's Office aids the state agency in making permitting and review decisions. The Report indicates that if either the permit applicant or the interested public desire to obtain information from the Governor's Office, they must pay a consultation fee, (p. 97, Fig. 31) but the Draft Report does not indicate if local governments have the same free access to aid and information from the Governor's Office.

<sup>1</sup>See Hearing Draft p. 14-18

<sup>2</sup>Texas Natural Resources Information Systems, Hearing Draft, p. 90

B.S. - it says  
everybody  
this incl. Loc. govt

If the agency determines the activity is not "significant", no further assessment takes place, it is treated like a non-coastal activity. If the agency determines the activity "significant", the activity is not precluded; a further analysis by the agency must determine if the activity is permissible. The Draft Program provides the local governments with no input whatsoever into the state agency's determination of significance.

### 3. Is the Activity Permissible?

The draft program sets out no formula or process to determine if an activity with direct and significant effects is permissible. The tenor of the Report suggests that the determination of permissibility would be a balancing process weighing the dollar costs and benefits of an activity against the social and environmental costs. If an agency determines that an activity is impermissible apparently this does not preclude the agency from issuing a permit anyway.

"No activity would be automatically rejected by this process, and suggested improvements in a proposed activity could be accepted or rejected . . . Permit procedures would not be changed by the use of the activity-assessment routine. The permitting agencies would decide whether or not to allow an activity, as is the case under the present system." pp.93-94 Draft.

Furthermore when an agency is issuing a permit it is not absolutely required to use the described activity assessment but may use a "similar" process for assessing environmental, social, and economic effects in reviewing permit applications for activities within the management boundary.

The activity assessment process applied to permitted or reviewed activities within the coastal management boundary amounts only to a procedural methodology for decision making. If the state agency's statutory authority states that a permit must issue if the applicant meets certain criteria, it

TRUE

How is Texas

is questionable whether an agency could deny a permit solely on the grounds that the activity had an impermissible effect on coastal waters.

The proposed management program does not expressly provide for any role of local governments in the activity assessment process, so presumably local governments are relegated to the same comment or review powers they currently possess by virtue of each state agency's particular enabling statute or regulations.

accept  
get voice  
from Adv.  
CmH.

Apparently local governments may comment on federally permitted activities in the coastal area. The same comment function should be accorded local governments for state permitted activities within the coastal area.

#### Designation of Areas of State Concern

##### Outside the Coastal Management Boundary

Since only activities directly within the designated management boundary come within the purview of the activity assessment process, the Program recognizes a need for a definition of other areas and activities which effect the entire coastal area. Hence, state agencies may identify priority areas of concern which are mapped as geographical units by the ICNRE. (see Plate 5 Areas of Particular State Concern) Designation as an area of concern does not automatically effect uses in the area, but alerts potential users of state agencies' programs and policies affecting the area. (Such as the Air Control Board's Galveston Air Quality Maintenance Area and the Water Quality Board's 208 planning areas.)

The Draft Program does not indicate that local governments in the coastal area may also designate areas or activities of particular concern to them which fall outside the management boundary. There is no procedure by which

such local units may initiate or request to include within areas of concern,  
activities outside the management boundary which nonetheless affect the  
locality. Therefore cities within the management boundary should have some  
formal and effective means of participations in the designation of areas of  
particular concern to the municipality.

I disagree:

① if its in the corporate boundaries a  
city can ~~do~~ designate + regulate

already - what more can  
be there?

②

can do via the Advisory Comt  
w/ 8 local elected officials

- guess could provide some  
formal process - but if could  
why formalize

ROLE OF LOCAL GOVERNMENTS IN THE POLICY  
MAKING PROCESS OF THE ICNRE

The restructured ICNRE proposed in the management program would be an executive council for reviewing and recommending coastal policy and programs to the legislature. The ICNRE's powers would be strictly advisory.

*as they  
are now*

- ~ 1. The ICNRE would submit biennially a comprehensive report on coastal problems and issues.
- ~ 2. The ICNRE is to review and comment on all state coastal programs proposed in budget requests to the governor and the legislature.
- ~ 3. The ICNRE is to establish an information collection and retrieval system made easily available to agencies and the public.
- ~ 4. The ICNRE monitors and updates the boundaries of the coastal management area and the resource areas within that boundary.
- ~ 5. The ICNRE and support staff in the Governor's office will assist in the activity assessment process conducted by state agencies in permit applications and review procedures.
- ~ 6. The ICNRE will identify the current national interest in Texas coastal region, monitor federal actions within or affecting the Texas Gulf Coast and make recommendations to the Governor to assure that federal actions are consistent with the state's management plan.
- ~ 7. The ICNRE will monitor the state planning and research programs affecting the coastal management area.
- ~ 8. The ICNRE will hold public hearings on coastal policy issues to maintain an ongoing process of public participation.
- ~ 9. The ICNRE will conduct special studies such as on coastal hazards and bay and estuarine productivity.

technically good - ~~actually~~ this would be the Gov. - he'd be exec. officer. - <sup>11-</sup> but ICNRE would advise him

10. The ICNRE is solely responsible for administering federal grants and funds under the implementation program of the federal Coastal Zone Management Act. The applications of any local governments within the management boundary for federal funds must be evaluated and commented upon by the ICNRE.

The role of local government in these functions of the ICNRE is restricted to the citizen's advisory panel which consists of fifteen members, eight of whom are elected county officials from coastal counties. The chairman of this citizen's panel is a non-voting member of the ICNRE. The advisory group has the power to call public meetings to open the policymaking of the ICNRE to public scrutiny. The main function of the advisory group is to increase the accountability of the ICNRE to the public.

Coastal cities such as Galveston have no greater formal input into the functions of the ICNRE than does the general public. Even though the city of Galveston is totally within the management boundary and is affected more directly than the County of Galveston there is no provision for any representation for the city on the ICNRE. The draft program does not provide that the ICNRE when making policy decisions affecting a particular locality consult representatives from that locality. Most importantly, the proposed plan presents no formula or criteria governing how or if federal grants will be allocated to local governments, even though local governments when submitting federal grant applications must go through the ICNRE.

at time of draft nobody knew because the CZMA amendments didn't pass

hell, pull a typical: Any city w/ pop<sup>n</sup> greater than 50,000 & located totally w-i/ the mgmt boundary shall be an ex-officio member of the ICNRE



Role of Local Government in State-Federal Coordination

If the state's coastal management program is approved by the federal government, then any federal activity affecting the coastal area--including federal licenses and permits, grants and financial assistance and federal development projects--must be consistent, to the maximum extent practicable with the approved state management program. [16 U.S.C. §1456 (c)] ✓

The procedure for federal coordination is described in the draft management program:

1. The federal agency advises the state through the Governor's Office of any activities that would occur in or affect the coast.
2. A detailed description of the project is sent to the state clearinghouse in the Governor's Office. The clearinghouse publishes notice in the Texas Register and routes the description to the ICNRE<sup>3</sup> agencies and "to other relevant state and substate agencies."

The draft does not specifically state whether affected municipalities are also consulted.

In the assessment of federal activities, a municipality within the management boundary should be assured of getting notice and description of any federal activity affecting the municipality as well as having free access to the activity assessment information in the Governor's Office so that the municipality may make a reasoned evaluation.

3. Four weeks are allowed for review and comment by the agencies to determine whether the proposal is "consistent to the greatest extent practicable with the coastal management program by using the activity assessment process.

<sup>3</sup>Hearing Draft, Appendices, p. 123.

4. Finally the clearinghouse returns the state agency findings to the federal agency.

The draft is ambiguous as to whether:

1. the Governor's staff within the clearinghouse, after reviewing the comments of the various agencies and local governments makes a composite, general statement of consistency or inconsistency with the state's management program, or
2. whether the state clearinghouse acts merely as a conduit returning the findings of the various state agencies and local governments to the federal agency without overall evaluation or synthesis.

Under either interpretation, if a municipality within the coastal area has developed its own management program, federal activity within its jurisdiction should be evaluated for consistency with that program.

this is A Tough One -

if # 1 → then the minority agencies get p.o.'d  
# 2 → then Fed get no "state position"

RESTRICTIONS ON LOCAL GOVERNMENT POWERS  
IMPOSED BY THE COASTAL MANAGEMENT PROGRAM

The federal Coastal Zone Management Act requires for an approvable state coastal management program that some of the traditional prerogatives of local governments in restricting uses and activities within their jurisdictions be tempered by the interests of the nation and the region. The federal Coastal Zone Management Act envisions state level planning, based on the premise that parochial interests of localities must be curbed to provide a coherent, orderly state planning program for the coastal area.

*is this really true?*

The federal act requires that the state coastal management program provide

"for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit." §1455(e) (2)

The Act defines "regional benefit" as "a land or water use that typically provides benefits to a significant area beyond the boundaries of a single unit of the lowest level of local, general purpose government." (40 C.F.R. 1684, 1689 [1975]) This unit of government is generally the municipal government. Blanket exclusions or restrictions on uses of regional benefit within the defined coastal management area are not permitted unless they are based upon "reasonable considerations of the suitability of the area for the uses or the carrying capacity of the area." If such reasonable considerations can be advanced by a local government, then uses which may be of regional benefit may be prohibited in specific areas so long as the prohibition is not "capricious". The state must develop some method of reviewing local government decisions to determine their reasonableness and some method of overriding decisions which are "capricious." [40 Fed. Reg. 1684, 1689 (1975)]. The federal act requires a two step process to review local government decisions.

*Quote this statute if you are going to say this!*

1. A general overview by the state planning agency of local government decisions to determine their reasonableness and
2. A method of overriding "capricious" local government decisions which conflict with regional or national interest.

The proposed state management program provides no method for review by the state of local government decisions. Again only those local governments partly or wholly within the defined boundary, such as Galveston, are in any way affected by the coastal management program and the requirements for considering regional interests. There is no mention of whether local governments are to employ the activity assessment routine through / the Governor's Office nor whether ICNRE ever reviews local government decisions. The draft provides that "all agencies are directed to give full and fair consideration to the national interest in their deliberations on coastal resources," (p. 99) but does not so direct local governments nor describe a method for reviewing local government decisions to determine if the national interest is considered.

The proposed program does provide that if "a local government arbitrarily restricts or excludes facilities or activities of national interest or of greater than local benefit, an aggrieved party be awarded prompt judicial review." This provision indicates that the only method by which a local government decision could be challenged would be if the person whose use or activity was restricted or precluded by a local ordinance challenged the application of the ordinance in court. Presumably the state itself would not be such an aggrieved party. The draft states that "judicial review rather than administrative remedies would probably prove inconclusive." (p. 99)

and see unless a city attorney  
could get nervous!

Any action of a city government is normally subject to judicial review by a person aggrieved by that action on the grounds that the action is ultra vires the powers of the city, or is in violation of the laws of the city, state or nation - such as a taking of property without due process or other denial of constitutional rights. The proposed coastal management program will subject those few municipalities such as Galveston which are within the management boundary to a challenge of its land and water use decisions on a basis which is extraneous to the legality of the city's decision. Any individual who is prohibited from or restricted in engaging in any activity by local land or water use laws may challenge that denial or restriction in court solely on the ground that the proposed use is of regional or national interest and the action of the city arbitrarily restricts that use. Almost every activity within Galveston could arguably be of "regional" or "national" benefit. It is not a regional or national entity who claims that the proposed activity is of benefit, but the person whose use or activity was denied or restricted by the city who alleges the regional or national benefit.

is this a valid stmt?  
I can read it back wrong  
- I think

good point -  
"You damn right - My thing is of Natl. benefit!"

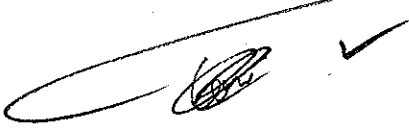
Under the proposed coastal program, any time the city exercised its local land and water use controls, it would be vulnerable to suit in court brought by any party who, without prior resort to any administrative agency, claimed his proposed use or activity is of regional or national benefit.

is this a realistic question?

The court alone would have to determine whether,

1. The use or activity is of regional or national benefit, if so
2. Is the city's land or water restriction arbitrary and thus overruled, or reasonable based on the suitability and carrying capacity of the area.

There is no provision that the court consult regional and national interests or the state in making the former determination, nor that the court consult the ICNRE or the Governor's activity assessment process when making the latter determination. The judiciary lacks an adequate data base to determine if restrictions of local governments are reasonable considering all the environmental, economic and social interrelationships in an area. The decision of whether a city's land or water use restriction is compatible with or contrary to coastal management policy is a legislative type of decision which <sup>should</sup> ~~must~~ be made originally by an administrative agency rather than the judiciary.



CONCLUSIONS AND RECOMMENDATIONS

*same as transcripts!*

Conclusions:

Generally the draft proposal of the coastal management program makes few references to local governments; the involvement of local government in the implementation phase of coastal management is minimal. Basically the planning and comment functions of local governments--cities as well as special purpose agencies--are not altered by the proposed coastal management program. Only those local governments whose jurisdictional boundaries are within the operational boundary of the coastal area are affected in any way by the management program. Thus though activities of Houston may have significant impacts on the coastal waters they are excluded from the coastal management program.

Galveston is totally included within the operational management boundary as presently defined. Corpus Christi and Port Arthur also appear to be included. This boundary is subject to alteration with changes in biological and geological conditions. Due to the inclusion of Galveston within the management boundary, the role of local government in general policy decisions and specific permitting activity in the coastal boundary is paramount to Galveston and others. It should be noted that these three communities contain about 75% of the people in the present management boundary. The following conclusions apply to Galveston, as well as other local governments:

1. The activity assessment procedure for evaluating direct and significant impacts of activities on coastal waters is applicable only to activities permitted by the state or federal government, thus activity assessment is not required for local government permitting or regulation, nor is it denied.

2. Since Galveston, Port Arthur, and possibly Corpus Christi are all within the coastal management boundary, any activity or use in the city may be classified as having a direct effect on the coastal area. On the other hand, many activities outside Galveston and other cities which will affect them are not within the coastal

management boundary and thus not subject to the program.

3. Galveston has no input to the ICNRE decision determining fluctuations in the management boundary, although the location of the management boundary determines whether or not activities within the city are regulated by the program.

4. Coastal resource information is to be housed in the Governor's Office to aid state agencies in making permitting and review decisions, the report does not indicate if Galveston or any other coastal zone city would have the same free access to aid and information from the Governor's Office.

5. The Program does not provide Galveston or any other coastal zone city with any input into the determination by a state agency that an activity within the coastal area has a significant impact on coastal resources. *except as above now*

6. If a state agency determines that an activity has an impermissible effect on the coastal area, this does not preclude the agency from issuing a permit, nonetheless. - Yes

7. The proposed management program does not provide for any role in the activity assessment process, so presumably Galveston is relegated to the same comment or review powers it currently possesses by virtue of existing state law and regulation.

8. There is no procedure by which Galveston or any other coastal zone city may initiate or request to include as state areas of concern, activities outside the management boundary which affect the city. - *via Adv. Cmte*

9. Galveston has no formal input into the functions of the ICNRE than does the general public, even though the City of Galveston is totally within the management boundary and is affected more directly than the County of Galveston which does have representation on the advisory council to the ICNRE. The same observation applies to Port Arthur and possibly Corpus Christi.

10. The Plan presents no formula or criteria governing how or if federal grants will be allocated to local governments and cities such as Galveston within the management boundary. - *Fed Ammnds. weren't done then!*

11. In the assessment of federal activities, Galveston should be assured of being promptly notified and receiving the description of

*ok. in 750k, put in ex-officio - like hell*



and federal activity affecting the municipality✓

12. The proposed program provides that if "a local government arbitrarily restricts or excludes facilities or activities of national interest or of greater than local benefit, an aggrieved party be awarded prompt judicial review."\* This provision will subject those few municipalities such as Galveston, which are within the management boundary, to judicial challenges of its local land and water use regulations by any person on the basis that the regulation conflicts with a national or regional benefit. For example, this language appears to mean that any Galveston, Port Arthur, or Corpus Christi zoning restriction can be challenged immediately in courts on the basis of national or regional needs; just because we are in the coastal zone management boundary.

*Seems like a good point,  
BUT it's the Federal law  
-not TCMP's Scheme*

Recommendations:

1. A city such as Galveston which is within the defined coastal boundary should be represented on the citizen's advisory committee to the ICNRE. ✓ O.K. if >50,000 pop on it!

2. Local governments within and without coastal zone should have free access to the information systems in the Office of the Governor and to the activity assessment process. Local governments should be able to obtain the assessment reports from the Governor's Office regarding any proposed activity within its jurisdiction.

*No sweat*

3. Any city or local government which will be affected by an alteration in the management boundary by the ICNRE should be afforded notice and opportunity for formal comment. ✓ *loser*

4. The language raising the issue of whether the regulations of Galveston or other local government within the management boundary arbitrarily restrict or exclude facilities or activities of national or regional interest should be changed to remove this unwonted incursion on local zoning powers. If this is not possible, the issue should:

- (a) Only be raised after a national or regional entity has demonstrated the benefit of the activity to the broader interests. After the ICNRE has determined that national and regional interests are implicated,

\* Texas Coastal Management Program, Hearing Draft, Pg. 99

Texas Coastal Management Program, Hearing Draft, (Appendices), Pg. 161

- (b) ✓ the ICNRE should assume the task of evaluating the national or regional interest in light of the overall policies and interests of the state in the coastal area.
- (c) ✓ The ICNRE should determine, after an adjudicatory hearing at which all interested governmental units present evidence, whether the regulations of the local government which preclude the activity are unreasonable in light of the suitability and carrying capacity of the area for such use.
- (d) ✓ At the conclusion of the hearing, if the ICNRE and the local government are unable to resolve the conflict of interests, then the ICNRE would issue an advisory opinion that the local government had arbitrarily restricted or precluded facilities or activities of a national or regional benefit.
- (e) [ The Attorney General should be empowered to bring suit against the enforcement of the local government's regulation as in conflict with the state's coastal management law. The Court in making its determination would review the administrative record of the ICNRE hearing and determine if the local government's regulation should be upheld or overruled.
- (f) [ Finally, if the Coastal Zone Management Program is not federally approved, all the limitations and procedures discussed above should automatically self destruct by law.

15 this reasonable?  
if no lawyer & don't know!

a new version of  
GALVESTON law!

5. Galveston, and other municipalities in the coastal area, should be encouraged to develop its own management program which intermeshes with the state coastal management program. The local management program would be approved by the Governor upon the advice of the ICNRE. If Galveston develops such a management program, it should be afforded greater participation in coastal management in the following particulars:

- (a) The ICNRE should allocate federal funds from the coastal management program to Galveston and other coastal zone cities to develop and administer its own management program which would coordinate the

give 'em  
a few \$'-  
10k is a  
lot to  
them!

policy making and regulatory activities of the municipality with the state's plan for coastal management.

*Does this imply that a city will do a plan & submit to ICNRE for approval?*

(b) Galveston and other coastal zone cities with approved plans would be empowered by the legislature to designate within its management plan areas of concern regarding activities occurring outside the management boundary which nevertheless affect the Galveston area. These areas of concern should be keyed into the state activity assessment process so when any state agency permits or reviews an activity with a direct effect on the locality, the concerns of the local government are assessed.

✓ (c) Galveston and other coastal zone cities with approved plans should be given the power by the legislature to review and comment upon the general reports and recommendations of state coastal policy developed by the ICNRE, as well as having formal input into the ICNRE's alteration of the coastal management boundary and composit resource areas.

*Can do it now*

(d) Galveston and other coastal zone cities with approved plans should be empowered by the legislature to review and comment upon permits issued by state agencies which affect the jurisdictional area and areas of concern of Galveston to determine consistency with Galveston's management program.

7 (e) In the process of the state's review of federal activities, Galveston and other coastal zone cities with approved plans should be able to review and comment upon the consistency of federal activities in light of the local management program.

In summary the draft management program generally does not deal with the role of local governments in the coastal management program. In order for the coastal management program to be approved by the federal government to obtain implementation funding, the state must

*It simply exempts them!*

with respect to local governments:

- ✓ 1. Coordinate its management program with local plans applicable to areas within the coastal zone.  
(16 U.S.C.S1455(c) (2) (A)
2. Establish an effective mechanism for continuing consultation and coordination between the management agency, (the Texas ICNRE) and with local governments within the coastal zone to assure the full participation of such local governments and agencies in carrying out the program. *cto ?*