National Committee on Levee Safety (NCLS)
Review Team Feedback Form

DIRECTIONS: The Committee would like your feedback on their draft recommendations. The associated Review Team compilation document and presentations from the Dec. 12, 2008 meeting provide more detailed information. Please send your responses to terry.r.zien@usace.army.mil (and copy laura_sneeringer@sra.com) by December 22, 2008. Since the NCLS is working on a very quick-turnaround time, a quicker response is appreciated. The Committee will take your feedback into consideration, but due to the limited timeframe, responses will not be provided.

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Components of a National Levee Safety Program
Which is preferable: fewer, but stronger, state programs or requirements for every state to have a levee safety program?
It is important that the national program be set up to be delegated to states. States have the constitutional authority for permitting levees and associated land use that adds to levee risk, the ability to order levee owners to take action and to undertake enforcement actions when needed. At some point, States could delegate some functions to sub state entities, with appropriate oversight and safeguards.

Are minimum qualification requirements reasonable compared to benefits/incentives?
No. The minimum qualifications for funding must include participation in the NFIP and minimum regulation of floodplain development and all development that is or will be impacted by levee failure or overtopping. Other suggestions on incentives are included elsewhere in these comments.

Are the lists of incentives and disincentives meaningful? Are there any incentives or disincentives you would add or remove?
States should face sanctions and not be eligible to receive any type of federal assistance within levee protected zones if a State is not participating in the program.
It is vital that 1) the incentives and disincentives are correctly targeted at the groups and 2) they will have long term impacts on positive behavior (operation and maintenance, floodplain management, land use and insurance). The report recommendations do not appear sufficient to accomplish these critical conditions to achieve accountability and reduced risk.

We would suggest consideration of a COBRA like sanction of no federal assistance within levee protected zones if a State is not participating in the program. Perhaps a caveat could be granted for levees that comply with levee design, inspection, and maintenance for a 500 year standard. This may be tough, but the sanctions have to target development and other infrastructure assistance or levee safety will continue to be ignored. At some point, phasing in the non-availability of federal flood insurance could be a sanction for states not adequately participating in these programs.
Mapping and the NFIP
The proposed mapping of “residual risk” areas behind levees is a starting point, but to give it
substance the “communities” protected by the levees MUST BE REQUIRED to participate in the
NFIP and REQUIRED to adopt and be in compliance with floodplain management ordinances.
Simply mapping the hazard is completely inadequate. The section “mandatory” flood insurance
under the current definitions is an illusion. It is only available IF the community participates in the
NFIP and it is only MANDATORY for federally back loans and it is ONLY for structures. This is
very small subset of the entities protected by a levee. It is a gaping loophole for any entity to get a
free ride if that entity does not have a structure or a federally back loan. It has no
disincentive for land owners subdividing and encouraging more development and
increasing risk in levee protected areas. It has no buy in by the local government.

The complex world of current levee ownership and operation and maintenance
responsibilities needs to be clearly articulated at the onset of the report. The variations on
combinations of ownership and protection must be determined to package effective
organization of the programs and incentives and disincentives for the various aspects of
levee safety.

The following recommendations should be added:
Recommend: That PL 84-99 and the Disaster relief program be reviewed and aligned
with the levee safety Program and NFIP. There are two major federal programs that
shift the consequences of inadequate levees or responsibilities associated with
them from levee owners and communities to the federal taxpayers---those programs
are PL 84-99 and the Disaster Relief Program.

Recommend: The levee inventory include geo-referenced spatial files showing the
full extent of each levee system, ownership and operation and maintenance, but the
federal government should NOT conduct a detailed analysis of the levees, which is
the responsibility of levee owners. The delegation of program responsibilities and
the set of incentives and disincentives should be designed to target these different
levee communities.

Do changes to the NFIP, CRS and other federal programs dilute the effectiveness of those
programs? Is the return on modification positive?
ASFPM agrees that the National Levee Program should be aligned with other federal programs.
The recommendations fall short of achieving alignment with FEMA. Recommending that FEMA
map the hazard is inadequate without buy-in by the local government through NFIP participation
and without mandatory true risk flood insurance in those areas that will be impacted when the
levee fails or overtops.

Participation in the NFIP should be mandated as a minimum for delegation or receipt of funds.
Mapping areas of residual risk is certainly in line with the NFIP, however relying on flood insurance
without requirements to reduce risk through floodplain management creates the classic “moral
hazard”: if you are fully insured you have no incentive to modify your “risky” behavior unless the
insurance is at true personalized actuarial rates—it just pushes the risk onto the NFIP or taxpayers.

The proposed funding mechanism of a surcharge on insurance premiums is ill conceived.
Expecting FEMA to collect a surcharge on insurance premiums and use that to support the levee
work is inefficient and inequitable.
Are there other federal programs with which the National Levee Safety Program should align?
Numerous ones—all federal programs that impact associated land use and provide grants that can also externalize the consequences of levee failure or overtopping to federal or other taxpayers.

Do you have any substantial improvements or considerations for the Committee on the components of a National Levee Safety Program?
ASFPM strongly suggest inclusion of the following recommendation:

Recommend: Eligibility for federal funding of programmatic or reparations is contingent upon all communities in the levee protected area to participate in the NFIP and be in good standing. Levee protected areas where communities fail to maintain their good standing in the NFIP will lose eligibility for funding for a minimum of 5 years.

The report systematically treats levees as an entity onto themselves with inadequate connection between flood risk management and the management of levees. This essentially is the problem with dam safety and as such has led to inadequate integration of dam safety as a risk management strategy.

Common Set of Standards
Do you have any substantial improvements or considerations regarding the common set of standards?
The classification system falls far short of what is needed. There are short term and long term consequences of levee failure. These definitions are not compatible in similar definitions with the Dam Safety program, and may reduce the effectiveness of implementing the Dam Safety program. From a local / state perspective, less than 1,000 people effected to classify a levee as "low hazard" is really a large number of people, which is often a meaningless connection to loss of life.
While a classification system may it helpful, it should be simple and straightforward such as:

HIGH----------potential for any loss of life
SIGNIFICANT---potential for damage to property
LOW----------no loss of life or property damage potential

Communicating Risk
What would best inform our discussion about how to change behavior regarding residual risk?
There is far too much discussion on risk communication, implying that better communication will somehow change citizen and community behavior. The single most effective way to change behaviors is for those affected to bear responsibility (esp. financial) for their choices. That needs to be reflected in the recommendations.

Do you have any substantial improvements or considerations regarding the communications and outreach program for governments and affected communities?
The most effective way to communicate risk is to ensure that the communities and the people who insist on building and living at risk are responsible for the consequences thereof and insuring their property. Levees inspections and maintenance should be supported through fee assessments on properties protected by the levees. Participation in the NFIP should be mandatory, and flood insurance should be mandatory for all areas that will be impacted by levee failure or overtopping.
Options for mitigation that do not depend on costly levee systems must be investigated for areas where extensive investment in structural protection cannot be justified.

**Governance Model**
Would creating an independent commission have advantages over embedding a National Levee Safety Program in an existing federal agency?
Suggest the report simply list the pro’s and con’s of each approach so Congress has good information with which to choose.

What are the benefits of combining a National Levee Safety Program with a dam safety program under a single governance structure? If it is beneficial, why?
At the national level these two programs should be separate. The entities who gain from the construction of a dam represent a much broader community than those who may be harmed if the dam fails; in contrast, there is considerable connection between the entities that benefit from a levee and would be harmed when it fails. While some think levees are like dams, the only similarity is in some of the engineering principles. Levees are much more related to broad land use and entire watersheds reaches than most dams.

Are there other programmatic structures or ideas to consider?

Do you have any substantial improvements or considerations regarding the governance model?
ASFPM does not support program delegation to entities other than states as a first order activity. Delegation of some tasks would be acceptable as a second order activity, after the state program is established. Two tiers of delegation should be clearly articulated: Program Delegation to Qualified States and Task Delegation to Qualified Entities.

**Liability**
Do you have any substantial improvements or considerations regarding the Committee’s recommendations on liability protections?
Immunity should NOT be an incentive for participation. If immunity needs to be addressed then it should be done as function of law and apply uniformly. We believe this matter is best left to Congress to work with other entities, and not be addressed in this report.

**Levee Rehabilitation Act**
Do you have any substantial improvements or considerations regarding the Committee's recommendations on establishing a National Rehabilitation, Improvement and Flood Mitigation Act?
ASFPM does NOT support this recommendation as written. A National Act for Flood Mitigation would send the appropriate message. Levee rehabilitation and / or improvement are only some of the options. The report systematically fails to consider options reducing the dependency on levees and seek mitigation solutions. This is a significant omission.

**Strategic Implementation Timeline**
Do you have any substantial improvements or considerations regarding the Committee's strategic implementation timeline?
As mentioned in the cover letter, the entire process is really being rushed too much. This report needs considerable work on major issues, and suffers from simply an editing standpoint. In its current form, it is very difficult to review, esp. with the short time frame allowed. ASFPM strongly
feels it is more important to have a good, thoroughly vetted report some months from now, than to meet some deadline that we have not found those in Congress seriously concerned about at this time.

PART TWO: RECOMMENDATIONS

ASFPM Comments

Recommendation: Establish a National Levee Safety Commission (NLSC) as an independent Federal agency, that is composed of 7 Commissioners for policy and management decisions, a Commission staff of technical and program support, and several Standing Committees to provide advise to the Commission. ASFPM could probably support the establishment of an independent agency, but we feel a much better approach is that the report should include an evaluation of alternative governance structures and their pros and cons. It is of concern that this agency will have to “require” or “task” other agencies such as the USACE to perform critical aspects of the program. It is not at all clear what authority this agency will, or could have to accomplish this delegation of tasks.

Recommendation: Delegate qualified entities to implement a subset of National Levee Safety Programs. These entities may include international organizations, states (as defined in the NLS Act), interstate regions, intrastate regions or local governments. States should be the first choice to be the designated entity for implementation of a Levee Safety Program within their borders. ASFPM does not support program delegation to entities other than states. Delegation of some tasks from the state to sub-state entities would be acceptable after the state program is established. Two tiers of delegation should be clearly articulated: Program Delegation to Qualified States Task Delegation from states to Qualified Entities

Recommendation: The Committee recommends that the following levee definitions and Hazard Potential Classifications be adopted on an interim basis for use with both the National and State Levee Safety Programs and that they be subject to revision after 5 years. ASFPM supports the concept, but DOES NOT support the levee definitions as they stand, the impacted population figures are too high and the system to complex—it essentially implies that a certain amount of loss of life is acceptable—that does not seem appropriate.

Recommendation: Authorize and fund the Corps to establish and conduct an inspection of all levees nationwide, including structures along canals. Require (and fund) the Corps to expand the National Levee Database to include inventory and inspection of federal levees, federally constructed, non-federally operated and maintained levees, and all jurisdictional levees on a periodic cycle, not to exceed 10 years. ASFPM supports the authorization and funding of the UASCE to establish and maintain an inventory of all levees. That inventory must include geospatial files that show the full extent of levee systems. The costs for federal inspection of ALL levees would be 1) huge; 2) potentially a slow moving, lumbering process; 3) more efficiently carried out at the owner level; and 4) should be provided by owners as part of the buy-in to being a responsible levee manager/owner. Inspections
should be conducted by qualified professionals and the cost is the responsibility of the levee owners. Failure to provide inspection disqualifies any entity from federal funding eligibility.

**Recommendation:** Develop and implement measures and practices to more closely harmonize levee safety activities with environmental protection requirements and principles.
ASFPM supports

**Recommendation:** Develop National Tolerable Risk Guidelines for levees and structures along canals.
ASFPM supports the concept of a national discussion on risk, but the National Levee Safety Program is not the appropriate lead. Furthermore, a discussion and any effort related to “tolerable risk” in this report or for this program is inappropriate. The concept is currently abstract at best, and experience shows that communities and citizens will tolerate considerable risk, as long as someone else pays the consequences. Until a levee safety program is in place and structured so those who live at risk with levees, or add to the risk associated with levees are responsible for all the consequences thereof, any discussion of tolerable risk is premature and should be expunged from the report.

**Recommendation:** Develop a Research and Development (R&D) program funded at the federal level, with contributions from States and private sector that includes as a minimum:
- **Identification of alternatives to levees to provide reductions in flood risk**
- **Innovative technology for repairs and improved engineering methods that would lead to more reliable levees and more cost-effective and environmentally sound approaches**
- **Technical and archival research**
- **Development of research products (technical manuals and guidelines, workshop and conference proceedings, training manuals, executive summary documents, brochures, etc..) to the levee safety community (dissemination not the job at national level)**
- **Build upon existing resources and research**
- **Technology and tools to enhance the security of levees at the operation level**
- **Development of methods and technology for improved levee inspections**

ASFPM supports this list only if mitigation and alternatives are a key part of the research program.

Further, this entire list implies that the solutions to the nation’s levee problems are engineering and technology. The history of levee failures and increasing flood damages and flood risk in the nation vividly show this is not the case. The “who benefits and who pays” issue, the social and environmental, along with long term impacts to people, our natural systems and our society far outweigh the technical issues in terms of addressing this problem.

**Recommendation:** Develop a public education and awareness program designed to increase public support of State and National levee safety programs and communicate residual risks associated with living in levee protected areas. The program will be guided by the following parameters:
ASFPM believes there is too much emphasis in the report on communicating risk rather than mitigating it. However, some communications is needed and ASFPM could support parts of the recommendation if the Levee Safety Program outreach is partnered with some existing communication program like the FEMA FLOODSMART program to develop some model
approaches. Communicating risk associated with levees must be tailored to each specific levee system and must be done at the local or state level.

**Recommendation:** FEMA’s flood hazard mapping program should be augmented to include the following activities to further support National Levee Safety Program activities, especially those associated with risk identification and communication in levee system impacted areas.

- **Option One:** Identify levee systems, including structures along canals, and associated levee system failure consequence zones. This should be carried out in accordance with the standards established through the effort lead by the Corps, and depicting the consequence areas identified by the Corps in the NLD. The completion of this step is dependent on the Committee recommendation that recommends authorization and funding the Corps to inventory and inspect non-Federal levees.
- **Option Two:** Re-designate on DFIRMs existing Zone A/AE or Zone X areas impacted by levees as either AL or XL, respectively, to better communicate the greater flood risks in levee system impacted areas.
- **Option Three:** Depict on FEMA’s website additional flood hazard information (i.e. 200-year and 500-year floodplain maps) that may be provided by local/regional/state entities.

ASFPM fully supports the mapping of levee residual risk areas on FEMA FIRMs. ASFPM DOES NOT support the recommendation as written.

Alignment of federal programs is not achieved by this recommendation. The Levee Safety Program should require participation and good standing in the NFIP for delegation eligibility and any federal funding. If the state and/or the community is not performing the minimum federal requirements for floodplain management, they are not good candidates for levee management. **The clear requirement for NFIP participation is missing throughout the report.**

*Option One.* Levees accredited with providing protection from the 1% annual chance flood are already required to be shown on FIRMs. Mapping “consequence” zones is unclear and not linked to flood insurance. ASFPM does not support this option.

*Option Two.* It should be clearly stated, that areas protected by accredited levees should be mapped as zones with risk. FEMA should be tasked with developing appropriate actuarial insurance rates and floodplain management regulations for residual risk areas. ASFPM could support this option if appropriately revised.

*Option Three.* ASFPM supports the idea, but this is not a complete solution.

**Recommendation:** Develop and adopt a set of National Levee Safety Standards for common, uniform use by all federal, state and local agencies. The National Standards should incorporate engineering policies, procedures, standards, and criteria for a range of levee types, canal structures, and related facilities and features. We recommend that interim products and procedures be adopted while final standards are developed. ASFPM supports this recommendation with the USACE being tasked to lead the effort in cooperation with other fed and state and regional entities.

**Recommendation:** Incentives and disincentives can be used to encourage states, regions, communities, and owner/operators to meet and to exceed minimum qualifications for delegated levee safety programs and to manage flood risk in levee-protected areas.
ASFPM supports this recommendation with the caveat that the Levee Safety Program Commission identifies the appropriate and effective mechanisms. These need to be meaningful to States and must be accompanied by details to show Congress how the cost of these incentives to the federal taxpayers will be offset by saving in disaster and other federal costs that will be reduced by effective state levee safety programs.

**Recommendation:** Congress should identify, support, and incentivize best practices for states and communities to exceed minimum requirements for delegated levee safety programs and for managing risk in levee-protected areas.

ASFPM supports this recommendation with the caveat that the Levee Safety Program Commission identifies appropriate and effective mechanisms as noted above.

**Recommendation:** Establish a new grant program which would be used to support the establishment of a sustainable National Levee Safety Program for all States, at least at a minimum level.

ASFPM supports this recommendation with the caveat that the grant program be limited to qualified entities that fully participate in the NFIP. Again, this must include strong consequences for a state that does not choose to participate. Grant programs should have a built in gradual movement to stronger state programs with higher standards and criteria, knowing that total effectiveness will not be achieved immediately.

**Recommendation:** States should be offered the services of federally funded staff and Peer Review teams that would advise the states on establishing and maintaining an effective Levee Safety Program.

ASFPM does not support this level of detail in the report.

**Recommendation:** Develop a National levee safety training program that includes the following minimum elements:

- In order to ensure the high level of professional training and experience, delegation of the National Levee Safety Program (or parts thereof) to States and/or local entities should occur only if that entity has at least one “Certified Levee Professional” (CLP) on staff (or under contract) that is significantly responsible for the program.

- The National Levee Safety Commission contract with the Corps to take the lead responsibility and be provided the necessary funding to develop, maintain, and periodically update technical assistance materials dealing with State and National Levee Safety Programs and the physical integrity of levees.

ASFPM agrees with developing training and inspection criteria.

**Recommendation:** Require the phasing in of mandatory purchase of flood insurance for structures in areas protected by levees with risk informed premiums.

ASFPM strongly supports the immediate mandatory purchase of flood insurance for all areas of risk associated with the levees and related development. HOWEVER, this cannot be the funding mechanism for levee safety. The report should have clear language that explains flood insurance is currently only for structures, and only required if the structure is collateral for a federally backed loan. It does not include infrastructure; land; self-insured states or businesses. These qualifications should be stated in the report; otherwise the implication of “mandatory flood insurance” is misleading.
Recommendation: The National Flood Insurance Program (NFIP) Community Rating System (CRS) Program should be revised to credit a community based on its Local/State's levee safety program and augmented to increase/decrease maximum credits allowed for certain CRS activities, including but not limited to Activity 620. ASFPM agrees---but while CRS may serve as an example, it has limitations here.

Recommendation: Authorize the National Levee Rehabilitation, Improvement, and Flood Mitigation Act
ASFPM supports a National Act for Flood Mitigation. Levee rehabilitation and / or improvement are only some of the options. ASFPM does NOT support this recommendation as written.

Recommendation: Congress should explore a range of measures aimed at reducing the potential liability of engineering firms and/or government agencies that perform engineering services for levee systems (e.g. inspections, evaluations, design, construction administration, certification, or flood fighting) for damages resulting from levee failures. ASFPM does not support this recommendation. Immunity should NOT be an incentive for participation. If immunity needs to be addressed then it should be done as function of law and apply uniformly. All reference to this issue should be removed from the report—this is not the place for it.