

Coastal Nonpoint Program **Coordination White Paper**

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Introduction

The Coastal Zone Act Reauthorization Amendments (CZARA) of 1990, now commonly known as the Coastal Nonpoint Program (CNP) are over a decade old. The coastal states, islands, and territories have been working to develop programs pursuant to the enabling legislation and subsequent guidance from the National Oceanic and Atmospheric Administration (NOAA) and the Environmental Protection Agency (EPA). The ‘first round’ of ‘full program approvals’ has been made. There remain numerous, in fact a majority, of states to complete the development and approval processes. We have had several ‘national meetings/workshops’ on the coastal nonpoint program. During the course of the latter of these meetings, several individuals began a dialog about ‘implementation’ of the programs - the who, what, when, where, how and why of moving on.

Thus was born the “CNP Implementation Workshop” Planning Committee. The need of and desire for an “implementation workshop” decided upon by the “members” of the planning committee began with “what do we want to do in this workshop? The answer was – there are many questions about implementation, what it means etc. that have not been focused on so let’s work on those. They divided the subject matter into four broad topics – monitoring and tracking, coordination, evaluation and reporting, and implementation. The planning committee came up with a list of questions that we thought might need to be addressed at the workshop. With respect to coordination there were five. They are as follows:

- 1 – What is the purpose of coordinating the CNP with other programs?
- 2 - How can existing funding sources like the Farm Bill be used to implement BMPs in the coastal area?
- 3 - How have states successfully directed 319 resources to the coastal area? Are there other resources being directed to 6217 (NRCS, CZMA, NEP, NERRS, DOD, FHWA)?
- 4 - What other programs have states used to develop or implement BMPs? CZMA? Clean Vessel Act? Etc.
- 5 – Who are the other partners needed to implement the management measures? This ‘white paper’ is intended to further that portion of the dialog by focusing on some of the important issues vis-à-vis coordination and implementation. It is meant to serve as a starting point only; an effort to try and give frame and context to the discussions that will

take place at the meeting. The more we consider the issues of coordination and implementation, the more complex they seem to become. This white paper was developed by a working group and has been submitted to the planning committee for use during the first national meeting focused on implementation of the Coastal Nonpoint Program.

We start the paper with a discussion of “coordination” vis-à-vis the authorizing legislation and the rules/regulations and guidance produced by the federal agencies pursuant to that legislation. After this discussion, we turn to Issue Identification where we try to ferret out those most germane issues regarding coordination as they relate to implementation. Subsequently, this section is followed by an Issue Assessment section(s), which focuses or clarifies the most significant questions surrounding each issue we have identified. These are followed by Meetings Outcomes sections.

As you will see, we came up with three broad issue areas: federal coordination, state coordination, and other coordination. Discussions relative to each of these that frame the issues are made, and finally, meeting outcomes are proposed.

Legislation & Guidance

CZARA Statute

A simple word search of Section 6217 of the federal Coastal Zone Management Act (CZMA) reveals that the word “*coordination*” is used three times.

The first two uses occur within section 1455b(a)(2) entitled “Program coordination.” This section states firstly that “[A] State program under this section *shall* (emphasis added) be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and 1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972 [16 USC §§ 1651 et seq.]”

This tells us, we believe, that the legislative intent of Congress was for a program that would provide a synergistic relationship between water quality programs and coastal programs. This would ultimately provide for a program that met the overall goals of the section, to wit, the protection and/or restoration of coastal waters from the effects of nonpoint pollution.

Secondly, vis-à-vis “coordination,” the section states that the program “shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act [33 USC § 1329], as the program under that section relates to land and water uses affecting coastal waters.” This “update and expansion,” it could be argued, is a reference to the program being or using regulatory means to achieve what the non-regulatory 319 program may not have been achieving “as the program under that section relates to land and water uses affecting coastal waters.”

The third reference to “*coordinate*” or “*coordination*” is found in section 1455b(b)6 entitled “Administrative coordination.” This subsection refers to a requirement of state plans. It specifically states that a state program “shall provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g), to protect coastal waters generally, and shall also contain the following:”, i.e. administrative coordination. This coordination is spelled out explicitly as “[T]he establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.”

Guidance Document (1993)

“*Coordination*” is mentioned in several places in the 1993 Coastal Nonpoint Pollution Control Program: Program Development and Approval Guidance document. In the Executive Summary of the document, at page *viii*, it states:

“The statute requires the coastal nonpoint programs to be coordinated closely with existing Clean Water Act programs and with approved state coastal zone management plans. In addition, the statute requires the establishment of coordination mechanisms among state agencies and between state and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety.

NOAA and EPA expect state coastal nonpoint programs to be well coordinated with all relevant Federal, state and local programs including those administered by EPA, NOAA and U.S. Department of Agriculture (USDA). In addition, states should establish mechanisms to coordinate the relevant state and local programs through joint project reviews, memoranda of agreement, or other mechanisms. Where possible, these mechanisms should build upon existing coordination procedures.”

Administrative Guidance (1998)

The second bullet under ‘Targeting’ on page 3 - Coordination and integration of coastal nonpoint programs with other programs and water quality initiatives, e.g., state §319 nonpoint source programs, the development of Total Maximum Daily Loads (TMDL) under section 303(d) of the Clean Water Act, the Environmental Quality Incentives Program under the 1996 Farm Bill, National Estuary Programs, and State Watershed Plans, should be considered in establishing priorities and developing strategies to meet §6217 CZARA program requirements.

Issue Identification and Assessment

Coordination is crucial to the success of any endeavor that involves more than one person or entity, and the coastal nonpoint program is no exception. The program was founded on the premise of coordinating efforts to achieve a goal of improving water quality. The reason the program was set up as it is was because it was recognized that without coordination, there would be no improvement in water quality, and that there could be no effective coastal nonpoint program. Coordination can be a catalyst for achievement while a lack of coordination is usually a recipe for failure. It is often the determining factor between success and failure.

Coordination occurs at many levels among many partners. At its most basic level, coordination implies cooperation. Within the context of the coastal nonpoint program, coordination occurs among the following groups of entities to greater and/or lesser degrees: federal agencies, state agencies, local government agencies and non-governmental entities. This coordination occurs within and without the entity groups. EPA, NOAA, NRCS, FHWA and other federal agencies should coordinate with each other, the states and, to a lesser extent, the local government partners. The states coordinate between state agencies, with the federal agencies, and, to a much greater degree, with local governments and Non-Governmental Organizations (NGO's).

FEDERAL COORDINATION:

Federal coordination should serve as the foundation and/or the model for other types of coordination. We have identified three coordination issues/types that are relevant to the federal agencies: communication, funding, and new programs.

Communication: A basic question should be “What is the “state of coordination” among the federal agencies that oversee 6217 as well as those that impact it? Are there federal MOUs that define partnerships, coordination efforts, responsibilities, or assistance goals?

Issue: There are not enough interagency workshops for integrating/coordinating 6217 into other programs e.g. 319, ISTE/TEA21, EQUIP, WHIP etc.

Recommendation: All future 319 conferences should include sessions on improving the integration of programs and discussing the ways in which better program coordination (between 319 and 6217) could reduce burdens (e.g., reporting, monitoring, etc.) for both programs.

Issue: Regional federal coordinators are not always communicating/coordinating amongst themselves.

Recommendation: To the extent possible, there should not be separate nonpoint and coastal nonpoint coordinators at the regional level of federal agencies.

Funding: Funding of the CNP by Congress has been abysmal. States are encouraged by the federal agencies to “partner” with other programs as a means of funding projects and/or meeting the goals of the CNP. Some states have heard several “presentations” from NOAA and/or EPA on “potential” sources of funding, e.g. using the various pots of money provided to USDA/NRCS or TEA/ISTEA/TEA21 monies to fund nonpoint programs.

Issue: Federal agency coordination to “encourage” this type cooperation.

Recommendation: Federal partners coordinate and produce an MOU/position paper/policy guidance or some other “mechanism” which demonstrates; 1 – support, 2 – provides guidance on the “process” by which the support will translate to actual monies to state programs.

New Programs: There are new initiatives/programs etc. coming on-line on a regular basis from Congress and the federal agencies. Things like NPDES Phase 2, TMDL’s, etc., which will or should have consequences to when, where, and how CNP’s are implemented. NOAA and EPA need to give consideration to how these things are going to “affect” the CNP’s, inform the states in a timely manner, and ensure that coordination takes place so that everyone understands revised requirements, etc. There should be a mechanism developed to memorialize these changes and what they will mean.

Issue: New federal programs are coming out on a monthly basis it seems. Is there ongoing “coordination” at the federal level during the development of these things so that coastal nonpoint, when appropriate, is addressed? See for example the following notice:

Example: The New "Elements of a State Water Monitoring and Assessment Program" Released On March 14, 2003. EPA released Elements of a State Water Monitoring and Assessment Program. This guidance document recommends ten basic elements of a holistic, comprehensive monitoring program that serves all water quality management needs and addresses all water body types. The elements provide a basic framework that may be tailored to the specific needs of States or other organizations. The elements include important activities such as developing a strategy that integrates the efforts of monitoring partners, articulating monitoring objectives, designing networks and selecting indicators that serve management needs, ensuring the quality and integrity of data and analyses, managing and reporting data, conducting program evaluations and documenting resource needs to ensure effective program implementation. The final document is being sent to the printer and posted on the EPA web site at <http://www.epa.gov/owow/monitoring/>

Example: Water quality trading and CZARA/319. How will this be coordinated at the federal, state, and local levels? Is water quality trading a part of 6217? How do we coordinate this effort? Who makes the decisions? How does it impact our implementation? For example: If an agricultural producer “sells”

his nonpoint “credits” to another agricultural producer does that mean the second agricultural producer does not have to implement management measures? How do we monitor this and how do we report? Will NOAA and EPA give the states coordination “credits” for working this out? What if an agricultural producer “buys” credits from an industry? Does he become exempt from 6217?

Recommendation: Federal agencies develop and disseminate a process for coordinating the development of new programs such as that mentioned above. Federal agencies provide guidance to states on projected impacts of these programs to the CNP.

Issue: The federal agencies (NOAA, EPA, FHWA, and USDA/NRCS) need to provide to the states compelling evidence that all of these agencies are coordinating on the program.

Recommendation: They could evince this coordination by “position papers,” guidance, or other means. For example, the NRCS, Farm Service Agency (FSA) and the National Association of Conservation Districts (NACD) could be invited to the Implementation Workshop to discuss how their programs might be utilized for meeting conditions, reporting for monitoring purposes etc.

Issue: There should be evidence that the federal agencies are engaging each other and, as importantly, that headquarters are coordinating with regions. This information should be transmitted to the states so that states know what information is flowing among/between federal agencies.

Recommendation: A commitment by the federal agencies to host annual coordination meetings to further the goals and objectives of the program would be useful.

STATE COORDINATION:

The State’s coastal program is not the only agency responsible for developing Coastal Nonpoint Programs (indeed in many instances it is not even the “lead” agency); other state agencies (e.g. forestry, agriculture, water quality) have their respective roles to play as well. As a result, many state programs include specific Memoranda of Understanding (MOU) between the various agencies, spelling out the roles and responsibilities of the agencies involved in implementing the Coastal Nonpoint Program (e.g., Rhode Island and California).

State level coordination challenges seem to be the greatest in states where coastal nonpoint and 319 are housed in different sections, divisions, or even different agencies. The difference between the two programs, i.e. regulatory vs. non-regulatory, often exacerbates the problem. What is the “state of coordination” among the states?

Issue: Definition: What is coordination? Does it in fact equate to cooperation? Does its existence presuppose a positive outcome? Are FOIA requests considered coordination? How do we get “coordination credit(s)” from NOAA and EPA?

Recommendations: The issue coordination components, program review thresholds and "coordination credits" should be a topic of discussion at the CNPCP Implementation Workshop in Richmond.

Issue: What is the “bottom line” for the coordination requirement? Are states required to have interagency MOU’s? Do these MOU’s detail all aspects of the “relationship”, e.g. Do they detail how, how often, and in what format information is exchanged?

Recommendations: Clarification of this issue should be a topic of discussion at the CNPCP Implementation Workshop in Richmond.

Issue: Is coordination considered “sufficient” under the program, if all agencies that perform, fund, or regulate activities that might impact nonpoint pollution, provide the 6217 program with notice of activities? Does the “authorizing” agency have to allow comments, right-of-review, or veto over the project or any of its elements? Do those activities require a “Consistency Review” pursuant to the state’s coastal Program?

Example: (In Oregon the Department of Agriculture (ODA) is statutorily given sole authority over regulating agricultural practices. No other state or local entity can have a rule or ordinance that requires any NPS mitigation practice for farmers. The state water quality agency (DEQ) has review authority over Agricultural Water Quality Management plans (AWQMPs) developed by ODA, but can only make comments based on water quality standard compliance. ODA is not required and not willing to mandate management practices that do not relate to a documented standard violation, or TMDL load allocation. This approach results in some (g) Guidance Agricultural Management Measures being left out of AWQMPs. The Coastal Management Program, DEQ and ODA all still "coordinate" but we have what could be called coordination without a mutually agreed upon result.)

Recommendations: Coordination should only formally be required between the state agency responsible for Coastal Zone Management Act administration and the state agency responsible for Clean Water Act administration. Specifications for this coordination should be a topic of discussion at the CNPCP meeting in Richmond. Other interagency coordination relevant to nonpoint source water quality mitigation that exists as a result of a state's administration of the Clean Water Act or the Coastal Zone Management Act should be recognized and

reported as part of the state's CNPCP. Confirm that 6217 requires no other documentation of interagency coordination.

Issue: Do we get coordination credit if 319 money funds voluntary programs that are part of the states CNPCP? How is this translated into “reportable” measures for purposes of monitoring and tracking?

Recommendations: States get credit for coordination when 319 funds are used in voluntary programs that are part of the states CNPCP. Reports required under the 319 programs are acceptable for 6217 program purposes.

Issue: If we have a state agency that has little or no interest in coordination with the Coastal Program or the 319 program is that a deal breaker getting federal blessings on our CNPCP? Would this mean that final federal approval would be withdrawn or not given? What if there is “coordination” today but after approval it, for whatever reason, ceases to exist? If, for the moment, we assume we have some reasonable level of intrastate coordination, do we just have to show this up front, or do we need to provide some ongoing proof or demonstration of this coordination?

Recommendation: As long as the majority of the state agencies are willing to coordinate with the 319 & 6217 programs, states get credit for coordination. Federal approval should be given/continue as long as the majority of state agencies are showing coordination. The federal agencies should show their coordination by utilizing their influence to get the federal agency that is the partner of the reluctant state agency to urge the reluctant state agency to become a partner with the 319 & 6217 programs.

Issue: See Section 1455(c)(1) (A) and (B) of CZARA which refers to the portions of the program "under the authority" of the Secretary and the Administrator respectively. How far does this authority go when reviewing things like agricultural practices, or boating practices that are not necessarily covered under the Clean Water Act or the Coastal Zone Management Act? It is not clear that 6217 gives the federal agencies new authority over these activities. The question is does it give primacy to the CNP program?

Recommendation: A federal “white paper” which addresses this issue should be undertaken by, at a minimum, the big four federal agencies (USEPA, NOAA, USDOT/FHWA, and NRCS) and submitted to the states.

Issue: If, due strictly to a “lack of coordination” ability, a state cannot achieve “full approval” does that lack of ability to achieve “full approval” mean that ultimately the coastal program and the 319 program would be found inconsistent with the federal CZMA and CWA? Would a state be de-certified with respect to

either or both of the programs? What about if a state becomes “unapprovable” after final approval is initially given?

Recommendation: The state 319 and 6217 programs should not be found to be inconsistent with the CZMA and CWA if “full approval” cannot be met. If a state is found to be inconsistent with the CZMA and CWA, then instead of de-certification the federal agencies should look at a range of responses that could include: increased assistance to specifically address particular issues that are holding up “full approval”; penalties or reallocation of resources in federal programs other than CWA and CZMA for state agencies that are hindering/thwarting “full approval” (i.e. DOT funds, USDA funds, etc.); lobbying of Congress to modify the relevant sections of the U.S. Code relating to certification/de-certification.

OUTSIDE COORDINATION:

How the federal, state, and local agencies coordinate with Non-Governmental Organizations (NGOs) is also important. NGOs can be “environmental” groups, industry, producers, the general public, etc. They can be individuals or large groups. Coordination with these folks is as important as any other. Let’s face it; we do not have any trouble “coordinating” with some of these entities. “Environmental” and “conservation” groups as well as industry and trade association groups are not shy about their positions or needs. The information and/or coordination with other entities is what is the most difficult. You could argue, however, that it is also the most rewarding and the most important. Local governments should be the primary focus for partnership development. Without local adoption and implementation of the management measures, it is unlikely we will accomplish noticeable reductions in NPS pollution.

Issue: Local government coordination and participation in the CNP. Provide examples of successful coordination (state—local), major barriers, means to target particular MMs or geographic areas, partnering with existing programs (e.g., NEMO)

Recommendation: If a state provides examples of successful state-local coordination, then it should receive recognition for coordination, especially if the success is built on over time and is not a one or two-year success story.

Issue: NGO coordination and participation in the CNP.

Example: In Louisiana the CNP funded the seminal efforts of the Master Farmer Program. This program utilized many of the traits of the Master Logger Program, which has been successfully utilized to address nonpoint issues that are attributable to a portion/sector of the silviculture/logging/forest products industry.

Recommendation: How about a commitment from the states and the federal agencies to do regional and or national stakeholder meetings on coastal nonpoint?

How about local government advisory subcommittees for the 319/CNP state committee(s)?

Recommendation: State 6217 personnel have an opportunity to review/comment on 319 proposals and USDA-NRCS committees. This will provide them with the opportunity to work with, or become acquainted with, many NGOs.

Issue: Coordination of funding at the local level. How do we do this? How can coordination of limited resources be used to enhance “efficiency” and be effective? How much “leverage” can the federal partners expect that the states to exert in order to meet CNP guidelines/provisions?