

## **INTERSTATE CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT OF 1972 (CZMA)**

Office of Ocean and Coastal Resource Management (OCRM)

National Oceanic and Atmospheric Administration's (NOAA's) National Ocean Service

Fact Sheet — October 16, 2007

### **GENERAL INTERSTATE CONSISTENCY INFORMATION**

- **CZMA FEDERAL CONSISTENCY** — *Federal actions* affecting any use or natural resource of a state's coastal zone must be consistent with the state's NOAA-approved coastal management program (CMP). This *federal consistency* requirement applies in or outside a state's coastal zone, including federal waters/lands, and another state. Under the CZMA there are four types of federal actions:
  - *Federal agency activities* – an activity proposed to be conducted by, or on behalf of, a federal agency (15 C.F.R. part 930, subpart C);
  - *Federal license or permit activities* – an activity proposed by a non-federal entity applying for a required federal authorization (15 C.F.R. part 930, subpart D);
  - *Outer Continental Shelf (OCS) Oil and Gas Plans* – a plan for the exploration or development and production of oil or gas in federal waters under the Outer Continental Shelf Lands Act (OCSLA) (15 C.F.R. part 930, subpart E); and
  - *Federal financial assistance activities* – an application by a state agency or local government for federal financial assistance (15 C.F.R. part 930, subpart F).
- **INTERSTATE CONSISTENCY** — a federal action occurring in one state (State B) will affect uses or resources of another state's coastal zone (State A); and State A's ability to review the action.
- State A can review an action in State B if previously authorized by NOAA. States may submit to NOAA a list of activities occurring in specific areas within State B. NOAA may approve such activities for interstate consistency review, if it concludes such actions will have reasonably foreseeable effects on State A's coastal uses and resources. 15 C.F.R. part 930, subpart I.
- *Interstate consistency* does not affect the sovereignty of State B; it does not give State A authority to review the laws or policies of State B. It only allows State A to review the *federal authorization*.
- State A may, but is not required to, describe geographic areas within State B for the review of *Federal agency activities* under 15 C.F.R. part 930, subpart C. This is because, even if not described, a Federal agency has a statutory responsibility to provide State A with a CZMA review for *Federal agency activities* with coastal effects, regardless of location (including within the boundaries of State B). See 15 C.F.R. §§ 930.33(c)(1), (d) and 930.155(a). Federal agencies have provided CZMA review to states for *Federal agency activities* occurring wholly within the boundary of another state.
- **OCRM Approval and State Review** — Once OCRM approves a state's interstate consistency proposal, the reviewing state, upon receipt of an applicant's consistency certification for a listed activity occurring within the approved specific geographic area, must notify the applicant, the other state, the licensing federal agency and the Director of OCRM within 30 days that it will review the activity; otherwise the state waives its right to review the activity. In 2006 and 2007 OCRM approved interstate review for NY, CT, PA and NJ. FL is the only other state currently developing its interstate program for OCRM review and approval, but has only worked on the initial stages.

## HISTORY OF CZMA INTERSTATE CONSISTENCY

- **South Carolina and Georgia (mid to late 1980's)** — SC objected to a USACE permit for the “Hooker” project, a proposed marina on the Back River, shared by GA and SC. The project was entirely within GA. Hooker appealed SC's objection to the Secretary of Commerce under NOAA's regulations, claiming, in part, that the CZMA did not authorize interstate review. The USACE and Department of Justice (Justice) agreed with Hooker, but the appeal was ultimately withdrawn.
- **NOAA View (1989)** — In 1989 NOAA disagreed with the USACE and Justice and supported interstate consistency.
- **Interstate Reviews in the 1990's** — There were three interstate reviews in the 1990's:
  1. *North Carolina and Virginia.* NC objected to Virginia Electric Power Company's (VEPCO's) Federal Energy Regulatory Commission (FERC) license amendment to allow the City of Virginia Beach, VA to withdraw 60 million gallons of water a day from Lake Gaston, a hydroelectric dam/reservoir located in VA on the Roanoke River. The Secretary overrode NC's objection allowing FERC to authorize the project, but found NC's interstate review was authorized.
  2. *Massachusetts and New Hampshire.* MA reviewed the Town of Seabrook, NH's proposal to pipe discharge from its wastewater treatment facility to approximately 2,100 feet offshore. The Environmental Protection Agency (EPA) and OCRM supported MA's review and the USACE agreed to delay its decision until after EPA's discharge decision. MA concurred with the project.
  3. *New Jersey and New York.* NJ reviewed NY's proposed subaqueous sand mining project in the Lower Bay of NY, located wholly within NY. NY did not oppose NJ's CZMA review of NY's USACE permit application. NJ concurred with the project.
- **Secretary of Commerce's Lake Gaston Decision (1994)** — In the NC/VEPCO dispute, the Secretary found interstate consistency was authorized under the CZMA in a Secretarial decision overriding NC's objection. *See VEPCO Consistency Appeal Decision and Findings* (May 19, 1994), upheld in *North Carolina v. Brown*, C.A. No. 94-1569 (TFH) (D.D.C. Sep. 27, 1995). Previous USACE and Justice opposition to NOAA's view was reconciled when Justice deferred to Commerce's interpretation of the CZMA.
- **NOAA's Interstate Consistency Regulations (2000)** — While revising the CZMA regulations, NOAA agreed with the USACE that specific interstate consistency procedures were needed and added subpart I. *See* 65 Fed. Reg. 77123-77175 (Dec. 8, 2000). Subpart I provides greater predictability and certainty to determining when CZMA review applies. States must coordinate with neighboring states and federal agencies and must describe specific geographic areas in other states where listed federal license or permit activities would be subject to CZMA review. A state must demonstrate that listed federal license or permit activities occurring within a specific geographic area of another state will have reasonably foreseeable coastal effects on the reviewing state.