

Coastal Nonpoint Program

Evaluation & Reporting White Paper:

4/4/03 DRAFT

Introduction

The Evaluation and Reporting Work Group was charged with beginning the dialogue on issues and options, roles and responsibilities for a national strategy on evaluation and reporting of the Coastal Nonpoint Program (CNP, or section 6217 of the Coastal Zone Act Reauthorization Amendments -- CZARA). The Evaluation and Reporting Work group "met" via email to discuss and address this challenge. A total of seven state representatives participated in the work group discussion and review of the draft paper, along with a representative from the U.S. Environmental Protection Agency (EPA), Region III. Comments from National Oceanic and Atmospheric Administration (NOAA) staff were also incorporated into the draft.

This DRAFT white paper summarizes Work Group member responses to the questions posed by the Conference Planning Committee and reviews the statute and the three major program guidance documents (*see* Work Group Guidance). This discussion serves as a starting point for upcoming state, EPA, and NOAA discussions to be held at the Spring 2003 national CNP meeting in Richmond, Virginia.

It is clear that CNP program evaluation needs and requirements are currently subject to widely varied interpretations. This paper represents the thoughts of the Evaluation and Reporting Work Group in order to begin the processes of clarifying states' preferred evaluation approaches for federal agency reviewers, articulation of EPA's and NOAA's evaluation roles and responsibilities, and development of guidance for states in reporting on their programs. The Planning Committee's questions seemed to naturally condense themselves into several key interrelated evaluation and reporting themes. These themes and related questions are described below:

- **Purpose:** What is the purpose for evaluating and reporting on the CNP? What goal/objective will be met by submitting reports to NOAA/EPA? Who will be using the reports and how will they be using them? What needs to be included in the reports?
- **Mechanism:** Is there an existing mechanism that can be used or adapted? Will the program be evaluated jointly by NOAA and EPA? What is the format? How frequently will a state report be produced for NOAA/EPA evaluation - annually, biennially, triennially?
- **Criteria:** What are the criteria that will be used by EPA and NOAA to assess state progress in implementing the states' CNP programs? What role, if any, will a state's 5/15-year plan play in the evaluation process? Should measurable outcome indicators be developed?

Expected Work Group process at the meeting The states and territories, together with NOAA and EPA, will collaborate on a draft outline of answers to the paper's questions about the CNP program evaluation's purpose, mechanism and criteria. Through this, States and territories will provide input into the direction of CNP evaluation and reporting, and together with NOAA and EPA will develop guidance responding to the question of what states should expect from CNP program evaluation.

Issue Identification

The 1998 *Final Administrative Changes guidance* states, “ NOAA and EPA will work with the states to develop guidance for the evaluation process which clarifies the roles of the federal agencies and seeks, to the maximum extent possible, to avoid duplication and ensure coordination with other program implementation and review processes . ”

Although the 1998 guidance indicated NOAA and EPA would work with the states to develop guidance for the evaluation process, focus for the national program to date has been largely directed toward program approvals. However, the recently increased number of approved programs emphasizes the program’s post-approval and implementation needs. Yet, little progress has been made on the question of how to evaluate approved states’ program implementation.

Since the release of that 1998 guidance, the urgency for developing consensus and national guidance on CNP evaluation has increased. Based on the same guidance, which mentions evaluation of programs at five years, several states are nearly ripe for initial evaluation (Maryland, California). Others are in line to follow.

Evaluation of the CNP program overall needs to show progress for several reasons:

- 1) Eleven states/territories are fully approved and all 29(33) states/territories should be implementing the fully approved portions of their programs (which for many is almost 100%). In 2003 there is a greater need to show progress nationally in environmental program implementation and to showcase program accomplishments if only to continue to justify federal and state expenditures in the face of budget shortfalls. In the last three years, \$30 million has or will be spent on implementation, so states should be able to better account for the outcomes they are achieving with these monies.
- 2) In addition, the Government Performance Review Act (GPRA) and the related federal agency strategic planning processes are focusing more and more on program outcomes and ultimate end-outcomes. In the case of 6217, outcomes may mean improvements in coastal water quality. The emphasis on environmental outcome achievements for all water quality programs has been building since the passage of GPRA.

Since the CNP program’s inception, the Program Assessment Rating Tool, or PART, has emerged as the key to the federal budget-making process within the Office of Management and Budget (OMB). The PART approach was invented presumably as a means for OMB to perform more objective evaluations of program performance under

GPRA. The PART approach is designed largely to force federal agencies to take program performance measurement seriously by answering a series of questions, including how well are they achieving certain goals. For the first time, this performance evaluation is being done as part of the federal budget making process. What implications will or should this review process have on 6217 evaluation and the program's future?

Existing Guidance

The 1990 statute is essentially silent on evaluation and reporting. The subsequent guidance, however, provides the following general outline of how programs may be evaluated:

- *(Program Development and Approval Guidance, 1993, p. 36):* “**NOAA and EPA will monitor progress of state implementation as part of program and grant reporting requirements under section 319 of the CWA, section 306 of the CZMA, and regular program evaluations under section 312 of the CZMA.** States not making satisfactory progress in meeting their milestones may be subject to loss of funds awarded under section 319, as well as to sanctions imposed under section 312 of the CZMA.”

This is a clear statement about the reporting mechanism state and federal agencies will use to report on and evaluate programs. However, there are conflicts between the CWA (Clean Water Act) and CZMA (Coastal Zone Management Act) with regard to content, reporting periods, qualitative versus quantitative information, etc. EPA requires an annual review of 319 programs for “satisfactory progress”, which has a defined intent and meaning. CZMA does not have a “satisfactory progress” clause but does have the triennial to five-year program evaluation process. CZMA also has semi-annual reporting requirements, whereas CWA does not. It is also not clear if only the grant-funded portions of either of the programs are to be evaluated.

- *(Final Administrative Changes guidance, 1998):* “ **At least every five years, NOAA and EPA will evaluate progress in achieving goals established through the 5-year implementation plans and the 15-year program strategies,** including the success of existing authorities, coupled with voluntary or incentive-based programs, in achieving management measure implementation.

“Where levels of implementation are less than needed to ensure implementation within 15 years of the date of conditional approval, the 5-year implementation plan will outline steps the state will take to improve progress, including application of existing authorities or the development of new enforceable policies and mechanisms to achieve full implementation of the 6217(g) management measures.”

While this appears to provide the basis for what will be considered in an evaluation, *what precisely are states being held accountable for?* The time is ripe for states/territories to use the 2003 CNP national meeting to make recommendations to EPA/NOAA on how

they would like to use the existing guidance or develop workable processes that simplify requirements for the states and reduce their administrative burden.

Issue Assessment

Generally, it seems there are two simplistic, yet potentially competing views of 6217 evaluation: Qualitative (NOAA's approach) vs. Quantitative (EPA's approach). Many states seem to prefer evaluation to be general and flexible, similar to the CZMA 312 evaluation and semi-annual reports to NOAA. Others believe evaluation means performance indicators that are more structured and data-based, such as measurable environmental results (MERS) and reporting, e.g., EPA's 319 Grant Reporting and Tracking System (GRTS).

Regarding EPA's approach of quantitative measures; EPA has few if any "quantitative" methods to assess the 319 program. In fact, the PART analysis has caused EPA to reevaluate its measurement approach and suggest new ways of getting at more outcome-oriented performance measures. GRTS could be considered "quantitative" at the project level, but until further enhancements are made, it provides little information useful to comprehensive, objective program evaluations of the sort that OMB and others are seeking.

However, comments regarding NOAA vs. EPA evaluation preferences cannot be made with an eye only to the past or on current types of evaluations and review methods. All federal agencies are being asked to provide objective, quantifiable, outcome-oriented measures; NOAA is no exception.

While quantitative performance indicators are necessary, and may be more useful than qualitative data to NOAA, EPA, and the states, tracking performance based on indicators is very resource intensive. For example, it has taken at least several states' programs a number of years to structure a performance measurement system that even begins to track "indicators". There is clearly a need to reconcile these somewhat competing views and articulate how state programs will be evaluated and tracked. Various options may exist, for example, to combine these methods and use the types of indicators and evaluation methods best suited to specific program parameters.

Three evaluation and reporting issue themes are discussed below, including: I. Purpose or Goal of Evaluating and Reporting; II. Mechanism for Evaluation and Reporting; and III. Criteria for Evaluation. Where relevant, quotes from either the statute or guidance, or both, preface the thematic discussions and/or specific questions.

I. Purpose or Goal of Evaluating and Reporting:

What is the purpose for evaluating and reporting on the CNP?

The purpose of evaluating any program at any level is to determine whether or not the program is meeting its goals. The reporting process must be better defined to achieve evaluation goals. The question that needs to be answered to better target evaluation and reporting is: **What are the CNP program's key goals?**

Program evaluations can reach casual linkages between the program(s) goals and the outcomes expected. However, this is often more difficult than it sounds. Further reasons to evaluate might include: assessing cost/benefits of a program (cost effectiveness), relative contributions (compared to similar programs), efficiency, determining needed funding, etc. Both anecdotal (qualitative) and quantitative information (where available) can describe and detail program progress.

It could be argued that the primary purpose for evaluating and reporting on the CNP is to gain and sustain public support for implementing programs that protect and restore coastal waters, and, by extension, for continuing Congressional funding support. Some states noted that a periodic reporting requirement allows review of past actions and preparation for the future, and provides benchmarks on program progress. Reporting also provides states with a mechanism for gathering programmatic information to promote the program at the state level and garner continued state support.

In the absence of specific guidance, almost any number of possible methods of state reporting could be considered valid at this point. For example, it seems reasonable that some states might wish to use 319 annual reports as the place to summarize 6217 progress, while other states might wish to provide comprehensive updates during 312 evaluations, still others may wish to devise alternative reporting mechanisms.

What goal/objective will submitting reports to NOAA/EPA fulfill? Is it simply administrative or will it have utility?

Conducting CNP evaluation and reporting will seemingly meet the 1998 guidance requirements for five-year program evaluations (see guidance page 5). In addition, reporting may meet CZMA goals and the intent of: § 1455b. Protecting coastal waters (*Section 6217*)(b)(1) Identifying land uses, (2) Identifying critical coastal areas, and (3) Management measures. Coastal Nonpoint Program evaluation seems also to fit with 312 CZMA evaluations, and is required for § 1458 Review of performance (*Section 312*)(a) - Evaluation of adherence with terms of grants and may support § 1462. *Coastal Zone Management Reports (Section 316) (a) Biennial reports.*

However, in 2003, it is evident that EPA and NOAA, along with the states, need to better communicate the effectiveness of coastal resource environmental programs. Reporting results can help the federal agencies, as well as states, compile evidence of the program's effect and progress towards goals.

Some states currently believe that state utility of such reporting is minimal, i.e., that the reports meet only administrative needs. These states do not support reporting “*just to meet some administrative paper exercise.*” One state complained that the federal agencies usually do not have enough time to constructively review their reports, but acknowledged reporting is one way for the states to be held accountable. Several states also indicated that reporting could help them review progress and prepare for future challenges, convey how the required program coordination is being accomplished, and would be appropriate for distribution to state legislatures.

Additionally, if NOAA/EPA compile state reports for release, some states indicated they could provide much needed program publicity or sharing that would benefit the states as well. Such reporting should describe the value added in areas of pollution prevention and improvement and maintenance of water quality and be a mechanism to publicize states’ successes. However, from the national perspective, the federal partners will only be successful in “*describing the value added (of the CNP) if every state can do so in its reporting*”. Some felt that reports would enhance transferability of other states’ accomplishments, although this may partially be served through national meetings and CNP “success” updates. However, at least one state is not convinced that national meetings provide the same scope and level of detail as an annual report, especially if the report is properly indexed. Reporting would both enable states/territories to evaluate progress towards achieving goals and describe successes and difficulties that other states could learn from.

From states’ perspectives, reporting should ideally also assist the state -- for example, in targeting funding, etc. There is a concern in at least one state that without such accountability within states relevant to program actions, other pressures may slowly, or not so slowly, usurp CNP money and staff time. One state indicated its performance review process has been very useful internally for evaluating its program and setting priorities. Their system is based on progress towards meeting their program's 10 goals and tracking indicators. It was noted that reporting also can identify key program needs for future years.

Who will use the reports and how will they be used? - Within each state, within other states, within the federal realm (information exchange? highlight selected accomplishments?, etc).

It could be argued that the primary reason for performance reporting is to improve the performance of the program, which in the case of 6217 means that the states themselves would be both the primary users and primary beneficiaries. On the other hand, clearly NOAA/EPA will be primary “users” of the reports to inform federal constituencies about the impact of 6217 funds. Because the CNP program is a coordinating program, agencies coordinating with/through the CNP could also utilize these reports. Reports could have value as a reporting/consultation tool with other agencies (local, state, federal) and partners, as well as to funding sources outside NOAA/EPA. Periodic updates of

enforceable authorities could also be used to keep the program description current within a state.

It makes sense to tie reporting into an existing reporting mechanism. If the program follows the 1998 administrative guidance for evaluating 6217 every five years, then the information provided for § 319 reports should be compatible with this purpose. Reporting through the Coastal Program Section B report is another option. The question, “How are the Coastal Program reports and 319 reporting used now?” demands an answer and could help states tailor future CNP reports to meet diverse needs and multi-program reporting requirements.

With respect to 319 Annual Reports, some states already include a summary of 6217 activities. However, not all 6217 activity occurs in the context of the 319 program and the annual 319 report does not cover the scope of 6217 projects/programs in all states/territories. Also, NOAA’s 6217 funding for the last and current federal years is for specific, even thematic, implementation (Clean Marina Programs, On-site Disposal Systems (OSDS), tracking). This could have implications for the type or emphasis of reporting necessary.

What needs to be included in a report - regulatory updates in enforceable policies, projects implementing Management Measures (MM), success stories, etc?

Opinions varied. Many felt that the CNP should not be reported separately, but included within the Coastal Program and 319 reporting. Most felt that activities, success stories, and results specific to 6217 should be reported in 319 reports when applicable. Examples might include enforceable policies, techniques used to bring in additional funding, and MM beyond the 1993 guidance. Some indicated that funds from other sources being spent in the coastal zone on BMP implementation should be reported. Some thought it would be useful to include "track-able" information in the report (i.e., enforceable program reports) rather than just focusing on success stories.

One state helped identify two proposed levels of reporting to support a cohesive CNP program:

- 1) Changes in laws, etc.: Every two to three years the state should report changes in the laws and programs relevant to enforceable authorities that are used to implement the CNP.

This is seen by some as absolutely necessary, since federal partners and states/territories have evidently failed to express the impact of the program through policy changes, which may very well be the area that 6217 has made the greatest (unique) difference. The thinking is the program should improve in its ability to describe the progress made in this realm. For example, since 319, NRCS programs, and most watershed efforts were not designed to influence local ordinances, statewide rules and regulations, etc., but 6217 was intended to encourage local

changes where necessary to meet the MMs, its role in local change should be highlighted.

This also raises the question of whether CNP enforceable authorities should be included in the federal consistency aspect of the coastal program. However, the reality is that although there were supposed to be adequate reporting requirements to keep the federal consistency current, this tool is not really functional. This also raises the issue of auto-incorporation.

- 2) Grant reporting: As the state laws work in the background, specific tasks funded by 6217, or 6217-related tasks funded by 319, should be reported according to the requirements of those grants.

Alternatively, there is the concept of EPA Region III's ideal 6217 report: "A progress report on implementation of Management Measures by small watershed that the public can understand and success stories in restoring and protecting coastal resources through partnerships." Yet, 6217 was never designed on a watershed basis, and such an approach would require developing considerable additional infrastructure within the states to quantify and report in this way. Of all of the local, state, and federal agencies, few collect data or regulate using watershed boundaries. Using watersheds as the boundary for reporting would also require a clear and acceptable definition of what a watershed is – 10 sq. miles or 100 sq. miles? Consider also that the vast majority of the general public has a better understanding of political jurisdictions vs. watersheds. National Geographic magazine, among other sources, has documented that if one asks the public to describe their own "Cow Creek" watershed, you're likely to receive a blank stare. However, ask the average person to describe their county or township, etc. and you will receive a fairly descriptive response. To keep reporting simple, it would undoubtedly be easier for many or most state CNPs to access and develop information based on political jurisdictions. If a state wants to create a watershed-based layer of information, then that should be left as an individual state decision, not a national requirement.

II. Mechanism for Evaluation and Reporting:

Program Development and Approval Guidance (1993):

"NOAA and EPA will monitor progress of state implementation as part of program and grant reporting requirements under section 319 of the CWA, section 306 of the CZMA, and regular program evaluations under section 312 of the CZMA.

Final Administrative Changes Guidance (1998):

"At least every five years, NOAA and EPA will evaluate progress in achieving goals established through the 5-year implementation plans and the 15-year program strategies, including the success of existing authorities, coupled with voluntary or incentive-based programs, in achieving management measure implementation."

Do we need a new reporting mechanism or can an existing one be used? Is there an existing mechanism that can be used or adapted? For example, will existing CZMA (section 312) and CWA (section 319) program reviews and reports suffice?

In addition to the guidance which states: “NOAA and EPA will monitor progress of state implementation as part of program and grant reporting requirements under section 319 of the CWA, section 306 of the CZMA, and regular program evaluations under section 312 of the CZMA,” those who responded agreed that it would be preferable to excerpt and combine existing reports.

One view is that the CNP could be considered subject to 312 because: 1) by default of inclusion in the CZMA it is subject to CZMA requirements; 2) approved CNPs must be incorporated into a state coastal program. Another state view is that it should not be part of 312 evaluation “*since 6217 is not, in fact, part of CZMA, how is it reasonably a part of 312?*”

Clearly, though, if existing mechanisms were used, the frequency and content of these reports would need to be reconciled. NOAA’s 312 reviews occur only every three to five years, while 319 program reviews are annual, as is grant reporting. States also report in semi-annual performance reports on 6217 activities funded by annual NOAA awards.

Will NOAA and EPA evaluate the program jointly? If so, why and how? If not, why not?

There are potentially confusing parts of the statute. *Section(c)(2) (A and B)* speaks to changes in both the 319 CWA program and the 306 CZMA program. There is apparent deference made to 319 at the end of *(a)(2)* which says that the two programs shall be closely coordinated, but states, “*The program shall serve as an update and expansion of the State nonpoint source management program developed under 319 of the [CWA], as the program relates to land and water uses affecting coastal waters.*” Coastal programs are left out of this reference. Does this then imply that the review should be of 319-related aspects only?

However, *(c)(1)(A) and (B)* indicate programs cannot even be approved without a clear demarcation of “portions of the program under the authority of the Secretary [and] portions of the program under the authority of the Administrator”, since they can only evaluate the programs based on their authority. This could argue for separate evaluations. Yet, the guidance says: “At least every five years, NOAA and EPA will evaluate progress in achieving goals established through the 5-year implementation plans and the 15-year program strategies, including the success of existing authorities, coupled with voluntary or incentive-based programs, in achieving management measure implementation.”

For NOAA’s purposes, the current reporting/evaluation mechanism -- 312 evaluation -- is very open-ended and flexible, providing the states with an opportunity to recommend improvements to their programs. In addition, NOAA’s Section A and Section B reports,

reflecting grant activities and regulatory program updates, are submitted every six months, with very general “criteria” giving the states a great deal of flexibility.

EPA, on the other hand, would probably like to see more specific performance-based tracking and evaluation, particularly in light of the national OMB performance review of 319. EPA Region III believes they and NOAA should perform joint evaluations of state CNP programs that should relate directly to 319 effectiveness discussions. It was noted that NOAA needs to decide what impact the development of NOAA’s “performance indicators” will have on the 6217 program.

States would clearly like the federal roles and responsibilities for the CNP evaluation to be clearly articulated, and if necessary, divided between the coastal program and the water quality program. It is not yet clear whether most states favor a joint EPA and NOAA review of 6217 or separate reviews. This question should be addressed further at the meeting.

What is the format of the report that states provide to EPA and NOAA?

There was no consensus, but two opposing views surfaced, one arguing for no 6217 reporting, per se, and one arguing it is explicitly required:

1) No separate reporting is required: The statute and 1993 guidance state that the 6217 program was never intended to be a stand-alone program. The program development guidance (Green Book) clearly states that 6217 will be an extension of the coastal and 319 programs. That is why there were never any requirements for reporting specified. The extended implementation time frame does pose a case for additional reporting, but this would only continue until programs were implemented. Any other reporting should fall under existing requirements or be part of a grant-reporting requirement.

2) Reports are required: Two suggestions for report formats were received, one directed at a national consistency and the other tailored to state program’s individuality. For the national perspective, the format of any report could follow the outline of the (g) guidance chapters (agriculture, forestry, urban, marinas, hydromodification, wetlands). An alternative is to write more tailored state reports based on issues/activities, i.e., regulatory changes, new programs, BMP implementation (with load reductions), etc., which track the individual management plan milestones.

As an additional suggestion, the states could think anew about reporting requirements. Rather than describing new 6217 reports that would have the same look, feel, and content as existing reports (such as those for 319), why not a two-page matrix of MM implementation updated every 3 years? How about a brief discussion of policy/law/rule changes related to coastal NPS? What about a state review of the cost-effectiveness of its various NPS programs? Few readers find value in hundreds of pages of descriptive analysis and most would prefer short, objective, performance focused, numerical (if possible) analyses related to 6217 goals. The states now have the opportunity to suggest simpler, more targeted reporting that reflects outcomes of the program.

How frequently will state reports be submitted and how often will NOAA/EPA evaluate them - annually, biennially, triennially?

The 1998 guidance requires that, at a minimum, every five years state plans be reviewed to determine what milestones were met. Currently, there is no formal approval process for 5-year implementation plans, nor a defined process for updating them. Some states' plans are now nearly five years old. Some approved states never even submitted them at all. The 312 evaluation frequency is every three to five years. However, if 6217 were ever to be formally incorporated into CZMA, then CNP enforcement mechanisms would presumably be part of the evaluation, which could resolve the frequency of reporting issue.

EPA Region III expressed that annual reviews should be part of the 319 State Annual NPS program report and "Satisfactory Progress" review. The 6217 component of the 319 state annual reports could then be compiled into a national report. However, this may assume that all 6217 activity occurs in the context of the 319 program, which is unlikely to be the case. Yet, why should 6217 activities have to occur 'within the context of 319' in order to be reported as part of the 319 annual process? Consider that if the states want to see EPA (and other federal agencies) become more integrated, then perhaps program reporting should begin to converge, as well.

Another state commented that reporting frequency should be no more often than every two years as annual reports are too time consuming, especially with limited 6217 resources for staffing. Excessive reporting reduces accomplishments in the field, where they really count. The state recommended folding the 6217 reporting process into an existing one on a three or five year basis. However, it was noted that state/territory tracking of progress will still have to be ongoing for any reports (regardless of frequency) to have value.

III. Criteria for Evaluation:

Program Development and Approval Guidance

States not making satisfactory progress in meeting their milestones may be subject to loss of funds awarded under section 319, as well as to sanctions imposed under section 312 of the CZMA. (p. 36)

Final Administrative Changes guidance

At least every five years, NOAA and EPA will evaluate progress in achieving goals established through the 5-year implementation plans and the 15-year program strategies, including the success of existing authorities, coupled with voluntary or incentive-based programs, in achieving management measure implementation .

What criteria will EPA and NOAA use to assess state progress in implementing the states' CNP programs?

The statute's § 1455b. **Protecting coastal waters (Section 6217)(b)(3)** requires “*The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.*”

In addition, the 1998 guidance calls for an evaluation of progress on milestones. One suggested evaluation criterion would be accomplishment of goals/tasks in the five-year implementation plan. However, this approach raises more questions. (See, also the next discussion question).

For NOAA: how does CNP review fit into the 312 evaluation? For EPA: how will it be factored into the 319-effectiveness discussion? One state suggested that EPA and NOAA agree to nest the 6217 planning process into the five-year, 319 update process and use a “satisfactory progress” determination similar to the 319 program. The state also argued that the approach is similar to the 312 evaluation. However, the statute requires under § 1455b. *Protecting coastal waters (Section 6217)(c)(2)(A) and (B)* that changes be made to 319 and 306 programs.

Another question regarding the CWA 319 nexus is how exactly do 6217 MMs tie to Total Maximum Daily Load (TMDL) analyses and vice-versa? The accomplishment of TMDL implementation could be considered a CNP activity and vice-versa. Consideration of impairments is reasonable since water bodies are 303(d) listed because of NPS-related impairments and CNP may be referenced in a TMDL as a “reasonable assurance” of NPS implementation activity. Do we look to the number of impaired waters removed or added as a measure of 6217 effectiveness? Why or why not?

One state wrote: “I guess it depends on the nature of the MM to be implemented. If there is a state law on the books that has a time table for implementation EPA and NOAA do not need any other assessment criteria. Any change in the law or failures to meet the schedule laid out in the law could be described in a periodic update of state enforceable authority. Any voluntary program that was funded by 6217 or 319 would need some goals set for assessment and should be evaluated as part of the grant requirement. For unfunded voluntary programs, the feds just have to take whatever the states can give. If they are not working and there is some NPS impact that occurs, the backup water quality authority should kick in. Such an occurrence is another thing that could be reported in the periodic update of enforceable authorities.”

What role, if any, will a State's 5/15-year plan play in the evaluation process?

This is required in the 1998 guidance – every five years state plans will be reviewed to determine if milestones were met. In theory, progress could be compared to these plans

and, if milestones were not attained, their status should be documented and explained. However, there is no formal approval process for implementation plans, nor a defined process for updating them. In fact, some approved states never even submitted them at all.

One state wrote, *"Truthfully, I have not looked at the 5 and 15 year plan since I wrote it. I was surprised that although NOAA wanted me to write it they had no review authority so I never even got any real comments on it. Most of what we do here for much of our water quality regulation strategy, particularly with respect to proposed regulations, seems to be guesswork more than a couple of years out. This is due to a two-year state legislative cycle, periodic turmoil in state priority- setting, budget constraints, and the rise and fall of political agendas."*

Some states' plans are now nearly five years old. Must these be updated? How and why? If the five-year plan is not part of the evaluation process, then the utility of the plan and maintaining it is certainly questionable.

Should we develop measurable outcome indicators?

The issue of the goals of CNP has never been resolved. Are the goals management measure implementation? Or achieving water quality? Or enforcing laws? Or something other? Without agreement on the goals, outcome indicators would be difficult to agree on.

One view is that because of differences in areas such as geomorphology, population density, amount of industrialization, and types of agricultural activity, any measurable outcome indicators beyond a basic "was water quality impairment alleviated and how?" would have to be very general. Monitoring and quantifying relevant NPS indicators is difficult and costly and, furthermore, it could take years for management benefits to become visible in indicator measurements.

Several states wrote that measurable indicators, especially for 6217 would not be appropriate because of the program's pollution prevention ability, as well as the known benefits of MMs. Program results (by design of the statute) are based on the principle of induction. Specific management practices in specific places or via demonstration have proven to cost-effectively prevent or reduce NPS pollution. Thus, widespread adoption of such practices should reduce or prevent NPS pollution in coastal management areas. One state wrote *"measurable outcome indicators are redundant for 6217, at least if you are talking environmental outcomes. The main premise of 6217 is that the water quality and habitat benefits are presumed to be known and prescriptive in nature. It is the 'Just Do It Program'."*

States believe it would be hard, and presumably unwarranted, to separate 6217 outcomes from 319/NPS outcomes overall. Many states have to track progress in local or regional efforts (e.g., Chesapeake Bay Program). Alternatively, one state believes some outcome indicators for NPS will ultimately be included in the Coastal Program's national

performance indicators. How would these diverse program outcomes be separated out? If the Chesapeake Bay Program, the National Estuary Program, Marine Protected Areas, etc., directly incorporated reporting on the 6217 management measures, many of the associated water quality problems would (theoretically) be reduced. Would this provide the 6217 program with superior reporting information? Would it be worth the duplicative effort for programs with common direction and goals?

Perhaps states should think about the uniqueness of 6217, and whether or not states and the federal partners would want to promote certain aspects of the program or suggest changes to it – what measures would we need to define our niche and contributions? EPA Region III noted that CNP programs should work with state water quality agencies to characterize coastal water quality using indicators. In their view, measurable outcome indicators for 6217 should be the percent and extent of management measure implementation (i.e., number of permits, etc.?)

From another perspective, measurable outcomes would match the milestones in 5- & 15-year plans. But development and updating of these plans is uneven, and interpretation of milestones could be controversial. Again, how would projects that weren't successful in reducing NPS pollution rate against pollution prevention programs that prevented water quality degradation in the first place? Pollution prevention activities could be at least as valuable as even the most successful reduction projects. Finally, tracking outcomes is often as costly as the actual implementation of MMs themselves. Where will the staff and equipment come from to ensure tracking that specific numerical goals/objectives are met?

Desired Outcome of Evaluation and Reporting Workgroup at the CNP Meeting

“... I think the attempts at communication between NOAA and EPA is one of the things that bogs this program down.” ...state program coordinator

The overall outcome of the meeting will be to lay the groundwork to facilitate the development (following the meeting) of a joint EPA/NOAA guidance on CNP program evaluation. During the meeting:

- 1) States/territories will make recommendations to EPA/NOAA on how they would like the federal agencies to either use the existing guidance or develop workable processes that simplify requirements for the states and reduce their administrative burden. The roles of both EPA and NOAA in program evaluation and reporting will be further clarified to both avoid duplication and ensure coordination and communication with other program implementation and review processes.
- 2) Some key additional questions will also be considered and addressed during the evaluation and reporting discussion at the meeting. The states, together with NOAA and EPA, will also identify any additional questions that cannot be resolved with the knowledge and experience of those participating in the meeting. These will include but not be limited to:

- What are the CNP program's goals? What are states being held accountable for? Is the bottom line: 1) implementing the Management Measures, or 2) enforcing laws, or 3) achieving water quality, or 4) other?
- How do we determine a goal is being met?
- What kind of progress should be considered reasonable if the ultimate goal is 100% implementation in 15 years?
- Are there specific tasks, milestones, number of BMPs implemented, etc., to be reported on?
- What mechanism(s) have states begun to develop to report progress?
- Should EPA and NOAA evaluate jointly, if not, how would the evaluation be structured?
- Do the states/territories want to use 5/15 years plans/strategies? If so, how is the plan process going to be made workable?
- While these issues are being decided, what should states do if they are coming due for five year evaluations in the near term?
- Are there key legal questions we need to identify regarding the statute's authority? If so, can we get these questions resolved before we attempt to draft a joint EPA/NOAA guidance to be reviewed by the states and then finalized?
- What implications will or should the PART review process by OMB have on 6217 evaluation and the program's future?

After the Meeting:

Using the results from 1) and 2) above, a joint EPA/NOAA written guidance regarding CNP program evaluation will be drafted with state input, reviewed by the states, then ultimately finalized.