

FEDERAL CONSISTENCY BULLETIN



Office of Ocean and
Coastal Resource
Management

Number 5
April 1997

The Federal Consistency Bulletin is intended to keep states, federal agencies, and other interested parties abreast of current federal consistency issues. The federal consistency requirement, section 307 of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires that activities proposed by the federal government, that are reasonably likely to affect any coastal use or resource, must be consistent, to the maximum extent practicable, with the enforceable policies of a state's federally approved coastal management program. Federally approved and funded activities must be consistent with the enforceable policies of a state's coastal management program. The Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, administers the CZMA and federal consistency at the national level.

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State Issues

NOAA Approves the Texas Coastal Management Program

On December 23, 1996, NOAA approved the Texas Coastal Management Program (TCMP). NOAA's approval follows several years of coastal communities' grass roots efforts, state legislation and support, and close coordination between the state and OCRM. With federal approval, Texas is eligible for federal CZMA program implementation funds, federal consistency applies to federal actions reasonably likely to affect Texas coastal uses or resources, national interests will be considered when the state is making coastal management decisions, and interested parties in the state are now eligible to apply for a deepwater port license from the U.S. Coast Guard, pursuant to the Deepwater Port Act of 1974. Federal consistency applies to the TCMP as of January 10, 1997 (the date NOAA's approval was published in the Federal Register, 62 Fed. Reg. 1439-1440).

The TCMP is based primarily on the Coastal Coordination Act of 1991 (33 TEX. NAT. RES. CODE ANN. §201 *et. seq.*) as amended by HB 3226 (1995). Key elements of the Coastal Coordination Act and its implementation regulations (31 TAC §§501, 503, 505, and 506) include: establishment of the Coastal Coordination Council (Council) to develop policy and oversee implementation of the TCMP; development of a uniform set of coastal goals and policies; establishment of the fundamental legal requirements that selected "networked" state agencies and local governments must comply with; establishment of the scope and organizational framework of the program and the program boundaries; establishment of procedures to ensure networked state agency and local government implementation and adherence to the uniform policies; establishment of procedures to ensure that federal activities will comply with the state's coastal policies; establishment of mechanisms such as the Council to ensure implementation of, and adherence to, the coastal policies; and establishment of the procedures for enforcement of the TCMP by the networked agencies and the Council and Attorney General's Office.

The TCMP's seaward boundary is the state's territorial seaward limit. The state's inland boundary is based on the State's Coastal Facilities Designation Line (CFDL). The CFDL was developed in response to the Oil Spill Act of 1990 and basically delineates those areas in which oil spills would affect coastal waters or resources. For the purposes of the TCMP, the CFDL has been modified somewhat to capture wetlands in upper reaches of tidal waters. The program boundaries encompass all or portions of 19 coastal counties including Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Liberty, Jefferson, and Orange counties and overall include roughly 8.9 million acres of land and water.

Within this coastal zone boundary, the scope of the TCMP's regulatory program is focused on the direct management of fourteen generic "Areas of Particular Concern," called coastal natural resource areas (CNRAs). These CNRAs are associated with valuable coastal resources or vulnerable or unique coastal areas and include: waters of the open Gulf of Mexico; waters under tidal influence; submerged lands; coastal wetlands; seagrasses; tidal sand and mud flats; oyster reefs; hard substrate reefs; coastal barriers; coastal shore areas; Gulf beaches; critical dune areas; special hazard areas; critical erosion areas; coastal historic areas; and coastal preserves. Specifically, the geographic scope of the regulatory programs is based on the direct regulatory jurisdiction of those "networked" state agency and local government authorities which are subject to the program as provided by the Coastal Coordination Act. It should be noted that the geographic scope extends upstream 200 miles from the mouths of rivers draining into coastal bays and estuaries in order to manage water appropriations on those rivers. In addition, the State has designated the Western Outer Continental Shelf (OCS) planning area as the geographical area in which federal consistency shall apply outside of the coastal boundary. The TCMP also identifies those federal lands which are excluded from the State's coastal zone.

The state TCMP contact is Tom Nuckols, Co-Director, Coastal Division, General Land Office, 1700 North Congress Ave., Austin, TX 78701. (512) 463-5054. Fax: (512) 475-0680. For information from OCRM on the TCMP, please call Ed Kruse at (301) 713-3117, ext. 181.

Louisiana, the Minerals Management Service (MMS), and 5-Year OCS Lease Plans

Every five years MMS publishes a program for outer continental shelf (OCS) oil and gas leasing. On August 11, 1995, a Notice in the Federal Register (60 Fed. Reg. 155) was published requesting comments from states, local governments, and other interested individuals and groups, the oil and gas industry, and federal agencies on the Draft Proposed 5-Year Program (1997-2002). In response to this notice, Louisiana's coastal management program notified MMS that coastal effects were reasonably likely and that, pursuant to CZMA section 307(c)(1), MMS should submit a consistency determination.

Rather than determine whether the 5-year program would likely affect any coastal use or resource, and provide Louisiana with a consistency determination or a negative determination, MMS' response to Louisiana was that the 5-year program was not a federal activity and was not subject to the consistency requirement. Louisiana requested OCRM assistance. Eventually, Louisiana agreed that, for this 5-year program, a consistency determination was not required as coastal effects and the means to avoid, reduce, or minimize them could not be reasonably identified at this stage.

NOAA commented that MMS should determine if coastal effects are reasonably likely and provide to Louisiana either a consistency determination or a negative determination. OCRM and MMS discussed the issue throughout the summer and fall and have agreed to work together to determine how to effectively and efficiently combine and coordinate the federal consistency requirement and MMS' state involvement process for the 5-Year Program. This issue may also be resolved through changes to the consistency regulations. One of the issues that may be addressed in the revised regulations is the consistency requirement for direct federal activities with de minimis effects.

Connecticut, the Federal Energy Regulatory Commission (FERC), and Regulation of Coal-Burning Electric Generating Facilities

In early 1996, FERC issued a proposed rulemaking: Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities (Docket No. RM95-8-000) and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities (Docket No. RM94-7-001). In February 1996, Connecticut notified FERC that the proposed rulemaking was likely to adversely affect Connecticut's coastal resources. Connecticut believed that the promotion of competition is likely to increase energy production by Mid-west coal burning plants which will in turn increase the export of nitrogen and sulphur oxides and that these oxides, falling out through atmospheric deposition, are linked to adverse environmental impacts in Long Island Sound.

FERC responded, in its final rule, that the FERC rulemaking was not subject to the consistency requirement. FERC did not make a determination of effects, but exempted itself from consistency. Connecticut filed, under FERC's rules, a request for a rehearing on the CZMA issue. OCRM met with FERC to discuss the consistency requirement and urged FERC to respond to Connecticut's rehearing request with a consistency determination or a negative determination.

FERC performed an effects analysis and, in September 1996, FERC responded to Connecticut with both a negative determination (no effects) and a consistency determination if the regulations did lead to effects. FERC described the commitments it had made with the U.S. Environmental Protection Agency in case there were effects.

This was the first time that OCRM had worked with the rate structure side of FERC (OCRMs and FERC's hydroelectric licensing staff have worked closely together and have effectively coordinated and resolved issues, see e.g. next article). FERC adequately responded to Connecticut's rehearing request.

Washington, FERC, and Hydroelectric Relicensing

In 1974, the City of Tacoma, Washington filed a relicensing application with FERC for Tacoma's Cushman Hydroelectric Project. The Washington coastal management program (WCMP) asserted consistency on FERC's recent processing of the application. Tacoma asserted that the CZMA consistency requirement does not apply to the Cushman Project licensing. Tacoma argued that consistency did not apply as the relicensing application was filed before WCMP approval (in 1976) and that the state's earlier issuance of a 401 water quality certification precluded further CZMA review.

OCRMs, working through the NOAA Office of General Counsel Northwest (Seattle), urged FERC to deny Tacoma's request regarding federal consistency. NOAA found that federal consistency applied in this case where the federal license application was filed prior to federal approval of a state coastal management program, but which was still pending after federal approval of the state coastal management program (in this case pending 20 years after coastal program approval). Tacoma's application is current; it is not something that started and ended prior to federal approval of Washington's coastal management program. Tacoma is still an applicant. In fact, Tacoma's application is more current today than it was 22 years ago; the license application was amended in 1991, FERC's draft Environmental Impact Statement (EIS) was issued in November 1995. Also, NOAA's regulations recognize the application of consistency to federal license or permit activities initiated prior to management program approval. See 15 C.F.R. § 930.51(b)(1). NOAA also found that the issuance of a state's 401 water quality certification does not preclude an applicant's CZMA federal consistency responsibility: they are two separate issues. FERC denied Tacoma's request.

California Unlisted Activity Request of a Project on Postal Service Property

California requested OCRM approval to review, as an unlisted activity, the construction of a wireless communications tower and to co-locate multiple commercial wireless operators on property owned by the U.S. Postal Service. California was concerned with visual impacts of the tower on the quaint coastal village, Half Moon Bay. The state was also concerned with water quality and habitat impacts from the tower and construction of the tower on a nearby creek. However, the Postal Service decided that the project would not go forward at this time and that further studies were needed. OCRM, therefore, responded that the state's request was premature and that there was nothing for OCRM or the state to review. The state could raise the issues through federal consistency at a later time if the Postal Service decided to proceed with its consideration of the activity.

North Carolina's Proposed Revised Energy Facility Policies

North Carolina proposes to adopt revised coastal management policies regarding energy facilities. The proposed policies are needed to clarify existing policies regarding energy production in the coastal region, especially for exploration and production on the outer continental shelf. Their intended effect is to improve existing policies and provide federal agencies and applicants for federal approvals with greater predictability and notification of the state's coastal management concerns, information needs, and federal consistency reviews. OCRM has preliminarily determined that the changes would be a routine change to North Carolina's coastal management program. The policies, among other things, provide greater specificity as to information requirements and addressing effects to important resource habitats, e.g., fish spawning areas. The policies apply to activities that affect the state's coastal uses or resources.

Florida's Proposed Revised Energy Facility Policies

Florida also proposed to amend its energy facility siting policies. Florida proposes to eliminate the state's existing policy which encourages the development of oil and gas resources and to add a policy that expressly prohibits, without exception, the issuance of permits for oil and gas exploration, development, or production within Florida's jurisdiction. The State proposed these changes as a routine change. OCRM determined that the blanket prohibition of all petrochemical facility development within the entire Florida coastal zone is a substantial change in the enforceable policies related to the consideration of the national interest involved in the planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature. See 15 C.F.R. § 923.80(d)(5). Thus, OCRM determined that the change is an amendment to the Florida coastal management program.

Massachusetts Programmatic General Permit

The New England Division of the Army Corps of Engineers (Corps); the Massachusetts Department of Environmental Protection (DEP), which is the state's environmental permitting agency; and the Massachusetts Coastal Zone Management Program (MCZMP), a networked program which is the state's coastal policy agency, all worked together to develop a state-wide programmatic general permit (PGP) to reduce the regulatory burden on projects of minimal environmental impact. The PGP covers activities subject to the Corps' section 10/404 permits and is divided into three categories. Category 1 projects have minor impacts and do not require notification to the Corps. Examples include alteration of less than 5,000 sq. ft.

of wetlands approved under the Massachusetts Wetlands Protection Act; repair of currently serviceable, previously authorized structures; and maintenance dredging of less than 1,000 cu. yd. of material. Category 2 projects exceed Category 1 thresholds and are reviewed by the Joint Processing Committee to determine if the proposed activity is eligible for a PGP or if an Individual Permit will be required. About 95% of screened projects receive PGPs. Category 3 projects are those that are categorically required to obtain an Individual Permit from the Corps. Examples include permanent fill in salt marshes and projects required to prepare an environmental impact statement.

Major features of the PGP are 1) categories are set up so that state and federal thresholds are similar for each resource; 2) it eliminates multiple reviews of the same impact; and 3) both state and federal agencies were willing to revise their thresholds to achieve the first two objectives. The PGP also rescinds the Nationwides in Massachusetts.

The MCZMP reviewed the proposed PGP as a direct federal action and found it to be consistent with its enforceable policies. Projects that are eligible for a PGP are not generally required to complete a separate consistency review, though MCZMP did reserve the right to review projects that have impacts beyond those anticipated in Massachusetts' review of the PGP. MCZMP sits as a member of the Joint Processing Committee and participates in Category 2 screening decisions. Federal resource agencies are notified within 10 days of a Joint Processing meeting if MCZMP intends to require a federal consistency review.

Implementation of the PGP has improved state/federal cooperation. MCZMP's federal consistency reviews have been reduced from about 200 a year to about 50 a year (this reduction is also attributable to other state permit streamlining efforts but is primarily a result of implementation of the PGP). Response from the regulated community has been very positive and there are no known instances where reduction of regulatory review has resulted in increased environmental damage.

The PGP will be renewed every 5 years. MCZMP, DEP and the Corps will revise the permit as needed. Current experience has suggested improvements in stormwater and aquaculture provisions. For further information from the State contact Jane W. Mead, Senior Project Review Coordinator, at (617) 727-9530, ext. 418.

Connecticut, Local Governments, and Litigation Regarding Native American Casinos

The Bureau of Indian Affairs (BIA) purchased some land in eastern Connecticut to be held in trust for the Pequot Tribe. The land is to be used to expand the parking facility at the

Pequod's casino (Foxwoods). Three local communities opposed the action and sued BIA, claiming noncompliance with, among other things, the CZMA federal consistency requirement. OCRM assisted the Department of Justice in responding to the towns' lawsuit.

The towns argued that BIA should have made a consistency determination. However, because BIA determined that the proposed federal agency action would have no reasonably foreseeable effect on the state's coastal uses or resources, no consistency determination was required (the activity, the parking structure, is fairly far removed from the Thames River and any runoff would be well filtered before reaching the Thames). A negative determination was also not required. Further, the Connecticut Coastal Management Program (CCMP) knew of the proposed activity and agreed that there was no foreseeable effect.

The towns also argued that they were responsible for implementing Connecticut's Coastal Management Plan. However, for purposes of the CZMA, the State, not the towns, has responsibility and authority to implement the federal consistency requirement. The CCMP (the Office of Long Island Sound Programs) did not notify BIA of the need to make a consistency determination. The case has been argued and a decision from the court is pending.

OCRM Coordination with Other Federal and Non-Federal Entities

In addition to the interaction with other federal agencies involving specific state issues noted above, OCRM has met with the following federal and non-federal entities.

Federal Consistency Workshops

OCRM recently held its tenth regional federal consistency workshop in Wrightsville Beach, North Carolina for the South Atlantic Region (North Carolina, South Carolina and Georgia and regional offices of federal agencies). The workshop was well attended: a total of 49 people participated from eight federal agencies and the three states. With this workshop OCRM has completed its goal of conducting a general federal consistency workshop for all coastal states and federal agencies. Further workshops will be held for newly approved state coastal management programs (there will be a Texas workshop later this year) and for more specific issues as requested by coastal states.

In 1994, OCRM and state coastal management programs identified consistency workshops as a high priority for OCRM assistance and outreach efforts. The purpose of the workshops is to assist state coastal management programs and federal

agencies understand and comply with the Coastal Zone Management Act's federal consistency requirement, make full use of the benefits of federal consistency, and resolve potential conflicts through early and effective consultation, coordination, and cooperation.

From September 1994 to January 1997, OCRM conducted ten workshops around the country. These were for the Virgin Islands; the Gulf & Caribbean region (Florida, Alabama, Mississippi, Louisiana, Texas, and Puerto Rico); two in Alaska; the Great Lakes region (Wisconsin, Michigan, Pennsylvania, Ohio, Minnesota, and Indiana); the Pacific Islands (Hawaii, Guam, American Samoa, and Northern Marianas); the Pacific Northwest (Oregon and Washington); the Mid-Atlantic region (New Jersey, Maryland, Delaware, and Virginia); the North Atlantic region (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York); and the South Atlantic region (North Carolina, South Carolina and Georgia).

Over 475 state and federal people participated in the workshops. State and federal participants noted how useful the workshops were and the need to conduct additional workshops, for both general education and to address specific issues. In conjunction with the workshops OCRM developed a Federal Consistency Workbook to be used as an educational tool for the workshops and as a practitioners resource. The workbook has been distributed to over 650 people. Many recipients of the workbook have noted how informative and useful the workbook has been.

Corps of Engineers

Operations and Maintenance CZMA Policy.

Partly as a result of discussions over the approval of the Texas Coastal Management Program, OCRM and the Corps cooperatively developed a draft policy on CZMA consistency compliance requirements for Corps Operation & Maintenance (O&M) projects. The policy clarifies the Corps' responsibilities for complying with CZMA section 307(c) when undertaking congressionally authorized O&M activities at navigation projects. There have been issues over the years between states and the Corps on compliance with state coastal management program mitigation and beneficial use enforceable policies. This policy discusses Corps responsibility in light of the CZMA "consistent to the maximum extent practicable" standard and what this means for compliance and funding purposes. This draft policy was sent to Corps districts and state coastal management programs for review and comment (comments are due on May 9, 1997). This draft policy is reprinted in the following section on OCRM Policy Decisions, Guidance and Projects.

Nationwide Permits.

The Corps reissued the Clean Water Act section 404 nationwide

permit (NWP) program this year. As part of the NWP reissuing process, the Corps provided a consistency determination to the coastal states. Corps Districts were directed to work with the coastal states to negotiate state or regional conditions to obtain state agreement.

OCRM, other NOAA offices, and other federal agencies tried to convince the Corps that if a state CMP agency disagrees with the Corps consistency determination for a NWP, the Corps should rescind that NWP in that state. The Corps declined to take this action. If a state disagrees with the Corps consistency determination for a particular NWP, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must present a consistency certification to the appropriate state agency for concurrence, under CZMA § 307(c)(3)(A). Upon concurrence by the state, the activity would be authorized by the NWP. OCRM has only received disagreement letters from two coastal states.

Texas. During the development of the Texas Coastal Management Program (TCMP), and particularly in response to comments on the TCMP draft environmental impact statement, OCRM worked closely with the State and the Corps to address Corps concerns regarding the TCMP, especially the TCMP's policy regarding the beneficial use of dredge material.

Coast Guard

OCRM worked closely with the Coast Guard, through NOAA's Hazardous Materials Response and Assessment Division (HAZMAT), Office of Ocean Resources Conservation and Assessment, on coordinating the CZMA and the Oil Pollution Act Area Contingency Plan (ACP) Process. In September 1996, HAZMAT sent guidance to National Response Team and Area Contingency Plan members. The guidance explains the CZMA and federal consistency requirements, and stresses the importance of the involvement of the state CMP managers while the ACPs are being developed and revised.

Economic Development Administration

OCRM worked closely on a number of issues with another Department of Commerce office: the Economic Development Administration (EDA). OCRM provided guidance to EDA on whether EDA may "approve" a grant application from a state or local government prior to the completion of a coastal state's CZMA federal consistency review, where EDA's approval contains a condition that the federal funds will not be dispersed until the applicant has satisfied the federal consistency requirement. The CZMA and its implementing regulations require that federal agencies not grant federal funds if a state CMP agency objects to the activity. OCRM found that EDA's procedure complies with this requirement. EDA's disbursement of funds is conditioned, in part, on the federal consistency requirement.

OCRM also assisted EDA and the states on EDA's proposal to award \$40 million in disaster relief funds to North Carolina as a result of Hurricane Fran and for the grant of funds for infrastructure repair at the Charleston Naval Base in South Carolina.

Environmental Protection Agency

OCRM continued to assist EPA Region IV on the development of a general permit (GP) for outer continental shelf National Pollutant Discharge Elimination System (NPDES) permits. OCRM advised EPA to treat the NPDES GP as a direct federal activity, obtain state CMP agreement at the draft environmental impact statement (DEIS) stage, with the goal of eliminating the need for future consistency reviews of individual NPDES permit applications. EPA issued its DEIS and included detailed consistency determinations for each affected state.

Council on Environmental Quality

OCRM participated in a federal inter-agency effort to "reinvent" National Environmental Policy Act (NEPA). The effort was spearheaded by the Council on Environmental Quality (CEQ). CEQ launched the effort as a spin-off from CEQ's NEPA Effectiveness Study. Phase I explored improving NEPA implementation in three sectors: oil and gas, grazing and timber. The NEPA reinvention team developed a set of initial recommendations that center on reducing duplication of analyses, improving consistency among agencies, improving early public involvement, improve readability of NEPA documents via focused analysis, elimination of repetition, etc.

OCRM Policy Decisions, Guidance and Projects

CZMA is reauthorized

On June 3, 1996, the President signed into law the Coastal Zone Protection Act of 1996 (CZPA), Pub. L. No. 104-150. The CZPA reauthorized appropriations for the CZMA, and for the most part, made few changes from the 1990 amendments. The CZPA had overwhelming support in Congress. The only change to the federal consistency requirement is to the Secretarial override process. Section 8 of the CZPA addresses the Secretarial override process, provided in CZMA § 307, whereby the Secretary of Commerce may override a state's consistency objection to a federal permit, license or funded project. Specifically, CZPA section 8 provides that the Secretary shall publish a notice in the Federal Register indicating when the decision record in a consistency appeal has closed. No later than 90 days after the date of publication of this notice, the Secretary shall issue a final decision or publish

another notice in the Federal Register detailing why the decision cannot be issued within the 90-day period. In the latter case, the Secretary shall issue a decision no later than 45 days after the date of the publication of the notice.

Revised Federal Consistency Regulations

OCRM continues to work on revised consistency regulations. An informal draft was presented to federal agencies for review and comment in December 1996. OCRM will, to the extent possible, incorporate or respond to federal agency comments and provide the federal agencies and state coastal management programs with another informal draft for review and comment. This draft should be available in June 1997. OCRM will eventually publish revised regulations in the Federal Register as a proposed rule.

The changes codify the CZMA 1990 and 1996 amendments and clarify 17 years of implementation and interpretation. The draft revisions are intended to facilitate smooth and effective implementation of the federal consistency requirement.

Revised Program Change Regulations and Guidance

Over the years OCRM has provided guidance on requirements and submission procedures for changes made to state CMPs. OCRM published revised regulations, 61 Fed. Reg. 33802-33819 (to be codified at 15 C.F.R. part 923, subpart H), and new program change guidance (July 1996).

The new guidance clarifies information requirements for program change requests. The focus of the guidance is to explain the difference between procedures for the two types of program changes: routine program changes and program amendments. The guidance also explains the recent update of the program change regulations. In the regulation update, OCRM replaced the four criteria by which program change requests were evaluated with a reference to the five program areas identified in the program development regulations: (1) uses subject to management, (2) special management areas, (3) boundaries, (4) authorities and organization, and (5) coordination, public involvement and national interest. The regulations also require states to identify any enforceable policies to be added or changed by the program change.

Draft Local Government Implementation Policy

OCRM developed a draft local government implementation policy. The purpose of the policy is to clarify CZMA and NOAA regulations and OCRM policy regarding local government implementation of a state's federally approved coastal management program (CMP). Comments from state coastal program managers are due on May 9, 1997.

The proposed policy, based on an analysis of existing state and OCRM practice, would provide states and OCRM with flexibility regarding local government funding, and ensure consistent application of OCRM policy and CZMA requirements. The proposed policy addresses whether the means by which a local government implements state CMP authorities must be incorporated into the CMP and the implications of incorporation versus non-incorporation for program changes, federal consistency, CZMA section 312 evaluations and CZMA section 306 funding. The policy does not dramatically alter existing practice, but does clarify requirements and policy.

The draft policy statements are (there is also a discussion of each policy statement in the draft guidance):

Incorporation into the CMP - Local implementation mechanisms, or LIMs (the means by which a local government implements state CMP authorities includes local comprehensive plans, ordinances, local permits, enforcement actions, and other local implementation efforts--hereinafter referred to as "local implementation mechanisms" or "LIMs"), used to implement state CMP authorities do not have to be incorporated into the CMP, so long as the state CMP authorities that define the use of such LIMs meet CZMA and NOAA regulation requirements for state establishment of criteria and standards for local implementation - Technique A. CZMA § 306(d)(11)(A); 15 C.F.R. § 923.42.

Program Changes - Where LIMs are incorporated into a state's CMP, changes to those LIMs must, generally, be submitted to OCRM as a program change pursuant to CZMA and NOAA regulation program change requirements. Note however that changes to LIMs may not need OCRM approval if they do not affect the federally-approved CMP. Depending on the nature of the particular state CMP and the nature of the change to the CMP, a state may make minor adjustments in how it manages the coastal zone without necessarily changing its approved CMP. Thus, a state may determine that a necessary change in its federally-approved CMP is so insignificant that it need not be submitted to OCRM for review. See 61 Fed. Reg. 33803 (preamble to revised CZMA program regulations). However, changes not incorporated into the CMP, no matter how insignificant, may not be used for federal consistency purposes and may be subject to CZMA funding limitations. See sections on federal consistency and funding, below.

Where LIMs are not incorporated into the CMP, changes to those LIMs do not have to be submitted as program changes. Note however that if an unincorporated LIM, or a change to such a LIM, affects the approvability of a state's CMP, e.g., affects the state's consideration of the national interest in energy facility siting, then the state could submit the change for OCRM's review and/or the state might have to take remedial action through its oversight capabilities. In either case the state might be subject to possible program sanctions or program approval withdrawal.

Federal Consistency - Federal consistency applies to LIM enforceable policies, or any other state enforceable policies, that are incorporated into a state's CMP. Federal consistency does not apply to those policies, including to those that are LIMs, that are not incorporated.

Periodic (312) Evaluations - The state's oversight of local implementation of its CMP is subject to OCRM review and evaluation regardless of whether or not the LIMs are incorporated. If a local government takes action that affects the approved CMP, OCRM may include in its 312 evaluation findings a necessary action that the state take remedial action through its oversight capabilities (the state could also submit the LIM as a program change for OCRM review). In either case the state might be subject to possible program sanctions or program approval withdrawal. OCRM will continue to evaluate the expenditure of CZMA funds by local governments, whether or not LIMs are incorporated into the state's CMP. OCRM has the responsibility to ensure that CZMA funds are used for the intended purpose, consistent with the state's CMP and the CZMA.

Funding Local Governments - The primary purpose of CZMA section 306 funds is to assist coastal states to administer and implement their CMPs. States must ensure that funds are available to implement CMP authorities, CZMA section 312 necessary actions and recommendations, and other CMP section 306 needs as negotiated by a state and OCRM as part of the grant negotiation process.

Subject to adequate state overview, and provided the activities support the effective development or implementation of the coastal management program, a state may allocate administrative grant funds to local governments to implement state coastal management program authorities that have met management control Technique A requirements (see 15 CFR § 923.42), where the state authorities are incorporated into the CMP (the LIMs that implement the authorities do not have to be incorporated into the CMP); other local activities that are identified in a state's federally approved coastal management program document or program approval findings as allowable management program implementation activities (no other local government implementation activities may be funded, except for one-time projects discussed below); or one-time projects. One-time projects include demonstration projects such as one local government developing a comprehensive plan or ordinance as a model for other localities; development of local plans or ordinances which are expected to be incorporated into a state's CMP; development of specialized one-time studies or projects, e.g., hurricane evacuation plans and public access plans, etc.

States may allocate funds to local governments for section 306A projects if the projects meet the CZMA section 306A requirements and OCRM's Section 306A Guidance, and if the state is adequately funding the CMP and addressing any section 312 evaluation necessary actions.

Final Draft Guidance on Incorporation of 6217 Programs into a State's CMP

In 1993, OCRM and EPA stated in the Coastal Nonpoint Pollution Control Program Development and Approval Guidance that "when a state coastal nonpoint program receives final Federal approval, it will be incorporated automatically into the state's coastal management and nonpoint programs." OCRM has developed final draft guidance on incorporating state Coastal Nonpoint Pollution Control Programs (6217 programs) into a state's coastal management program.

In October 1996, OCRM provided a draft of this guidance for state review and comment. Six states submitted comments. The final guidance was revised to address those comments. Because of the changes made to the draft, OCRM provided states with the final draft for another review. Comments are due on May 9, 1997.

OCRM is allowing states to incorporate fully approvable 6217 program elements now, rather than waiting until final program approval, for several reasons. First, earlier incorporation of fully approved elements is an administrative convenience and will allow the state to apply the incorporated policies through its coastal management program, e.g., for federal consistency. Second, the time frame for full 6217 program approval is longer than envisioned in 1993 and states may want to incorporate fully approved elements now. Third, earlier incorporation of approvable elements into a state's CMP will streamline the approval process and reduce administrative burdens; and fourth, the state can capitalize on the current public review process. The guidance contains the following policy statements (in the final draft guidance there is also a discussion of each policy):

Policy 1: The CZMA § 306(d)(16) requires that state CMPs contain enforceable policies and mechanisms to implement state 6217 programs. Thus, states shall incorporate 6217 program enforceable policies and mechanisms into their CMPs at the time of final 6217 program approval. Prior to final approval a state may choose to automatically incorporate those elements of a state's 6217 program that OCRM and EPA have approved (i.e., those that do not have conditions). Automatic incorporation does not apply to changes to state 6217 program elements made after OCRM's and EPA's final approval. States may also, at any time, submit 6217 program elements as a program change pursuant to the program change requirements under 15 C.F.R. part 923, subpart H, and OCRM's Program Change Guidance (July 1996).

Policy 2: Except for local government mechanisms which will be used to implement a state's 6217 program, see Policy 3, the only actions for automatic incorporation required by the state are to: (1) identify those elements to be incorporated; (2) ensure that any new CMP enforceable policies are identified; and (3) notify OCRM, federal agencies, and other interested parties, of OCRM approval and the incorporation of the elements into the

state CMP.

Policy 3: For state 6217 enforceable elements that will be implemented by local governments, states must show, prior to automatic incorporation, that the local implementation mechanisms were developed pursuant to, and conform to, state standards and criteria, and that the state has the ability to ensure local compliance with the state's 6217 statutes or programs.

Policy 4: Water pollution control requirements of a state's 6217 program that were established pursuant to the Clean Water Act are automatically incorporated into the state's CMP upon promulgation of the state requirement and notification to OCRM and relevant federal agencies.

Policy 5: Only those 6217 program elements incorporated into a state's CMP and meeting the definition of enforceable policy under 16 U.S.C. § 1453(6a) may serve as a basis for state objections for federal consistency purposes.

Native Americans and Coastal Management Programs

Over the years states and Native American Tribes have asked whether Tribes are subject to federal consistency and whether Tribes could develop their own autonomous coastal management programs. As for federal consistency, OCRM has stated that Tribes are subject to federal consistency, but that the extent to which a Tribe must be consistent with specific state enforceable policies depends on federal law applicable to a particular Tribe. See Federal Consistency Bulletin No. 4, February 1996, at 6, for OCRM's view on the applicability of federal consistency to Native Americans.

As for whether a Tribe may develop an autonomous coastal management program, OCRM has stated in the past that the CZMA only allows coastal states and U.S. territories to develop coastal programs. Tribes may be part of and implement a part of a state's coastal management program (much like a regional agency). 15 C.F.R. § 923.92(b)(2). However, the Narragansett Tribe (Rhode Island) believes that the CZMA does allow Tribes to develop autonomous coastal management programs and has asked that OCRM make a new determination based on information to be provided by the Tribe. The Narragansett Tribe has also asked that OCRM provide more specific guidance on the application of federal consistency. In the coming months, OCRM will examine how to facilitate Tribal coastal management efforts.

OCRM/Corps O&M Draft Policy

The following draft policy on CZMA Consistency Compliance Requirements for Corps Operation & Maintenance (O&M) Projects was developed in a cooperative effort between OCRM and the Corps. It was sent to states and Corps districts for

comment on March 27, 1997. Comments are due on May 9, 1997.

DRAFT

Revised: March 18, 1997

Coastal Zone Management Act Consistency Compliance Requirements for Corps of Engineers O&M Projects

This policy paper clarifies the responsibilities of the U.S. Army Corps of Engineers (Corps) for complying with section 307(c) of the Coastal Zone Management Act (CZMA) when undertaking congressionally authorized operations and maintenance (O&M) activities at navigation projects. This policy paper does not change existing regulations, rather, it serves to compile and interpret those regulations and policies in the specific context of the Corps O&M navigation mission. The following are addressed:

Background
Authorities
Roles and Responsibilities of the Corps and State
Public Notification
State Conditional Concurrences
State Letters of Disagreement
Funding
Conflict Resolution

Background

1. Meeting the objectives of federally approved state coastal management programs (CMPs) while accomplishing the congressionally authorized navigation mission is an important goal of the Corps. Section 307(c) of the CZMA was established in 1972, among other things, to require that Federal activities be conducted in a manner consistent to the "maximum extent practicable" with state CMPs.
2. The Corps fully supports conducting its activities in a manner that is consistent to the maximum extent practicable with enforceable policies of state CMPs. However, Corps project managers often have difficulty meeting state CMP requirements within navigation project maintenance schedules established by the Congress through the budget process. Also, the Corps may not have the authority or discretion to comply with some state CMP requirements. Thus, the purpose of this policy paper is to provide specific guidance on how the Corps can effectively and efficiently accomplish its mission and comply with CZMA requirements.
3. Corps compliance with state CMP policies may be prohibited by other federal law or compliance may be difficult given limited Corps discretion. For example, the State of Texas requires that dredged material from certain navigation projects be used for beneficial purposes. The State of Louisiana has a similar policy and is applying it to the designation for the Atchafalaya River ocean disposal site final designation. New

Jersey is applying its CMP water quality policies to an ocean disposal site consistency determination (the “Mud Dump” site), and Florida has long held that the Corps must place all suitable dredged material on coastal beaches at federal expense. The consistency regulations are specific about timeframes and when the process concludes. Delaying federal action beyond the required timeframes, when there is an issue between the Corps and the state, is encouraged if there is a reasonable chance that the issue will be resolved and the state will then agree with the Corps’ consistency determination. At any rate, after the statutory 90-day period the Corps may proceed with a direct federal activity over a state CMP agency’s disagreement if the Corps provides the state with the legal requirements that prohibit Corps compliance with the state CMP. In addition to clarifying this requirement, the intent of this policy document is also to encourage earlier coordination between the Corps and the states. Other congressional authorizations and appropriations may also address these issues.

Authorities

1. CZMA section 307(c)(2) requires that any federal agency proposing development projects in the coastal zone of a state insure that those projects are conducted consistent to the maximum extent practicable with the enforceable policies of state CMPs. The term “consistent to the maximum extent practicable,” means that proposed Corps projects must be fully consistent with state CMPs unless compliance is prohibited based upon the requirements of existing law applicable to Corps operations. See 15 CFR § 930.32. The word “practicable” within the definition means capable of being done. When modified by the phrase “to the maximum extent,” the complete term means to the fullest degree permitted by existing law. If the Corps believes that a state’s recommendations for making a project consistent exceed the Corps’ authority, with respect to either authorization or appropriation, then the Corps has complied to the maximum extent practicable. Letter from Douglas A. Riggs, General Counsel, U.S. Dept. of Commerce, to Corps (Aug. 20, 1986, page 3 of enclosure to the letter). Determining whether state CMP compliance recommendations exceed either authorization or appropriation for a congressionally authorized navigation project is a Corps responsibility.

2. In addition, CZMA section 307(e)(1) provides that CZMA requirements cannot diminish Corps jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor limit the authority of Congress to authorize and fund projects. This section ties in with the concept of consistent to the maximum extent practicable.

3. CZMA section 307(f) provides that CZMA requirements shall not in any way affect any requirement established under the Clean Water Act (CWA) or any requirement established by the Corps or any state or local government pursuant to the CWA. Such federal, state and local water pollution control

requirements shall be incorporated in state CMPs and shall be the water pollution control requirements applicable to such program. When the Corps prepares a CWA section 404(b)(1) evaluation report, it must include an analysis of alternatives. The alternatives analysis must consider state CMPs. See 40 CFR § 230.10(a)(5). Thus, Corps activities must be conducted consistent with state and local government water pollution control requirements so long as compliance is not prohibited by CWA section 404 water pollution control requirements.

Roles and Responsibilities of the Corps and State

1. Corps regulations at 33 CFR § 336.1(b)(9) require that the Corps provide the CWA public notice and any additional information the district engineer determines appropriate in support of the consistency determination. Usually, the 404(b)(1) evaluation report and the National Environmental Policy Act document, if one is necessary, are sufficient to satisfy the Corps consistency determination. If a state CMP agency believes that additional information is necessary it should immediately notify the district engineer. The district engineer will attempt to satisfy the state’s request for additional information or negotiate a resolution. The Corps and the state CMP should coordinate as early as practicable before beginning the O&M project. Early coordination will help the Corps identify state concerns and policies and address such concerns and policies to the extent practicable early in the Corps environmental compliance process. This will help eliminate conflict and avoid delays and costs due to delays.

2. Consistency determinations must be provided by the Corps to the state CMP at the earliest practicable time, but at least 90 days before initiation of the O&M project. 15 CFR § 930.34(b). The content of a consistency determination shall include a brief statement of consistency, an evaluation of the relevant CMP policies, a detailed description of the activity, its associated facilities, their coastal effects and comprehensive data and information sufficient to support the determination. 15 CFR § 930.39(a). The Corps may provide this information in any manner it chooses so long as the requirements of 15 CFR part 930, subpart C are met. This information and analysis could be combined with an environmental analysis under the National Environmental Policy Act or CWA 404(b)(1) guidelines.

3. If the state agency response is not developed and issued within the initial 45 day period, the state must notify the Corps of the basis for the delay and request an extension of time. The Corps can presume agreement if the state agency fails to provide a response or request an extension within the 45 day period. If requested within the time period, the Corps shall grant a 15 day extension. 15 CFR § 930.41(b). See also 33 CFR § 336.1(b)(9)(iv). In the case of complex or large projects, longer extensions should be granted. Extensions beyond six months should be granted only in rare and unusual circumstances.

Public Notification

1. CZMA section 306(d)(14) requires the state CMP agency to provide timely public notice of requested consistency determinations. The Corps cannot be required to publish or pay for the state public notice. However, consistency determination requests are routinely included in the public notice for the Corps project to avoid duplication and unnecessary delay. See, e.g., 15 CFR § 930.61. Corps public notices that incorporate the notification requirements of the CZMA will include the information identified at 33 CFR § 337.1(a)(11). That information is generally adequate to meet the states' CZMA public notification requirements.

2. State agency review will commence when the state CMP receives the Corps consistency determination and information required by 15 CFR § 930.39(a). Normally the public notice with the information requested at 33 CFR § 337.1(a)(11), and other supporting information the district engineer determines necessary for the state to determine if the proposed project is consistent to the maximum extent practicable with the state CMP is sufficient. A state agency request for information or data in addition to that required at 15 CFR § 930.39(a), does not extend the date of commencement of state agency review.

State Conditional Concurrences

The CZMA does not authorize the states to enforce conditional concurrences unilaterally; rather, the CZMA requires the state to concur or disagree with a consistency determination. The National Oceanic and Atmospheric Administration (NOAA) regulations do not contemplate a conditional concurrence unless the Corps agrees to the conditions. However, states must identify, as part of a state disagreement to a consistency determination, alternative measures (if any) which would make the Corps project consistent to the maximum extent practicable with the management program. 15 CFR § 930.42(a).

State Letters of Disagreement

In those cases where the state agency disagrees with the Corps consistency determination, NOAA regulations provide two alternative ways a state may disagree. See 15 CFR § 930.42(a) and (b).

1. **Disagreement as to the Consistency of the Activity.** A state may disagree that the activity is consistent to the maximum extent practicable with its CMP. The state must include the following information in its response:

a. **The Disagreement Must be Based on Enforceable Policies.** Only enforceable policies incorporated into a state's CMP may be used to disagree with a proposed activity. The disagreement letter should cite and describe the applicable enforceable policies. CZMA § 307(c)(1)(A); 15 CFR § 930.42(a).

b. **The Disagreement Letter Must Describe How**

the Activity is Inconsistent. There must be a description of how a project is inconsistent with enforceable policies. 15 CFR § 930.42(a).

c. **The Disagreement Must be Timely.** A disagreement letter should verify when the consistency review of the complete consistency determination and necessary information began. A decision on a consistency determination must be made within 45 days from the date the consistency determination and necessary information was received, unless the review period has been extended. If the consistency review of the Corps activity is to extend beyond 45 days the Corps must be notified in writing. 15 CFR § 930.41.

d. **Consistent Alternatives Must be Identified and Discussed.** A disagreement letter must include alternatives, if any, that would be consistent with the state's CMP. 15 CFR § 930.42(a).

2. Disagreement Based on Insufficient Information.

Disagreement letters must describe the information needed and why it is needed if the disagreement is based on insufficient information. The state may disagree with a project based on insufficient information if the Corps has failed, following a written request, to provide the required information. If disagreement is based on insufficient information the disagreement letter must describe the nature of the information requested and the necessity of having that information to determine consistency. 15 CFR § 930.42(b).

3. **Disagreement Letters Must be Sent to the Corps and the Director of the Office of Ocean and Coastal Resource Management in Washington, DC and Silver Spring, MD, respectively.** 15 CFR § 930.42(c).

Funding

1. The Corps may allocate funds to comply with state CMP requirements that are consistent with Corps authorities and congressional funding for specific navigation projects. If the district engineer determines that the state recommendations to achieve consistency exceed either the authority or funding for a project, the district engineer will so notify the state indicating that the Corps has complied to the maximum extent practicable with the state's CMP. 33 CFR § 336.1(b)(9)(v).

2. In those cases where the district engineer determines that state recommendations exceed either the Corps' authority, or congressional funding for a project, the district engineer will determine whether funding from continuing authorities or Water Resources Development Acts (WRDA) are available to meet state CMP requirements. Authorities particularly applicable to meeting state CMP requirements are the authority to beneficially use dredged material to protect, restore, and establish aquatic and related habitat provided by section 204 of WRDA 1992, as amended, and the authority to place dredged material on beaches provided by section 145 of WRDA 1976,

as amended. A determination by the district engineer regarding the use of such authorities will occur concurrent with and not extend the time period for state agency review. Thus, early coordination with the state may be necessary to determine the need for or availability of additional authorities or funding to bring a project into consistency with the CMP. If funds and alternative cost-sharing programs are not available or appropriate, as determined by the district engineer, the Corps will request that the state fund the additional expense, see 33 CFR § 337.2(b)(2), or the district engineer will notify the state that the Corps has complied to the maximum extent practicable with the state's CMP. If the state CMP agency agrees to fund the additional cost, the Corps will comply with the requirement.

3. In cases where the Corps and state CMP agency cannot reach agreement and no other funding sources are available, the district engineer may defer dredging using the procedures of 33 CFR § 337.8, or the district engineer may proceed with the activity if the district engineer describes to the state CMP agency the legal authority which limits the Corps' discretion to comply with the CMP's requirements. See 15 CFR § 930.32(a).

4. In those cases where the project has a local sponsor and the Corps and state CMP agency cannot reach agreement and no other funding sources are available, the district engineer may request the local sponsor fund the additional requirement. 33 CFR § 337.2(b)(2).

Conflict Resolution

If the Corps and a state CMP agency disagree as to the application of the CZMA Federal consistency requirement to Corps O&M projects they should attempt to expeditiously resolve their differences. If the Corps and the state CMP agency cannot reach agreement, either party may request that NOAA's Office of Ocean and Coastal Resource Management informally facilitate settlement of the dispute. See 15 CFR § 930.111. Either party may also request that the U.S. Secretary of Commerce mediate a serious disagreement between the Corps and a state (a more formal procedure). See 15 CFR part 930, subpart G.

Update on CZMA Section 306(d)(14): Public Participation for State Reviews of Direct Federal Activities

As reported in previous Bulletins, state CMPs must now provide for public participation in permitting processes, consistency determinations, and other similar decisions. Many states have submitted proposed public participation procedures for OCRM review. States that have not submitted their procedures to OCRM should do so as soon as possible.

Approved state procedures include publication in local newspapers, state environmental mailings to interested parties

(state and local government agencies and other interest groups), including the items on the agenda of state coastal commissions, etc. In all cases the public notice makes it clear that the public is invited to comment on the state CMP's review of whether a federal activity is consistent with the state CMP.

Consistency Internet Bulletin Board.

OCRM has developed an Internet consistency home page and bulletin board. The home page provides some brief information on federal consistency. The bulletin board will allow OCRM to quickly, and briefly, notify the coastal management community of current federal consistency issues. The home page and bulletin board are in an infancy stage. OCRM hopes to keep the bulletin board updated this year. The bulletin board can be accessed from the OCRM home page at:

<<http://www.nos.noaa.gov/ocrm>> or directly at:

<http://www.nos.noaa.gov/ocrm/czm/federal_consistency.html>

National Federal Consistency Meeting

OCRM is considering holding a national federal consistency meeting in 1998. The purpose of the meeting would be to bring state coastal management program federal consistency staff, federal agencies and OCRM together to address a range of federal consistency issues, including revised federal consistency regulations. Meeting sessions would address the revised regulations, improving communication and cooperation between states and federal agencies, and resolving specific consistency issues between states and federal agencies. States, federal agencies and OCRM too often address consistency issues in a reactionary manner. While OCRM's regional federal consistency workshops have helped improve coordination and educated federal agencies and states on consistency requirements, a broader meeting would bring states and federal agencies together to develop proactive policy and agreements regarding federal consistency.

The meeting would be 2-3 days and would most likely be held in the Washington, D.C. area. Having the workshop in Washington will allow more OCRM and federal agency staff to attend. However, the workshop could be held outside the Washington area and be treated more as a working retreat. Funds will most likely not be available for 1997. However funds may be available for FY 1998. Any thoughts on such a meeting should be sent to OCRM's David Kaiser.

Secretarial Appeal Decisions CZMA Consistency Appeal Decisions Since February 1996

Under CZMA § 307(c)(3), a state's consistency objection precludes a federal agency from issuing a permit for an activity

at issue unless, upon appeal by the appellant, the Secretary of Commerce finds that the activity is either consistent with the objectives of the CZMA (Ground I) or necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must override the state's objection. Since February 1996 the Secretary has issued the following consistency appeal decision to date.

Puerto Rico - Decision and Findings in the Consistency Appeal of Vieques Marine Laboratories, May 28, 1996.

On May 28, 1996, the Secretary declined to override the Commonwealth of Puerto Rico's consistency objection to the Vieques Marine Laboratories (VML) proposed shrimp mariculture project. VML planned to construct and operate a shrimp mariculture farm in the submerged lands and waters of Puerto Ferro Bay on the Island of Vieques. The shrimp farm operation would have involved the maintenance in floating cages of approximately 37,500 pounds of a species of shrimp exotic to the waters of the Bay. VML needed approval, under section 10 of the Rivers and Harbors Act, from the U.S. Army Corps of Engineers for the project. Of specific concern to the Commonwealth of Puerto Rico in making its objection was that VML's proposed project would jeopardize the ecological communities in and close to the area by virtue of introducing exotic species, and would also affect the water quality of the Bay by the increase of nutrients from food and animal waste resulting from the concentrated culture of shrimp. The Secretary concluded that the adverse coastal effects of the proposed activity outweigh the activity's contribution to the national interest. The Secretary also concluded that no national defense or other national security interest would be significantly impaired if VML were not allowed to proceed with its proposed activity.

Pending Consistency Appeals

(As of April 1, 1997)

<u>Appellant</u>	<u>Activity</u>	<u>State</u>
Texasgulf	Phosphate Mining	NC
Joseph Mattone	Construction of seawall and Placement of fill	NY
Jessie Taylor	Placement of fill	SC
Jose Gregory	Mooring piles	PR
Margaret Bryan	Placement of fill	SC

For further information on appeals call Roger Eckert, NOAA Office of General Counsel for Ocean Services, (301) 713-2967, ext. 213.

Federal Consistency Bulletin Board

The Consistency Bulletin Board provides states, OCRM, and other parties the opportunity to alert readers to upcoming events, various issues, request information from other states on a federal consistency issue, transfer ideas, etc.

After reading this Bulletin, include it in your Federal Consistency Workbook with the other Bulletins

Federal Consistency Internet Addresses

OCRM has listed the Internet addresses for OCRM staff and state coastal management program managers on the OCRM home page: <<http://www.nos.noaa.gov/ocrm/email.html>>. We also want to include a federal consistency contact Internet address list (especially for state coastal programs). If you have an Internet address, please send it to OCRM at: <dkaiser@coasts.nos.noaa.gov>.

Three state coastal managers who have played a significant role in federal consistency over the years have moved on to other activities. These three people made substantial contributions to the implementation of federal consistency for their respective states and nationally.

Wayne Beam, long time South Carolina coastal program manager and a leader in the national coastal management community, retired from state government. Wayne continues to be involved in coastal management as a consultant and continues to teach at the University of South Carolina.

Gabriela Goldfarb, Federal Programs Manager, with the California Coastal Commission for several years, was instrumental in furthering California's coastal management and federal consistency interests and was an effective advocate for coastal management at the national level. Gabriela has moved on to the world of non-profits where she is the Deputy Director of *For the Sake of the Salmon*, in Portland Oregon. Gabriela's replacement is **Ms. Jaime Kooser**, formerly with the Washington State Department of Ecology.

Bryan Cullen, staff attorney with New York's Department of State (New York's coastal program), used his effective legal and negotiation abilities to further New York coastal management program's objectives. Often working "behind the scenes" Bryan successfully furthered New York's interests with federal agencies. Bryan was also very active nationally through

the Coastal States Organization's Legal Counsel (he was a past chair of the CSO Legal Counsel). Bryan continues to work with the New York Department of State on other legal matters.

Wayne, Gabriela, and Bryan will be missed and OCRM wishes them luck in their new endeavors.

New Coastal States Organization (CSO) Executive Director

Tony McDonald is the new CSO Executive Director, replacing David Slade. Tony was formerly with the American Association of Port Authorities. OCRM looks forward to working with Tony on many upcoming coastal management issues.

OCRM's Coastal Programs Division Staff. CPD has been recently reorganized. The office now consists of:

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