FEDERAL CONSISTENCY BULLETIN

Office of Ocean and Coastal Resource Management

Issue No. 1
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The Federal Consistency Bulletin is intended to keep states, federal agencies, and other interested parties abreast of current federal consistency issues. The federal consistency provisions, section 307, of the Coastal Zone Management Act of 1972, as amended (CZMA) require that activities performed by the federal government, that affect any land or water use or natural resource of a state's coastal zone, must be consistent, to the maximum extent practicable, with the enforceable policies of a state's federally approved coastal management program. Federally permitted 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.

Table of Contents

The Federal Consistency Bulletin is published periodically by OCRM. Please send comments or questions or information to be included in future Bulletins to David W. Kaiser, Federal Consistency Coordinator, OCRM, 1825 Connecticut Ave., N.W., Washington, D.C. 20235. (202) 606-4181, FAX: (202) 606-4329

Significant State Issues

Lake Gaston Consistency Appeal -- Interstate Consistency Dealt a Setback

On December 3, 1992, the Secretary of Commerce terminated an appeal, in appellant's favor, by finding that section 307 of the CZMA did not require the appellant to submit a consistency certification and that the objection was improperly lodged because the state coastal management program lacked the authority to object to the appellant's project. The appeal was brought by the Virginia Electric and Power Company (VEPCO) to override North Carolina's objection to VEPCO's consistency certification for an application to amend its Federal Energy Regulatory Commission hydroelectric license. The amended license would allow the withdrawal of up to 60 million gallons of water per day from Lake Gaston. Lake Gaston, which is bisected by the North Carolina and Virginia border, is a dammed portion of the Roanoke River, which flows from Virginia into North Carolina's coastal zone. The water intake structures would be just over the border in Virginia. The water withdrawal would be made for the benefit of the City of Virginia Beach, Virginia. North Carolina objected to the water withdrawal because of downstream effects on important fisheries, wetlands, and the hydrology of the Roanoke River and Albemarle-Pamlico Sound, one of the largest estuaries in the country.

The Secretary, for this particular appeal, deferred to the legal opinion of the Department of Justice (Justice) that the CZMA does not authorize one state to object to a project located wholly within another state, regardless of the effects of that project on the coastal zone. In addition, the Secretary found that the proposed activity occurs wholly in another state (Virginia). This consistency appeal decision, and Justice's opinion, is contrary to previous NOAA General Counsel opinions on interstate consistency, see e.g. Hooker Opinion (May 2, 1989), and the view of OCRM that the CZMA, particularly as clarified in the Coastal Zone Act Reauthorization Amendments of 1990, authorizes states to review an activity that

affects the coastal zone, regardless of the activity's location. However, the decision in this case is consistent with previous views expressed by the Environment and Natural Resources Division of Justice.

For additional information from North Carolina contact Alan S. Hirsch, Special Deputy Attorney General, North Carolina Department of Justice, (919) 733-5725. To discuss broader policy implications contact David Kaiser, OCRM Federal Consistency Coordinator, (202) 606-4181.

Pennsylvania, the Corps, & Nationwide Permits

The Pennsylvania Department of Environmental Resources (DER), and the U.S. Army Corps of Engineers (Corps) have agreed to a settlement in Pennsylvania's legal challenges to the Corps' Clean Water Act section 404 nationwide permit (NWP) regulations. Pennsylvania had disagreed with the Corps' consistency determination for the NWP regulations, after the Corps treated proposed State NWP conditions as a denial of State water quality and CZMA consistency certification. Pennsylvania, on March 20, 1992, then brought suit against the Corps' promulgation of the final NWP regulations. Pennsylvania asserted that the Corps had no authority to treat the State conditions as a denial (precluding the use of regional conditions for NWPs issued in Pennsylvania), the Corps had exceeded its authority in determining what is a reasonable period of time for a state to review the NWPs, and the Corps regulations would impermissibly override State authority to review an individual application for a NWP, which the State had previously found to be inconsistent.

However, Pennsylvania and the Corps have agreed that the State has six months to review an applicant's CZMA consistency certification, as provided for in NOAA's federal consistency regulations. Further, the State may establish conditions for Pennsylvania's concurrence with an applicant's consistency certification. The consistency regulations provide for state objections and the suggestion of consistent alternatives. See 15 C.F.R. § 930.64(b). The Corps will include such conditions in any applicable permit authorization. If the Corps does not include the conditions, the Corps will consider the State's conditioned concurrence as an objection and will not authorize the activity unless the permittee chooses to comply voluntarily with all conditions in the conditioned concurrence or the State withdraws the conditions considered to have been objected to by the Corps. For additional information call M. Dukes Pepper, Jr., Office of Chief Counsel, PA DER, (717) 787-7060.

New York and GSA/ U.S. Marshals Service Land Disposal

The General Services Administration (GSA) is disposing of a parcel of land that was seized by the U.S. Marshals Service. The State of New York requested to review the land sale for consistency with the New York Coastal Management Program. GSA asserts that GSA's "broker" activities for the disposal of the land is exempted from CZMA consistency requirements by federal drug statutes, that acting as a "broker" is not a federal activity under 15 C.F.R. § 930.31(a), and that a consistency determination is unnecessary when selling federal surplus real property.

The 8+ acre parcel of land is along the Hudson River where the State has prepared a major Greenways plan. The State asserts that various land or water uses involving recreation, public access, and greenways, for which the state has enforceable policies, would be affected by the land sale. The State proposes that an easement be granted to the State for a passive public access trail along the river's edge, linking it with an existing park. After several discussions among the State, OCRM, and GSA, the State and OCRM informed GSA that based on all information provided this sale of federal property is an activity subject to the federal consistency provisions of the CZMA and its implementing regulations, and that the sale should not be finalized until the consistency requirements have been met.

OCRM informed GSA that first, there does not appear to be language in the federal drug statutes that would exempt the disposal of property forfeited to the U.S. Marshals Service under the federal drug statutes from the consistency requirements of the CZMA. Second, OCRM believes that GSA is acting within its statutory responsibilities to dispose of federally owned land and is performing a federal activity in the exercise of its own statutory responsibilities, or on behalf of the U.S. Attorney General. In either case, the activity is subject to federal consistency. Third, the relevant issue is not whether the U.S. Marshals Service or GSA is imposing any land use requirements along with the disposal of land, but whether the liquidation itself affects any land or water use or natural resource of New York's coastal zone, such as public access uses, which are covered by enforceable policies of the New York Coastal Management Program. Finally, the State of New York has, since the approval of its CMP by the Secretary of Commerce in 1982, listed GSA disposition of Federal surplus lands and structures as an activity likely to affect the coastal zone which requires a consistency determination.

However, GSA was still not convinced that it should comply with the federal consistency provisions of the CZMA. Therefore, the State prepared to file for a temporary restraining order and permanent injunction against the sale of the property, but the U.S. Attorney's Office for the Northern District of New York expressed an interest in working the issue out. At this time, the U.S. Department of Justice still maintains that a consistency determination is not required in this instance because the sale of property is "environmentally neutral." The State has contacted the property owner directly and is attempting to negotiate an easement. OCRM is preparing a response to GSA's latest letter to New York on the applicability of consistency to certain federal land acquisitions and disposals.

For additional information call Bill Barton, N.Y. Dept. of State, (518) 474-3643, or Bryan Cullen, (518) 474-6740.

Hawaii, American Samoa, and Guam and Japanese Plutonium Shipments

Beginning in November 1992, Japan began shipping plutonium to Japan from Europe through the Pacific Ocean (the plutonium is fuel from U.S. reactors that has been processed in France for further use). Japan will use the plutonium in an experimental "breeder" reactor, a new type of nuclear power plant that produces additional plutonium while generating power. Because the plutonium originated in the United States, a plutonium transportation plan was approved by the U.S. Department of State (DOS), under the Implementing Agreement of the Agreement for Cooperation between the United States and Japan Concerning Peaceful Uses of Nuclear Energy. In June, 1992, Hawaii, American Samoa, and Guam requested that DOS provide the states with a consistency determination for DOS activities related to the transportation plan and the shipment. The states maintained that U.S. involvement is a federal activity under the CZMA section 307(c)(1). The states are concerned that adequate safeguards are not in place to protect the coastal and ocean environment.

DOS requested OCRM review of DOS's response to the states' request for a consistency determination. OCRM confirmed that Japan is responsible for the plutonium shipment, Japan is responsible for establishing and executing the transportation plan, and that the shipment and plan are not being undertaken by or on behalf of the United States. Therefore, OCRM concurred with DOS that DOS involvement was not a direct federal activity under CZMA section 307(c)(1). OCRM also found that DOS's approval of the transportation plan was a federally licensed or permitted activity. However, because of the governmental character of Japan's actions in this case, Japan is not an entity "existing under the laws of any state," and is therefore not an applicant for such approval pursuant to 15 C.F.R. § 930.52. OCRM also advised DOS to work with the State and territories to resolve the coastal programs' substantive concerns.

Following the DOS response that a consistency determination was not required, Hawaii requested Secretarial mediation on the applicability of consistency. However, NOAA informed Hawaii that, in this case, Secretarial mediation is unavailable because the DOS decision regarding the applicability of the CZMA consistency provisions was largely the result of OCRM's determination that the DOS involvement is not reviewable under consistency (thus, as to the applicability of consistency there was nothing to mediate). NOAA did offer to facilitate informal discussions on Hawaii's substantive concerns with the plutonium shipments.

Hawaii also requested that the Nuclear Regulatory Commission (NRC) and the U.S. Coast Guard submit consistency determinations for possible actions related to the plutonium shipment. The NRC replied that there were no proposed NRC activities or approvals related to Japan's plutonium shipment. (Further, if an NRC approval was necessary, Japan would not be considered an applicant, in this case, under 15 C.F.R. § 930.52.)

Hawaii was also concerned with Coast Guard responsibilities related to its "force majeure" emergency actions ("force majeure" refers to accidents caused outside of human control and which could not be avoided by the exercise of due care, i.e., "acts of God"). The Coast Guard requested OCRM assistance on the applicability of federal consistency to its emergency actions. OCRM informed the Coast Guard that the CZMA and NOAA regulations do not specifically address emergency actions such as "force majeure," but that consistency did apply, and that any Coast Guard actions should be consistent to the maximum extent practicable. OCRM suggested that the Coast Guard's response to Hawaii discuss the following:

1. A consistency determination is not required at this time because there is no proposed activity (if true) by the Coast Guard related to the entry of Japan's plutonium carrier into Hawaiian waters.

2. If an emergency does arise and the vessel requests entry into U.S. or Hawaiian waters, then any direct action taken by the Coast Guard under "force majeure" that affects any land or water use or natural resource of the coastal zone must be consistent to the maximum extent practicable with enforceable policies of Hawaii's coastal management program, in accordance with 15 C.F.R. § 930.32(b) (a federal agency may deviate from full consistency with an approved management program when such deviation is justified because unforeseen circumstances arising after program approval which present the federal agency with a substantial obstacle that prevents complete adherence to the state's program).

3. A description of Coast Guard procedures in a "force majeure" emergency action under the Port and Waterways Safety Act.

4. The Coast Guard should request from the State a description of the specific effects to the coastal zone that the State is concerned about and the enforceable policies that the State believes are applicable to this situation.
5. Inviting the State to work with the Coast Guard in developing possible contingency plans.

However, OCRM's suggestions were not followed and the Coast Guard merely informed Hawaii that "force majeure" entry of a foreign flag vessel into United States waters is not a federal activity within the scope of the CZMA. For additional information contact Doug Tom, Hawaii Office of State Planning, (808) 587-2875.

Louisiana and Consistency User Fees

On September 9, 1992, the State of Louisiana submitted to OCRM a draft request to incorporate Act 1075 into the Louisiana Coastal Resources Program (LCRP) as a routine program implementation (RPI). The Act was passed during the 1992 legislative session and requires that fees be charged for the processing of consistency determinations and certifications.

After careful review, OCRM advised the State that, in OCRM's opinion, the fee established by the Act constitutes an impermissible tax/assessment on federal agencies and would not be approved by OCRM in its present form. Specifically, certain State and federal entities were exempt from paying the fee. OCRM's finding is based on the holdings of several recent federal cases that set forth principles for determining when a fee constitutes an impermissible tax. See section under OCRM Policy Decisions, Guidance, and Projects in this Bulletin for more information on charging user fees to federal agencies.

The State and OCRM have identified and discussed the potential legal problems with incorporating Act 1075 into the LCRP, but have yet to resolve these issues. The Louisiana legislature directed the Coastal Management Division to begin collecting the consistency fees on October 1, 1992. Each federal agency must make its own determination as to whether the fee is an allowable expense. For additional information contact Terry Howey, Louisiana Coastal Management Program, (504) 342-7591.

California and the Transportation Corridor Agencies

The Transportation Corridor Agencies (TCA), a consortium of local governments, proposed to build several new public toll roads in Orange County, California. One of the proposed toll roads, the San Joaquin Hills project, is located both within and outside of California's coastal zone.

The major issues raised by this project were the applicability of federal consistency to projects outside of the coastal zone and the application of the geographic scope requirements found at 15 C.F.R. § 950.53. Both issues were raised in terms of section 404 permits required by the project. Section 404 permits are included in California's list of federal permits and licenses required by 15 C.F.R. § 930.53(a). The listing does not include a general description of the geographic area outside of the coastal zone where the state would review section 404 permits as required by 15 C.F.R. § 930.53(b).

In January, 1992, California Coastal Commission (CCC) staff notified TCA and OCRM that they had determined that the portions of the project outside of the coastal zone that required a section 404 permit would affect the coastal zone. CCC staff was particularly concerned with impacts to riparian habitat and the habitat of several threatened or endangered species.

TCA argued that federal consistency did not apply to those portions of the project outside of the coastal zone because of language in the California Coastal Act, and because of the geographic scope requirements found at 15 C.F.R. § 930.53(b).

Both the Corps and TCA requested OCRM's opinion on the federal consistency requirements for the project. OCRM reiterated its position that the applicability of federal consistency is based on effects, not location. Furthermore, OCRM stated that interpretation of state statutes is more appropriately left to the states. Finally, OCRM found that while California had not specifically identified the geographic area, it had met the intent of 15 C.F.R. § 930.53(b) by providing actual notice to the applicant that their activities outside the coastal zone would likely affect the coastal zone. See section on OCRM Policy Decisions, Guidance, and Projects in this Bulletin for further information on the geographic scope issue.

Following its review of the project, the CCC voted to concur with the applicant's certification that the project was consistent with the California Coastal Management Program. For additional information contact Mark Delaplaine, Federal Consistency Supervisor, CCC, (415) 904-5200.

Massachusetts, EPA and Ocean Dump Site Designation

Three recent major projects, one in federal waters outside the state's "three mile" limit, a second in the territorial waters of another state, and the third on land proposed for acquisition and development by a federal agency that would otherwise have proceeded without any Massachusetts environmental review, have undergone the federal consistency review process. Through the consistency process and early consultation with relevant federal agencies and other parties, the State was able to concur with all three projects and agree with the federal agencies on significant project improvements.

The first is the review of the Massachusetts Bay Disposal Site (MBDS), twenty-two nautical miles off Boston and southeast of the new Stellwagen Bank National Marine Sanctuary.

The Ocean Dumping Act of 1972 requires that the U.S. Environmental Protection Agency (EPA) formally designate federally-operated marine disposal sites. The MBDS, formerly known as the Foul Area Disposal Site, has been used for disposal of dredged materials for several decades and received an interim designation until the completion and acceptance of the Environmental Impact Statement (EIS). After several years of study by the U.S. Army Corps of Engineers (Corps) and EPA, a Draft EIS was released in September 1989, a Supplemental EIS in July 1990, and a Final EIS in July 1992.

The Massachusetts Coastal Zone Management Program (MCZMP) worked closely with EPA during the preparation of the EIS and concurred that the list of criteria for site designation was appropriate. The site has been used for disposal of low-level radioactive wastes (discontinued in late 1972), and disposal of contaminated dredged materials. However, recent permits have not permitted projects to dispose of contaminated sediments at the MBDS (e.g., the Third Harbor Tunnel sediments which have been disposed at upland sites).

The site is relatively deep, about 300 feet, which would probably be too deep for adequate and risk-free capping (capping entails depositing contaminated sediments and then covering them with a layer of clean material which isolates the contaminants from the marine environment).

Although the FEIS did not support "managing" disposal of contaminated sediments at the site by capping, it would have allowed this possibility if the technology were to be proven feasible. The MCZMP disagreed, noting that capping has not been adequately demonstrated as feasible at 300 feet (although some use of this technique has been made in much shallower areas, e.g., 150 feet, in Long Island Sound).

The MCZMP negotiated a written agreement with EPA requiring that only clean materials would be deposited at the MBDS. EPA has consented to preparing a record of decision that states that the designation allows only marine dredged materials deemed clean by toxicological testing.

The MCZMP has also stressed that this federal consistency approval is only for the site selection and stipulates the deposition of only clean material. Any and all uses of the site will also be subject to individual federal consistency review, which should assure that only clean material is being deposited there. For additional information contact Steve Bliven, Assistant Director, MCZMP (617) 727-9530 (ext. 420).

Massachusetts, New Hampshire and Interstate Consistency

The second important review involved a project wholly within another state, but potentially affecting Massachusetts' coastal resources and uses. In September 1992, the MCZMP concurred with a federal consistency certification for the proposed Seabrook, New Hampshire wastewater treatment facility, ending a two year effort to secure the right to review a project in an adjacent state. (This issue was settled prior to the Lake Gaston decision regarding interstate consistency. See first article in this Bulletin.)

The facility's discharge pipe will run through the town's heavily developed barrier beach and discharge approximately 2,100 feet offshore in 30 feet of water (low tide). All construction activities will occur on the New Hampshire side of the line, with the pipe discharging approximately 1,000 feet north of the border. Prevailing currents flow southeast towards the Massachusetts town of Salisbury and the popular Salisbury Beach recreation area.

The MCZMP raised the issue of Massachusetts' right to undertake a federal consistency review before any permits from the Corps or EPA were granted. The State argued that, as direct abutter, Salisbury, MA citizens' concerns on potential effects of the discharge on water quality, recreation, and property values should be addressed.

The Town of Seabrook and the Corps objected to a Massachusetts review. However, EPA supported the MCZMP's efforts and informed Seabrook officials that no discharge permit would be issued for the outfall without concurrence from the Massachusetts coastal program. With OCRM's backing, the MCZMP moved forward with the review and the Corps agreed to delay issuing its authorizations until after a decision was made on issuance of an EPA discharge.

In reviewing the project, the MCZMP determined it had no jurisdiction on the facility siting and construction (even though the proposed location in a productive saltmarsh area raised serious concerns), but did have authority to address potential water quality impacts. The focal point for the review became definition of the mandatory closure line for shellfish harvesting to be drawn around the point of discharge. The MCZMP contended that any permanent closing of shellfishing grounds in Commonwealth waters would result in a denial of consistency.

With significant cooperation from EPA staff, two matters were resolved that made it possible for the MCZMP to issue a finding of consistency for the project: 1) consensus was reached on a closure line around the outfall incorporating only shellfish beds in New Hampshire waters: and 2) the Town of Seabrook was required to put into place an expanded regime of outfall monitoring and an elaborate notification system for alerting Salisbury officials and residents if failure occurs in any aspect of plant operation such that shellfish harvesting or swimmers would be temporarily at risk.

EPA has committed to the MCZMP that if monitoring indicated that the closure zone needs to be extended into Massachusetts waters, they will reopen the permit and require relocation of the outfall. For additional information contact Steve Bliven, Assistant Director, MCZMP (617) 727-9530 (ext. 420).

Massachusetts and GSA Land Acquisition

The third Massachusetts consistency review involved concurrence with a project on federally owned land. At the end of November 1992, just days before the expiration of a Purchase and Sale Agreement signed a year and a half earlier, the federal General Services Administration (GSA) acquired a 4.56 acre portion of the prized Fan Pier site on Boston's waterfront, for the purpose of developing a new Federal

Courthouse. Clearing the way for this federal action was a decision by the MCZMP, on November 23, 1992 to concur with a determination by GSA that both the proposed acquisition and development of the land were consistent with the enforceable policies of the MCZMP. Such consolidation of consistency determinations made sense in this case because it involved the preparation of an Environmental Impact Statement (EIS) for the project site plan and building design and then evaluated the extent of conformance with relevant state and local standards for waterfront development, especially those embodied in the tidelands licensing regulations under the state's Public Waterfront Act.

In terms of promoting federal accountability to state coastal management plans, this "one-stop" approach is clearly desirable in that it allows all potential effects of the project to be identified before the federal government invests substantial funds. It also allowed GSA to adhere to a relatively tight schedule in two important ways. First, it averted a time-consuming legal clash that would have ensued if GSA had refused to make a determination of consistency on the land transfer per se, which both MCZMP and OCRM regulations identify as a separate action that must undergo consistency review. Second, it avoided the potential for unnecessary delay and duplication of effort which can occur when related reviews take place in sequence rather than simultaneously.

Ensuring the MCZMP's desire to maximize adherence to the progressive and newly-codified principles of the tidelands program, while not jeopardizing accommodation of a major civic institution of the kind that can establish an urban waterfront as a truly special public place, the State and GSA agreed that the formal description of the proposed project would be revised, incorporating a specific set of "enhancement parameters" as the framework for subsequent planning work on the project's public spaces and water-dependent uses. To oversee the application of this framework, moreover, the agreement established a special Task Force with representation of a full range of constituencies, to be co-chaired by the Secretary of the State Executive Office of Environment Affairs (of which the MCZM Office is a part) and by the chair of a community advisory group. The Task Force also is charged with developing funding strategies as may be needed to implement recommended project improvements that cannot be paid for under the present Congressional budget for the project. Finally, recognizing that professional support will be critical to the success of this advisory effort, the agreement provides the Task Force with reasonable access to the planning and design resources that GSA has dedicated to the Courthouse development. For additional information contact Steve Bliven, MCZMP (617) 727-9530 (ext. 420).

OCRM Coordination with Other Federal Agencies

In addition to the interaction with other federal agencies involving specific state issues noted above, OCRM recently met with the Department of the Interior's Minerals Management Service (MMS) and the U.S. Coast Guard to discuss federal consistency.

Minerals Management Service

On November 19, 1992 OCRM and NOAA General Counsel for Ocean Services met with representatives from MMS's Office of Program Development and Coordination, and Solicitor-Offshore Minerals. MMS requested the meeting to discuss MMS concerns with: (1) states treating MMS' outer continental shelf lease sales as federally permitted activities (MMS as an "applicant") under CZMA section 307(c)(3)(A) instead of as direct federal activities under CZMA section 307(c)(1), (2) state comments submitted after the 60 day review period allowed under the regulations, (3) states issuing "conditional concurrences" to MMS consistency determinations, and (4) states imposing processing fees for consistency determination reviews.

OCRM informed MMS that as long as a state's consistency review, public notification, and/or appeal procedure complies with NOAA's consistency regulations applicable to direct federal activities, then the state may use its permit procedures. See the section on Policy Decisions, Guidance, and Projects for further information on the state permit requirement issue. MMS and the State of Alaska, under the section 309 enhancement grant program, are developing a memorandum of understanding (MOU) to clarify consultation procedures between the State and MMS on outer continental shelf (OCS) lease sales and review of OCS lease sale consistency determinations. The MOU, in the spirit of the federal consistency regulations, will emphasize early consultation, before a consistency determination is submitted to the State.

As to "draft" consistency findings by a state or state comments received after the consistency review period, OCRM affirmed that a federal agency is not required to address or adhere to state comments on, or a state's disagreement with, a consistency determination received after the appropriate review period. States must agree or disagree with a federal agency's consistency determination within 45 days or agreement is presumed. The federal agency must grant one 15-day extension if the state requests the extension during the 45-day review period. Further extensions may be requested by the state, but are at the discretion of the federal agency. Moreover, states and MMS should consult early in the lease sale process in order to avoid last minute consistency objections to the lease sales. Where state concerns are raised during the 45-day consistency review period, to avoid receiving a state objection at the end of

the review period, MMS should consider granting further extensions.

Further, states must either agree or disagree with a federal agency's consistency determination. A state may issue a concurrence which includes agreements worked out with the federal agency which allows the state to concur. A state can, however, disagree with a consistency determination, but then note alternatives that would allow agreement. In fact, OCRM regulations require states to do so when they find an activity inconsistent. The state should also describe how an activity is inconsistent with the enforceable policies of its coastal management program. MMS suggests that the best time for the states to provide substantive comments and offer conditions is during the Outer Continental Shelf Lands Act section 19, Governor's comment, stage. However, where a state does not consult with MMS early in the OCS lease sale process, OCRM encouraged MMS to take the initiative to consult with the state, ask what the state's concerns are, what are the expected impacts to coastal resources, and request that the state supply MMS with the state's enforceable coastal management policies that are relevant to the activity under review.

The final issue discussed was state processing or user fees, for review of consistency determinations. OCRM believes that the federal agency assessed a state fee must decide whether or not it is authorized to pay a processing fee for state consistency reviews. See "User Fees" discussed below under OCRM Policy Decisions, Guidance, and Projects.

U.S. Coast Guard

Several NOAA staff (from OCRM and General Counsel for Ocean Services) met with representatives from the U.S. Coast Guard (Coast Guard) on November 5, 1992. The Coast Guard requested the meeting to learn more about federal consistency. In addition to general questions about consistency, the Coast Guard asked about their responsibilities to comply with state coastal management programs regarding activities such as granting licenses to merchant mariners, siting foghorns, and cleaning up oil spills. With regard to licenses to merchant mariners, NOAA indicated that coastal programs must have this license listed in their approved programs or request permission to review an unlisted activity before the Coast Guard is required to comply. NOAA also emphasized the importance of early coordination with state coastal management programs to minimize problems later in the decision-making stage.

OCRM plans to meet with many other federal agencies on a proactive basis. As OCRM completes its compilation of federal agency contacts, we will set up additional meetings.

OCRM Policy Decisions, Guidance, and Projects

State Permit Requirements for Federal Agencies

OCRM clarified its position on the requirement for federal agencies to obtain state permits for federal activities affecting the coastal zone as part of a federal agency's determination of consistency with the coastal management program of an affected state as required by the CZMA. See memorandum from Trudy Coxe, Director, OCRM, to State Coastal Program Managers, Federal Agencies, and Interested Parties (Oct. 8, 1992). OCRM made two general policy statements:

1. Federal agencies are required to obtain state permits and to include state permit applications in federal consistency determinations when (1) state permits for certain activities are required by other federal law; (2) the federal activity, whether within or outside the coastal zone, can be reasonably expected to affect any land or water use or natural resource of the coastal zone; and (3) the permit is a federally approved enforceable component of the state's coastal management program (CMP).

2. Even if a federal agency is not required to obtain a state permit under federal law, the federal agency conducting an activity that affects any land or water use or natural resource of the coastal zone must still be consistent to the maximum extent practicable with the state's enforceable policies. For permit requirements in state CMPs that are not required of federal agencies by other federal law, the federal agency may submit the necessary information in any manner it chooses so long as the requirements of 15 C.F.R. Part 930, Subpart C (federal consistency regulations for direct federal activities) are satisfied.

Charging User Fees for Federal Agency Consistency Determinations

Recently states have proposed to assess or have assessed federal agencies user, or processing fees for the state's review of a federal agency's consistency determination. OCRM was asked for its determination as to whether such fees are allowable. While OCRM may provide its views in a particular case, the assessed federal agency is in the best position to interpret its laws and regulations as to whether a particular fee is an allowable expense. As such, OCRM strongly recommends that for states assessing a processing fee, if a federal agency has submitted a consistency determination in accordance with NOAA regulations, but has not paid the fee, that a state initiate its review of the consistency determination when received and complete its review within the 45-day review period. Otherwise the state risks waiving its right to object to the activity under federal consistency.

OCRM will examine a state's processing fee scheme if submitted to OCRM for incorporation into the state's coastal management program. OCRM will examine whether the fee is non-discriminatory (the fee must apply to all similar private and government agency activities alike or it will be viewed as an impermissible tax). The fee must be a fair approximation of the costs of the benefits the federal agency receives from the state agency. Finally, the revenues produced by the fees must not exceed the total cost to the state of the benefits to be supplied. Of course Congress, by statute, can waive the government's immunity and require federal agencies to pay certain fees.

Review of Activities Outside the Coastal Zone: Unlisted Activities and Geographic Scope

The CZMA expressly provides for state consistency review of federal activities in or outside of the coastal zone, affecting any land or water use or natural resource of a state's coastal zone. The regulations implementing CZMA § 307(c)(3)(A) establish procedures for routine state review of classes of activities listed in a state's coastal management plan, as well as for state review of individual activities not covered by the scope of a listing. See 15 C.F.R. §§ 930.53 and 930.54. If a state chooses to routinely review federally licensed and permitted activities occurring outside of the coastal zone but likely to affect the coastal zone, it must generally describe the geographic location of such activities. 15 C.F.R. § 930.53(b). In addition, a state may review activities not covered by the scope of a listing if such activities can be reasonably expected to affect the state's coastal zone. 15 C.F.R. § 930.54(c)(unlisted activities). The regulations do not, however, expressly indicate how a state may review listed activities occurring outside of the coastal zone for which a state has not generally described the geographic scope of review.

The most effective way for a state to review listed activities outside the coastal zone is to describe the geographic scope of a state's review. OCRM strongly encourages states to modify their programs to include a description of the geographic location for listed activities to be routinely reviewed for consistency outside of the coastal zone.

However, in order to facilitate state review of listed activities occurring outside of the coastal zone absent a geographic scope description, OCRM is providing the following clarification of the review procedure a state should follow. In the past, OCRM has allowed states to review such activities subject to two alternative requirements. First, states have reviewed such activities upon fulfillment of certain notice requirements. Second, states have reviewed such activities upon fulfillment of the conditions for review of unlisted activities. It is OCRM's view that this second method of state consistency review of such activities is preferred because it ensures that the activity at issue is likely to affect the state's coastal zone. OCRM therefore advises states, in reviewing listed activities outside of the coastal zone absent a geographic scope description, to follow the unlisted review procedure for such activities. See 15 C.F.R. § 930.54.

Federal Consistency Manual

Preliminary work continues on the Federal Consistency Manual (a revised version of the old "Consistency in a Nutshell"). The Manual will explain existing regulations in light of the Coastal Zone Act Reauthorization Amendments of 1990, as well as clarify OCRM's interpretation of the consistency regulations. The Manual should clarify many issues and will be used for consistency technical assistance training for the states and the federal agencies. OCRM will solicit comments once we complete a draft document.

Federal Agency Contact List

OCRM is developing a master list of federal agency addresses to ensure that states and OCRM have the correct contact of relevant federal agencies, both headquarters and regional offices, for program change and consistency purposes. To help us in this effort it would be useful for state coastal management programs to send OCRM their current federal agency contact/ mailing list.

Until this list is completed, states should check their lists to make sure that the list includes the regional office of all "relevant" federal agencies noted in 15 C.F.R. § 923.2(d)(2). These agencies are the Departments (and appropriate components thereof) of Agriculture; Commerce; Defense; Energy; Health, Education, and Welfare; Housing and Urban Development; Interior; Transportation; and the Environmental Protection Agency; Federal Energy Regulatory Commission; General Services Administration; and the Nuclear Regulatory Commission. The mailing lists should also include the Interstate Commerce Commission and the Federal Emergency Management Agency. Finally, when states are amending their list of licenses and permits subject to consistency review, they should also notify the head of the affected federal agency. See memorandum from James P. Burgess, Chief, Coastal Programs Division, to State Coastal Program Managers (Nov. 18, 1991).

Secretarial Appeal Decisions

1992 and 1993 CZMA Consistency Appeal Decisions to Date

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. In 1992 and 1993, the Secretary has issued the following consistency appeal decisions to date.

Florida - Appeal of Chevron, (Chevron Destin Dome Decision), January 8, 1993.

Chevron U.S.A., Inc. and others acquired an interest in Destin Dome Block 97 in 1985 as a result of a successful bid in Outer Continental Shelf (OCS) Lease Sale 94. Chevron is the operator of the lease, which is located about 29 miles from Perdido Key, Florida. In November of 1990, Chevron submitted a Plan of Exploration (POE) for Block 97 to the Minerals Management Service of the Department of the Interior. Chevron proposes to drill an exploratory well to assess natural gas reserves, using water-based drilling fluids. The State of Florida objected to Chevron's POE to conduct drilling activities on Destin Dome Block 97, citing in its objection, among other things, the state's coastal management plan (CMP) policies protecting and preserving potentially affected coastal resources. On appeal, the Secretary of Commerce found that the Appellant's proposed project satisfied all four elements of 15 C.F.R. § 930.121 and was therefore consistent with the objectives or purposes of the CZMA. Although inconsistent with the state's CMP, Chevron's proposed exploration may be permitted by federal agencies.

Florida - Appeal of Mobil, (Mobil Pulley Ridge Decision), January 7, 1993.

Mobil Exploration & Producing U.S. Inc. is the operator of Pulley Ridge Block 799, acquired in Outer Continental Shelf (OCS) Lease Sale 79, and located about 59 miles northwest of the Dry Tortugas islands, 75 miles from the nearest Florida mainland (near Cape Romano), and 120 miles west-northwest of Key West, Florida. In May of 1988, Mobil submitted a Plan of Exploration (POE) for Block 799 to the Minerals Management Service of the Department of the Interior. Mobil proposes to drill four exploratory wells to assess the hydrocarbon potential of the lease block. The State of Florida objected to Mobil's POE to conduct drilling activities on Pulley Ridge Block 799, citing in its objection, among other things, the state's coastal management plan (CMP) policies protecting and preserving potentially affected coastal habitats and resources. Florida also stated that Mobil failed to provide sufficient information and analyses to demonstrate that all of its proposed activities, associated facilities and effects are consistent with the provisions of the state's coastal management plan. On appeal, the Secretary of Commerce found that Mobil failed to satisfy Ground I in that the proposed POE's adverse effects on the coastal zone outweigh its national interest benefits. The Secretary also found that there will be no significant impairment to a national defense or other national security interest if Mobil's project is not allowed to go forward as proposed. Because Mobil's proposed project did not meet the requirements of either Ground I or Ground II, the Secretary declined to override the state's objection.

Florida - Appeal of Unocal, (Unocal Pulley Ridge Decision), January 7, 1993.

Union Exploration Partners, LTD., with Texaco Inc., acquired an interest in Pulley Ridge Blocks 629 and 630 as a result of a successful bid in Outer Continental Shelf (OCS) Lease Sale 79. The lease blocks are located about 170 miles south west of Tampa Bay, 135 miles southwest of Fort Myers, and about 44 miles northwest of the Dry Tortugas, Florida. In February of 1988, Union submitted a Plan of Exploration (POE) for Blocks 629 and 630 to the Minerals Management Service of the Department of the Interior. Union proposes to drill up to three exploratory wells to assess the hydrocarbon potential of the two lease blocks. The State of Florida objected to Union's POE to conduct drilling activities on Pulley Ridge Blocks 629 and 630, citing in its objection, among other things, the state's coastal management plan (CMP) policies protecting and preserving potentially affected coastal habitats and resources. On appeal, the Secretary of Commerce found that Union failed to satisfy Ground I in that the proposed POE's adverse effects on the coastal zone outweigh its national interest benefits. The Secretary also found that there will be no significant impairment to a national defense or other national security interest if Union's project is not allowed to go forward as proposed. Because Union's proposed project did not meet the requirements of either Ground I or Ground II, the Secretary declined to override the state's objection.

South Carolina - Appeal of Henry Crosby, (Crosby Decision), December 29, 1992.

In February of 1989, Mr. Henry Crosby (Appellant) applied to the U.S. Army Corps of Engineers for a permit to place fill material in a wetland for the purpose of constructing an impoundment and installing a water control structure. The South Carolina Coastal Council objected to the Appellant's proposed project on the ground that it is inconsistent with the state's coastal management plan (CMP) policies providing for the protection of wildlife and fisheries resources from significant negative impacts and for the protection of freshwater wetlands from significant permanent alteration. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(b). The proposed project would permanently alter wetlands, thus causing loss of normal functions and values, while contributing minimally to the national interest. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

New York - Appeal of Robert E. Harris, (Harris Decision), December 2, 1992.

In January of 1990, Robert Harris (Appellant) applied to the U.S. Army Corps of Engineers for a permit to construct a dock, including a floating pier with 18 slips, extending into the

Hudson River in Rensselaer, New York. The New York State Department of State objected to the Appellant's proposed project on the ground that it is inconsistent with, among other things, the state's CMP policies of facilitating the siting of water dependent uses and facilities on or adjacent to coastal waters, and CMP policies on activities in historic areas. In its objection letter, the state identified an alternative of constructing a small dock with eight slips. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(d) in that the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

South Carolina - Appeal of A. Elwood Chestnut, (Chestnut Decision), November 4, 1992.

Mr. A. Elwood Chestnut (Appellant) owns farmland and adjacent freshwater wetlands near the town of Longs, Horry County, South Carolina. The Appellant applied to the U.S. Army Corps of Engineers for a permit to fill 0.7 acres of his wetland property and to impound another eight acres of his wetland property in order to create a livestock watering and irrigation pond. The South Carolina Coastal Council objected to the Appellant's proposed project on the ground that it is inconsistent with the state's coastal management plan (CMP) policies providing for the protection of wildlife and fisheries resources from significant negative impacts and for the protection of freshwater wetlands from significant permanent alteration. In its objection letter, the state identified an alternative of constructing a pond on the Appellant's upland property. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(d) in that the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

New York - Appeal of Claire Pappas, (Pappas Decision), October 26, 1992.

In June of 1989, Claire Pappas (Appellant) applied to the U.S. Army Corps of Engineers for a permit to construct a wood deck structure for dining over a canal as an addition to her seafood restaurant in Hemstead, New York. The New York State Department of State objected to the Appellant's proposed project on the ground that it is inconsistent with the state's CMP policies of facilitating the siting of water dependent uses and facilities on or adjacent to coastal waters. In its objection letter, the state identified alternatives of relocating the proposed deck to an upland area, making more efficient use of existing restaurant floor space, or adding space onto the existing restaurant structure. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(d) in that the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

North Carolina - Appeal of Roger W. Fuller, (Fuller Decision), October 2, 1992.

Roger W. Fuller (Appellant) owns an unimproved lot bordering one of the Boiling Spring Lakes, in Brunswick County, North Carolina. Historically, the lot has been subject to erosion and flooding. In March of 1989, the Appellant applied to the U.S. Army Corps of Engineers for a permit to dredge submerged fill adjacent to the property and fill a section of the property bordering the lake. The North Carolina Department of Natural Resources and Community Development objected to the Appellant's proposed project on the ground that it is inconsistent with the state's CMP policies of protecting areas classified as conservation areas and discouraging projects which require the filling or significant permanent alteration of productive freshwater marsh. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(b). The proposed project would eliminate emergent wetlands and associated wildlife habitat, while contributing minimally to the national interest. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

South Carolina - Appeal of Yeamans Hall Club, (Yeamans Hall Decision), August 1, 1992.

In May of 1990, Yeamans Hall Club (Appellant) applied to the U.S. Army Corps of Engineers for a permit to place 5,200 cubic yards of fill into 0.23 acres of freshwater wetlands to create a dam across a small stream for the purpose of creating a six-acre pond on the Appellant's property in Hanihan, South Carolina. The construction of the dam would result in the flooding of an additional 2.5 acres of freshwater wetlands. The South Carolina Coastal Council objected to the Appellant's proposed project on the ground that it is inconsistent with the state's CMP policies of discouraging projects which require the filling or significant permanent alteration of productive freshwater marsh. In its objection letter, the state identified an alternative of constructing a lake on the Appellant's upland property. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(d) in that the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

South Carolina - Appeal of Davis Heniford, (Heniford Decision), May 21, 1992.

Davis Heniford (Appellant) applied to the U.S. Army Corps of Engineers for a permit to place about 7,000 cubic yards of fill into 2.5 acres of freshwater wetlands to construct a Food Lion

grocery store, strip mall and adjacent parking lot, located in the town of Loris, Horry County, South Carolina. The South Carolina Coastal Council objected to the Appellant's proposed project on the ground that it is inconsistent with the state's CMP policies of discouraging such projects when there are other feasible alternatives. In its objection letter, the state identified an alternative of using the available uplands on the Appellant's property. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(b) and (d). The proposed project would eliminate wetlands and associated wildlife habitat, while contributing minimally to the national interest. Furthermore, the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

Puerto Rico - Appeal of the Asociación de Propietarios de Los Indios, (Los Indios Decision), February 19, 1992.

The Asociación de Propietarios de Los Indios (Appellant), a committee of landowners located in the Los Indios Sector, Las Mareas Ward, Salinas, Puerto Rico, applied to the U.S. Army Corps of Engineers for after-the-fact permits to authorize already-completed or nearly-completed residential structures, landfills, piers and bulkheads, and to maintain a private road on their properties. The Puerto Rico Planning Board (PRPB) objected to the Appellant's project on the ground that it is in inconsistent with the PRPB's CMP policies of discouraging lateral expansion along the coast, discouraging utilization of lands with important natural resources for urban uses, and prohibiting land development and construction in areas affected by floods and wave surge. On appeal, the Secretary of Commerce found that the Appellant's project failed to satisfy 15 C.F.R. § 930.121(a) in that the project does not further one or more of the competing national objectives or purposes contained in CZMA §§ 302 or 303. The Secretary also found that the project is not necessary in the interest of national security. Because the Appellant failed to satisfy either Ground I or Ground II, the Secretary declined to override the PRPB's objection.

Pending Consistency Appeals

(As of January 15, 1993)

Appellant	Activity	State
Jorge L. Guerrero-Calderon	Construction of a dock	PR
Mobil (Manteo)	NPDES discharges	NC
Mobil (Manteo)	OCS exploration plan	NC
Carlos Cruz-Colon	Construction of a dock or boardwalk	PR
Rushton/ Codd	Construction of private home in Chesapeake Bay critical area	MD
ERA, S.E. Inc.	Reconstruction of dock	PR
Mobil (Pensacola)	OCS exploration plan	FL
Staten Island Railway	Railway abandonment	NY
Olga Vélez-Lugo	Construction of a dock and placement of fill	PR

All Consistency Appeal Decisions

For the first Federal Consistency Bulletin we thought it would be useful to list all consistency appeal decisions decided by the Secretary of Commerce to date.

FL Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc., (Chevron Destin Dome Decision), January 8, 1993.

FL Decision and Findings in the Consistency Appeal of Mobil Exploration & Producing U.S., Inc., (Mobil Pulley Ridge Decision), January 7, 1993.

FL Decision and Findings in the Consistency Appeal of Unocal Exploration Partners, Ltd, (Unocal Pulley Ridge Decision), January 7, 1993.

SC Decision and Findings in the Consistency Appeal of Henry Crosby, (Crosby Decision), December 29, 1992.

NY Decision and Findings in the Consistency Appeal of Robert E. Harris, (Harris Decision), December 2, 1992.

SC Decision and Findings in the Consistency Appeal of A. Elwood Chestnut, (Chestnut Decision), November 4, 1992.

NY Decision and Findings in the Consistency Appeal of Claire Pappas, (Pappas Decision), October 26, 1992.

NC Decision and Findings in the Consistency Appeal of Roger W. Fuller, (Fuller Decision), October 2, 1992.

SC Decision and Findings in the Consistency Appeal of Yeamans Hall Club, (Yeamans Hall Decision), August

1, 1992.

SC Decision and Findings in the Consistency Appeal of Davis Heniford, (Heniford Decision), May 21, 1992.

PR Decision and Findings in the Consistency Appeal of the Asociación de Propietarios de Los Indios, (Los Indios Decision), February 19, 1992.

PR Decision and Findings in the Consistency Appeal of José Pérez-Villamil, (Villamil Decision), November 20, 1991.

PR Decision and Findings in the Consistency Appeal of Sucesión Alberto Bachman, (Bachman Decision), October 10, 1991.

SC Decision and Findings in the Consistency Appeal of Shickrey Anton, (Anton Decision), May 21, 1991.

CA Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc., (Chevron Decision), October 29, 1990.

NY Decision and Findings in the Consistency Appeal of Michael P. Galgano, (Galgano Decision), October 29, 1990.

AK Decision and Findings in the Consistency Appeal of Amoco Production Company, (Amoco Decision), July 20, 1990.

NJ Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A., (Exxon Decision), June 14, 1989.

CA Decision and Findings in the Consistency Appeal of Texaco, Inc., (Texaco Decision), May 19, 1989.

NY Decision and Findings in the Consistency Appeal of John Bianchi, (Bianchi Decision), January 25, 1989.

CA Decision and Findings in the Consistency Appeal of Korea Drilling Company, Ltd., (Korea Drilling Decision), January 19, 1989.

NY Decision and Findings in the Consistency Appeal of John K. DeLyser, (DeLyser Decision), February 26, 1988.

NY Decision and Findings in the Consistency Appeal of Long Island Lighting Company, (LILCO Decision), February 26, 1988.

CA Decision and Findings in the Consistency Appeal of Gulf Oil Corporation, (Gulf Oil Decision), December 23, 1985.

CA Decision and Findings in the Consistency Appeal of Southern Pacific Transportation Company, (Southern Pacific Decision), September 24, 1985.

CA Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A., (Exxon SRU Decision), November 14, 1984.

CA Decision and Findings in the Consistency Appeal of Union Oil Company of California, (Union Oil Decision), November 9, 1984.

NC Decision and Findings in the Consistency Appeal of Ford S. Worthy, Jr., (Worthy Decision), May 9, 1984.

CA Decision and Findings in the Matter of the Appeal by Exxon Company, U.S.A., (Exxon SYU Decision), February 18, 1984.

For further information on appeals call Roger Eckert, NOAA Office of General Counsel for Ocean Services, (202) 606-4200.

Upcoming Events

Coastal States Organization annual meeting, February 24-26, 1993, Washington, D.C.

Watershed '93, March 21-24, 1993, Alexandria, VA. (a national conference that brings together people involved or interested in natural resource use, management, pollution prevention and control, and planning and development for public and private sectors).

OCRM annual State Coastal Program Manager's meeting, tentatively scheduled for May 5-6, 1993, Washington, D.C.

Coastal Zone '93, July 19-23, 1993, New Orleans, LA.

Consistency Personals

Consistency Personals provide states, OCRM, and other parties the opportunity to alert states as to various issues, request information from other states on a federal consistency issue, transfer ideas, etc. Consistency Personals may also present the lighter side of federal consistency (if it exists).

OCRM is assisting the State of Maine in their efforts to negotiate with the Corps on the Corps providing mitigation for local government projects. OCRM and Maine would like to know if the Corps includes mitigation costs for local government projects in other states. Please contact David Kaiser, OCRM, (202) 606-4181, or Bill Laflamme, Maine CZM, (207) 287-2111.

The Oregon Coastal Management Program (OCMP) is currently reviewing consistency determinations from the Bureau of Land Management (BLM) on regional ten-year resource management plans/Environmental Impact Statements. These plans identify six possible management alternatives for several hundred thousand acres of federal forest lands for the next ten years. OCMP is interested in hearing from other states that have dealt with consistency determinations on similar, large management plans. What is the state's goal in reviewing such consistency determinations? How have other states handled such reviews? What is the level of documentation required of the federal agency to demonstrate consistency? How can conflicts be resolved in comments from state agencies with different missions (e.g., those with an economic development orientation vs. those with an environmental quality orientation)? Please contact Emily Toby, Oregon Department of Land Conservation and Development, 1175 Court St. NE, Salem, OR. 97310-0590. Phone: (503) 373-0096, FAX: (503) 362-6705.
