The Intergovernmental Balancing Act: State-Federal Interests in Coastal Zone Management

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THE INTERGOVERNMENTAL BALANCING ACT:

STATE-FEDERAL INTERESTS IN COASTAL ZONE MANAGEMENT

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The central notion of intergovernmental and inter-interest balancing suggested by the title of this paper reflects a distinctly American theme derived from our pluralistic, competing, compromissory and somewhat optimistic governmental values and experience. The Coastal Zone Management Act (hereafter CZMA or the Act) and the success of its implementation rests firmly on this balancing premise. The CZMA's assumptions, processes and implicit or stated objectives involve reliance on a governmental system that achieves effective and equitable intergovernmental balance. Yet, as I think this investigation will show, there are no ready-made answers as to how balance is to be achieved through the Act--let alone a clear set of groundrules, weights or even a defined fulcrum upon which solutions are to be found. Although the Act contains clues to the concepts and values to be utilized (e.g. exercise of "full" state authority as the key to improved management, "adequate consideration of the national interest" as a weight for balance, and achievement of "unified policies, criteria, standards, methods and processes" as an objective), the content and specific methods for "balancing" are notably absent.

The main thrust of this paper is to look carefully into, but beyond, the history, statutory language and academic critique of the Act. Experience and practice with implementation of the CZMA are the focus of analysis, rather than abstract assessment of political science theory, resource management concepts or public administration models. With this in mind, there are rather extensive Appendices that reflect this experience and practice, tell something of their own story and should be considered integral parts of the paper.
It is hoped that by taking this experiential approach, some practical and constructive directions for change may be identified. For it seems to me that a review of the relatively brief history of the Act's application, the diverse responses to it by the interests involved and the intergovernmental conditions for management are the best bases from which to seek the necessary reciprocal adaptations needed to achieve the Act's full potentials. Perhaps at the risk of stating the obvious, such adaptations are needed not only to make the CZMA work, but also literally hundreds of other programs based upon similar (if not as extensive) balancing assumptions.

The major thesis of the paper is that while there are often repeated and very substantial problems in achieving unified policies, criteria, standards, methods and processes for managing the coastal zone, some of these impediments can be removed or at least lessened within the current framework of the Act. Other state-federal conflicts or overlaps concerning coastal resource management probably require basic changes in legislation, aggressive executive leadership and organizational change, or perhaps redress to the courts. The aim here is to focus upon the art of the immediately possible and to clarify, analyze and suggest informed means for relatively near term initiatives.

My reason for exploring this topic stems from personal involvement and interest in the formulation of the CZMA, consultation during its translation into programmatic form and subsequent work for the Office of Coastal Zone Management. Although such direct involvement in the "life" of the CZMA could be a block to objectivity, I have had the opportunity to step back from immediate advocacy and thus hope to combine close contact with the past and relatively unfettered present opportunity for reflection.
I should also state the obvious. The research, analysis, biases and conclusions presented here are solely mine and do not represent those of the Office of Coastal Zone Management or any other actor in the balancing act.

In conclusion, I would like to express my sincere acknowledgment to the National Oceanic and Atmospheric Administration and its Office of Coastal Zone Management for supporting my educational leave at the University of Rhode Island, only one small part of which is represented by this paper. Special thanks are also warranted to Bob Knecht for that opportunity, the Coastal Zone Information Center of OCZM for their help and patience and to Dr. Lewis Alexander who supervised the preparation of this paper among many other of his kindnesses.
CHAPTER I

INTRODUCTION TO THE STATE-FEDERAL BALANCING ACT

Establishing the Context

The central focus of inquiry -- The Coastal Zone Management

Act of 1972, as amended has been variously supported or rejected as
a potentially strong and major force for improving intergovernmental
management of coastal resources. Much of the early interest and con-
troversy concerning the Act (hereafter the CZMA) revolved around the key
role assigned to the states, as distinguished from local governments, in
managing coastal resources. The difficulties in allocating state-local
roles and responsibilities remain, but state-federal coastal zone manage-
ment (CZM) issues and controversies have increasingly emerged as major
problems. Key differences have arisen concerning the requirements and
meaning of CZMA's provisions per se and the adequacy of those provisions
to achieve the diverse and broad objectives of the CZMA. Other differ-
ences have surfaced over the extent and nature of the reciprocal state-
federal obligations CZMA places on the participants themselves. Still
others have emphasized the inadequacies of the administrative and pro-
cedural framework established for implementing the CZMA. Some priorities
and issues have arisen since the passage of the CZMA--the acceleration
of Outer Continental Shelf mineral development and the general issue of
coastal area facility siting, for example--that have opened or heightened
new areas of state-federal interaction. These central and changing issues
in CZM are the main subjects of this paper.

The major actors -- Three primary parties are essential to under-
standing and evaluating potential resolution of the central state-
federal issues raised by the CZMA: (1) The Office of Coastal Zone
Management, National Oceanic and Atmospheric Administration; (2) the
participating coastal states, some of which are now seeking program approval; and (3) the interested federal agencies (ten departments and administrations have expressed varying degrees of substantial concern). In addition, of course, the overall federal executive leadership, the Congress and major interest groups also have a stake in and concerns about CZM state-federal issues. These parties will likely be essential to future changes or improvements, but are less important in defining past CZM experience. Therefore, CZM, the coastal states and key federal agencies suggest themselves as logical organizing points for analysis. Chapters II, III, and IV are devoted to discussion of each of these actors in the sequence presented above. Analysis will focus on the important policy, administrative, procedural and substantive positions that have developed over the first three years of active CZM implementation. Chapter V is more interpretive and takes a specific look at what have emerged as perhaps the most important and interrelated state-federal issues: the "national interest," facility siting and federal consistency. Chapter VI is fully interpretive and reformulates the issues, sets forth conclusions and presents the author's suggestions for resolution of at least some of CZM's important intergovernmental issues.

The historical context -- There were a host of studies, reports, proposals and testimonials that preceded passage and enactment of the CZMA. The late 1960's culminated in many findings and recommendations resulting from nationally sponsored efforts. Some of the most important of these efforts were: the Report of the Commission on Marine Science, Engineering and Resources (1969); the National Estuarine Pollution Study (1969); and the National Estuary Study (1970).
The purpose here is not to trace the contents or interrelationships among these study efforts; this has been done competently by others. What is instructive, rather, is to attempt to identify the apparent assumptions and expectations concerning state-federal relations that preceded the CZMA.

All of the cited studies concluded and recommended that the states be given increased responsibility and take leading roles in the coastal zone management improvement. They were also unanimous in their emphasis upon the need for more effective management and conservation of coastal environmental resources. While each study emphasized that there must be shared state-federal responsibilities, the predominant theme was one of enhancing state capabilities and placing the federal establishment in a supportive posture. The actual mechanics of how to establish this cooperative and shared system were, not unexpectedly, left to the Congress and the participants to work out.

One unpublished consultant report specifically addressed state-federal interests in the coastal zone and attempted to incorporate the existing views of states, federal agencies and commentators on this matter. Some selected findings in this report—unscreened by published editorializing—serve as good indicators of the context as it was perceived in late 1968:

The present management system at the Federal and state levels grants or withholding permission to modify...the Coastal Zone on a case by case interpretation of legal and administrative precedent. It fails to adequately consider the Coastal Zone as a highly interdependent system....

The report recommends assisting the states to objectively define the nature and extent of State government responsibility and establish guidelines for regional and local subdivisions of the State, and placing the state on notice that increased Federal activity can be expected to move into any power vacuum which may exist.
The report concluded in part that:

The inherent strengths and weaknesses of the federal system, especially in its diversity, become quite apparent when an attempt is made to generalize about State policy postures.... Strength in a federal system...is derived from the proximity of the decision-makers to the resources and their ability to tailor programs to meet specific physical, biological, or economic conditions. The weaknesses result from the enormous range of variability in statute, organization and emphasis....

Ziguards Zile, after a thorough review of the history of the CZMA concluded that "it was brought about by discrete and sometimes discordant constituencies motivated by a variety of concerns and advocating the pursuit of diverse goals by a wide range of means." There were, according to Zile, four historical phases to the CZMA: the recreation phase, estuary protection phase, ocean development phase, and land use policy phase. Thus "the Act in its final form reflects something of each of these concerns and phases." Zile thoroughly documents the tug-of-war for lead agency (and committee) predominance in CZM, but no attention or historical support is given to another of his conclusions that "federal compliance with approved state programs is deemed desirable and, for the most part, attainable." ¹⁰

Another key source for clarifying the state-federal climate preceding the CZMA is found in a recently completed and comprehensive compendium of the substantial legislative histories of the CZMA.¹¹ A review of this extensive history reveals a disappointing lack of precise guidance on state-federal matters, but does exhibit the following themes. Testimony of federal officials during the 91st Congress reflects unanimity regarding the lead state role in the process, faith in utilizing existing systems of intergovernmental coordination, and additional faith that the CZMA (in its various proposed forms) would not cause serious
state-federal conflict. In response to a House Committee on Public Works question, for example, Russell Train, the Undersecretary of the Interior stated: "There are really very few Federal programs that would be involved." Almost alone at this early stage, however, the Department of Defense successfully insisted that national security be fully acknowledged, defense interests be protected and that the Executive Office of the President be utilized to mediate state-federal differences.

Deliberations during the 92d Congress shed little further light on Congressional Committee or federal agency expectations, other than resisting or supporting the Administration's proposed land use policy incorporation of CZM. Again, however, there is a clue to Congressional thinking which occurs in a discussion between Mr. Heyward, Counsel for the House Committee on Merchant Marine and Fisheries and the Assistant Secretary of the Interior for Public Land Management, Mr. Loesh:

MR. HEYWARD. H.R. 9229 provides for a review at the national level with consultation with all of the departmental agencies that might be involved before the Secretary of Commerce approves the state plan. Does not this provision adequately insure the Federal input of all departments which are concerned with the plan that is coming up...? I hardly see how you could provide a better coordination of Federal Programs....States in coming up with a program are going to have to recognize the Federal interest....The initial input from the Federal government comes before the plan is ever approved.

MR. LOESH. What you say is all very true. However, one of the things we, and I believe the other Federal agencies, disagree with is the idea that in case of disagreement...if there were irreconcilable conflicts...the President must be dragged into it....

MR. HEYWARD. Well, when more than one department has a legitimate interest, it is difficult to put final decisions in one department without some provisions for an overview....It does provide for a mechanism within the Executive Office, either through interagency committee or some other form he may set up to effect the final decision. It is an attempt to protect the legitimate interests of all departments. As you know, decisions on funding or anything else by committee is very difficult. Somebody has to be the focal point.
The final and perhaps most important antecedent sources of information on Congressional state-federal assumptions and expectations may be drawn from the Committee reports that preceded passage of the Act. The Senate Committee on Commerce printed its report (No. 92-753) on what would ultimately become the CZMA in April, 1972. Two sections of that Report are pertinent to understanding the intergovernmental historical perspective of CZMA. First, the Committee created a Section 311 (a) that would establish a National Coastal Resources Board in the Executive Office of the President, chaired by the Vice President, and initially composed of representatives of nine major federal agencies. The rationale for creating this entity is worthy of repeating:

The Committee believes that there may be competition between state management programs and other activities. As a result of this competition there may be the need to allow a forum for those parties which may consider themselves aggrieved by the decisions of the State. The broad representation provided for on the Board is aimed at allowing input from as many affected agencies as possible. It is a foregone conclusion that the State management programs will affect both public and private utilization of land and water facilities, and that conflict will invariably arise. The Board hopefully will be able to mediate any such differences to the satisfaction of all parties involved.

The second key section concerns interagency coordination and cooperation. This is the first full discussion of the so-called federal consistency provisions, and as such, is especially interesting in terms of the expressed intent at that time. The basic language which would appear in the final version of the Act was now in place and depended upon a reciprocity of state and federal interaction, including opportunity for federal agency review prior to approval. Federal activities were made to be consistent except "in cases of overriding national interest as determined by the President." The rationale for federal consistency
of development projects was stated: "Inasmuch as Federal agencies are
given a full opportunity to participate in the planning process, the com-
mittee deems it essential that Federal agencies administer their programs... consistent with the States coastal zone management program." As for federal licenses and permits, the purpose was "to insure that development projects are consistent... after the date of the enactment of the legis-
lation." 19

The House Committee on Merchant Marine and Fisheries published its Report (No. 92-1049) on a draft bill on May 5, 1972. 20 While the House Bill (H.R. 14146) and its Report largely paralleled the Senate's version, there were some differences in emphasis as seen in the following Report comments:

There is no provision in this title which relinquishes any Federal rights in and powers of regulation of Federal lands, or of the paramount Federal interests in navigable waters, or any of the constitutional powers of the Federal Government, including those relating to interstate and foreign commerce, navigation, national defense and international affairs. To the extent that a state pro-
gram does not recognize these overall national interests, as well as the specific national interest in the generation and the distribution of electrical energy, adequate transportation facilities and other public services... the Secretary may not approve the state program until it is amended.... 21

Regarding state-federal interaction during program development the House Committee anticipated that:

During this process any aspects or phases of the proposed program which are deemed by any agency to be impractical to carry out or support will be brought to the attention of the Secretary and steps will be taken at that point to iron out difficulties... It is not anticipated that there will be any considerable number of situations where as a practical matter a federal agency cannot conduct or support activities without deviating from approved state management programs. 22

Subsequent House debate did not elaborate upon the state-federal framework to be established. The major subject of the debate addressed differences as to what federal agency should administer the program. Nor
did the Joint Explanatory Statement of the Conference Committee provide illumination except to delete the provision for a National Coastal Resources Board because it would be "cumbersome and unnecessary."\(^{23}\)

It remained only for President Nixon to state at the CZMA signing that:

"This bill...recognizes that the States can usually be the most effective regulator of such a planning process. I will instruct the Secretary of Commerce to carry out this statute in a way which focuses Federal efforts on the adequacy of State processes rather than to become involved in the merits of particular land use decisions."\(^ {24}\)

A whole new "history" was created in 1975 and 1976 prior to the passage of the CZMA amendments of 1976, P.L. 94-370. (See Appendix IV.) Although this history probably warrants a full separate study in itself, and following Zile, constitutes yet another distinct CZM "phase," there are certain portions of the 1976 amendments that will probably bear directly upon the eventual outcome of the state-federal balancing act. A new Section 302 (i) was drafted that declared the national objective of attaining energy self-sufficiency to be promoted by federal financial assistance to state and local governments for energy developments affecting the coastal zone. Specific functional requirements to develop "planning processes" for beaches, energy facilities and shoreline erosion were added to the more general Section 305 program development requirements of the original Act. Energy facilities were given prominence in the "national interest" considerations required of the states. A process for considering OCS plans was grafted on to the consistency provisions. The mediation provisions were extended to encompass state-federal disagreements after, as well as prior to, program approval. The Secretary was enjoined from interceding in or withdrawing funds over particular siting decisions. Interstate arrangements were further encouraged and increased respon-
sibilities were placed on the Secretary to evaluate and report on program progress, including the major new energy impact provisions.

A selective review of the legislative history of the 1976 amendments reveals only a few explicit policy directions that amplify the earlier state-federal setting for CZMA. Even though there was a massive expansion of the CZMA, the basic intergovernmental policies and tools in the original CZMA remain largely unchanged. The Joint Explanatory Statement of the Committee of Conference -- the culmination of Congressional deliberations -- concluded its summary statement with the following beliefs:

(4) that the Federal Government, because of the national need to increase domestic energy production...should provide assurance of timely and practicable financial assistance...;

(5) that the coastal states and localities, which are closer to and more cognizant of the situation, should make the basic decisions as to the particular needs which result from such new or expanded energy activity...;

(6) that the discretion of the Secretary of Commerce and other Federal officials should be correspondingly limited."

Although OCS plans were added to the consistency provisions, they basically remained unaltered, even though the House apparently thought them critical, and the Conference Committee reported concern over their advisability and workability, promising later oversight hearings.

As was the case in the original Act, the 1976 amendments passed the Congress by extremely wide margins. This time there were enthusiastic words from President Ford, who nevertheless cautioned that "the Secretary of Commerce will have responsibilities which are limited to those areas where Federal involvement is necessary."
The Pertinent Statutory Language of CZMA

Prior to organizing and setting forth the state-federal mandates of the CZMA, it is important to note that the Act can be characterized generally as having: (1) an environmental conservation or resource management thrust, together with acknowledgement of developmental, especially energy, needs; (2) requirements that are procedural or process oriented rather than prescriptive and measurably defined; and (3) an implicit assumption that its objectives can be reached on the basis of voluntary state participation, federal cooperation, financial incentives and more firmly grounded state ability to affect federal decisions and activities. The thrust of further analysis zeroes in on characteristics (2) and (3) of CZMA, but must be understood in the context of its environmental conservation roots. The substantive "balancing" of those states which have progressed furthest toward approval, in this author's judgment, has been one of placing environmental conservation increasingly on the scales of developmental decision-making—not simply a value free exercise in intergovernmental diplomacy.

Having noted this, it is nevertheless equally important to examine the means by which the CZMA is expected to achieve substantive improvements in the coastal environment. The intra- and intergovernmental means are divided among the three key actors introduced before. The statutory role, mandate and requirements for each of these actors is set forth below. The reader may refer to the appended CZMA, as amended, for clarification of these citations (Appendix IV).

The Office of Coastal Zone Management, NOAA -- OCZM as the
delegated entity acting for the Secretary of Commerce, was assigned a lead role for administering the Act. As such, the CZMA directs that it: (1) "promulgate rules and regulations," and otherwise administer and monitor the program; (2) "consult with cooperate with, and to the maximum extent practicable, coordinate with other federal agencies..."; (3) not approve a program unless "the views of Federal agencies principally affected by such program have been adequately considered"; (4) "in case of serious disagreement between any Federal agency and a coastal state...with the cooperation of the Executive Office of the President...seek to mediate the differences involved..."; (5) "conduct a continuing review of...management programs of coastal states... and the coastal energy impact program...", (6) prepare an annual report including "a summary of coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein "; (7) make findings on consistency issues either upon appeal or on its own initiative.

The coastal states -- The Coastal states are considered the central entities in achieving the Act's objectives, are the sole recipients of its funding and are the locus for its Federal obligations.

As a basis for participation the states have two basic responsibilities: (1) to develop management programs (set CZM boundaries, define permissible land and water uses, designate areas of particular concern, exert control over land and water uses, establish guidelines for priorities of use, organize for management and develop planning processes for beaches, energy facilities and shoreline erosion) and (2) to set forth objectives, policies and standards to guide public and private uses of lands and waters in the coastal zone.
As a basis for program approval, states are required: (1) to provide the opportunity of full participation by relevant Federal agencies (among others) adequate to carry out the purposes of the Act and consistent with the policy of the Act; (2) to provide for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect such state's coastal zone); and (3) to incorporate requirements of the Federal Water Pollution Control Act, as amended and the Clean Air Act, as amended.

The interested federal agencies -- These agencies are to be guided by an overall statement of Congressional policy which requires all federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of the Act. Within this broad charge, the federal agencies must be given the opportunity to review state programs prior to their approval, at which time the consistency provisions, unique to the CZMA come into effect. Federal agencies are thereafter directed as follows: (1) "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support them...to the maximum extent practicable, consistent with approved state management programs"; (2) Similarly, "development project(s)" are to be "to the maximum extent practicable, consistent with approved state management programs"; (3) Federal licenses and permits of "any applicant" are also covered, and "no license or permit shall be granted by the Federal agency until the state has concurred with the applicant's certification"; (4) Activities "described in detail" on exploration or development plans
for OCS are also subject to state review and amendment; and (5) Federal assistance programs affecting the coastal zone are also covered and "federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program...."

Review of the State-Federal CZM Balancing Act

An in depth review of the historical record reveals sustained unanimity concerning the key role of the states in achieving the objectives in CZMA and a major expectation that a balance of federal-state roles and authority could be "worked out" under the Act. Provision for mutual participation, consultation, cooperation, and shared obligations were assumed to establish a framework achieving balance conducive to effective management. In terms of the CZMA as passed, existing practices or vehicles for intergovernmental coordination were thought to be largely adequate to do the job. The federal consistency provisions, which were major departures from past intergovernmental obligations, emerged with surprisingly little debate or historical guidance. Unlike some related consistency requirements in Federal law (i.e. those in the Water Pollution Control Act and Clean Air Act), consistency was to be developed and enforced explicitly between the states and federal agencies-- not simply among the federal actors. Adequate consideration by the states of the "national interest" was introduced as one weight on the balancing scale, but again with little and somewhat conflicting guidance concerning the scope, nature and operational use of this concept in coastal management. Finally, the federal agency assigned responsibility to administer the program was consistently reminded to limit its role in the state-federal process, refrain from active intervention in state decision-making and accord
maximum discretion to states in developing their programs.

This balancing context has not been given explicit analysis or comprehensive review by the parties involved, yet it has shaped many of the themes and has been an underlying factor in the conflicts of CZMA implementation. The next three chapters reflect actual practice that has evolved in response to the CZMA and this historical setting.
CHAPTER II

OCZM: ADMINISTRATION WITHIN THE BALANCING ACT

A "Coastal Imperative"?

Award of the first three state CZM grants was made at a conference in Charleston, South Carolina on March 13, 1974. The title and theme of the conference was "The Coastal Imperative: Developing a National Perspective for Coastal Decision Making." At the very beginning of active CZM development, then, there was concern by the responsible administrative agencies to tackle the problems of CZMA's national implications. In his letter of transmittal, Senator Ernest E. Hollings stated his view that "the development of a national consensus on the issues surrounding the national interest question is important. The Charleston conference was a major step in formulating such a consensus." Robert W. Knecht, Director of OCZM, agreed that "it becomes important that the nature of the National interest in the coastal zone and how best to incorporate this interest into state programs, be generally understood." He further acknowledged that "the Coastal Zone Management Program has significant implications for Federal activities...calling for the adjustment of traditional relationships...."

Participants at the conference held predictably diverse views both about the substance of and the processes to deal with the "national perspective" of the CZMA. Issues were explored, however, that were to re-emerge later in the administration of the program. Substantive interests were treated primarily as competing claims for environmental protection versus the needs for development. Process concerns focused on whether and how the states were to deal procedurally with national interests.
Selected views of the participants are summarized in the following statements:

As a singular concept, the national interest does not, in fact, exist. But there are many short and long range national interests which must be balanced. The balance is best achieved by allowing competing interests full play in the adversary political process.

The conference seems to be focused on a search for understanding about how the national interest is to be discerned in the administration of the Coastal Zone Management Act. It really is not apparent at all why NOAA, in administering this Act, should have to answer that question — with one exception, Section 306(c) (8), which deals with the need to give adequate consideration to the siting of facilities. I also found severe semantic confusion on the question. That is the confusion of equating what Federal agencies do with the national interest. It is not even clear that this Act means that states have a duty to consider installing facilities, ports, power plants and so on where they are not already required by Federal law.

I think one of the challenges we have here, in addition to identifying the national interest, is to look at the question of procedures by which conflicting policies expressed in the laws of Congress can be resolved.

Under our Federal system with its allocation of responsibilities and money, it is unrealistic to expect any State to coordinate the Federal establishment. We can, however, provide a framework for Federal cooperation with State plans — provided that the Federal establishment is really prepared to recognize these plans.

To date, I know of no method, mechanism, or institution that has been established to achieve a good working relationship between Federal agencies on one hand and the States on the other within the framework of state coastal plans.

In his concluding remarks, Robert Knecht characterized the conference as "cautiously optimistic," saw acceptance of "shared responsibility," noted a lack of policy definition and stated his intent to begin a series of consultation with the various federal agencies.

The Charleston conference probably could not be expected to identify a specific agenda for administering the CZMA's state-federal
provisions; it certainly failed to address adequately OCZM's role and responsibility in this area. At least tacitly, the participants, as had the Congress before them, generally were silent about or assumed that some sort of interplay among state and national interests would result in a means to balance such interests. As the demanding work of encouraging states to participate in the program, assisting them in program formulation, and dealing with the state-local relationships increased, the "imperative" of a national perspective in coastal decision-making was to recede — at least for awhile. The "cautious optimism" of somewhat independent and good faith efforts by the affected federal agencies and the states for achieving the CZMA's "adjustment of traditional relationships" was left to future practice to verify.

The Style and Evolution of OCZM Administration

General administrative style -- There are some identifiable characteristics of OCZM administration, at least until very recently (1977), that have determined in part the conditions under which state-federal relations have evolved under the CZMA. Some of these characteristics were shaped by external forces. Chief among these forces were the consistent admonitions to limit the administrative intrusion of OCZM into state decisionmaking, the parallel directives to concentrate upon the development of processes for management and the lack of specific administrative or procedural guidance in the CZMA itself. OCZM's style of administration reflects these directives, but also stemmed from the perceptions and discretion afforded to its program leadership. The highlights of this administrative style are summarized below.
From the beginning, OCZM stressed its collaborative and catalytic role in state program development. The Office deliberately sought to remain small in number, remain located in one central Washington, D.C. office and to avoid a stratified bureaucratic structure or practices. Staff were recruited with great weight given to their diversity of background and knowledge and their experience with state and local government. Firm commitment to a supportive and flexible style of administration was established early and was fostered by constant interaction among a closely knit core staff in almost daily personal contact with one another.

Attempts were made to establish OCZM policies, rule-making and practices in an open fashion, with maximum use of consultation among the staff, with the participating states, interested parties and the CZM "community." Personal and direct communication characterized the Office's approach to program development.

This general style carried over into OCZM's state-federal relations efforts. Key responsibility for developing the details, approaches and negotiations between states and federal agencies were left to the states. The Office's Regional (state) Coordinators were assigned primary responsibility for contact with individual states. Federal relations activities within the Office at first stressed understanding and translation of federal agency mandates, organizational structures, decisionmaking practices and interests in CZM development. Later, specific high priority of apparently complementary federal-state interfaces were explored in depth at the headquarters level. Development of formal interagency structures for CZM were avoided and existing systems of intergovernmental coordination were utilized. Staff level
working arrangements were solidified. Formal review patterns were generally left up to the interested federal agencies to define and develop.

**Evolution of administrative style** -- Major pressures for change in OCZM’s state-federal relations approach began with the first state application for approval under the CZMA. A process that was to encompass more than fifteen months commenced with the state of Washington submitting its proposed program for review in March, 1975. In retrospect, this signalled the end of perception by the federal community of the CZMA as "simply" another grant assistance program. Major federal agency concerns and objections were raised in increasing number and severity. These concerns ranged from the demand for exclusion of federal lands, through the failure of the state to provide for participation or adequate consideration of federal views, to needs for procedural and substantive overhaul of the entire Washington proposal. The experience with Washington’s program was to have profound effects upon the style, complexity and future directions of OCZM administration. The state-federal assumptions that had permeated the history of the Act and its initial administration had to be thoroughly re-examined. In particular, OCZM was now partially thrust into the balancing equation that heretofore had been assumed to rest largely between the participating states and interested federal agencies. Among other things, federal agencies demanded direct and active OCZM participation in the process of program development, more formalized and higher levels of review and conflict resolution, legal determinations of statutory wording, and forceful protection or incorporation of their interests in state programs. States, who had viewed
OCZM as an advocate of their individual and collective interests, were concerned that this relationship would erode or reverse itself.

The impact of the Washington experience -- and the early prospect of other states, such as California, Oregon and Rhode Island seeking approval -- generated increasing and sometimes incompatible pressures on OCZM. To see how this evolution affected OCZM's administrative approach and practice, it is necessary to examine some of its representative administrative actions.

Administrative Activities and Policy Formulation

OCZM undertook a number of initiatives to address state-federal CZM relations. These can generally be classified as informal and formal. Informal activities characterized the initial period of program development, with increasing reliance on more intensive and formal procedures, especially after submission of the Washington program. Administrative rule-making and amplification of existing regulations constituted a major means to articulate OCZM policy.

The early period of program development -- Publication of rules and guidelines about how states could qualify for grants is one of the earliest expressions of OCZM policy on state-federal relations. These so-called program development regulations were promulgated after extensive preliminary consultation. A working paper was commissioned, outlining the rationale and options for the proposed regulations. Open seminars were held in selected coastal regions throughout the country with the working paper as a focal point for comments, suggestions, and criticisms preceding formulation of the official document. Proposed regulations were published in June, 1973 and extended time was allowed for additional
comments from all interested parties. Federal agencies were solicited to participate in this process, and many did. Specific changes in proposed regulations were made in response to federal comments. These changes involved incorporation of federal water and air pollution requirements, consideration of renewable resource lands, the availability of federal technical assistance and the importance of coordination with related federal planning and programming. Consistent with the remainder of the regulations, however, state-federal requirements or guidance were couched in broad and rather permissive language. For example, a description of "intergovernmental arrangements sufficient to develop and maintain an effective and coordinated management process" was required to accompany the original application. Other guidance was restricted basically to reiteration of the Act's participatory and coordinative provisions. There appears to be one major exception to this rule, however. Section 920.45 (f) set forth rather ambitious guidance that required a work program element to identify "other State and Federal planning, programming, or activity which may have significant impact on the State's coastal zone."

Informal efforts accompanying and following the development of the program development regulations attempted to compliment their flexible directives. This involved identifying the array of federal activities and assistance programs, exploration of the regional or other decentralized federal-state mechanisms for "new federalism" and adaptation to the "national land use" expectations then currently being considered by the administration and Congress. A position of Interagency Coordinator was created to assist in these efforts. Given very limited
staff resources, and in keeping with the spirit of OCZM, its history, and the regulations in force, much of the early work concentrated on translating to the states what intergovernmental tools existed or could be adapted to individual state circumstances.

A representative reflection of this early work was a handbook for use by the states entitled "State-Federal Interaction in the Development and Approval of Coastal Zone Management Programs." This document described state-federal requirements, highlighted federal activities thought to be of special concern to coastal states, discussed state program elements of probable interest to federal agencies, classified key federal activities, suggested a procedural approach to meeting the Act's requirements and described six existing procedures or structures for state-federal coordination. In keeping with the early exploratory style of OCZM administration, the handbook was advisory and "particularly subject to modification, supplementary comment and revision." OCZM's role and approach was described, in part, as:

limited but strategic...in the overall "interaction" required,...To select those Federal agencies which clearly have a substantial impact on the coastal zone and to deal with them on a first priority...[and] to either provide guidance to the States in dealing with Federal agencies or facilitate the interactions that must occur prior to Secretarial approval of a State's Program.

States again clearly were accorded a leadership role in national and federal agency interest balancing. The suggested handbook structure for achieving "balance" was advisory only -- and interestingly, was not followed subsequently by any state program. As a rule, states did not find the handbook interesting or useful.

The next important formal expression of OCZM policy was embodied in the Program Administrative Grants regulations published in final form
on January 9, 1975. (These regulations describe the basis for Secretarial approval of state programs and are hereafter referred to as the approval regulations.)

The approval regulations were prepared in essentially the same participatory manner as the earlier program development guidelines, including an extended period for additional solicitation of comments. In response to federal agency comments, the draft regulations were revised to emphasize the environmental thrust of the CZMA and its approval criteria, acknowledgment of lands excluded from the coastal zone if under the sole discretion of the Federal government, and further discussion of the national interest provisions. The approval regulations specified that OCZM would prepare an impact statement on state programs prior to approval -- a task that was to prove formidable and somewhat unique in a federally assisted grant program. Under the National Environmental Policy Act, the impact statement placed additional responsibilities on OCZM to disclose and analyze its federal level CZM decisions for public review, comment and challenge. The somewhat ambiguous statutory language was used to address the status of federal lands in the coastal zone. States were assigned responsibility to define such lands and seek mediation if there were serious disagreements with federal agencies.

Section 923.15 of the approval regulations described OCZM policy and guidance on the national interest clause. Such interests were to be "integrated" and "dealt with" and no arbitrary or unreasonable exclusion of such interests was permitted. No distinct "tests" were envisioned for national interest determinations. In depth consultation
with federal agencies was considered crucial to state compliance with the Act's requirements. OCZM attempted to define representative examples of requirements and facilities that may involve national interests. "Facilities" were defined very broadly to include such things as energy complexes, beaches, aids to navigation, fisheries, historic sites and mineral extraction facilities.  

Section 923.30 addressed coordination, including interaction with federal agencies. This followed the general statutory directives, but added a requirement for listing the parties and interests the state had dealt with. Specific documentation was required to demonstrate incorporation of water and air pollution requirements together with a stress upon the opportunities inherent in a melding of OCZM and EPA programs at the state level.

Shortly after promulgation of the approval regulations, OCZM prepared supplementary interim regulations on "Federal-State Coordination." These regulations provided procedural mechanics for coordination, the federal review process and mediation of "serious disagreements" between the states and federal agencies. For purposes of this paper, they are relatively unimportant except that they identify the Office of Management and Budget (OMB) as the entity within the Executive Office of the President which would be requested to participate in mediation.

The later period of program development -- OCZM and the states were equipped with the above informal procedures and policy instruments when Washington State submitted its initial program for approval in March, 1975. Specific federal reactions to that program and others are the subject of a later chapter, but the effects on OCZM administration
by the issues raised should be understood at this point. The major administrative effects were threefold. First, it became clear that the range, depth, administrative decentralization and perceived threat to agency interests far exceeded any indication received by OCZM beforehand, either through its contacts with federal agencies, the rule-making processes or from the participating states. Second, the coordination processes that had been derived from the CZMA and largely left to state discretion had not been adequate to satisfy the participatory, consultative and national interest considerations now forcefully claimed by federal agencies. And third, it became apparent that very substantial procedural as well as substantive state-federal efforts must precede approval of state CZM programs. These and lesser factors impelled OCZM to revise some of its past administrative procedures. The range of issues raised by federal agency reviewers, some of them complete surprises, necessitated further in depth knowledge of federal missions and activities by OCZM. Regional or field offices of federal agencies were often times the source of commentary, requiring increased OCZM involvement in the field. The perceived threats to agency missions heightened the need to negotiate basic issues in Washington, D.C. Inadequacies in fulfillment of or omissions from the coordinative processes of the Act had to be re-evaluated and somehow strengthened. Increased attention had to be given to assuring that the states not only met the requirements of program development and approval but also relatively specific consideration had to be given implementation procedures as well. In short, OCZM was further forced into playing a major role in the balancing act, with very little other than negative mandates upon which to build.
Just after OCZM's decision to authorize preliminary rather than full approval to the Washington state program, the General Accounting Office (GAO) was requested by Congress to undertake an appraisal of the overall program. GAO conducted its evaluation from July through December, 1975. A report of its findings and recommendations became available to the public in December, 1976. After a thorough review of OCZM documents, extended interviews with staff, and six state case studies, the GAO made a number of findings and conclusions. Three quotes from its "Digest" of findings serve to reflect the tone and results of the evaluation:

Although required by the Act, Federal participation in state program development has been limited... States assert that Federal agency coordination is a major problem. They have difficulty knowing when to begin soliciting Federal agency input, knowing whom to contact, and receiving Federal agency cooperation.

Because states are entering a new phase in the program, the agency [OCZM] must do more than just excel in its procedural and technical functions. It must shift its emphasis to increased assistance in monitoring State programs, resolving special problems and strengthening Federal-state coordination.

The concept of a harmonious process for a Federal-State-local decisionmaking mechanism through a federally sponsored program based on voluntary participation is unique. Achieving this concept will be difficult.

The GAO concluded that OCZM must redirect its efforts and resources toward resolving state-federal issues, in particular those related to the consistency provisions.

OCZM agreed with the majority of GAO's findings and instituted a number of changes both during and after the evaluation. Additional resources were allocated to state and federal regional coordination, monitoring activities were intensified, meetings with headquarters
federal agency representatives were more frequent and supplementary policies were formulated. A series of "threshold papers" were prepared designed to clarify and expand policy guidance to the states, including forceful admonitions concerning the absolute necessity of dealing with state-federal issues, future procedures and ongoing coordination. Quite late in the revision process, the U.S. Attorney General opined that all lands owned by the Federal government were excluded from the coastal zone. While removing an immediate source of federal agency-OCZM difference, this opinion served to heighten tensions with the states.

Formal rule-making commenced on the consistency provisions after the informal negotiations resulting in Washington's eventual approval in June, 1976 showed an imperative need to do so. Consistency working draft papers were prepared and distributed in June, 1976. Proposed regulations were published in October, 1976 and review, revisions and negotiations on consistency policy continue into 1977. Passage of the 1976 amendments to the CZMA served to expand significantly the type and potential severity of state-federal issues, but as has been seen, did not substantially alter the intergovernmental mandates or procedures of the Act.

Summary of OCZM's Administrative Situation

It appears clear that the Congressional assumptions concerning the administration of CZMA were severely strained by actual implementation experience. OCZM's own perception of its proper role and responsibility in the CZM process was also subjected to competing or conflicting forces. The evolution from largely informal to formal
administrative strategies appears equally compelling. Passage of the 1976 amendments will certainly bring even more pressure to formalize internal decisionmaking, become more actively directive in state activities, place heavy reliance upon legally defensible positions, and narrow administrative discretion and flexibility.

If the above interpretations are true (perhaps even inevitable), OCZM will face a number of old and some new issues in administration with somewhat questionable intergovernmental tools. In some ways, the Act's breadth and relative youth may prove to be something of a blessing. Before specific administrative options and initiatives can be explored realistically, however, it is essential that the approaches, expectations and interests of the other two actors in the process be explored.
CHAPTER III
THE COASTAL STATES: RESPONSE TO THE CZMA, ITS NATIONAL REQUIREMENTS, AND THE FEDERAL ESTABLISHMENT

State Entrance Into the CZMA Process

State initiatives prior to the CZMA -- As noted earlier in Chapter I, the diversity of state interests, settings and approaches has been considered both the genius of and a limitation to the Federal system's allocation of management responsibility.¹ This diversity also makes it difficult to generalize with precision concerning the status of the state efforts prior to the passage of the Act. Nevertheless, it is important to understand that some states had actively taken the lead in various aspects of coastal management prior to the CZMA.

Under sponsorship of the Conservation Foundation, this author with John J. Bosley evaluated the patterns and applicability of state coastal programs for potential consideration in Georgia during the summer of 1971.² We concluded that there then were four definable categories of state initiatives being developed, either concurrently, or incrementally: (1) regulation of specific coastal natural resources; (2) control and/or prohibition of "incompatible" uses; (3) management of water resources; and (4) comprehensive state planning or shoreline regulation. Because these four types of approach subsequently were to become pivotal development points or options for CZM under the Act, and because they were the objects of justifiable state pride in having assumed "coastal zone leadership," a brief summary of the four approaches follows.³ Specific state natural resource regulation focused upon various single or multiple criteria controls by states over salt marshes and wetlands. A few states also had initiated protection schemes for beaches and dunes or for insuring public access to beaches. Other states were
beginning to develop policies and controls over coastal and other key geographic areas based upon the extent or type of use or development. Controls over substantial developments and heavy industry were representative of the few states adopting this approach. Extension of traditional state controls over water resources (impoundments, water quality standards, ground water protection, etc.) although questionable as to their level of management selectivity, were also being tried out. Finally, a very small number of states were attempting to develop comprehensive shoreline-oriented plans and controls as the basis for management. Thus it was clear in 1971 that some states were actively involved in the various aspects of what was to become "CZM" under the auspices of the Congress. Many other states were not active in coastal management at that time.

Coastal states supported passage of the CZMA and their views helped to shape its policy direction and requirements. The overwhelming majority of states opted to participate in the CZM program within a year after grant funding became available in Spring of 1974. It is difficult to determine early state anticipations and incentives concerning participation in the program, but three, perhaps obvious, reasons can be suggested: (1) the promise of two thirds federal financial assistance provided within quite flexible regulations; (2) federal support and validation of already existing state coastal initiatives; and (3) at least a vague appreciation of the federal consistency potentials after program approval.

The CZMA left designation of the single state agency to receive and administer the program to the discretion of the individual state
governors. Selection of the CZM agencies within the states was therefore diverse, but, with few exceptions, fell into three broad types of state administrative settings: (1) natural resource or environmental protection agencies; (2) state planning organizations; or (3) independent commissions. Each of these three single or lead agency settings evidenced strengths and weaknesses and interest or relative lack of interest in certain aspects of the CZMA. Natural resource or environmental protection agencies tended to be familiar with coastal resources assessments, environmental protection and regulatory practices. Generally, they were less familiar with or interested in the comprehensive evaluation and intergovernmental mandates of the Act. Conversely, state planning or land use agencies often were strong in the intergovernmental, public participation and "process" directives of the CZMA, and weaker in addressing its regulatory and active management elements. Commissions fell somewhere between the extremes but were often somewhat distant from the resources and constraints of state and local "line" agencies and were subject to the vagaries of multiple-interest group planning and decisionmaking. All of these settings were affected also by their relative positions of influence within state bureaucracies (ranging from almost none to very influential) and interest by or complementarity with gubernatorial or legislative leadership (again with a wide range of relative support).

The above synopsis of state CZM organizational settings clearly does not give a full picture of the nuances, diversity and need for innovation to "fit" the states' interests, motivation, and capabilities
to the CZMA. The point here is to underscore the fact that the varying administrative agency selections brought their own and their state's distinctive commitments and perceptions of CZM into the program. While it may be taking some interpretive license, the author thinks it possible to make some reasonable generalizations from this situation. First, unlike many federal-state grant programs, OCZM would have to deal with a multiplicity of "client" relationships with differing perceptions of what the objectives of CZMA in fact were. Second, regardless of administrative setting, no state had developed a framework for management that was as comprehensive and intergovernmentally structured and, at the same time, as precise and forceful in its regulatory application, as the CZMA envisioned. These two key factors were applied to at least some state recipients that perceived their prior efforts as having already met or exceeded the Act's purposes and requirements. 5

State views and approaches to federal agency consultation and coordination prior to the CZMA are difficult to pinpoint but seemed to have agreed with the general supportive role of the federal agencies emphasized in the Act. State coastal management initiatives prior to the CZMA involved very little if any emphasis upon federal consultation or coordination. 6 The few state shoreline planning activities underway either continued this practice, or sought limited federal involvement for technical assistance, federal lands information, or consultation on dual permitting or licensing activities. The Charleston conference, cited earlier, showed the skepticism, or at best guarded optimism, with which the states viewed the prognosis for state-federal cooperation at the first awards of federal assistance.
State responses to OCZM rule-making and policy guidance - - The coastal states have played major roles in OCZM's rule-making process. Not only have state review and comments been actively solicited, but also special seminars have been called by OCZM for extended face-to-face discussion of proposed rule-making. The sometimes cloudy language of the Act, its lack of immediately understandable performance standards and its assignment of governmental leadership to the states certainly reinforced the need for this participatory approach to the regulations.

Based upon a recall of this author's experience, the state responses to OCZM rule-making paralleled in many ways the evolution of federal agency reactions stressed in Chapter IV. The initial program development regulations were designed to inform and facilitate early state participation in the national program, and, it is held here, fairly reflected the Act's design and flexibility in achieving this end. The development regulations, in short, generally were acceptable to the states and the federal agencies as an expression of initial mutual and seemingly interdependent interests. Initial state grant submissions were reviewed by OCZM's limited staff on a team basis and often resulted in amendments or additions to the preliminary document. First year grants understandably were longer on intent than were those subsequently submitted and made subject to the Act's admonition to OCZM and the states to assure "adequate progress" toward program approval. Given the diversity of prior state initiatives, administrative settings and miniscule staffs, the rather ambitious federal agency assessment called for in the program development regulations (S. 920, 45 (f)) was proferred and accepted as a tentative design for action. In the fall of 1974, OCZM's state-federal
handbook was discussed with state program managers. The overwhelming
response from them was to maintain flexibility for the states in creating
and developing participatory, consultative and structural state-federal
mechanisms. In recognition of the obvious diversity of state situations
and the less obvious, but very real diversity in federal regional
structures and agency interest or decentralization, this call to flexibility
was persuasive.

Preparation and adoption of the program approval regulations
followed a similar path. States sought again to maintain maximum flexi-
bility for dealing with federal agencies and the standards to meet adequately
the Act's state-federal approval criteria. The approval regulations did
little to expand upon earlier guidance to the states except for a sub-
stantial explanatory comment on the national interest provisions, mostly
couched in the negative. The subsequent interim coordination regulations
appeared acceptable to the states. The one exception here was the require-
ment for states to follow federal agency consultation procedures: most
states expressed their intention to jointly work out such procedures with
individual federal agencies -- an approach fully acceptable to OCZM.

Evolution of State Approaches

An overview of four advanced state management programs reveals that the experience with Washington's application had the effect
of states' formalizing and documenting the state-federal process require-
ments of the Act. The earlier general references to various presentations,
meetings or intentions to comply with the CZMA's cooperative mandate were
augmented by documentation of interaction with the federal community.
Task forces or advisory groups of federal representatives were formed.
Federal regional organizations were increasingly utilized as forums for
draft program reviews. In some cases, states attempted to formulate
"national interest" policy statements. A major source of documentation became inclusion of review comments by federal agencies (often provided only after the formal review process was underway) and state CZM responses to them. In short, in some of the more advanced states, activity and documentation of the process elements assumed an increasingly important place as plans to submit programs for approval became imminent. These efforts were assisted by OCZM on a limited basis and responded to its federal-state "threshold paper" guidance. As shall be seen in Chapters IV and V, however, this was only the beginning of the real struggles to grapple with the promised reshaping of traditional state-federal relations in CZM.

A Mid-course Evaluation of the States

The findings of GAO -- Chapter 5 of the GAO report to the Congress on CZM is entitled "Federal Participation: A Major Problem." In summary, the GAO found in this Chapter of its report that there were shared OCZM, federal agency and state responsibilities that had not been fully or timely exercised. As of December 1975, the GAO made a series of findings concerning state-federal relations. Findings regarding state problems and responsibilities were made on the basis of three areas of assessment: (1) the six state case studies; (2) OCZM guidance to the states; and (3) general state views and attitudes concerning the federal establishment. A summary of these findings is presented below.

Only one of the case study states, California (the others were Louisiana, Maine, Michigan, North Carolina and Washington) had made an initial and comprehensive attempt to involve all "interested" federal agencies in the CZM process. Maine and Washington had not formally met
with many key federal agencies prior to submitting draft programs to OCZM. Michigan and North Carolina had attempted to establish single points for federal consultation (the Great Lakes Basin Commission and the Southeastern Federal Regional Council, respectively), but with indeterminate results. Louisiana was reported to have rejected federal agency assertions of "national interest" as narrow agency interest and sought to define its own categories. GAO made an interesting aside in light of subsequent controversy when it commented on California's efforts: "If the extent of Federal agency comments is a legitimate measure of the extent of Federal participation in and acceptance of state programs, California has been considerably more successful in that regard than either Washington or Maine."9

GAO ascribed early failures in state-federal consultation to "three basic problems: (1) knowing when to begin soliciting Federal agency input, (2) knowing whom to contact, and (3) receiving Federal agency cooperation."10 These findings were not especially surprising or enlightening given the Act, its regulations and the history of state-federal relations elsewhere. Apparently responsibility for this situation was distributive among the parties with a need for states to increase their emphasis upon federal agency participation, OCZM to increase its guidance and involvement and for federal agencies to develop coordination mechanisms and to budget their time and funds "to meet their coastal zone management obligations."11

State views of the state-federal relationship also were tabulated from the GAO questionnaire: Of 31 states and territories responding, 13 found problems in considering the national interest and
an equal number had at least "moderate" problems in working with federal agencies; 28 states wanted more information about future federal CZM plans, 25 states sought clearer priorities defined within individual agencies, 16 saw the need for tradeoffs among federal agencies; most states reported contact with at least 20 agencies, with mixed views on the difficulties in dealing with individual agencies.

As can be seen rather readily, the GAO evaluation identified and assessed the general set of premises upon which the CZMA rests and in large measure appeared to accept the assumptions of a "participatory solution" to state-federal matters under the Act. Its analysis focused upon increasing process efforts to achieve CZM balance. Perhaps because of the relatively early stage of program development, the GAO did not delve into the substantive settings, proposals, and issues around which participation, consultation and the "adequacy" of both state and federal agency processes must necessarily be joined and resolved. In this latter respect, the GAO evaluation skirted what were to become the central and ultimately pivotal issues of successful movement from "development" to "administration" of the CZMA, and beyond. Chapters IV and V attempt to document and interpret these more substantive issues. But, even without benefit of these analyses, the author feels that much more can be clarified about the context and prognosis for CZMA's process directives, at least as of 1976.

The process mandates in "real world" state perspective -- States entered the CZM program with a good deal of exposure to Federal grants-in-aid and regulatory interface experience. Past experience with grants-in-aid is a process about which states may have varied, but generally
negative, perceptions. The caricatured picture of federal agency paperwork, conflicting requirements, over-regulation, inaction and ineptitude has become a commonplace description of the Federal system. Apocryphal stories are repeated, whenever state administrators gather, of inconsistent policy articulation or enforcement at different levels of the bureaucracy, reorganizations that cut the floor out from under on-going programs, "sand bagging" of decisions until the last (often least opportune) moment and a myriad of instances of simple incompetence. The point here is that the Act's almost uniquely extensive calls for state-federal interaction were applied in a federal system of inter-governmental relations of enormous complexity (structural, tactical, financial and administrative) and of proven resilience to change. The adequacy of "process requirements" in this milieu would be fully tested. Indeed, in retrospect, they would seem to have warranted very substantial commitment, investments, and even innovation by CZMA's participants. Such was the exception rather than the rule.

An equitable commentary, while recognizing the legitimate needs to get the "Federal house in order," must also explore what factors and attitudes are at play within the participating states. While not universal, it can be asserted that states came into CZM with a somewhat cynical or pro forma perspective on the Act's consultative requirements. Locations within state government further colored state views, as did the policy making position within state government. Even cursory experience with the states reveals that much of the functional provincialism ascribed to the federal agencies exists at the state level and that agency fragmentation and competition is not unknown either. Combined with historical or current attitudes about dealing with "the Feds," these factors often
resulted in assigning low priority to federal agency consultation and/or viewing it as an inherently unrewarding exercise.

The second point is that OCXM in particular was faced from the outset with a difficult chore in fostering the constructive use of the CZMA's process tools. And, at the same time that OCXM was being pressed for more aggressive guidance and intervention, the majority of the states preferred OCXM to remain limited in its role and centralized in Washington, D.C. It is likely (although politically difficult for OCXM) that some states simply may not be willing or see sufficient incentive to work explicitly through state-federal issues under the CZMA. This suggests some issues and options which must be faced in the future. At this point, some of the state options can be suggested without prejudice in terms of strategy alternatives they may pursue, such as: political power applications versus procedural techniques; ad hoc bargaining versus structured mediation; goal achievement through selective regulatory intervention versus adherence to adopted plans; and judicial versus administrative settlement of most disputes.

Finally, it clearly became evident during the Washington review and subsequently that OCXM must provide problem solving, mediatory and substantive guidance concerning the content as well as "process" of state programs. Practicing this consultative and even prescriptive role proved to be a strain on earlier "client" relations and was accepted only in modest degree. Yet, as will be shown later, it is the content of state CZM programs -- not simply intentions or processes -- that will be the key to the force and effectiveness of the consistency provisions which form one major incentive to gain program approval. "Content" is meant to denote the
clarity, specificity, geographical application and standing of state CZM policies, priorities, designations and procedures. The next chapter therefore shifts focus somewhat from the "process" emphasis of the Act to its content directives as perceived by the federal agencies.
CHAPTER IV

FEDERAL AGENCIES: RESPONSE TO THE CZMA, ITS NATIONAL MANDATES
AND STATE CZM PROGRAMS

Federal Agency Reactions to the CZMA

Reactions prior to passage -- As may be recalled from the Act's legislative history, federal agencies played a somewhat limited role in the formulation of the CZMA. The major thrust of agency comments prior to enactment addressed differences concerning which federal agency should administer the program (primarily as between the Departments of Commerce and Interior), whether or not CZM should be folded into a national land use program, and general concerns over the Act's review process and effect upon agency activities. EPA's air and water pollution programs together with the then proposed national land use program were the only federal activities receiving special attention in the Act. Routine language was included in the Act concerning non-derrogation of other Federal authorities and protection of Federal interests in water resources and offshore lands. Exclusion of Federal lands from the coastal zone (but not from limited application of its provisions) was provided for and subsequently clarified by the Department of Justice--although not to all parties' satisfaction.

Initial responses to program development -- The CZM program was viewed by the Federal agency community as an additional federally assisted planning grant program (and a modest one at that), albeit one that was considered a "laboratory" for anticipated land use things to
come. This view was manifested in invitations to CZM to join an ad hoc federal interagency land use group and to participate in an OMB working group on new (or revised) grant assistance programs. CZM was considered something of a junior member in this world of future anticipation and established, sometimes long and generously funded, federal agencies. The diversity of CZM's state clientele also made it difficult to "fit" the patterns of familiar interaction between federal and state agencies fostered by the categorical grant system. Finally, the CZMA presented the federal agency community with some difficulties in definition. As something of a hybrid program, CZM combined assistance for rather comprehensive (as distinguished from categorical) planning provisions, for regulatory and other means of active resource management, acquisition of estuarine sanctuaries and a related program for designation of marine sanctuaries. The CZMA thereby cut across a number of agency interests, traditional areas of federal agency expertise and established agency practice.

Nevertheless, CZM was initially considered (with some justification) as a broad, environmentally oriented planning assistance effort, even though CZM emphasized the Act's managerial, regulatory and other implementary aspects. As a result, the earliest positive relationships were formed with HUD's comprehensive planning assistance program, EPA's water and air pollution planning efforts, Interior's land use planning staff and Agriculture's soil conservation and other land planning activities. These relationships were also the first to develop agency policy guidance to their regional counterparts and joint CZM guidance (in the cases of HUD and EPA) to their respective grant recipients. The regulatory aspects of
CZM were more difficult to meld into existing agency structures, with the notable exception of the Corps of Engineers. Initially, at least, the Corps saw a great deal of compatibility between CZM and its regulatory responsibilities and actively sought to support CZM efforts in most regions of the country. Relationships with the Fish and Wildlife Coordination Act programs, Coast Guard licensing activities, Interior's OCS regulatory programs and other federal regulatory programs evolved slowly, if at all, during the first year and more of the CZM program.

Experimental efforts to foster increased federal agency participation and consultation with the states at the regional level were initiated in the Southeast Federal Regional Council (FRC), the Great Lakes River Basin Commission and the New England River Basins Commission. It became evident that FRCs, although established as lead Federal field coordinating mechanisms, were often limited in staff resources, CZM interest and also decisionmaking authority. However, depending upon the leadership of a particular region, they could play an important part in facilitating communications, information exchange and local contacts with states. Some River Basins Commissions (RBCs) were also found to accept the same role, although inevitably the question arose as to whom was "really" representative of federal interests, headquarters, FRCs or RBCs.

As has been seen in terms of OCZM administration and state responses, the submission of the Washington program and its subsequent review process caused a significant shift in the total CZM program. The major causes of this shift were federal agency responses to this first program submission and a handful of other states expressing their intent to apply for program approval. The scope, nature and implications of
these federal agency responses are the subjects of the remaining discussion in this chapter.

Introduction to the Appendix Material

The three Appendices at the end of the paper are drawn from the growing but largely unexamined body of combined federal agency positions on the CZMA, its state participants and OCZM's recent attempts to deal with the consistency provisions and related policies of the Act. Reference to this material is essential to the understanding of this and successive chapters. Federal agency and other key comments are presented as they were stated, with little interpretive evaluation by the author. This is thought appropriate so that the reader may draw his own conclusions from the record presented.

The Appendix material is drawn from federal agency correspondence or statements received by OCZM regarding: (1) programs of selected coastal states seeking approval under the Act, or having expressed intent to do so; (2) agency policy statements on CZM in varying stages of adoption; and (3) comments received by OCZM on its lengthy attempts to formulate regulations on the Act's consistency and related policies. The materials presented are selective and represent most, but by no means all, of the available record. The bulk of materials were prepared beginning in 1975 and ending in late 1976, although some of the consistency comments were received by OCZM in early 1977.

Prudence and relevance were exercised in selecting the Appendix material. Prudence or simple feasibility argued against the verbatim reproduction of well over 500 pages of correspondence and agency policy statements. Relevance was the major criterion in selecting statements,
especially those that bear on the central notion of state-federal balancing in CZM. Individual dates, authors, places, etc. are not cited, as the objective is to present the cumulative record, not to compare individual pieces of correspondence or views. For those who may wish to examine the original documents, they are on file with the OCZM or in various Environmental Impact Statements, state programs, and authoring federal agencies.

Appendix I contains federal agency comments on five state programs and is arranged alphabetically by agency. Four of the state programs have been submitted for formal approval (Culebra, Puerto Rico (1976) Oregon (1976) San Francisco Bay Conservation and Development Commission (SFBCDC)(1976) and Washington (1975-76); Culebra, SFBCDC and Washington have received approval as of March, 1977, Oregon's program is expected to be approved shortly. The Rhode Island program is representative of states that are well advanced in program development, but have not yet been subjected to the Act's federal review process. Appendix II presents the somewhat meager record of policy statements prepared by six of the thirteen "relevant" federal agencies identified in OCZM regulations. Appendix III presents federal agency, state and selected interest group comments on the proposed consistency regulations of OCZM. Major use is made of Appendix III in the next chapter.

Where individual quotes have been used, footnote references are made to those Appendices rather than the original documents.

Federal Agency Reactions to State CZM Programs

Federal agency review structures and practices -- Most federal agencies have delegated key responsibility for participation, negotiation
and review to their regional or field representatives. This is a natural product of federal decentralization and the perceived need, especially after the Washington experience, to influence state programs while they were still developing. This structure, however, placed tremendous logistical and participatory strains on both federal and state agencies. Federal field organizations are extremely diverse in their organizational structure (level and distribution of actual decisionmaking and layers of review authority), location (local, state, and varying geographic regional units) and membership or participation in coordination mechanisms (Federal Regional Councils, River Basins, A-95 review process, etc.). In some cases there were no effective regional structures, for example in the Energy Research and Development Administration and the Nuclear Regulatory Commission. States found that there was considerable uncertainty concerning who the proper spokesperson was for an agency or departments with many agencies. Of greatest concern, however, was when in the process of state program development definitive federal views and positions would be formulated and could be relied upon. A statement of the Department of Interior's Northeast Region on the Rhode Island draft proposal expresses this continuing problem directly: "These are to be regarded as informal field level comments and not formal Washington-level Department comments." Many other comments during program development (often understandably) placed the caveat of subsequent changes or additions to federal comments during the formal review process. In some instances (of later state programs) federal agencies refused to comment until the formal review process had been initiated by OCRZM. The logic of this latter practice escaped states altogether and has the
potential for substantial increases in costs, adversary confrontation and delay. While such a position may meet some strategic interests of a particular agency, they certainly violate the spirit and directives of the CZMA.

**Adequacy of performance under the Act's "process" elements**

As may be seen in Appendix I, the Washington program was almost uniformly attacked on the basis of having failed to provide adequately for federal agency participation, adequate consideration of their views and formulation of an on-going mechanism for consultation and dispute settlement. The OCZM acknowledged these "process" shortcomings in its award of preliminary approval to the state. Washington's subsequent primary reliance upon a consultation-assisted "packet system" to identify agency interests and respond to the views of federal agencies was only partially successful in meeting earlier objections. Federal agencies insisted that the state undertake direct bilateral negotiations on a number of their objections. These negotiations resulted in identifying four specific areas that had not been addressed in OCZM regulations beforehand, but were subsequently considered pre-approval requirements: (1) a specific state policy on excluded Federal lands; (2) a statement of how the state intended to implement the consistency provisions; (3) incorporation of key federal agency views and the state's response to them; and (4) the state's acknowledgment of national interests in its coastal zone management program.

While federal agencies were not fully satisfied with Washington's revised and expanded approach to these issues, they acquiesced to the approval of the program, with one exception.

The implications of the Washington experience in terms of the
Act's process elements were many. It became clear that the "interested" federal agency community was larger than had been anticipated -- including specialized agencies such as the Bonneville Power Administration which might be specific to a particular region. There could be no acceptable substitute for direct state confrontation of federal agency concerns. The "process" elements must include not only those required under the Act's development and approval sections, but also the total fabric of the entire CZMA. And, so-called process performance was inextricably tied to substantive resolution of major state-federal issues.

Federal objections on process grounds receded in later state program reviews to be replaced by a host of specific policy, procedural and legal claims.

Lack of positive commenting on state program content -- Perhaps it is the nature of the review process itself to accentuate the negative. A review of federal agency comments certainly reinforces this conventional wisdom. There have been exceptions to this rule, however, that should be noted. The Department of Agriculture (DoA), Housing and Urban Development (HUD) and Interior -- NOAA and the Environmental Protection Agency -- interspersed positive and sometimes innovative suggestions for program improvement with their views on program deficiencies. These sources in particular assisted OCZM, and hopefully the states, to clarify and further refine the quality of CZM management efforts. For example, useful comments have been submitted on program goals, objectives, and format (DoA, NOAA, HUD and Interior) assistance in future refinements (NOAA, Interior and EPA), clarification of state decision criteria (Interior)
and compliance with environmental standards and the National Environmental Policy Act (EPA).

Interpretations of the national interest -- Interior's comment on the Washington program is illuminating as a general statement of federal agency expectations of state compliance with the Act's national interest provisions:

In our view, the expression of national interest provides a necessary perspective and direct input to the development of a coastal zone program and some very important guidance in the actual implementation of that program. The Washington draft proposal lacks adequate explanations of their use of expressions of national interest in both these processes.8

Although this comment appears to express correctly the importance of the national interest balancing mandated by the Act, an analysis of the review comments suggests the difficulties in addressing this matter.

Federal agencies appear to have adopted two basic positions regarding the national interest issue. First, many agencies assumed that the national interest was to be determined solely by them. For example, the National Marine Fisheries Service stated: "In general, we must look within a state CZM plan to determine whether our interests -- the national interest -- are being served."9 The Maritime Administration, commenting upon the SFBCDC segment, complained that the Suisan Bay (mothball fleet) activities "heretofore...conducted under MarAd interest only conditions..."10 must be protected from interference by the state program. Paramount and overriding claims to the national interest determined solely by the federal agency have been most forcefully asserted by the Departments of Defense and Transportation. Their policy positions on this issue will be discussed shortly.
Second, and something of a derivative of the first point, are pervasive national interest claims derived from individual agency programs. Thus, we find that the national interest often is equated with agency interests. The gamut of these claimed interests runs from well-established Constitutionally based national interests such as defense and foreign affairs, to the operation of a simple unsurfaced runway air field, interisland ferry service and lighthouse on an uninhabited islet off the quiet island of Culebra. Examination of Appendix I reveals that functional claims to the national interest are made (and may, in fact, be considered of national importance), most often without supporting rationale or qualification. Therefore, in some manner the CZM program is to "adequately consider" (and in some way relate managerially) to the following typical array of interests: economic development, ports, defense requirements, comprehensive growth policies, mineral resources, long range energy systems forecasts, interstate fuel allocation, dredge disposal areas and seaplane bases in estuaries. These claims are presumably representative of the substantive weights with which states are to integrate national interests into their programs. Yet the claims are most often made in the abstract and are not usually related to what the states are specifically proposing to do in their programs. The feasibility of utilizing these weights appears to be further clouded by federal interagency differences concerning the latitude actually allowed states to "balance" developmental versus environmental protection claims, or the simple assertion that federal agency responsibilities are unaffected by state programs under the CZMA.
This sub-section identifies an implicit assumption and potential problem with the CZMA that until now in the paper has received little attention. Nor has the rather extensive literature reviewed addressed this assumption either. Federal agencies are afforded predominant review responsibilities under the CZMA to articulate national and agency views on proposed state programs. This opportunity, unlike other grant programs, is given after the extensive participatory and public hearing obligations are placed upon the states during program development. Federal agencies have responded with claims for national interests, often in the form of agency missions or objectives. Yet, substantial and legitimate questions can be raised as to whether "national interest" identifications are solely federal agency responsibilities, and more importantly, whether the extensive range of agency missions in fact are all national purposes that must be accommodated by, or even substantively considered in, state CZM programs. What makes this essential problem of "balancing" even more important is the almost total silence of the Act as to how the substantive balance is to be struck. On its face, the Act places states in this position, with the assessment process by OCM mostly silent on its criteria for deciding the merits of the claims. The role of the Executive Office of the President remains unclear.

Federal coordination policies in the CZMA -- One relatively obscure means by which federal agencies, the states and OCM could bring to bear additional policy guidance on the balancing of state-federal interests is through clarification and utilization of the Intergovernmental Cooperation Act of 1968 (ICA). This coordination statute is explicitly cited in the CZMA. The basic tenants of that Act are to assure that the different levels of government -- especially Federal actions -- are to be carried out
within what one excellent study has termed general "harmonizing frameworks." Implementation of this coordinative policy has been given expression primarily through guidance provided by the OMB in circular form. Besides hortatory language encouraging cooperation between area-wide, state and federal agencies, the policy has focused upon a review system for federally assisted planning programs (the so-called "A-95 review process"). This process has resulted in creation of local and area-wide clearinghouses, where proposed federal assistance applications are reviewed in light of state and local plans for compatibility. Final decisions rest with the granting federal agencies. The intended result of coordinating intergovernmental programs has been mixed, with its limited success due to a number of factors: varying commitment by participating state and local agencies, limited review resources or plans against which to make reasoned assessments, responsiveness to review comments by federal agencies (each of which developed its own implementary regulations), and a restricted arbitration role, now largely decentralized regionally, taken by OMB. Relatively recent additions to the A-95 process circular reference the CZMA and expand upon the ICA's applicability to federal agency projects and regulatory activity, as well as, assistance programs. To this author's knowledge, however, the implementary responses to this expanded mandate by the responsible federal agencies are still being worked out -- and have yet to be rationalized with the CZMA's specific consistency obligations.

The relationship of the CZMA to the ICA and other "harmonizing frameworks," such as the National Environmental Policy Act, present both opportunities for improving intergovernmental coordination and potential sources of conflict. Reference to the Demonstration Cities and Metropolitan
Development Act of 1966 is made in the Act in terms of coordinating state, areawide and local plans and issues during program development, not state-federal matters. A separate and distinct process for state-federal matters is provided for in the Act, as has been seen. The ICA is referenced only in Section 307(d), concerning the consistency applications for Federal assistance. Yet, some federal agencies have interpreted the ICA and the discretionary OMB implementing circular very broadly to either substitute for or circumscribe their responsibilities under the CZMA. For example, the DoD has liberally interpreted reference to the ICA in Section 307(d) to apply also to federal developments (all emphases supplied): "The A-95 requirements in regards to direct federal development in the coastal zone provide only that Federal agencies should ensure that CZM agencies have an opportunity to review the proposal from the standpoint of consistency..." DoD also asserts qualifying language (in part derived from the OMB circular, not the CZMA) that allows it "to establish the conditions of maximum consistency as may be practicable for each action of obvious significance." DoD also holds that "existing Federal provisions for achieving necessary cooperation with BCDC already exist and work satisfactorily." This last point would appear to beg the question somewhat -- at least from the state point of view.

Many federal agencies also reject the notion of involvement in proposed state processes to structure and establish consultation or dispute settlement procedures, while concurrently requiring accommodation of their perceived interests pursuant to the CZMA. An example of this position is that taken by the Federal Power Commission (FPC) on the SFBCDC program. On the one hand, the FPC indicates that the SFBCDC program must have a
long range energy systems planning element, including estimates on energy growth in regional energy utilizing industries and a "fair share" policy for energy throughput to other regions. On the other hand, FPC rejected SFBCDC's attempts to establish a structured (and already practiced) system for consistency determinations. Thus, while making claims on the SFBCDC program, FPC insisted on the status quo in terms of consultation as graphically illustrated in the following quote:

The FPC would not be able to enter into substantive commitments of any kind regarding a specific proposed development. Any requirements to which the FPC would subject a regulatee would have to be based on the record in a particular proceeding and could not derive from any external agreement between the FPC and a State agency.... No prior commitment of the sort normally included in memoranda of understanding would be possible.18

Thus, it can be seen that the coordinative provisions of the CZMA must be worked out not only in terms of its own statutory language, but also must address other harmonizing frameworks while maintaining the integrity of the Act's somewhat unique provisions.

The stance of the Department of Transportation -- A combined review of DOT's various criticisms, demands and proposals in the context of CZMA's coordinative provisions, including its reference to the ICA, presents a position at the extreme end of agency resistance to the spirit -- perhaps the requirements -- of the Act. As the legal profession is fond of saying, to state the (perceived) facts is to reach the (adversary) conclusion. The facts, as DOT has viewed them, are as follows:

Provisions for the continued use of the (Culebra) airport should be included in the development of the Coastal Zone Management Plan. Likewise for all existing and future Coast Guard operations, navigation aids, and communications, we would like to reserve the same rights to uncontrolled, non-monitored ingress and egress, by whatever means we deem practical....The management plan should not attempt to regulate the legitimate exercise of interstate or international maritime activity, an authority specifically reserved for the national government.19
In response to the Oregon program, the State of Washington's program and "opinion" by the Attorney General would not be binding upon the U.S. DOT. Several actions involving state and local governments are identified as prerequisites to achieving the program objectives. This raises two questions: (1) Why is there a need for state and local entities to evaluate the performance of a Federal agency? and, (2) How would such an evaluation be accomplished? The state, through A-95 process, will have received notification of an impending Federal project...setting forth the reasons. Since all lands used (emphasis supplied) are excluded...the use of such a statement is superfluous. It is the DOT position that Federal agencies will rely entirely (emphasis added) on the process established by OMB Circular A-95.... In recognition of the navigational servitude, provisions of the Constitution, the State of Oregon should also recognize that...permits and licenses used exclusively by the Coast Guard would not require concurrent determination of consistency.20

DOT obligation to 'follow' comprehensive plans for all actions 'negates' National Environmental Policy Act threshold determination [only on major actions].21

[Regarding the SFBCDC:] Any suggestion that there is a mandatory requirement for Commission certification for the Federal facility seeking the permit is not only incorrect as a matter of law, but inappropriate since under Section 307 (c) (3) of the Act the Commission is without authority to issue certification for those areas excluded from the coastal zone. [And in regard to the proposed SFBCDC coordination procedure:] We do not feel that it is an acceptable substitute for established Federal decision-making processes except as might be appropriate in specific cases. Those Federal processes, including a statement by the Federal agency as to why it cannot comply with the coastal zone plan in the unusual case, would have results almost identical to those the MOU process seeks to achieve.22

The Act states (as quoted by DOT in the Washington response] that it shall be construed not to diminish, change modify, limit or affect existing laws applicable to Federal agencies or their jurisdiction....23

The conceptual and pragmatic implications of the mean and extreme views, the latter represented here by DOT, will be explored further in Chapter VI.

Federal Agency Policy Guidance

General Agency CZM policy guidance -- The need for federal agencies to develop guidance on the Act's process elements was transmitted rather early by OCZM and many agencies complied, but compliance results came over a long and varying time frame, as the GAO report has indicated.24 Perhaps more important was (and is) the need for federal agencies to develop
their views of national interest or overriding national program requirements so that individual inputs to reviews of state programs could be based upon more explicit criteria. OCZM re-emphasized this guidance need in a letter to all reviewing agencies after the initial review of the Washington program in May, 1975. The OCZM letter stressed the Act's requirements and the strong logical, if not statutory, rationale for the interested federal agencies to develop policy statements and consult with OCZM during their preparation. This exhortation met with mixed results due to a number of reasons: (1) policy formulation usually is developed at the national level where, until very recently at least, detailed knowledge of the CZMA, state programs and key issues was either lacking or recognized only by mid-level staff representatives; (2) the formal policy making process (almost always lengthy) when concerning another agency's program, almost naturally assumes lower priority than an agency's own program activity; and (3) there was, as hopefully has been demonstrated by this point, considerable uncertainty as to the definition -- for CZM purposes, among other -- of national as distinguished from shared or state interests in coastal zone management.

The context of agency policies -- Review of the agency policies in Appendix II indicates that there are wide variations in the scope, direction and contents of those statements. These statements were promulgated as of early Summer, 1976 and are representative of the guidance provided both to agency regional and field staff -- and to the states. Their scope varies from extensive formal "operating instructions,"25 to relatively informal dissemination.26 The policy statements rarely set forth detailed assessment of the policy issues raised by the CZMA, but
all recognize the potential importance of the Act's consistency provisions. The contents of these statements essentially are five fold, although an inspection of the excerpted material shows that no single document contains all elements and many contain only passing reference to these subjects. The five general types of guidance content are:

(1) identification of the potential impacts of the CZMA on agency programs and policies; (2) specific attention to the effects of the consistency provisions on agency missions; (3) review criteria concerning such aspects as the clarity, appropriateness and usefulness of state controls, institutional and procedural arrangements, and treatment of relevant national interests; (4) instructions concerning agency participation and review policies and procedures; and (5) in a few cases, positive instructions on agency provision of assistance to state CZM programs and explanations of agency obligations to comply with the consistency provisions.

The Department of Transportation is perhaps the most explicit in its policy toward state programs. DOT's general criterion stated for transportation interests is as follows:

When essential in the national interest, the construction, maintenance and improvement of present and future transportation systems on and under the surface of the land, on and under those waters subject to the jurisdiction of the United States, and in the air, shall predominate over less essential interests...Coastal zone management programs should include explicit acknowledgement of and adherence to existing and future national interest in each...direct transportation program. In varying degrees, all Federal transportation assistance programs entail the weighing of national and state interests. 27

This DOT statement serves to highlight the state-federal issues rather completely; it does little to clarify how to resolve such issues. In this author's view, DOT's subsequent listing of transportation activities "in the national interest," further raises, rather than answers, the balancing question:
a. providing for the national defense (e.g. access to military installations and ports of embarkation)

b. maintaining the public safety and welfare (e.g. hurricane evacuation routes)

c. managing public lands in the coastal zone (e.g. access to wildlife sanctuaries)

d. providing for public recreation (e.g. beach access)

e. facilitating interstate and international commerce (e.g. access to seaports)

f. developing and using natural resources in the coastal zone and outer continental shelf (e.g. oil, fisheries)\(^{28}\)

This and the preceding chapters naturally suggest that the national interest and the other review criteria of the federal agencies are diverse, complex, crucial and in need of substantial clarification. But the national and federal agency end of the balancing spectrum can only be understood and clarified in the context of the state responses to the CZMA, the administration of the Act by OCNM, and perhaps a role envisioned for the Executive Office of the President. Although there are many potential themes that can and should be clarified to address these interrelated issues, the "national interest," facility siting and federal consistency "cluster" of issues are probably unique to the CZMA and, in the author's view, most crucial to the program's relative success or failure in the future.
CHAPTER V

NATIONAL INTERESTS, FACILITY SITING AND FEDERAL CONSISTENCY

The National Interest Considered

Conceptual examination of the national interest — Considerable effort was given to examining the literature dealing with the "national interest," in its various forms, as perceived by political science, public administration, legal and policy analysts. In retrospect, the results of this search proved largely unfruitful, contradictory and somewhat limited in clarifying value. The national interest as a conceptual guide to CZM administration remains somewhat clouded at best. This, in part, determined the subsequent experiential focus of the paper. However, an understanding of what the national interest concept does not clarify, as well as development of a common language for future use and refinement in practice can be an important backdrop for making reasoned decisions among alternatives in this area.

A leading spokesman for the "realist school" of public administration, Richard Taylor, is quoted as saying: "The ghosts of 'national interest' and 'general welfare' are unfrocked; these phrases come to have no more authority over inquiry than a divested priest has over the faithful." In an article, containing the above "defrocking" stance, Schubert makes what this author considers to be two important comments on this rather clever discarding of an often used (and considered by many to be vital) concept:

The administrative realists have defined the problems of the administrator in terms of the political process rather than in terms of administrative efficiency or natural law. The principal difficulty in their theory lies in its generality, for they describe wonderful engines (including the human mind) in which are poured all sorts of miscellaneous ingredients which, after a decent period of agitation, are spewed froth from time to time, each bearing a union label which reads: 'Made in the Public Interest in the U.S.A.'
Earlier examination of the history, language and practice under the CZMA suggests something of this (implicit) reliance upon and assumptions about the "national interest" elements of the CZMA.

Schubert also concludes, in part, with an interesting observation that suggests at least one approach to the future evaluation of the CZMA and its administration:

If we assume that the peaceful adjustment of conflicting interests is not only the consummate act of the politician, but that it is also the fundamental task of all policy processes in a democratic polity, then a model of administrative due process could be empirically verified... and measured by a reciprocally minimal recourse to other centers for public policy change (i.e., the legislature, the chief executive, courts, etc.).

J. Roland Pennock suggests an optimistic view of the national interest (or public interest which appears interchangeable to "national" in the literature). In summing up the administrative facet of this issue, Pennock begins with a question:

What then is the "public interest"? In general, it is a spur to conscience and to deliberation. It is a reminder that private rights are not exhaustive of the public interest and that private interests include much more than self-interests... A legislature that delegates to an administrative agency the power to regulate in accordance with the public interest is not merely "passing the buck"; it is, may be, providing the means for applying a dynamic and increasingly precise policy based on experience, continuing contact with special interests, and freedom to pursue the general welfare as they come to see it.

Joseph Frankel, a British political scientist, is the only source discovered by this author who devotes book-length treatment to the concept of national interest. He attempts "to break down the concept into factors which may ultimately be used in factor analysis...." This effort, at least to the present writer, is a provocative if partially successful analysis of the term. It certainly appears to be the most rigorously thought through exposition of the issue. For CZM purposes, this analysis
provides only tangential insight, perhaps because its author concentrates almost exclusively upon national security and international relations and appears to believe that the relationship of these to domestic issues is blurred. Nevertheless, Frankel proposes a classification of the national interest term that is very helpful in sorting out its various usages and the attitudes and values associated with it. He suggests three distinct but related usages of the national interest term:

1. "aspirational" -- refers to the vision of the good life, to some set of goals which the state would like to realize if this were possible, the general direction desired and, given an opportunity through favorable changes in the environment or in capabilities, it may become operational. Aspirational interests are characterized as: long-term, rooted in ideology, providing broad purpose, not needing full articulation and possibly even contradictory.  
2. "operational" -- refers to the sum total of interests and policies as actually pursued. Operational national interests are characterized as: short-term and seen as capable of achievement in the foreseeable future, descriptive rather than normative, translated into policies gauged against capability, and can be arranged into maximum and minimum programs. 
3. "explanatory/polemical" -- refers to recourse to national interests (or less-than-national interests in our case) to explain, evaluate, rationalize or criticize; to "prove" oneself right and one's opponent wrong rather than its potential use to describe or prescribe.

Each of the major actors in the balancing act, including the Congress, appear to have used or interpreted the Act's national interest clause in one
and usually more than one of these three ways. For example, the Act's finding at Section 302 (a) that "there is a national interest in the effective management, beneficial use, protection, and development of the coastal zone," would appear to fall squarely within the "aspirational" usage of the term. Federal agencies in presenting their claims for required state accommodation of extremely broad "national interests" also show signs of asserting "aspirational" obligations. States and OCZM on occasion have asserted the national interest in having the states assume a key role in coastal management. The "operational" use of the term appears to fit the Act's specific requirements for adequate state consideration of federal agency views and the national interest in facility siting. Likewise, more specific federal agency policy positions on nationally essential or important interests in the protection or promotion of facility siting are more consistent with an "operational" usage of the term. Experience with the Act since its inception demonstrates that the "explanatory/polemical" usage of national (or non-national) interests has been much in evidence and may increase in frequency if state-federal adversary stances become the ruling practice in this domain.

Frankel provides a final and potentially important conceptual insight into the balancing of state-federal interests through the notion of "salience." He uses this term "to convey the joint qualities of importance, prominence, urgency and intensity...[where] future changes in importance are often so heavily discounted that it may clash with long-range considerations...[and] can be equated with the prominence of the issue...." Frankel believes that this quality is a key to the setting of priorities in the political arena and that it is a major factor in liberal-democratic societies in the interplay among various sectional interests.
In an analysis of the national interest perhaps more directly related to the issues raised by the CZMA, Bockrath explores the question of which level of government shall decide where developmental-environmental interests collide and where there are present substantial national interests in the outcome. While this announced exploration may promise more than it produces, three points in Bockrath's article add further to the conceptual and practical emphases that can be pursued under the Act:

National interest is partly a matter of degree and partly a matter of whose ox is presently being gored. Of particular concern should be the extent of discretionary authority by the federal government where the national interest at stake is less obvious than is the case of imminent emergencies. The problem of state-federal prerogatives becomes substantially more susceptible to political and philosophical dispute when there is no unifying catastrophe or clearly defined national goal or interest.

Finally, Bockrath implies that the diffusion of state-federal responsibilities in such areas as OCS development and deepwater ports may simply be a short term political expedient that will give way to national controls as the crisis in energy mounts, and that the debates over national in land (also read CZM) planning largely were issues of power -- not based on the merits or substantive needs for shared national planning.

CZMA and the national interest in facility siting. Before turning to some brief examples of facility siting and the potential uses of the Act's consistency provisions, it may be instructive to review briefly the Act's treatment of this subject. The "adequate consideration" of facility siting (Section 306) requirement of the states was brought into being with little substantive debate. CZM regulations dealt with this requirement in general language, but, significantly, interpreted 'facility' very broadly. GAO's evaluation, while acknowledging the importance of
national interest considerations, concluded its analysis with this finding. Experience in the federal review process and with federal agency policies suggests that many of the issues have been surfaced, but only a few addressed adequately. States have generally assumed a minimum compliance, rather than an affirmative stance concerning national interest matters. CZMA's 1976 amendments have significantly heightened the importance of national interest considerations, but restricted its incentives to substantial financial assistance and requirements for "planning processes" -- within the context of a voluntary, geographically limited CZM program. The Act's intergovernmental policies and balancing machinery remained essentially the same as the original Act.

The CZMA's initial assumption that states should be pivotal managers in the coastal zone was further reinforced by the beliefs of the 1976 Conference Committee, set forth in Chapter I. Essentially these beliefs are that closeness to the situation and cognizance of needs argue for a lead state role in facility siting and mitigation planning-programming. Does this logical enough assumption square with the general process of major facility siting or the practices of the coastal states? At present, the answer probably must be negative. The general process of facility siting initiative now lies with the proponent entity, public or private. Site selection can be characterized generally by its project focus, local or areawide suitability, strategic or cost implications (not the least of which is land acquisition or control) and seeking a receptive public climate for the facility. Barnam, et al. have described this process and its implications well:
In the process, developers of the private sector, as well as the developer agencies of the public sector, employ siting methods that are essentially opportunistic, in that methods of site selection are designed primarily to identify paths of least resistance from interest groups. Measured in terms of costs and time, the process is inefficient. Measured in terms of environmental quality indicators, the process is largely ineffective for ensuring appropriate siting and design decisions.\textsuperscript{13}

Baram's concise evaluation of the current governmental response to this situation is equally persuasive:

Each of the numerous federal, state and local authorities involved in the siting process in turn applies its narrowly drawn criteria to its permit and other review procedures.\ldots\textsuperscript{15} In multiple review contexts, in the aggregate, the numerous separate and uncoordinated decisions of these authorities constitute a negative approach to siting on the part of government, no effort is made to harmonize the separate review procedures.\ldots\textsuperscript{16}

While it is certainly premature to forecast the outcome, in the aggregate, states under the CZMA have only begun to address this basic and systemically unsound process of facility siting. Although the "adequacy" of state consideration of the national interest in facility siting is an important element in addressing this complex of issues, it is only one part of the larger management scheme encouraged under the Act. For the national (or for that matter regional) interest must be considered within what the state has adopted and proposed to use for decisionmaking within its management program. To the extent that states rely solely upon existing regulatory practices and authority (albeit with great potential benefits from consolidation and coordination of them) and only peripherally develop the Act's other elements (policies, priorities of use, geographical areas of particular concern and affirmative plans), the siting process described above will change little from its current form. This option appears open to the states under the alternatives provided in the Act for meeting its authority requirements. It is an option, however, that probably will not
remain untested by the various interest groups associated with CZM, both public and private.

Experience with Facility Siting Under the Act

Increasing pressures and conflicts -- The Congress in 1972 was aware that coastal facility siting and developmental pressures were major causes of environmental degradation in the coastal zone. The Act's findings are replete with recognition of the competing demands upon the vulnerable coastal resources, the often destructive results of accommodating ill-planned developmental activity in the zone and the high priority that should be given to natural systems in management efforts. The Act's call for substantive balancing was, and is, heavily weighted toward environmental conservation.

Since the Act's passage, the environmental quality fever of the late 1960's and early 1970's may have abated, but has certainly become an important integral part of societal values and a requirement of governmental decisionmaking. During this same period, the developmental pressures that in part impelled passage of the Act have increased substantially -- especially in terms of coastally dependent or related facilities. A primary source of increasing pressures on the coastal zone since 1972 is the so-called "energy crisis." With the Arab petroleum embargo came substantial and continuing pressures, national and otherwise, to develop OCS petroleum reserves, provide for deepwater or other specialized ports, increase refining and related facilities, and find suitable sites for electrical generating complexes. Concurrently, the more traditional, sometimes competing, claims on coastal resources for national defense, recreation, transportation and fisheries, for example, also increased
not only quantitatively, but also it seems in terms of public awareness and strongly held positions as well. The enormous pull-and-tug leading to California's adoption of a coastal management act in 1976, state resistance to accelerated OCS leasing in 1975-76 and local or state opposition to new port facilities during the past few years bear witness to this phenomenon.

Federal and state responses to facility siting -- Federal agency responses to increasing facility siting issues were discussed in Chapter IV and are documented partially in Appendix I. These responses most often stem from legitimate mandates and responsibilities as perceived by the agencies and reflect the diverse functional concerns identified by the Congress as in need of priority attention. The various functional agency concerns reflect, in short, national perception of the general demands identified earlier as central to the managerial CZM "art." What has been a difficult, if not surprising, result of this situation is a lack of clear national policies governing or relating the responses of individual agencies and lack of something approaching the same degree of importance being attached to institutional, legal and procedural mechanisms for resolution of state-federal interests as for functional claims.

State responses, of course, have been varied. In terms of the CZMA, however, certain broad and interrelated conclusions can be set forth, although they do not apply equally or in all instances. First, state CZM agencies often lack the interest, mandate or authority to deal specifically with various aspects of facility siting. In this the states often match or exceed the fragmentation of institutional or managerial administration at the Federal level. Second, most states have reacted to the national interest
in facilities siting provision as a separate, distinct and often distasteful precondition of CZMA approval—not an integral element of program development. When coupled with the predominant state approach to management—knitting together regulatory procedures and programs—the result characteristically has been to place constraints on facilities (very much needed), but to avoid key issues of facility siting priorities, suitable or prohibited areas, conflict resolution mechanisms and future siting objectives. Third, states, only sometimes including their CZM programs, have sought an increased voice in federal agency decisionmaking (e.g. in the planning, timing, alternatives and impacts of coastal facility siting or regulation), often successfully, but equally often without a coherent, plan-based, cluster of policies and procedures to substitute for or modify proposed federal actions.

The experience with facility siting under the CZMA, in short, is inconclusive so far concerning the political as well as the managerial roles states and federal agencies will play under the Act. Neither party has yet developed the policy frameworks that would give life to the "adequate consideration" and other balancing notions of the Act. Nevertheless, while confrontation and buck-passing remain very much a part of the facility siting and its associated regulatory processes, the CZMA has tended to focus these issues and may prove to be a viable means for their (to recall a nice phrase) "peaceful adjustment."

Trident, OCS and Federal Regulatory Programs

There are few discreet examples of how the states or federal agencies may operate under the CZMA concerning national interest facilities or objectives. This perhaps is due to having only one state and two
segments of states approved as of this writing and the evolution and experience under the Act discussed earlier in the paper. There has been some experience with various facilities or national concerns, however, that may serve to inform future action. The objective here is obviously not to attempt even a partial description of what one author correctly has described as the "delicate inter-relationships and nuances between the poles of authority...within a hodge-podge of interagency and inter-governmental relations of consuming complexity." Rather it is hoped that some light may be shed on what limited experience has occurred in the recent past.

**Trident -- Location and construction of the Trident Submarine Support Facility, located in the State of Washington, Hood Canal, Kitsap County, was first made public in 1973 and is currently underway, after considerable controversy, litigation and federal financial assistance to the locale. The facility is projected to occupy approximately 8,000 acres and sixteen miles of the scenic Hood Canal shoreline and will support what is considered by many to be America's future first line nuclear deterrent-- the ten ship Trident Submarine Fleet. This activity took place within the immediate coastal zone in a state that had pioneered state-local CZM efforts since 1971.**

The material that follows was excerpted from a study prepared by Bill Williamson on the relationship of the CZMA, what was to become the first approved state CZM program, and an almost classical confrontation of national-state environmental interests. Williamson's key findings for the purpose of informing future CZM improvements, include the following:
Neither the community-related impacts nor the environmental impacts... have received or been involved in any operative process of decision making using federal or state coastal management legislation.\textsuperscript{19}

The lack of an adequate conflict resolution procedure within A-95 and A-95 Revised through which most Trident-related assistance flows makes A-95 a questionable process as the backbone of Washington State's managerial network.\textsuperscript{20}

\begin{quote}
[Prior to approval, the state CZM program had attempted to influence the Navy through denial of a Section 10 permit and later relented, but acknowledged that although DOE had come to a full understanding with the Navy over the refit pier, blanket approval of the Facility would not be given and that future DOE objections...were not ruled out.\textsuperscript{21}]
\end{quote}

As a regulatory tool over federal lands and enclaves in the coastal zone, the CZMA...should be viewed as only beginning steps. To a large degree, the CZMA and SMA will not be able to provide a single management program over all users of the coastal zone.\textsuperscript{22}

Consistency dialogues between the state and federal agencies will include substantive determinations heretofore not possible under the A-95 Review Process.\textsuperscript{23}

For their participation in the [CZM] program the states have received something they may never have been constitutionally permitted to prescribe...namely the requirement of consistency with their state programs. Although the states may not have received the degree of federal consistency desired, Section 307...represents a significant concession by Congress similar to that [substantive compliance] of the Federal Water Pollution Control Act.\textsuperscript{24}

\begin{quote}
It is apparent from this careful analysis that the earliest use of CZMA consistency principles was limited, encountered severe state, as well as federal problems, but cannot be precluded from becoming "an important factor in key-facilities impact mitigation in the future."\textsuperscript{25}
\end{quote}

\textbf{The OCS --} The major CZM results of federal agency efforts to accelerate and open "frontier" outer continental shelf areas to petroleum exploration and development are embodied in the 1976 amendments to the Act, discussed earlier. These amendments represent something of a political victory for state involvement in the OCS process and in planning for and
mitigating some of its adverse onshore effects. A major test ahead for all the key actors is to integrate these OCS-impelled amendments into the total fabric of the CZMA. Highlights of experience with the OCS issue prior to passage and implementation of the 1976 amendments are as follows: (1) some states turned to the CZMA and the still-developing stages of their CZM efforts as rationales for deferral of Interior's leasing schedule; (2) the Congress deliberated over literally hundreds of legislative proposals, yet passed the 1976 amendments despite opposition from some federal agencies and industry; (3) while states achieved a voice in OCS decisions outside of the CZMA, it became a major potential vehicle for planning, mitigation and consistency of leasing plans and production; (4) most states had not developed policies, standards or plans for their territorial waters -- coastal water management is still in its infancy; (5) supplemental grants for OCS impact planning were made only in 1975-76; (6) interstate regional coordination was quick to coalesce against certain federal OCS proposals but has yet to mature into a strong basis for treating CZM issues; and (7) absent the hoped-for revenue sharing or grant provisions, some states, at least, are viewing the 1976 amendments and OCZM administration with some misgivings.

The OCS issue also raised important and fundamental constitutional questions which go beyond the scope of this paper to explore, but which are evident in Appendix III and are argued extensively in the recent literature.26 (As a pragmatic aside, however, the state-federal legal confrontations and differences evident in the OCS issue to date may spur increasing reliance on the courts in the future implementation of the CZMA.)
Federal regulatory programs -- In some cases states seek to use the CZMA and approval under the Act to enhance their ability to influence federal agency regulatory programs in the coastal zone. For example, many states feel that if they achieve approval under the Act, they should either carry substantially greater weight in agency permit or licensing decisions or should supercede them altogether (with or without qualification). A prime example are permits considered by the Corps of Engineers for work in navigable waters under the Rivers and Harbors Act of 1899 (Section 10 actions) or wetlands alteration permits under the Federal Water Pollution Control Act (Section 404 actions). As has been seen, the responsible federal agencies generally resist this notion and many environmental groups oppose such a shift vigorously.

Clearly there are actions proposed subject to federal regulation that are of national concern; others are not. Just as clearly, if state capabilities, standards and performance under the CZMA meet or exceed existing agency practices, there is a strong argument for a shift in regulatory responsibility. The Act codifies this notion, in part, at Section 307 (c) where applicants for federal agency licenses and permits are required to certify state CZM concurrence prior to the agency granting permission to proceed. So far at least, the refinement of this issue--nearly always associated with facility siting -- has been avoided by the parties. This dialogue, where it has occurred, has generally been couched in terms of federal agency intrusion into local affairs, undue red tape, state incapacity or unwillingness to assume a lead role, etc. It remains to be determined if the CZMA provides the basis for a significant shift in federal-to-state regulatory responsibility and a responsible incentive to hammering out the conditions under which such a shift could or should be made.
Building the Fulcrum: The Consistency Regulations

Reference has been made to the Act's unique federal consistency provisions throughout this paper, with good reason. For the obligations inherent in the consistency policies of the Act are ones that help distinguish the CZMA from other assistance programs in addition to its important geographic focus, implementary incentives and recent energy amendments. If there is a fundamental cause of state-federal conflict and dynamic future potentials, it probably lies in the consistency system that will be formulated under the Act. Therefore, it is appropriate in concluding this chapter to attempt a distillation of the experience and issues surrounding the consistency question.

OCZM rulemaking -- Draft regulations were published by OCZM in September, 1976 after an extensive period of preview beginning in June of the same year. In this author's opinion, these regulations represent an evolution and maturation of OCZM administration in response to the program development and approval process experience of the prior two years. OCZM assumed the difficult, but essential role of formulating consistency implementation policies, essentially without Congressional guidance, as has been seen. Initiating this rulemaking formally and finally placed OCZM in the midst of the state-federal balancing act, a position that is only likely to deepen in the future.

Unlike much of OCZM's earlier regulations and its "catalyst" role in state-federal matters, the proposed consistency regulations attempted to construct a firm, even prescriptive, basis for implementing that portion of the Act. The highlights of this difficult effort are reflected in the proposed regulations as follows: (1) definitions of the Act's tortuous and vague qualifying language; (2) assignment of specific
roles and responsibilities for all key actors; (3) specific notification procedures and processes; (4) designation of who makes which determinations; (5) clarification that both federal and state agencies accrue new obligations under the Act; (6) limited discretion allowed to the parties; and (7) promulgation of the specific ground rules for administrative conflict resolution and appeals short of recourse to judicial relief.

Responses to OCZM rulemaking -- Appendix III rather graphically illustrates the range of responses to this OCZM initiative and should be reviewed in its entirety by the reader. Even a cursory examination of these responses shows that they generally fall into related categories such as unworkable, burdensome, overly complex, legally insufficient and so on. Neither federal agencies nor the states (and in this instance, interest groups as well) were satisfied. The key thrusts of this review community are summarized below.

Some federal agencies repeated their concerns expressed earlier about state programs, especially in terms of the necessity for states to accommodate national interests and to provide substantive policies and specific criteria for determining consistency. While these recommendations have obvious merit, the comments reviewed for this paper provided little further guidance on reaching the national interest than the earlier program review material. At the same time, agencies sought various avenues to widen their discretion, limit Secretarial or state intervention in their affairs and streamline the consistency process. These objectives were expressed in various ways, but included; (1) substituting agency rulemaking for NOAA's; (2) insisting that federal agencies have the full and complete responsibility for consistency determination for their activities and projects; (3) insisting that NEPA or A-95 processes be
utilized; (4) objecting to any outside intervention in disputes or appeals; and (5) suggesting the deletion or severe limitation of administrative remedies short of litigation.

States almost predictably held differing views, except for the desire for simplification. States claimed the right to determine consistency, suggested that federal agencies must show that overriding federal interests are at stake, expressed skepticism about the force of mediation provisions and in one instance referenced the efficacy of power politics over administrative remedies.

Interest groups essentially pitted the oil and gas industry against environmental protection organizations. And in a "dialogue" reminiscent of the 1974 "coastal imperative," divided along the following representative lines: (1) expediting energy development versus enjoining it if non-consistency is alleged; (2) claiming national interest "outs" versus environmental imperatives; and (3) seeking to minimize mediation procedures versus opening mediation to any and all outside participants.

Although there were many familiar and some new themes that emerged from the initial consistency rulemaking effort, it differed from many past CZM actions in that these regulations broke new and formal ground in state-federal CZM relations. Rather than an evolutionary testing of the Act's broad, permissive and optimistic language and assumptions, the proposed rules seek to develop the maximum of precision and procedure. In this author's view, this approach squares with that of another student of CZM affairs who stated:

The procedure of administrative rulemaking is in my opinion one of the greatest inventions of modern government. It can be, when the agency so desires, a virtual duplicate of legislative committee procedures. More often it is quicker and less expensive....Anyone and everyone is allowed to express himself and to call attention to the impact of various possible policies on his business activity or interest.
Of course, however, the unfolding of the state-federal balancing act does not stop here -- even with the most superb rulemaking -- for the consistency regulations rest upon the total fabric of the CZMA, its past experience and most importantly the future course of actual events. Having reviewed this history thoroughly, it is now appropriate to turn to the future options and strategies for improving the current CZM situation.
CHAPTER VI
SUGGESTED DIRECTIONS FOR THE FUTURE

This chapter presents my conclusions and thoughts concerning the future of state-federal relations and interests in coastal management. My rather extensive review of the experience with the Act thus far presents at least two temptations. On the one hand, one cannot help but be impressed with the enormous difficulties surrounding the future success of CZM as presently constituted. Certainly some of us who saw its rather unique features as constituting a "breakthrough" in intergovernmental arrangements must, at least, be chastened by its implementary experience.

A temptation then, is to accept one fashionable theme of the "realist" view, namely that whatever progress will be made will emerge primarily from the "wonderous engine" of interest agitation; this view seductively promises results without rational and sustained efforts for change. On the other hand, a temptation exists to alter fundamentally or to seek revolutionary answers to the CZM balancing issues. While I find myself pulled in both directions, a position that is something more than the first and less than the second suggests itself as worthy of substantial effort, at least for the near future.

The Prognosis for Positive Change

Many of the CZMA's initial state-federal assumptions and expectations have fallen short of early verification or fulfillment. In my view, however, these assumptions and expectations have evolved as a result of this experience and perhaps only now can be re-assessed, modified or abandoned from an informed perspective. Three factors appear to be important determinants of an optimistic or pessimistic prognosis for CZM in the future.
States, together with the Act's other key actors, can opt for different alternative CZM futures -- At least under the CZMA, there appear to be three outcomes of CZM participation that are still very possible at this stage of the program: (1) Due to a number of local, state and federal conditions, the large majority of coastal states can choose to remain in the program during its developmental period and end participation, either voluntarily or for failure to make "adequate progress" under the Act. This option must be considered as more than a farfetched and gloomy prognostication. With the recent extension of the developmental period, the Act now provides adequate time to test fully CZMA's incentives, state resolve and federal agency cooperation in entering the administrative or implementary phase of the program. If the majority of states are unwilling or unable to take the necessary steps to achieve approval, then in my view, CZM should become a prime candidate for "sunset" review. (2) A second alternative involves a future wherein ten to fifteen states achieve approval under the Act, enter into and refine their programs during implementation and make significant progress in state managerial capability. Full exercise of the Act's consistency, facility siting and potential state-federal managerial coordination could then be exercised. Congress and the executive branch would then have an experiential basis upon which to evaluate the Act's basic framework for management -- and repeal modify or extend it as they see fit. (3) The third alternative involves all or at least a large majority of states coming into the administrative phase of the program, development of the nation's first comprehensive (if geographically limited) facilities siting effort, establishing a basis for interstate regional CZM efforts and a full testing of the Act's state-federal policies. Attention could
then be shifted, at least in part, from almost sole managerial reliance upon regulatory constraints to affimative management strategies.

The growing importance of the coastline and coastal waters may affect CZM futures -- Just in the past five years, the incremental building of what may be termed a "marine management zone" appears to be emerging through various pieces of domestic legislation. Marine pollution control, sanctuaries, wetlands protection, deepwater ports, regional fisheries management, OCS development and ocean dumping come to mind as examples of this phenomenon. State-federal issues of the sort encountered in CZM (if not its necessary local land use preoccupations) also are intertwined in these related initiatives. Taken in the aggregate with the CZMA, these recent marine-related initiatives present new challenges and opportunities for establishing state-federal management systems. The states in particular should weigh the potential benefits, or lack of benefits, of the CZM program in the context of this evolution of a broader marine management spectrum -- an area that until recently was almost soley a federal domain. The state role in this domain will be tested during the next few years.

A common language and understanding must be developed concerning state and national interests in the coastal zone -- Whatever its eventual outcome, the CZMA has served to highlight the need to sort out and clarify state and national interests, together with their attendant roles and responsibilities in resource and related coastal management. "Aspirational" goals and perceived interests in CZM should be understood for what they are and placed in their appropriate philosophical or semantic niches. Similarly, "explanatory/polemical" assertions of the national or state interests should be recognized, if not abandoned. Continued heavy reliance
upon these usages of the term only serve to mask what should be apparent: state-national interests are inextricably tied together in the coastal zone, are or should be shared in many cases and thus require explicit articulation. The question really rests upon whether these interests will be worked out, in part, within the Act's managerial framework or whether they will collide as "salience" dictates. A major premise of my thoughts concerning CZM's future is that an "operational" approach to state-national interests is possible within the Act's framework, but that the framework must be strengthened substantially.

Evaluation of the CZMA Itself

Congress should consider holding oversight hearings on the state-federal aspects of the Act in early 1978 -- Although the Act was substantially reconsidered and revised by the Congress in 1976, many of its most crucial state-federal policies and mechanisms remain unchanged from 1972. In many ways this was most appropriate, given the status of state programs, the uncertainty of federal agency positions and lack of experience with the Act's consistency provisions. By early 1978, however, there should be a much more developed experiential record, particularly in state-federal relations, upon which the Congress could evaluate the Act, its administration and the performance of its key actors. Many of the suggestions for more immediate action described below would serve to inform and support such a congressional initiative. Even though it may be premature to suggest a tentative "agenda" for future congressional oversight, the following areas of assessment are needs made evident by this study: (1) The Act lacks clear "action-forcing" requirements on the states and federal participants; after four years of experience, should it? (2) Originally, one version of the CZMA contained provision for a National Coastal Resources Board, chaired by the
Vice President, whose major responsibilities were to deal with state-federal issues in CZM. Should some version of this sort of mechanism, perhaps with a limited life-span, specific mandate, and prepared record be established by law? To what extent could such a mechanism contribute to resolving other state-federal issues associated with delegating national purposes to state administration? (3) To what extent has the Act's statutory language and legislative history contributed to state-federal misunderstandings, lack of progress or conflict? (4) And how have the Act's consistency provisions worked and how have or should they relate to other national "harmonizing frameworks"?

A White House sponsored conference would be an excellent forum to evaluate CZM and relate it to the larger concept of an emerging marine management zone -- The significant recent coalescence of interests -- state and national -- in the coastlines and marine waters would seem to warrant the sort of interagency, intergovernmental and inter-interest focus that can be given almost solely by White House sponsorship. There is a growing need to take stock of the many somewhat independent federal initiatives taken to address the marine-related environment. The record and direction developed by such a conference might well establish a course for "ocean-related policy" that has often been confined to the forums of academic dialogue. The careful planning requirements to make such an effort successful would, in and of itself, provide a needed perspective on these complex issues.

Administration by OCZM

As the federal agency chiefly responsible for administering the CZMA, OCZM has assumed a rather important, if sometimes uncomfortable, position as we have seen earlier. Within constricted bounds, OCZM must be considered to have major responsibility for guiding state-federal interaction
under the Act. Some thoughts on actions that could be taken by OCZM within the current framework of the Act are as follows.

Undertake a thorough revision and integration of administrative regulations for program development, approval and federal coordination — While there probably are many areas where the basic regulations could be strengthened, consolidation and updating to reflect current realities foremost among them, three elements of the regulations stand out as a result of this analysis and experience with the Act. First, the national interest guidelines should be thoroughly examined and revised. As they currently exist, the regulations invite the broadest possible claims to "national interests" and at the same time are almost silent on what constitutes "adequate consideration" of them. Experience in this arena suggests that the following revisions be developed and proposed: (1) a narrowing of what is to be "considered," namely the siting of facilities; (2) acknowledgement that there must be distinguishable "tests" (read "consideration") by states of national interest facilities — otherwise this explicit provision is rendered of much of its meaning; (3) set forth at least qualitative criteria for factors that should be considered in assessing national interests, e.g. coastal zone dependence (is the site necessary?) types of facilities, their scale or magnitude, whether they serve interstate, national, or international requirements, potential alternatives, etc.; (4) what bases in national policy and law various facilities or agency claims have — and what discretion is afforded the states in their siting, operations and impacts; and (5) what methods and procedures would be considered "adequate" state consideration for the purposes of the CZMA, e.g. reliance upon NEPA, as well as the CZM program, per se. Second, consider a revision to the "regional benefit" guidance that makes it clear that this thorny requirement basically is an
intrastate matter, one that might best be restricted to assuring that
localities not "unreasonably restrict" such benefits based upon areawide
plans and policies and relate them directly to the contents of the manage-
ment program. Again, it would appear that OCZM must try to explicate the
limits of this requirement, together with stating as clearly as possible
what policies and procedures will constitute "a method of assuring" that
this provision is carried out (including, for example, the planning coor-
dination requirements of Section 306 (c) (2) (A) and (B). Finally, "ade-
quate consideration" of federal agency views should be related to, but dis-
tinguished from, the above two provisions -- procedurally, and in terms of
how OCZM will treat these views in terms of the review process (e.g. working
out with federal agencies and the states an acceptable work program commit-
ment to respond appropriately to legitimate views).

OCZM should consider developing a specific work program to respond
to national interest issues -- Resources permitting, there appear to be
some specific tasks that would enhance the ability of all principal actors
to deal with national interest issues. For example: (1) there is a need for
clarification of what standing states and OCZM should give to general claims
made by some federal agencies that interstate commerce, federal preemption,
navigational servitude, statutory prohibition or other legal doctrines
exempt or override CZM programs; (2) conduct an in-depth analysis of the
specific policies, procedures and contents of at least the advanced CZM
programs to identify the specific interfaces of state interests with what
is known of federal agency interests; and (3) develop further guidance on
techniques for dealing with national interests in facility siting such as
those proposed by Baram in his recent book.¹
Consider what specific actions in the area of federal agency relations should be taken by OCZM—OCZM should not overestimate its influence in dealing with the federal community. However, there appear to be at least three candidate areas where OCZM initiatives might contribute substantially to furthering the Act's objective of coordinated state-federal relations. While these suggestions probably are not new, they do not appear to have been explored in the necessary detail to date: (1) working with the EPA to determine how CZM programs can utilize more effectively the substantive standards of water and air quality and the procedures of Executive Order 11752, for coastal zone management, as well as seeking to identify how coastal water quality standards can be "fine tuned" to achieve state managerial objectives and compatibility with CZM shoreland and intertidal policies; (2) exploring possible revisions of OCZM guidance, NEPA guidelines and A-95 review policies to assure that maximum compatibility and use can be effected among these frameworks; and (3) investing sufficient time and resources to evaluate whether an approved CZM program can provide the basis for expeditious, environmentally sound, joint regulatory activity and whether there is real or illusory promise for the reduction of regulatory "transaction costs" utilizing CZM.

State and Federal Agencies

Making recommendations concerning the states and federal agencies is difficult because of their diversity of attitudes, varying commitment to CZM, legislative or constitutional constraints and the essentially voluntaristic nature of the Act. For the states, however, the significant increases in the Act's incentives and its inescapable obligations to deal with the federal community and national interests may be persuasive.
Federal agencies are not at least immediately subject to incentives and are largely subject to the Act's hortatory (or self-protective) obligations. Nevertheless, there are increasing signs that underscore the need for state-federal reforms, of which the Act can be one element. There may even be positive incentives for federal cooperation that are yet to be realized.

States should allocate increased CZM resources to state-federal matters, including national interests, and develop a specific program element addressing this complex issue -- States should consider the substantial benefits of shifting from essentially a reactive stance to aggressive leadership in state-federal and national interest considerations. Suggested elements of such a change include the following: (1) While the Act is not directive in this respect, its substantive provisions provide the basis upon which states can develop an explicit rationale for "balancing" local versus national claims. The extent to which states explicitly address these issues will determine in part where the burden of proof rests with respect to the many claims explored in this paper. (2) Either as part of program development or in the administrative phase, states should seek legislative adoption of plans or key elements of plans to provide a solid framework within which state-federal interests can be negotiated. (3) States should consider utilizing the affirmative effects of the planned siting (or inappropriateness of siting) of facilities (and mitigating their adverse effects) in the coastal zone as a public education and political support mechanism for adoption or refinement of CZM programs. (4) States should adopt administrative strategies that will maximize state utilization of the consistency provisions and thoroughly prepare the record upon which the almost inevitable judicial construction of the Act can be founded.
Federal agencies should clarify their national interest policies and practices in concert with the states and OCZM. Hopefully, earlier segments of this paper and its Appendices provide at least a partial basis upon which the federal community can re-evaluate and refine "operationally" its national interest and program relationships to CZM. Although this will be a difficult process, it is suggested that: (1) Agencies, together with OCZM and the states, should identify generic "serious disagreements" and seek to mediate these under the current terms of the Act. (2) Agencies should attempt to address and resolve conflicting or incompatible CZM positions among and between themselves. (3) They should clarify and expand agency guidance to their respective regions or field offices. (4) And they should articulate federal agency views on general or specific, individual or regional, work elements that states should undertake that will improve state-federal relations and practices within the framework of the Act.

Good faith efforts by all of CZM's major actors to explore, amplify, propose additions to and act upon these suggestions is needed to test fully the Act's balancing assumptions and expectations. It is hoped that this study will contribute in some measure to this effort.
FOOTNOTES

CHAPTER I

1 See Appendix IV for a reproduction of the full text of the CZMA, as amended; for purposes of further verification of this source, pertinent sections of the CZMA are cited in the text and may be referenced in this Appendix.


3 See, for example, the discussions of Hershman and Zile noted above and John Armstrong, et al, Coastal Zone Management: The Process of Program Development (Sandwich, Massachusetts, Coastal Zone Management Institute, 1974).

4 Harold F. Wise and Associates, Intergovernmental Relations and the National Interest in the Coastal Zone of the United States, prepared for Interagency Committee on Multiple Use of the Coastal Zone (mimeographed paper, March, 1969).

5 Ibid., 4.

6 Ibid., 7.

7 Ibid., 19, 67.

8 Zile, "A Legislative-Political History," 236.

9 Ibid., 236.

10 Ibid.

11 U.S. Senate, Committee on Commerce and National Ocean Policy Study, Legislative History of the Coastal Zone Management Act of 1972, as Amended in 1974 and 1976 With a Section-by-Section Index, Committee Print, 94th Congress, 2d Session, (December, 1976), 23-64 and 95-181.

12 Ibid., 43.

13 Ibid., 54-64.

14 Ibid., 164-65.
CHAPTER II

1U.S. Senate, Committee on Commerce, The Coastal Imperative: Developing a National Perspective for Coastal Decision Making, Committee Print, 93d Congress, 2d Session, (September, 1974).

2Ibid., iii.

3Ibid., vii.

4Ibid.

5Ibid., 84.

6Ibid., 69.
13 Ranging from a total of approximately 15 professional staff during its first year of active administration, through about 30 during the second and to 43 in its third year to administer the national program.


15 Ibid., see the preface, Section 920.3, Section 920.21 and especially, Section 920.45 of the Regulations.

16 Ibid., preface.

17 Ibid., Section 920.45(f).

18 U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management (mimeographed paper, 1974).

19 Ibid., ii. (It should be noted that no additional handbooks or revisions have been made. The press of events and experience overtook the comparative luxury of revising handbooks -- oftentimes produced, it seems, but equally often remaining unread or ignored).

20 Ibid., 45-6.

21 Ibid., 45-64.


23 Ibid., Section 923.11(b)(4).

24 Ibid., see the insert occurring at Section 923.15 of the regulation.

25 Ibid., Section 923.44.

The OMB has not been requested to participate, nor have the ground rules for such participation been worked out for mediation even though a number of federal agencies have asserted that they have "serious disagreements" with state programs.

For example, naval operating areas and restrictions, interstate energy demand projections and seaplane bases were unforeseen claims of national interests.


bid., iii and iv.

U.S. Department of Justice, letter to Mr. William G. Brewer, Jr., General Counsel, NOAA, August 10, 1976.

CHAPTER III

See the quotes from Wise & Associates, Intergovernmental Relations, at page above.


See Section II of our Interpretation, "The Emerging Pattern of State Coastal Management," for a more detailed exposition of this analysis, 14-32.

Obviously, there were exceptions of this classification. Transportation, economic development or "mutant" entities were also chosen to administer the CZMA funds.

The State of Washington and the San Francisco Bay Conservation and Development Commission are representatives of this view.

See, for example, Wise & Associates, "Interviews," Intergovernmental Relations, 154-200.
This was extracted from review of the following sources: Commonwealth of Puerto Rico, Department of Natural Resources, The Culebra Segment of the Puerto Rico Coastal Zone Management Program, La Fortaleza, An Juan, August 23, 1976, v,9-v,16 and Appendix I; State of California, Coastal Zone Conservation Commission, California Coastal Management Program (Draft) (mimeographed paper, San Francisco, February, 1977), Section 10; State of Oregon, Oregon Coastal Conservation and Development Commission, Oregon Coastal Management Program (Draft) (mimeographed paper, Salem, February, 1976), "Discussion of Written Comments"; and State of Washington, Department of Ecology, Washington State Coastal Zone Management Program (mimeographed paper, Olympia, June 1976), 136-142.

U.S. Government Accounting Office, Uncertain Future, 47-64.

Ibid., 61.

Ibid., 60.

Ibid., 63.

CHAPTER IV

1See, for example, the comments of Environmental groups in Appendix III.

2Unfortunately, I was unable to obtain materials on California's revised program under a new law adopted in January, 1977. This would make a substantial contribution to understanding the balancing process and should be evaluated promptly.

3Other federal agencies, such as the Federal Energy Administration, had begun developing policy directives in 1976, so there well may be additional guidance other than that presented here.


5See, for example, Agriculture, DoD, Interior and especially Transportation comments on the Washington program.


7The one exception was the Department of Interior whose comments were received well after the final closing date on a process that had extended through 15 months.
CHAPTER V

All emphases in this Chapter are supplied by the author.

3Ibid., 444.
4Ibid., 445.
5Ibid., 448.
7Ibid., 31-32.
8Ibid., 32-33
9Ibid., 35.
10Ibid., 61.
12Ibid., 30.
13Ibid., 31.
14Ibid., 38-9.
15Baram et al., Environmental Law and the Siting of Facilities, 9.
16Ibid.
17Bill Williamson, "Trident: A Study of Key Facilities Impact Mitigation in the Coastal Zone," Paper submitted to the Environmental Problems Seminar (University of Washington School of Law, June 1976), ii.
18Ibid., see especially Chapters IV and V, C,D,and E.
19Ibid., 19.
20Ibid., 31.
21Ibid., 49-50.
22Ibid., 70.
23Ibid., 79.
24Ibid., 81.
25Ibid., 94.


CHAPTER VI

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Commonwealth of Puerto Rico. Department of Natural Resources. The Culebra Segment of the Puerto Rico Coastal Zone Management Program. La Fortaleza, San Juan, August 23, 1976.


DEPARTMENT OF AGRICULTURE

Culebra--We have no comments to make and no objection to the approval of this program...

Oregon--The Program... includes 7,811 square miles of land, which is substantially greater than any reasonably defined coastal zone. The Department of Agriculture cannot accept the inclusion of national forest lands nor can we accept the unreasonably large area in the coastal zone. (Agriculture questions) ... what mechanism exists to ensure full participation of interested landowners and agencies in future regulation changes. (Concerning consistency, the program is expected to) contain the presumption that the federal determination is valid until such time as the state refers the matter to the Department of Commerce for mediation.... If LCDC (the state CZM agency) is going to make the final state response to a federal action, the state procedure should be an internal matter; (and toward which federal agencies should not be responsible) for initiating actions within the state's process.

Rhode Island--The suggestion of utilizing performance standards is most commendable. This could be applied to every activity.

San Francisco Bay Conservation and Development Commission (hereafter SFBCDC)--We have no comments to make and have no objection to the approval of this program...
Washington--(The program) does little...to present a coherent picture of the actual operation proposed for the state's Coastal Zone Management Program. A section which succinctly explains proposed administrative procedures, cites all relevant acts and regulations and discusses proposed interactions between federal, state, and local governments is needed. If current procedures and regulations are considered adequate for the purposes of protecting coastal waters, the document should say so. (Later, in the FEIS) we would suggest that the Office of Coastal Zone Management urge the state to consider establishment of formal interagency coordinating mechanisms at both the state and local level to resolve conflicts.... We do not agree...that disagreements over the inclusion of federal lands within the coastal boundary is associated with a reluctance to abide by the consistency requirements...this statement confuses the excluded lands issue with the consistency issue and implies that federal agencies are seeking to avoid the consistency requirements.... USDA agencies intend to comply fully with the statutory requirements of the Act.

DEPARTMENT OF COMMERCE

Culebra--(NOAA) It is gratifying to note that most of the major areas of concern regarding this program which I transmitted to you on June 7, 1976, (this memo is dated December 1, 1976) have been appropriately considered. (NMFS) We find that biological information of particular interest to NMFS is dealt with only in summary fashion.
Oregon--(Mar Ad) One of the Maritime Administration's most significant concerns...is that state agencies...will get together with port, shipping, and related maritime transportation interests for the purpose of reviewing port master plans and to comprehend what the ports and maritime industry will require in the way of shorelands and coastal territory for growth, expansion, and the siting of future port and related intermodal transportation facilities. (NMFS) We support the designation of the crest of the Coastal Mountain Range as the Oregon program boundary. "The boundary approximates a natural biophysical unit, the coastal watershed." The future of our freshwater, estuarine, and marine aquatic habitat and fauna are dependent on adequate control of uses within the coastal watershed.

Rhode Island--(Mar Ad) Should a state choose to emphasize the preservation of its coastal zone to the exclusion of other alternatives, then the opportunity for the construction of a deepwater terminal in the water of the state's coastal zone might be lost, together with the economic returns to the state.... If port development is considered by a coastal state to be a lesser priority than other elements of coastal zone development, then the future improvement and expansion of ports in that state could suffer. A state's Coastal Zone Management Program could prove to be a constraint to a port authority's efforts to find and acquire additional shoreside acreage for expanding container terminal operations. Future shoreline planning must provide for additional transportation facilities. (NMFS) In general, we must look within a state CZM plan to determine whether our interests—the national
interest—are being served. Federal consistency with a state plan is viable only insofar as the plan does not conflict with specific mandated activities for which we are responsible. This is explicit in the law. What are the clear-cut "do's" and "don'ts" for Rhode Island's coast? A "trade-off" or "balancing" may well work against environmental amenities, coastal fisheries, habitat, food chains, marsh systems, etc.... The CWA was passed in light of past failures on the part of federal, state and municipal governments to provide the degree of protection to the fragile marine coastal ecosystem that is required to sustain its benefits to society.

SPICDC--(Maritime Administration) (Because BCDC called for an "expectation" that all federal activities not subject to its permits should be carried out in conformance with the program, the following relevant comments were provided): this provision could substantially affect Mar Ad's Guian Bay Reserve Fleet site activities that heretofore were conducted under Mar Ad interests only conditions.... Hence, it is recommended that the wording be included in the management program stating that:

1) BCDC will meet with interested federal agencies to jointly develop standards which will define the activities for which consistency will be necessary and to establish guidelines for judging consistency.

2) Federal agencies will then apply these standards and guidelines to their own activities to determine their consistency.
Some recognition of our role and the special situation a national emergency would create should be provided for... (NWFSC) The policies for wetland preservation and fill restriction in the Bay are in basic accord with the habitat protection goal of the National Marine Fisheries Service. Allowing... wide and unchecked latitude in defining national defense could unjustifiably threaten valuable habitats within the San Francisco Bay. The program... indicate(s) that the final determination as to the degree of federal compliance with BCDC's management plan for the Bay is up to the federal agency involved. Perhaps some avenue for BCDC appeals should be written into the program....

Washington--(EDA) It is obvious that the intent of the requirements for coordination with economic development interests were not met in the Washington CZM Program prior to its submittal for approval by the Secretary of Commerce. It is EDA's recommendation that the Secretary of Commerce should disapprove the Washington CZM Program pending adequate consultation by the Washington State Department of Ecology with groups and organizations that are primarily concerned with economic development. (Mar Ad) For the most part, the WSCZMP deals only in very general terms with substantive coastal zone development issues. Individual state laws which are designed to protect the coastal zone, such as the Washington State Tanker Law, passed May 29, 1975, and referenced (emphasis supplied) in the first paragraph on page 18, could have substantial impact on the tank vessels built under the Merchant Marine Act of 1936, as amended. Some consideration should be
given to the development of port reception facilities for the collection, treatment and disposal of oily wastes from vessels.... The tabulation of local master programs presently includes only Solid Waste Disposal among the series of about 20 selected shoreline activities. (NOAA) The Program does not reflect a thorough review of existing living coastal resource-related biological, economic and social data. The Program lacks basic goals and objectives, such as those advanced in the Oregon...Program, to assure considerations of important plant and animal populations, identification and management of significant habitat areas and living resource use zones. The WSCZMP does not demonstrate that plans for Areas of Particular Concern have been adequately considered. (NMFS) The Washington program must be the best product possible because of the national presence involved. The Washington CZM program does not adequately consider water uses. A mechanism for further integrating local shoreline management programs into comprehensive land and water use plans is necessary. We suggest that CZM boundaries be identified as the watersheds of all rivers draining into Puget Sound and the Pacific Ocean, with the exception of the Columbia River. It would seem appropriate to add the 1975 DOT wetland preservation policy (to the WSCZMP program). We are concerned about priority of uses. Formal federal agency-DOE coordination during the final critical months of the program development has been minimal. The possibility that Washington's CZM Program will be the first in the nation and therefore utilized as a sample for other states is both good and bad.
CORPS OF ENGINEERS (CCE)

California--All language in the proposed statement (of "national interests") which could be construed as creating an obligation on the part of Department of the Army components to enter into a Memorandum of Understanding or to apply for a permit as a condition precedent to the performance of federal functions must be deleted. All language...which purports to require the Department...to participate in, or be bound by, appellate procedures or permit procedures of California state agencies must be deleted.

Culebra--We note...that the Department of Transportation reserves the right to initiate ferry service to Culebra as part of the Puerto Rico highway program...the CZM program should consider the possibility of channel and harbor improvements, and especially adequate provision for disposal of dredged materials.... There are no indications of...conflict of an administrative or operational nature...we recommend that the Culebra segment of Puerto Rico's CZM program be approved....

Oregon--(No comments available.)

Rhode Island--With the exception of the Bay Islands Park proposal...the plan does not discuss a specific program for acquisition of key areas designated for preservation and restoration. Possibly this matter will be discussed in a separate communication accompanying your Section 306 application.

SFB CDC--Civil works projects are vital to the maintenance of our ports.... If the consistency requirements and procedures
hinder and delay the Corps of Engineers in conducting these projects, the movement of waterborne commerce could be affected.

Washington--From the civil point of view, the U. S. Army Corps of Engineers recommends that the Secretary of Commerce approve the plan.

DEPARTMENT OF DEFENSE (DOD)

Culebra--(Beginning in June, 1976, the Corps of Engineers' comments became integrated into DOD consolidated reviews.) (Navy) Upon revisions that clarify the excluded federal lands section and delete the requirement for state (emphasis supplied) certification of consistency for federal activities and development projects, the Program is recommended for approval. The DOD position, concurred in by NOAA, is that the federal agency shall make the initial determination of consistency in respect to those projects and activities.... The A-95 requirements in regards to direct federal development in the coastal zone provide only that federal agencies should ensure that CZM agencies have an opportunity to review the proposal from the standpoint of consistency (Paragraph 2 (a) (4)). As presently drafted, the A-95 notification procedures...could be used in attempts to override initial determination of consistency by federal agencies to prevent, delay, or frustrate valid federal activities....

Oregon--(In a review of the DEIS, the Deputy Assistant Secretary of Defense, Environment and Safety stated:) The determination of consistency should, in the end, rest with the federal
government. (He continues) It would seem appropriate, also, to provide for exclusion of unforeseen future military requirements short of a declaration of war that may be needed due to the ever-changing international tensions and modern warfare technology. (The Office of Assistant Secretary of Defense, Installations and Logistics stated:) Pages 89-91 of the program imply a requirement that Defense applications for permits to other federal agencies will be included among those to be certified by the Oregon Land Conservation and Development Commission. DOD does not agree to certification of these activities by individual states because certification will tend to set a precedent of obtaining permits from the state to conduct federal activities (emphasis supplied). It is... recommended that final program review and approval be withheld until all local government plans are completed. The CCZMP should be changed to include a positive declaration of the priority of national defense as an essential element of the national interest. This would facilitate the accommodation of future unforeseen DOD installations short of a nationally-declared war and protect existing facilities from encroachment.

**Rhode Island**--The Air Force will make maximum effort to achieve the objectives of approved state CZM programs.

**SFBCDC**--The program appears to give the BCDC full authority to determine consistency of federal activities with the state program. This...is contrary to the DOD policy to meet fully the federal consistency objectives of the CZM Act, and to establish
the conditions of maximum consistency as may be practicable for each action of obvious significance (emphasis supplied). The BCDC's proposed use of Memoranda of Understanding in lieu of permits to negotiate and assure federal response to the consistency provisions tends to put the federal agencies in the same obligatory role as a system of permits. (In its detailed comments, these themes are amplified as follows:) The DOD intends to be consistent with the Commission's coastal goals, but considers that adequate federal provisions for achieving necessary cooperation with BCDC already exist and work satisfactorily. (Army) All language in the statement which could be construed as creating an obligation on the Department of the Army components to enter into a Memorandum of Understanding must be deleted. (Navy) The Navy can accept no less than complete exclusion of all of the land it uses, irrespective of the jurisdiction or ownership estate, and without any qualification as to the identification of its activities thereon. (In a later (June 10, 1976) communication, the Navy's Western Division, Naval Facilities Engineering Command stated:) The Navy's position is that all naval activities on all of the lands the Navy uses are conducted in the interest of national defense, and, thus raise(s) the question of a non-defense use of Navy lands.

Washington--The extent of state concern in these (coastal) waters (is not) expressed, nor specific Navy exclusion excluded. There was no representation (in the development of the program) by Navy. The policies of the state's Shoreline Management Act have not been fully resolved with those of the federal act, and casts
serious doubt on the validity of the state's program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

Culebra--(No significant comments.)

Oregon--(No significant comments.)

Rhode Island--(No significant comments.)

SFBCDC--The BCDC is a site-specific state agency which does not fit conveniently within the CZMA and implementing regulations that require a statewide approach in California's coastal zone. It will be desirable to put the BCDC area in state perspective as regards where growth should and should not take place. The most serious deficiency (is that) the BCDC proposal gives no reference to either the specific regulatory standards of the National Flood Insurance Program or to the areas of the Bay which have been identified by FIA as flood-prone, nor does it discuss the role of the NFIP in flood hazard reduction in the Bay Area.

Washington--(In combined findings HUD noted:) Lack of substantive consideration of the flood hazard in the coastal and coastal-riverine flood plains of the state...flood hazard areas and coastal high hazard areas (should be designated) areas of particular concern. (The state narrative) also fails to require that certain developments such as new residential communities, shopping centers, and other community facilities of a regional character should be considered by the Department of Ecology as
"Uses of Regional Benefit." The process (,) to be approvable, should produce a definitive final product against which federal consistency can easily be measured.

DEPARTMENT OF THE INTERIOR

Culebra--(Bureau of Mines) "15 CFR 923.4 (c) ii requires that all CZM plans have a mineral resources section." (FWS) "The discussion of unacceptable disruptions of natural conditions does not include the illegal taking of migratory birds, endangered marine turtles and their eggs for human consumption...this problem and remedial measures should be addressed."

Oregon--(No comments available.)

Rhode Island--(BOR) BOR is concerned principally with policy content and program impacts rather than technical refinement and mapping. Consideration should be given to specific mention of the SCCRIP planning process with the CZM Plan Report.... We are in substantial agreement with the Rhode Island CZM plan philosophy stated in Chapter 2 which places emphasis on the activities generated by land and water uses rather than uses themselves.... We also support the concept of performance standards rather than broad zoning actions in determining permissible land and water uses.... (NPS) We failed to find any mention of cultural, historical, architectural, archeological, or scenic elements.... (Bureau of Mines) The chapter serves to reinforce my concerns about "federal consistency"....under 5.7-3 (the Rhode Island program) states that consistency provisions 'impose additional responsibilities on affected
federal agencies to respect and coordinate with Rhode Island's coastal resources management policies, plans and procedures....

This same general theme is carried out elsewhere in the chapter.... This chapter singles out mining as the only prohibited activity throughout Rhode Island waters and coastal zone. It does not regulate mining, it does not manage mining, it does not selectively forbid mining. It prohibits mining. (BLM) It would be helpful if the plan clarified the use to which the information and analyses will be put in management considerations and the types of management considerations referred to. The applicant is called upon to demonstrate that the proposal will not have...a serious or adverse effect without any specified parameters against which to measure the impact. It would seem that it may be feasible to identify, or establish a mechanism to identify, guidelines for determining changes which could be regarded as serious. (USGS) It would be interesting and helpful if Rhode Island provided some hypothetical situations of possible impacts in the Coastal Zone, and outside the Coastal Zone, and indicated in detail how the organizational elements would react to control the impacts. (In reference to the above comments, the Special Assistant to the Secretary for the Northeast Region stated:) These are to be regarded as informal field-level comments and not formal Washington-level departmental comments.

SFBCDC--(BLM) We will review and comment on the program through our Washington Office during the formal federal agency review process as established by the Office of Coastal Zone Management. (FWS) We do not believe BCDC's influence outside of
the 100-foot shoreline band is sufficient to control the development in diked agriculture or abandoned salt pond-type tidelands. (The Office of the Secretary commented:) Both the proposed CZM program and the BCDC plan present conclusions with little or no discussion on how the procedures were utilized to meet the requirements of the program elements. (Concern also is expressed about) exclusion of the Sacramento-San Joaquin Delta in California's CZM plan. It is an important segment of the adjacent shorelands (including the waters therein and thereunder)... and as such complies (sic) with Section 304 (a) of the Coastal Zone Management Act.... The present position of the State, in regard to the Delta, puts the Department of the Interior in a potential position of "serious disagreement" with this portion of the State CZM program. We recommend, if the BCDC CZM program is approved, that as part of administration of such a program, a formal investigation be conducted of these areas (of diked wetlands) to ascertain their value to the Bay and its living resources and a program for ensuring the maintenance of these valuable former tidelands be formulated and implemented. Such a program should involve a partnership of federal, state, and local interests. There is no specific opportunity or mechanism apparent in the program for ensuring participation by federal agencies in any aspect of these two (Special Area and Priority Use Areas) important land and water use guiding processes.

Washington--It should be emphasized to the coastal states that a coastal zone management program is more than the setting forth of policies and management approaches. To produce results,
it must formulate a set of procedures and institutional arrangements to implement a program that achieves the stated goals.... As it now stands, the process is silent on coordination with federal agencies regarding common interests on contiguous non-federal lands and inadequately covers the methodology to be used in determining national interest. A process to prioritize is alluded to; however, more explanation is needed to permit an adequate evaluation. The various state agencies which are proposed to be brought together with the Shoreline Management Act do not appear to constitute a uniform and comprehensive system of regulation and control which satisfies the letter and intent of the act. (In an attachment to this comment, DOI goes on to cite:) Lack of adequate explanation on obtaining and using expressions of national interest in the development and implementation of the coastal zone program. The state should modify the proposal to specifically recognize the expression of national interest and the importance of the federal role in natural resources activities. In our view, the expression of national interest provides a necessary perspective and direct input to the development of a coastal zone program and some very important guidance in the actual implementation of that program. The Washington draft proposal lacks adequate explanations of their use of expressions of national interest in both of these processes.

DEPARTMENT OF TRANSPORTATION

Culebra—We feel that the Culebra airport is a necessary element in the life of the Island. Provisions for the continued use of the airport should be included in the development of the
Coastal Zone Management Plan. Likewise for all existing and future
Coast Guard operations, navigation aids, and communications, we
would like to reserve the same rights to uncontrolled, non-monitored
ingress and egress, by whatever means we deem practicable. The
Coastal Zone Management Plan for Culebra, etc., should take into
account the ferry operations mentioned above as well as other
commercial and recreational marine activity. The management plan
should not attempt to regulate the legitimate exercise of interstate
or international maritime activity, an authority specifically
reserved for the national government.

Oregon—There are several items which DOT must identify
as items of "serious disagreement" until such time as they are
resolved.

(1) DEFINITION OF COASTAL ZONE AND THE INCLUSION OF
"EXCLUDED FEDERAL LANDS" THEREIN
(2) DOT CONCERNS RELATING TO FEDERAL CONSISTENCY
(3) DOT CONCERNS RELATING TO PERMITS AND LICENSES
(4) DOT CONCERNS RELATING TO PERMISSIBLE USES IN THE
COASTAL ZONE

1. The State of Washington's program and "opinion" by the Attorney
General would not be binding upon the U.S. DOT. It should be noted,
however, that regardless of the "exclusion" provisions of the
program, the responsibility of federal agencies to conform to the
federal consistency provisions, as defined under Section 307 of the
CZM Act, would still be a factor to be considered in any federal
action covered by this section. 2. Several actions involving state
and local governments are identified as prerequisites to achieving the program objectives. (Among these,) evaluating the performance and progress of federal agencies developing plans is listed. This raises two questions: (1) why is there a need for state and local entities to evaluate the performance of a federal agency? and, (2) how would such an evaluation be accomplished? The state, through the A-95 process, will have received notification of an impending federal project. A preliminary consistency determination by both the federal and state entities will be made at that time, indicating whether the project is consistent, to the maximum extent practicable, or if not, setting forth the reasons. An evaluation of performance such as suggested is felt to be both unnecessary and impractical. Reference is made here to the use of (the Oregon CZM) goals and guidelines by federal agencies in preparing plans. The Coast Guard position is that all lands used (emphasis added) exclusively by the Coast Guard, irrespective of jurisdictional status, are excluded from the Oregon Coastal Zone Management boundaries, as discussed above.... Therefore, the use of such a statement appears superfluous. If the statement remains, it would best reflect the Act if it were to read that the goals and guidelines "should be considered." It is stated here (by the Oregon program) that '...federal agencies shall not approve applications for federal assistance except where consistent with the program or necessary in the interest of national security...'. It is the DOT position that federal agencies will rely entirely upon the review process established by OMB Circular A-95, through which federal agencies will be notified of certain projects or phases
thereof which are not consistent with the Oregon Coastal Zone Management Program (emphasis supplied). The process set forth by environmental impact statement requirements and review procedures is also another mechanism readily available through which consistency will be evaluated. It is very desirable to have a workable conflict resolution process which will preclude the necessity of referral of questions to a federal court. 3. It is stated here, incorrectly, that FAA issues permits for operation of airports.... The only involvement of FAA concerns the issuance of airport operating certificates, which are safety-oriented and pertain only to the operation of Civil Aeronautics Board certified air carriers into certain airports and does not significantly affect coastal or land/water uses. FAA feels that this certificate is not subject to certification by the state as proposed (emphasis supplied). The Coast Guard position is that only those permits and licenses pertaining to bridges, deep water ports, anchorages, tanker lay-ups, and private aids to navigation are subject to certification as described in Section 307 (c) (3) of the Act. In recognition of the navigational servitude provisions of the Constitution, the State of Oregon should also recognize that those other permits and licenses used exclusively by the Coast Guard would not require concurrent determination of consistency. 4. The Federal Aviation Administration points out that the permissible uses in estuaries does not address the question of airport development or seaplane activities (emphasis supplied). It could be interpreted from this that no aviation facility can be developed in any estuary area. This is not acceptable. Airports are essential for intra- and
Interstate commerce, and seaplane facilities are essential for commerce and recreation in many areas. The CZM program must recognize, and make allowance for maintenance, expansion, and development of airports and seaplane facilities in certain estuaries. (And, finally,) In this document, the State of Oregon is apparently attempting to interpret recent A-95 revisions as authority to define all federal permit applications in the coastal zone as "significant," therefore requiring federal agencies to submit them for review. This, of course, is not acceptable to DOT. (In a subsequent letter, the DOT Regional Representative stated:) The Oregon Department of Land Conservation and Development's letter of September 28, 1976 implies that the federal agency "will follow the comprehensive plan." This negates the latitude provided in 42 USC 4331 et seq (NEPA 1969) and 40 CFR 1500 (CEQ Guidelines) for federal agencies to determine when a project or activity is a major or non-major federal action with significance to the environment. In other words, an absolute requirement to "follow" the comprehensive plan, would allow local planners to alter the threshold offered under NEPA and the CEQ Guidelines, declare any action it wished "major," interrupt a project and thereby create conflict.

Rhode Island--We feel that the plan should identify all (Coast Guard) developments and activities and wherever practicable execute agreements with the appropriate federal agencies which would permit concurrent review of applications in order to avoid the great delays an applicant might otherwise experience. In any case, the Council should make clear to applicants the procedures
to be followed in obtaining both federal and CRMC permits. It is our position that the Policies and Regulations (incorporated only by reference in the review draft) should be included as an integral part of the management plan submitted to CCOZ for approval, and that the plan provide for formal federal review of any and all policies and regulations issued by the Council subsequent to submission of the plan. We feel that at a minimum the plan should cite, and provide explicit recognition of, DOT authority to carry out its statutory responsibilities under these (its) programs; this is especially important with respect to Coast Guard programs and operations.

SPBCDC--(The SPBCDC program) suggests procedural requirements which exceed the standards of Executive Order 11752 and which the Coast Guard has historically rejected. Even the revised draft’s purported exclusion of Coast Guard facilities creates two specific problems for us. First, the exclusion as it now reads would purport to establish a two-part test for assessing whether the exclusion applies. In addition to federal control, the additional test of use for specific operational missions is included. This is unacceptable. Second,...the revised draft indicates that a permit including Memorandums of Understanding (MOU) would be required as a precondition to issuance of any federal permit. The clear implication is that a federal applicant must have a MOU for a permit from another federal agency. This is incorrect. As earlier noted, all federal agency facilities (emphasis supplied) are excluded as a matter of law from the coastal zone. Hence, any suggestion that
there is a mandatory requirement for Commission certification for the federal facility seeking the permit is not only incorrect as a matter of law, but inappropriate since under Section 307 (c) (3) of the Act, the Commission is without authority to issue certification for those areas excluded from the coastal zone. So, for example, were the Army Corps of Engineers to apply to us for a bridge permit or we to the Corps for a permit to construct a facility which would obstruct the navigable waters of the United States, the view of the Commission as to whether the facility complies with the plan is advisory at most. It would certainly not be mandatory so as to constitute a legal impediment to issuance of the federal permit to the federal applicant (emphasis supplied). The revised draft implies that federal agencies have generally agreed to use the MOU process. Our informal conversations with other agencies indicates that while, as a matter of expediency the MOU process has been used with regard to specific projects, no federal agency has agreed to use the MOU process for all of its projects. Certainly the MOU process or its equivalent is very desirable for certain federal projects. For others it would not be. This must be decided on a case-by-case basis. We can appreciate that other agencies less involved in the coastal zone might find the MOU process a convenient means of complying with federal requirements for coordination with the Commission. As one of the major agencies active in the coastal zone, however, we do not feel that it is an acceptable substitute for established federal decision-making processes except as might be appropriate in specific cases. Those federal processes, including a statement by the
federal agency as to why it cannot comply with the coastal zone plan in the unusual case, would have results almost identical to those the MOU process seeks to achieve.

Washington--The Act and regulations clearly require inclusion of these (objections and the state's response to them) items in the program. The state's position that they will not be included in the program and are available for viewing in Olympia, Washington, is not satisfactory to DCT. In a memorandum dated May 29, 1976, the state indicated that they (sic) proposed to combine the Federal Agency Advisory Committee and the State Agency Advisory Committee and, meeting on a routine basis, probably monthly, at a consistent time, date, and place, in order to improve communication. The program on page 131 indicates that this concept was explored and later rejected. The concept was never discussed with DCT agencies and DCT was never advised that this procedure had been abandoned.

The responses (to federal agency comments) listed in Appendix F are not the result of any...structured process of interaction. The example of the development of an Offshore Petroleum Transfer Station does not show at what stage or the method by which "national interest in the siting of facilities" would be addressed. This example also does not address the involvement of DCT agencies in such an activity. (In an accompanying enclosure the Coast Guard states, in part:) The Act stipulates that nothing within it shall be construed to diminish, change, modify, limit or affect existing laws applicable to federal agencies or their jurisdiction.... The Act requires that prior to approval certain specific items must be present.
Included is a process for conflict resolution (Section 306 (d)). It is imperative that this process be present for water use decisions pursuant to the Act as defined within Sections 304 (h) and 306 (c) (8). (In a subsequent correspondence, the FAA's mission was altered to include the following mission statement:)

Promote aviation safety; ensure efficient utilization of air space; promote air commerce and civil aviation at home and abroad; fulfill national defense requirements.

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Culebra--(No significant comments.)

Oregon--I am pleased to see energy conservation included in the land use goals and guidelines, but the implementation section is very sparse and probably will not be too helpful as a "guide."

Rhode Island--(No significant comments.)

SF3CDC--We have no comments other than to observe that it is an excellent plan of proven success.

Washington--We would recommend withholding federal approval of the Washington CZM program pending a determination by ERDA and other concerned federal agencies that acceptable procedures and administration mechanisms have been established to ensure adequate consideration of the national interests in siting energy facilities.
ENVIRONMENTAL PROTECTION AGENCY

Culebra--No criticism of the document...(but) the opportunity exists for close coordination between the two programs. Through Section 208, EPA has an interest in the management program for the area.

Oregon--Given that the objectives of the Federal Coastal Zone Management Act are largely environmental, we believe that a logical substitute (for current CZMA impact statements) would be a complete description of the mechanisms by which the state will ensure that federal and federally-sponsored environmental protection programs are consistent with the State Coastal Zone Management Program and vice versa. Therefore, we would suggest that the program document and the final environmental impact statement should contain a complete description of the mechanisms and procedures which will be used to meet the requirements of Section 307, including 307 (f), of the Federal Coastal Zone Management Act with regard to the subject environmental protection programs.

Rhode Island--(No comments available.)

SFBCDC--(No comments available.)

Washington--We believe that the State of Washington has submitted an incomplete application for program approval under Section 306 of the Coastal Zone Management Act. We believe that the CZMA requires that the state or local governments acting under state authority specify which land use activities are permissible in each of the natural systems defined in the state guidelines and
the kinds of restrictive conditions which should be included in substantial development permits that local governments issue for each type of use activity in each natural system. The following expansions should be made to the application's content before the program is approved and funded under Section 306: a description of how the department screens proposed substantial development permits.... A description of the major state level related legal authority and how the department proposes to integrate the implementation of that legislation with the implementation of the coastal zone management program.... A description of how...local governments will coordinate their work with that of the state and federal agencies.... A description of how work, carried out under federal, state and local environmental laws, will be integrated with the work (that) local governments perform under the Coastal Zone Management Program. We believe that special attention should be paid to air quality maintenance planning, new stationary air pollution source reviews, complex/indirect source reviews, Section 208 Area-wide Wastewater Management Planning and permits issued by the U.S. Army Corp(s) of Engineers under the Rivers and Harbors Act of 1899 and Section 404 of the Federal Water Pollution Control Act Amendments of 1972. We also hope to assist (the state) in defining the "organizational relationships" and environmental program coordination mechanisms which we have cited above as missing from the program description.

FEDERAL ENERGY ADMINISTRATION

Culebra--(No significant comments.)

Oregon--The state program establishes "Areas of Particular
Concern," "Areas of Statewide Significance," and "Areas of Critical State Concern." We believe the program should include:

(1) A clear definition of these classes, especially with respect to limits of local authority;

(2) Provision for federal input and review opportunities, prior to the state’s designation of such areas; and

(3) Clarification of how areas designated as suitable for energy sites by the State Energy Facility Siting Council are considered by local governments and related to the above area classes and area plans.

Rhode Island--The characterization of FEA’s interest in CZM (as being in terms of a “non-existent National Energy Policy”) was, at best, injudicious; and now just not true.... A National Energy Policy (at least in part) has come into existence.

SFBCDC--We note that (the program) does not include the Warren-Alquist State Energy Resources Conservation and Development Act. We request that this Act be included and that the program narrative be amended to clearly reflect relations between authorities of BCDC and the State Energy Resources Commission. Further clarification is required here to determine the volume of petroleum off-loading facilities and pipelines that could be accommodated and specifically whether a BCDC plan would accommodate petroleum facilities to supply other areas of the country, as well as the Bay area. We would...be most interested to know specifically what is meant by accommodating the national interest in the siting of energy facilities in the BCDC plan.
Washington--Given the environmental concern frequently associated with the development of energy facilities and the importance of adequate energy facility capacity, the enunciation of a detailed policy on this subject should be a major objective of the program.... FEA wishes to see coastal areas particularly suitable for energy development identified as such, and encourages that they be designated as "areas of particular concern." The program does not adequately document coordination with energy company officials or with public officials responsible for energy planning. Much planning for energy development is done by energy companies rather than by public agencies.

FEDERAL POWER COMMISSION

Culebra--Section 202 of the Federal Power Act indicates a national interest in assuring an abundant supply of electricity throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources. This national interest should be protected in the Culebra Coastal Zone Management Plan.

Oregon--(No comments available.)

Rhode Island--(No significant comments.)

SFECDC--The (Federal Power) Commission has...established procedures for public hearings in which the coastal zone commissions may wish to participate as intervenors supporting or opposing proposed projects (18 CFR 1.8). In May of 1975, we advised the Office of
Coastal Zone Management that a lack of long-range energy demand assessment and energy systems planning could create serious shortcomings in a state program plan,... In order to contribute to the goal of having each state assess the role that it should play in meeting national energy needs, it would be necessary for each state program to identify:

(1) The expected growth of the state and regional economies by detailed energy-using sector;

(2) A methodology for estimating current and future energy needs (by energy source, especially for natural gas and electricity) associated with expected economic growth;

(3) Criteria and methods for planning to balance the state and regional energy needs with expected energy supplies, including an analysis of each state's allocation of energy transfer throughout the region; and

(4) How the state plans to meet its share of regional and national energy needs, including an identification of the land, location, and capacity of current and future bulk energy facilities that would utilize (sic) in meeting these needs.

Although the BCDC program does not entirely exclude electric power generating plants and transmission lines from its proposed jurisdiction, the tone of the program indicates insufficient attention was placed on the interregional responsibilities of electric utilities in the Bay area. The Federal Power Commission would not be able to enter into substantive commitments of any kind regarding a specific proposed development. Any requirements to which the FPC would subject a regulatee would have to be based on the record
in the particular proceeding and could not derive from any external agreement between the FPC and a state agency.... No prior commitment of the sort normally included in memoranda of understanding would be possible.

Washington--Our preliminary assessment indicates that there are serious shortcomings because of a lack of long-range energy demand assessment. At the federal level, there is very little information on the supply side of local energy equations. Coastal zone plans clearly need to consider how much of a state's fuel moves across its own coastal zone or that of some other state, as well as how much fuel other states expect to acquire across its coastal zone. The program must therefore describe specific methods by which a plan can reflect these needs.
APPENDIX II
FEDERAL AGENCY POLICY STATEMENTS

DEPARTMENT OF AGRICULTURE

It is Soil Conservation Service policy to assist states in developing management programs that achieve the goals and objectives of the Coastal Zone Management Act. State programs submitted for approval are to be reviewed with particular attention to:

(1) Adequacy of data used in inventories and evaluations and their relevance to decision-making processes;

(2) Potential impacts on private landowners, project sponsors, or conservation district activities;

(3) Potential effects on USDA programs or policies;

(4) Potential impacts on agricultural production;

(5) Clarity and usefulness of regulatory requirements or procedures;

(6) Potential difficulty USDA may have in meeting the requirements imposed by the 'federal consistency' provision.

CORPS OF ENGINEERS

The CZM Act does not diminish existing Corps of Engineers' responsibilities or authorities. Although the Corps was not given a specific legislative assignment in the development of the state CZM plans,...civil works activities of the Corps of Engineers within the coastal zone fall within this (Section 307) classification. Future Corps actions and plan recommendations shall be consistent,
to the maximum extent practicable, with the state's approved CZM programs and plans. The Corps' traditional area of regulatory jurisdiction overlaps and interacts with state CZM programs. Close and continuing coordination will be required between the Corps and state CZM agencies. During program development by the state, the Corps will make known its interests, activities, and responsibilities. Technical assistance requested by the states to assist their implementation of the national policy for coastal zone management will be provided to the extent practicable. Corps review of a state CZM program will consider the adequacy of the state's institutional and procedural arrangements in dealing with key coastal problems and issues. In particular, those processes will be reviewed to determine whether the state has developed procedures to assure that the interests, activities and responsibilities of the Corps of Engineers are adequately considered. Affected Corps divisions shall designate a single Corps office with lead responsibility for the coordination of Corps civil works activity within a particular state coastal zone.

DEPARTMENT OF DEFENSE

Recognizing that Coastal Zone Management (CZM) plans of coastal states prepared under the CZM Act may significantly affect national defense interests, including military operations, installations, facilities, and real property, DOD components will carry out coordination and review procedures in accordance with this instruction and in a manner consistent with security interests of the nation. DOD components shall ensure that a coastal state's CZM
plan recognizes the existence and impact of all military installations, facilities and lands, and excludes (state) provisions for mandatory application over same. It is the policy of the DOD that DOD components conducting or supporting operations, activities, projects, or programs in or on coastal lands or waters that affect, or may affect coastal zones, shall ensure that such undertakings, to the maximum extent practicable, comply with the coastal state's approved program and that future undertakings, unless specifically exempted in the national interest, are likewise consistent with that program. Non-federal applicants for licenses, permits or leases of military real property affecting land or water uses in the coastal zone shall provide in their application to the granting military department a certification that the proposed usage complies with the coastal state's approved program and that such usage will be conducted in a manner consistent with the program. To the maximum extent practicable, information will be furnished through the A-95 clearing-houses in accordance with the provisions of OMB Circular A-95. The Deputy Assistant Secretary of Defense (Installations and Housing) shall be the single point of contact with other federal agencies for matters pertaining to coastal state CZM plans and programs and shall be responsible for:

(1) Providing guidance on CZM policies and matters affecting installations, facilities, activities and projects of DOD components;

(2) Providing coordination with other federal agencies as required;

(3) Developing, in concert with DOD components, a DOD position on each coastal state CZM plan and forwarding to the National Oceanic
and Atmospheric Administration (NOAA) a coordinated DOD position on such plan;

(4) Assisting the Assistant Secretary of Defense (Health and Environment) to process environmental impact statements in accordance with DOD Directive 6050.1. Defense Agencies with Properties in Coastal States shall be responsible for:

(1) Determining the impact of applicable state CZM plans on agency installations, facilities, activities and projects;

(2) Developing an agency position vis-a-vis applicable state CZM plans and submitting same to the DASD (I & H).

DEPARTMENT OF THE INTERIOR

It is the policy of the Department that: . . . the effective implementation of the Act of 1972, requires the cooperation and participation by the Department in the development and implementation of the state CZM programs, and in doing so, the Department will fully communicate the nature of its authority and responsibilities including the national interest in the siting of facilities.

Assistant Secretary - Program Development and Budget...shall be the Department's policy liaison official with the Department of Commerce. Heads of Bureaus and Offices...shall develop procedures to assure the fullest practicable field and headquarters participation on the development, review and implementation of state CZM programs. Secretary's special assistants (field)...shall establish procedures to assure comprehensive and coordinated participation by the Department in state CZM activities. The program development phase provides the best opportunity for the Department to make its
expertise available and its interests and responsibilities known to
the states in order to assure that a state's decision-making process
adequately considers those matters of concern to the Department.
Departmental policy guidance on its national interests shall be
made known to the states early in program development to assist
states in making their decisions. Review of a state's program is
to concentrate primarily upon the adequacy of the state's institu-
tional and procedural arrangements in dealing with key coastal
problems and issues. Where notification is received at the field-
level from a state that any departmental activity or development
is found by a state not to be consistent with the state's coastal
zone management program, every attempt will be made to resolve
such conflict at the field-level between the departmental bureau
or office concerned and the state. A tabulation has been prepared,
structured on the Department of the Interior's national objectives,
to provide the coastal states an understanding of national interest
and federal involvement. This tabulation consists of six columns
defined as follows:

- Functions and objectives for which the Department of the
  Interior is responsible through legislative mandate or
  administrative directive (national objective);

- The laws or administrative directive establishing goals
  and objectives and creating programs to meet those
  objectives (authority);

- Those bureaus in the Department of the Interior having a
  primary responsibility in achieving the authorized objective
  (agencies concerned);
- A brief account of the directions, rules and regulations given to and also developed by the Department of the Interior in response to the authority establishing the objective. These directions are further given enumeration and explanation and serve as avenues to follow in achieving the objective (program description);

- A listing of the methodologies and techniques available to the bureau field offices for dealing with activities relating to the objective (field activities used to meet objective);

- State/federal discussions and site-specific investigation to assist states in program development and management phases of coastal zone program (coordination of CZM Program with objective).

DEPARTMENT OF TRANSPORTATION

The development of a balanced national transportation system, including well articulated and integrated surface, air, water and subsurface modes, is a primary element of the national interest. When essential in the national interest, the construction, maintenance and improvement of present and future transportation systems on and under the surface of the land, on and under those waters subject to the jurisdiction of the United States, and in the air, shall predominate over less essential interests. The national transportation interest is applicable in the coastal zone. It finds expression in the body of federal laws, regulations and the related programs that influence, shape and support the developments and functioning of the nation's transportation system. The national
interest in the coastal zone is based on the body of law governing these programs. Each of these direct federal transportation programs has some impact on at least some portion of the coastal zone. Coastal zone management programs should include explicit acknowledgment of and adherence to existing and future national interest in each of these direct transportation programs. In varying degrees, all federal transportation assistance programs entail the weighing of national and state-local interests. Coastal zone management programs should reflect coordination with consideration of transportation facilities and programs developed and planned with federal assistance by state and local governments. In the application of direct federal transportation programs and federal transportation assistance programs, it is in the national interest to provide fast, safe, efficient, and convenient access via one or more modes of transportation (e.g., airway, highway, railway, waterway, bicycle, pedestrian) for the movement of people, goods, and services to, from, along, and through the coastal zone for purposes including, but not limited to, the following:

(a) Providing for the national defense (e.g., access to military installations and ports of embarkation);

(b) Maintaining the public safety and welfare (e.g., hurricane evacuation routes);

(c) Managing public lands in the coastal zone (e.g., access to wildlife sanctuaries);

(d) Providing for public recreation (e.g., beach access);

(e) Facilitating interstate and international commerce (e.g., access to seaports);
(f) Developing and using natural resources in the coastal zone and outer continental shelf (e.g., oil, fisheries).

**ENVIRONMENTAL PROTECTION AGENCY**

In addition to our general review requirements under NEPA and Section 309 of the CAA, specific requirements are placed on EPA by Section 307 (f) of the CZMA. The failure to object to a CZMP which is inconsistent with the applicable state air and water requirements would be inconsistent with the intent of the CZMA.

Special items of concern to EPA in reviewing CZMP's prior to approval by EPA...(should include:)

(a) A statement that air and water pollution requirements are overriding.

(b) A positive recognition that certain uses in the coastal zone are contingent on the achievement of standards and that the achievement of standards and desired water uses is contingent on supporting land uses and land use controls.

(c) Documentation of adequate consultation with the state agency responsible for air and water pollution control as well as coordination at the substate level (e.g., 208 planning agency) and with EPA where appropriate.

(d) Incorporation of procedures for continuing participation of appropriate air and water authorities, including EPA where necessary, in the implementation of the CZMP program, including new sources.

These considerations represent the dynamic consistency requirements of Section 307 (f) of the CZMA. Included should be:
(a) A substantive element, defining permissible land and water uses including the interrelationships of uses and setting priorities for the specific areas in the coastal zone.

(b) A guidance element, including an explanation of how the developing air and water requirements...will be integrated into the CZMP.

An adequate consideration of areas of EPA concern and how they relate to permissible uses,... An adequate consideration of important conflicts and processes for their resolution. An identification of priority areas for cleanup in the coastal zone.
FEDERAL AGENCIES

Department of Commerce--(NMFS) Subject proposed regulations are unnecessarily complex and overdetailed. We recommend that the final regulations require federal consistency of those inland activities that could significantly reduce biological productivity of estuaries. Without this requirement, many states would be unable to effectively manage their coasts to maintain their current productivity of living marine resources. The final regulations should clarify whether implementation of the FWCA (Fish and Wildlife Coordination Act) would be considered one of the overriding national program factors. If FWCA implementation would not be so categorized, this section of the proposed regulations would apparently conflict with the intent of Section 307 (e) of the Coastal Zone Management Act... which states, in part, that nothing in this title shall be construed...as superceding, modifying, or repealing existing laws applicable to various federal agencies.... It is unclear how the consistency requirement will apply to other federal agencies with regulatory authority in the outer continental shelf (e.g., Corps of Engineers, Department of Transportation, Department of Commerce), since only the Secretary of the Interior is mentioned.

Department of the Interior--There is a danger that the pressure for state and local control over federal activities could lead to consistency regulations and practices which provide opportunities to
seriously impair the achievement of national benefits provided by federal activities without offsetting benefits at the regional or local level. The consistency regulations should minimize such opportunities by ensuring that decision-making under the CZMA reflects the proper balance of "reciprocal responsibilities." In general, the Department strongly recommends major revisions in the proposed regulations to assure that:

- State CZM programs are explicitly required to provide for achievement of national interests before the consistency provisions are activated;
- State CZM programs are required to clearly specify the policies, procedures and criteria to be used in implementing the consistency provisions;
- The regulations reduce the opportunity for controversy and delaying litigation by providing substantive guidance on key issues;
- The regulations provide procedures for consultation, determinations, and appeals which are simple, expeditious and balanced between federal and state interests.

The Department has strong concerns with the application of the proposed regulations to CCS activities. These general concerns are buttressed by further specific comments which are presented, in part, below. Unfortunately, our experience has shown that the procedures used in the development, federal review and federal approval of state CZM programs do not assure that federal "input" is translated into provisions for achievement of the national interest.
CZM programs, when submitted for federal review and approval, (should) identify the specific substantive policies to be used in implementing the consistency provisions. Without substantive guidance from NOAA, the scope of confusion, controversy and litigation over these (consistency) items will be quite broad and substantial costs and delays to federal programs could result. Criteria in federal regulations would be preferable (to state definitions) because they would give a uniform foundation on which both state and federal agencies could build. The regulations should be revised to indicate that policy-making activities are excluded from the requirements of Section 307 (c) (1) of the CZMA. In dealing with complex sets of interrelated activities, affecting determinations should select those activities with the strongest and most immediate causal relationship to the effects on the coastal zone rather than those activities which set such "affecting" activities in motion. Since the CZMA does not define "described in detail," the Department of the Interior recommends that it be determined under regulations issued by the Department pursuant to the Outer Continental Shelf Lands Act. Since it (detailed description) is a feature of OCS plans rather than coastal zone management programs, it should not be substantively addressed by NOAA regulations. In order to avoid extensive delays in the implementation of OCS plans, the proposed regulations should be revised so as not to permit a state to block federal approval of permits for activities which are not "affecting" or which have been determined to be consistent, on the grounds that other activities in the same OCS plan are not consistent. Interior also suggests that deviations from
consistency are justified on the basis of failure of the state's CZM program to adequately provide for activities in the national interest or having greater than local benefits; or failure of the state's CZM program to make clear the means by which the activity in question can be made consistent. The word "initial" should be dropped to indicate full federal responsibility for consistency determination under Section 307 (c) (1). This section should recognize the possibility that a federal activity may proceed even though it is not "consistent to the maximum extent practicable."

Department of Transportation--The Department of Transportation is in serious disagreement with the following elements of the proposed regulations:

1. We find unacceptable, and beyond the intent of the...Act... provisions...which would appear to make a federal agency decision on actions other than licenses and permits contingent on a finding of consistency by the state and/or by Department of Commerce (DOC). The final determination of consistency and whether a project goes forward must remain the prerogative of the federal agency in which such authority is vested by law.... While the regulations should assure that federal agencies receive the benefit of advice... language should be deleted that would suggest that state... or DOC has final authority over decisions vested in other federal agencies. (Citing the Clean Air Act and the Federal Aid Highway Act as involving consistency requirements, DOT claims that such determinations are made by:) the agency
administering the program (even in the face of a contrary determination by those agencies...charged with the administration of state air quality implementation plans).

2. The regulations...require state...certification of a federal project where a federal agency is required to get a permit or license from another federal agency. This in effect gives state...agencies a veto power over any federal project which affects the coastal zone and requires a license or permit from another federal agency.... Federal agencies should be deleted....

3. The Act does not remove from the federal agency the authority to determine the scope and effect of the licenses issued by the federal agency.

4. States should not be allowed to require for any one activity a separate certification relating to each application for a federal permit or license.... Since the National Environmental Policy Act process requires considerable coordination and occurs at a specific time during project development, a consistency determination at that time would be the most appropriate.

5. Expanded use of the OMB Circular A-95 notification process is approved by the proposed regulations.... The regulations should (also) acknowledge the environmental impact statement mechanism for consistency procedures.

6. The mediation procedures of Section 921.5 should be deleted.... If the federal agency has notified the state that the
activity in question is consistent to the maximum extent practicable with the state's management program, the regulations should explicitly provide that the federal agency may proceed with that activity even though the state has disagreed and mediation procedures have been initiated.

7. In our view, the relevant provisions of the statute (Section 307 (c)) cannot be read to require consistency of all programs carried out or supported by the federal government on excluded lands in the vicinity of the coastal zone.... It is clear...that those activities which affect the coastal zone only indirectly need not be consistent with the state program.

Environmental Protection Agency--With respect to federal activities, including projects, NOAA should be aware of the requirements of Section 313 of the FWPCA, Section 118 of the CAA, and Executive Order 11752, which have direct application to the prevention, abatement, and control of environmental pollution from federally-owned or operated sources. These provisions require federal agency adherence to applicable federal and to substantive (emphasis supplied) state, interstate, and local pollution requirements. It appears possible under the CZMA and this regulation that state coastal zone management plans may also be able to specifically incorporate these requirements, at least as criteria for a finding of consistency. The definition of "federal assistance" should include a description of the manner in which federal assistance
activities will be considered to "affect" the coastal zone.... The definition should give some examples of the type of federal activities included within the definition.... The regulation should...discuss how consultation with the state CZM agency can be consolidated within an (federal) agency's NEPA process.

Federal Energy Administration--We believe the regulations should specify that deviation is justified when federal actions or schedules for action are required by other provisions of federal law. As we have previously noted, regulations for the...consistency requirement of the...Act emphasize the initial importance of developing detailed and specific area and use designations in state programs. Federal agencies have, subject to judicial review, final as well as "initial" responsibility for determining consistency.... The final action of the Secretary of Commerce...is to file a report of inconsistent action with the Congress as provided in Section 316 of the Act. Delay before judicial determination, whenever either party declares the existence of a serious disagreement, should be minimized.... We also question whether the mandatory utilization of a time-consuming and administratively burdensome procedure upon the request of a single party is supported by the statute. The logical meaning of "seek to mediate" would appear to be an offer to mediate that would be effective if accepted by both parties, not a mandate for the establishment of a complicated, legalistic mechanism that either party can impose on the other. Who are the potential "other interested parties" referred to in Section 921.5 (m)? What weight or significance attaches to their comments,
i.e., what is the Secretary supposed to do with such comments? The relevance of third party comments in a dispute between federal and state agencies is not clear. We believe that there should and will be considerable pressure on the federal agency to accept mediation and make appropriate modifications and compromises. We are confident that reasonable and shortened procedures can be designed to assure this. Previous draft regulations...included provisions implementing the authority of the Secretary of Commerce to conduct a continuing state-by-state review of the implementation of approved management programs. This authority, derived from Section 312 of the Act, has not been included...these regulations are essential to a balanced perspective of the authorities and responsibilities of the state in determining federal consistency. Little mention is made of the possibility of amending the state CZM program to accommodate subsequently developed state or federal interests.... Procedures for program amendments should be fully described in CZM regulations for Section 306 (g). We suggest qualifying language limiting the required submission of information to that which is essential to the determination of consistency, not confidential or proprietary, and not readily available elsewhere.

COASTAL STATE RESPONSES

Delaware—(After attempting to work out the appropriate state role in CCS decision-making, the State of Delaware found that the Department of the Interior's draft CFR regulations applied,) only to states without approved Coastal Zone Management programs. Development plans are not expected for Atlantic CCS development
activities until after 1979. The benefits of the order will not, therefore, inure to the states receiving 306 approval by 1979. Thus, the order acts as an incentive not to obtain approval. The surest way to remedy this result is to incorporate the OCS order #15 requirements into CEE's draft regulations...as "necessary data and information." States are allowed to adopt more stringent standards than required under the FMPCA.

Illinois--The proposed regulations do not capitalize upon the opportunity presented by the A-95 process for the review of federal assistance programs. The proposed process entails redundant reviews--for consistency and for the purpose envisioned for A-95--by the state administrative agency, its sister agencies with which it would want to consult, and, in the states such as Illinois, by "certified" municipalities participating in consistency review.... The relationship between A-95 and consistency review (should) be more fully explored and explicated. In most cases the granting of necessary state or local permits may constitute certification of the consistency of a federal permit with the state's program. A stronger emphasis should be placed on certain substantive aspects of the regulations...activities affecting the coastal zone of more than one state...the definition of a federally-conducted or supported "activity"....effect on the public management of the resources. States are not required by...the Act to incorporate greater than local land and water use considerations into state programs: (as stated in the draft regulations).
Louisiana--The state CZM agency should be the one responsible for determining whether or not a federal action is consistent with the state's program, rather than a federal agency. Rather glib statements (in NOAA's proposed regulations) to the effect that the states are obligated to ensure that their programs (sic) structure and provisions are clear and easily interpretable are not helpful in light of the complexities of both the programs and problems addressed.

Maryland--Appeal to the federal level should be an extraordinary measure involving considerable delay. NOAA's proposed consistency regulations must be revised to reflect Congressional intent that the state is the arbiter of consistency, and that appeal to federal mediation machinery will only occur in extraordinary circumstances.

Massachusetts--Because of CZM's coordinative role in the development of Massachusetts' Management Plan, and because we feel we have gained valuable perspective from the integration of state, local and federal interests, we would argue strongly that decisions be made from the state-level where a clearing-house resource center for economic and environmental information capability is housed. It appears to us unreasonable to allow activities to occur which may jeopardize important coastal resources simply because they occur on federal lands. The coverage of A-95 is limited, and we recommend the opportunity to expand consistency review of those activities not presently under A-95 which the state determines to be of significance to the coastal zone.
North Carolina--The state agency's responsibility to provide public notice of the application for federal license or permit may be better accomplished using existing federal public interest review procedures. Thus, it may be more efficient to have the state effect public notice using existing federal permit review procedures.

Oregon--The regulations should include an explicit statement of the purpose or goal of the consistency requirement.... For example:

- Reduce conflict between local/state government and federal agencies and their plans, projects and activities;
- Lead to greater efficiency in administering management programs, by avoiding counter-productive activities;
- Lead to greater efficiency of management program by assuring common objectives and policies and by providing the first real opportunity for comprehensive coastal resource management;
- Reaffirm the congressional intent to place the primary responsibility for implementation of coastal zone management at the state as opposed to the federal level;
- Provide another incentive to induce or encourage state management of their coastal resources.

It is our understanding that the CZM review of performance...will also address actions taken by federal agencies which are not consistent with approved programs. If this is correct, the requirements should properly reflect this concern as well. The Act simply does not provide any guidance for judging the consistency of a specific activity with the objectives of the Act. Indeed, since CZM has
repeatedly indicated that the Act does not categorically preclude any activity in the coastal zone, then it would follow that any-- and every--activity measured by itself (by the Secretary of Commerce) would be compatible with the Act's objectives.

**Pennsylvania**—We believe...that a more appropriate requirement (of 921.1 (p)) for the resolution of state-federal consistency conflicts in these instances would be for the applicant to demonstrate that an overriding federal interest is at stake.

Section 921.5...fails to take into account one potential source of federal/state disagreement with respect to the consistency requirements of the Act--the failure by the federal agency to make a consistency determination and submit it to the state agency.... This failure...should be regarded as a "serious disagreement" for the purposes of 307 (h) of the Act...the mediation provisions of 921.5 should then apply.

**San Francisco Bay Conservation and Development Commission (SPBCDC)**—We want to express our profound unhappiness at the direction taken in the draft regulations. It's our conclusion, and our views are shared by the (state) coastal commission staff, that if these regulations are adopted without significant modifications, they will render what's left of the federal consistency provisions after the Attorney General's opinion nearly useless. Maybe that's not all bad, as it's been our experience so far that federal agencies will go to almost any lengths to avoid or waterdown the consistency requirements.... It's still disappointing to see OCZM make the
final contribution—unintentionally no doubt—to this effort. If we’re going to have to prepare for a lawsuit in order to get through the mediation process, we would rather go directly to court. I think it’s clear that we don’t think the threat of a letter to Congress is going to be much of an incentive for federal agencies to comply with state programs. Our experience indicates, however, that the threat of having to account to the public and the California congressional delegation is a very real incentive (for) compliance.

SELECTED INTEREST GROUP RESPONSES

American Petroleum Institute—A careful review of these proposed regulations compels us to the conclusion that, on balance, they are not in keeping with the spirit and intent of the Act or the 1976 amendments to it. It is clear that in enacting the 1976 amendments, the Congress expanded on the original Act’s scopes as to ensure that both energy facility siting and the OCS development should be encouraged and expedited, not delayed and made more difficult. In discussing the Conference Report on the floor of the House, Congressman Murphy (a chief sponsor of the amendments) said its enactment would mean that “OCS activity will be expedited by a new spirit of cooperation between the federal government and the states.” The Congress intended there should be a quid pro quo. In return for the grants of federal money which the Act provides, and in return for being given a large measure of influence over energy activities beyond state boundaries on the OCS, the coastal states are expected to encourage and expedite onshore energy facility siting and offshore (OCS) activities. (The Act’s “national interest” and “energy
facility planning process" provisions are major elements of this quid pro quo.) While we have been advised by legal counsel that the issuance of an outer continental shelf oil and gas lease probably is not subject to the certification requirements of Section 307, we feel strongly that the proposed regulations should be reviewed so as to remove any possible doubt on this point. The intent of the Congress was to make the certification provision apply to OCS exploration plans and development and production plans for OCS leases.... There is no statutory authority for the regulations to proclaim that an activity may be permitted if it is compatible with the objectives of the Act (but) standing alone it is not sufficient. Section 307 (c) of the Act clearly states that a Secretaryial override is permitted after either of two findings by him: (1) that the activity is "consistent with the objectives of this title" (not Act) or (2) "is otherwise necessary in the interest of national security." National security may often involve non-military matters--i.e., economic factors may also weight heavily.... Our concern is that this discussion...may suggest that the Secretary need consider only advice from the Department of Defense.... Specific comments also follow, among which are the following: The Act in fact requires him (the Secretary) to look at all of Title III in making his determination and decide whether an activity under consideration is consistent with the objectives (not policies or purposes) stated therein. The state should have the obligation, expertise and authority to decide the activities to be reviewed for consistency.
The state is required to identify in their decision (307 (c)) the changes required in a proposed action in order to gain state concurrence. Such a requirement is necessary for an applicant to know what is required to gain concurrence and will discourage capricious action by a state.

(Legal counsel to the API, in an attached memorandum, make the following additional comments:) Under Section 308 (i), the Secretary is barred from interceding in any land or water use decisions...in a particular location a prerequisite to, or a condition of, financial assistance...)

The American Association of Port Authorities--We believe that waterways, anchorages and navigational activities under the Corps of Engineers and Coast Guard are so heavily dominated by the national and international interest, that they cannot be made...subservient to state plans that fail to appreciate this interest as your proposed regulations would allow.

Environmental Defense Fund--A Secretarial override of a state determination of inconsistency arguably must be based on a finding that a federal action satisfies the requirements of the Federal Water Pollution Control Act and the Clean Air Act,... Section 510 of the FWPCA and Section 110 of the Clean Air Act clearly make these requirements enforceable against federal agency actions. We wish to underscore the comments of NRDC on formal participation by intervenors in proceedings under the Secretarial override provision. The decisions to be made regarding coastal resources are too important
to be left solely to the parochial arguments of many federal agencies and state governments.

Exxon Company, U.S.A.—If the current title of "Purpose" is retained ... it should include some language which would emphasize these points:...

- There must often be trade-offs and compromises in order to achieve the proper balance between local coastal zone management objectives and national objectives.
- The main purpose of the regulations is to establish procedural guidance designed to expedite review and resolution of coastal zone consistency questions.

The built-in procedural delays, even for small objections, are far in excess of the six-month timeframe established by Congress to gain consistency agreement. The most obvious and potentially damaging effect of the proposed regulations is to substantially delay the exploration and development of the nation's high potential OCS areas. It is extremely difficult to quantify the potential delays since they depend to a great extent on how restrictive the state CZM plans are, the attitude of the states, the attitude of NOAA, the amount and nature of litigation involved, and whether or not the national security provisions of the Act will be involved with respect to OCS oil and gas operations. We have estimated that a 21-month delay could result while exhausting proposed administrative procedures resolving a problem where a single state mildly disagrees with a proposed action....
National Wildlife Federation--The proposed regulations should be revised to require federal agencies to discontinue projects and activities in or affecting the coastal zone, where such projects and activities are not determined to be consistent with an approved program. The proposed regulations should require federal agencies to notify participating states of all activities which could potentially have an effect on the coastal zone. The proposed regulations should make clear that Section 307 (f) of the CZMA leaves unimpaired the right of states to establish state air and water pollution laws more stringent than federal requirements. (In an accompanying statement, the National Wildlife Federation goes on to make the following points:)

I. THE FEDERAL LANDS EXCLUSION DOES NOT OBTIVATE THE NEED FOR CONSISTENCY WITH APPROVED CZM PROGRAMS, WHERE ACTIVITIES ON FEDERAL LANDS AFFECT A STATE'S COASTAL ZONE.

II. THE REQUIREMENTS OF CONSISTENCY "TO THE MAXIMUM EXTENT PRACTICABLE" PERMITS DEVIATION ONLY IN THE CASE OF UNFORESEEN CIRCUMSTANCES WHICH COMPEL NON-ADHERENCE TO AN APPROVED PROGRAM.

III. THE FEDERAL CONSISTENCY PROVISIONS APPLY TO ALL FEDERAL "ACTIVITIES," INCLUDING FEDERAL "DEVELOPMENT PROJECTS," "DIRECTLY AFFECTING" THE COASTAL ZONE.

IV. FEDERAL AGENCIES MUST BE REQUIRED TO NOTIFY THE STATE NOT ONLY OF THEIR ACTIVITIES "ADJACENT OR IN CLOSE PROXIMITY TO THE COASTAL ZONE,"... BUT THEY MUST ALL BE REQUIRED TO NOTIFY THE STATE OF ALL THEIR ACTIVITIES WHICH COULD POTENTIALLY HAVE AN EFFECT...
V. The regulations must require the suspension of work on federal projects, the consistency of which with approved programs has not been determined or is in dispute.

VI. The regulations should require...review under the management program...activities which...require agency review only in groups (in terms of incremental and cumulative adverse impacts)....

VII. The bases for a secretarial finding of "consistency with the objectives or purposes of the act" should be clarified.

VIII. (Redundant)

IX. The regulations should require public participation in monitoring the consistency of federal actions with approved state programs.

Natural Resources Defense Council, Inc.—We submit that the opinion of the Department of Justice (regarding the federal lands exclusion) is in error and should be reconsidered. NOAA's proposed regulations place the burden of making the initial consistency determination on the federal agency in question rather than the state... One may question whether the federal agency is as qualified as the state to make the ultimate determination.... In addition, NOAA has not set very demanding standards for approval of state management programs. These considerations suggest that states must have (1) adequate opportunity for comprehensive review of federal activities and development projects...and (2) protection against premature action by federal agencies.... The proposed regulations should be revised to require an agency's deferral of action until
a state has determined that no conflict exists between the action and its management program or the prescribed mediation process has been exhausted. We submit that the regulations should require some opportunity for public comment on the proposed lists of permits (by the state agency) subject to consistency review, prior to its adoption by the agency.

Pacific Gas and Electric Company, et. al.--The governmental agency empowered by the state to determine compatibility of a proposed use with a state's program may not be the agency charged with the fiscal or administrative management of a state's coastal program; it should be, however, the agency responsible for the determination of compatible uses within the coastal zone to which the proposed NOAA should refer. (Most of the remaining comments consider specific procedural points.)

Sierra Club--We believe the proposed regulations correctly interpret the Coastal Zone Management Act, as amended, in most critical respects... (but) believe the regulations are totally in error when they assume there is no Congressional prohibition on direct federal activities which... violate... management plans--at least until the secretarial mediation process has been attempted.... These regulations should explicitly state that following a state objection to a proposed federal activity... such project may not be initiated... until the conclusion of the mediation process.... One of the most important aspects of coastal management is the participation of the public and interested groups in the management process.... Most state management agencies... give most attention
to those cases over which a public controversy has arisen and who
make decisions as judges of that controversy and not as if they
were advocates for either side.

Sunmark Exploration Company—We recommend that a comment be made in
the preamble with the following intent: national interest in energy
matters dictates that CCS resources be developed expeditiously.
Therefore, the various review and administration steps in CCS
Order #15 should be carried out as promptly as possible notwith-
standing the time constraints set forth in the order.