Enforcement of State Coastal Resources Management Regulations: The Rhode Island Coastal Resources Management Council

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ENFORCEMENT OF STATE COASTAL RESOURCES MANAGEMENT REGULATIONS: THE RHODE ISLAND COASTAL RESOURCES MANAGEMENT COUNCIL

BY

DAVID W. KAISER

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF ARTS IN MARINE AFFAIRS

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Thesis Committee

Major Professor

DEAN OF THE GRADUATE SCHOOL

UNIVERSITY OF RHODE ISLAND
1988
Abstract

This paper examines the adequacy of the enforcement efforts of the Rhode Island Coastal Resources Management Council (CRMC) in carrying out the rules and regulations of the Rhode Island Coastal Resources Management Program (CRMP). This analysis describes the Federal and State mandates and contributions to the enforcement of the Rhode Island CRMP, determines the legitimacy of the CRMC through Superior Court cases, examines CRMC enforcement activities, and determines the compliance to CRMC cease and desist orders.

The research finds that the CRMC has not enforced its regulatory responsibilities well. Actual compliance to cease and desist orders was only 41%. It may be that compliance with the CRMP is significantly lower due to a perceived high level of undetected violations.

This enforcement problem has been due to administrative problems, both within the CRMC and between the CRMC and other state agencies; insufficient staff and resources, inadequate enforcement procedures with the existing resources; and minimal federal oversight and pressure to correct the problems.

The CRMC has recently been addressing some of these enforcement problems. However, it is too early to determine if the new enforcement initiatives will secure a greater level of compliance with the Rhode Island CRMP.
Acknowledgements

I would like to thank Grover Fugate and his staff at the CRMC for their time and easy accessibility. Without their openness this project would not have been possible. I would also like to thank Larry Juda whose urging helped to complete this project. My major professor, Dennis Nixon, was instrumental in guiding this project to a successful conclusion. Special thanks go to Tim Hennessey and Don Robadue. Their contribution to this project was invaluable. My parents, Robert and Evelyn Kaiser, must also be thanked for their moral and financial support while I attended the University of Rhode Island. This paper was written with funding in part from the National Sea Grant Program.
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Introduction

The Coastal Zone Management Act of 1972 (CZMA) provided the opportunity for coastal states, the Great Lake states, the U.S. territories, and the federal government to develop and implement federally approved state coastal zone management programs. This partnership arose out of the growing need to conserve coastal resources while accommodating increasing coastal development and resource exploitation demands.

The CZMA provided development funds for state coastal zone management programs (CZMPs). Once a program met the federal requirements, federal implementation funds became available. Approved state programs receiving these funds became bound to adhere to their federally approved CZMPs and annual grants. While the federal office responsible for administering, monitoring and guiding the state programs periodically reviews the CZMPs for annual grant and program compliance, there has been no concerted effort to determine the adequacy of the state CZMP's enforcement efforts in carrying out their mandates to conserve coastal resources and secure some level of compliance to the federally approved state CZMP enforcement measures.

This paper will attempt to determine the importance and success of enforcement systems in the implementation of state coastal resource management regulations by looking at an early coastal zone management program, the Rhode Island

Efforts to analyze the implementation of federal and state environmental regulatory agencies have too often neglected the enforcement element of environmental regulations. The work done in this area has predominantly been concerned with air and water pollution (Hawkins, 1984), and fisheries law enforcement (Hennessey and Sutinen; Fraily; Matera; Pallozi; et. al.). Analysis of state coastal zone management programs has been limited to descriptions of program development and regulatory methods (i.e., Brower, 1984; Fischer, 1984; Kinsey, 1984; and, Owens, 1984). There has been no evaluation of the enforcement efforts of these programs or an attempt to determine levels of compliance with the regulations and/or enforcement efforts.

Federal coastal zone managers are also concerned that the states know what is actually happening to their coastal resources and that there is an "acceptable" level of compliance to the federally approved and monitored CZMPs. However, they have not been able to perform indepth evaluations of the state programs and the states do not evaluate themselves. Federal coastal managers have been constrained by a lack of resources and administrative will to effectively evaluate the state CZMPs.

In order to evaluate the success of regulatory agencies
in meeting the goals of coastal resource management legislation the behavior of the agencies must be examined. A key to effective environmental management is the degree of compliance with the regulations, provided that regulation is desired by State citizens and the policies and regulations formulated are based on sound information implemented in a reasonable and equitable manner.

An analysis of the coastal resources management enforcement process includes the following five main components:

(1) Program Policy, Legislation and Regulations. This includes the enabling legislation and policy as specified by the State Legislature and the regulations as promulgated by the CRMC.

(2) Program Resources. These include the federal and state resources allocated to the implementing state agency to carry out its responsibilities.

(3) Implementation. The agency is carrying out the policies, developing and implementing procedures and decision criteria, issuing permits, cease and desist orders, and initiating court action to enforce the regulations. Through adaptive implementation policy is also being made at this stage (see chapter 3).

(4) Level of Compliance. As a result of the implementation of the regulatory program there will be some level of compliance to agency decisions.
Evaluation. After determining the compliance level a comparison of the level of compliance with agency decisions must be made to determine if the regulations and implementation methods utilized by the CRMC have been adequate in meeting the policies and goals of the State Legislature.

While the level of compliance may be determined the benefits to society and the environment are less tangible. Some would argue that increased land use regulation is a hindrance to production and therefore an economic burden on society. Others would argue that without land use regulation, especially in an environmentally important area such as the coastal zone, development has in the past and would continue to cause serious problems for species habitats, water quality, recreational opportunities and for the general well-being or quality of life for U.S. citizens.

Several states were pursuing coastal management initiatives prior to the enactment of the CZMA. However, these efforts were for the most part in anticipation of the federal program. The contribution of the federal program to the RICRMP enforcement efforts is discussed in Chapter 2. In Rhode Island emerging coastal resource management issues were identified in the early 1970s, state legislation was created to deal with these issues, and the new state agency, the Coastal Resources Management Council (CRMC), had to implement their mandate with few resources, reliance on
other state agencies, and limited guidance from the State General Assembly (Chapter 3). With the influence of the Federal Coastal Zone Management Program the RICRMP gained resources and momentum. However, the irony of the RICRMP was, that, while the CRMC was increasing its CZM efforts and defending its legal status (Chapter 4) there was an inconsistent and relatively ineffective effort to enforce their decisions (Chapter 5 and 6).

This research will build upon existing work accomplished in the field of policy implementation in coastal zone management and enforcement of environmental regulations by evaluating state coastal resource management policies at perhaps the most important implementation stage: enforcement. Without adequate enforcement and compliance of the regulations strong "paper" policies will have little effect on the resources the program was designed for. Enforcement of the regulations reflects the ability and willingness of a regulatory agency to implement the original goals and policies of its enabling legislation.

The hypothesis to be tested is that the enforcement efforts of the Rhode Island CRMC have been inadequate for the purpose of carrying out the rules and regulations of the Rhode Island Coastal Resources Management Program (CRMP).

In order to fully explain the CRMC enforcement efforts and make recommendations to improve those efforts various facets of the Rhode Island coastal zone management effort
must be discussed. This includes the regulatory authority for state CZMPs, the impetus behind the RICRMP, subsequent RICRMP development and implementation and the constraints and demands placed on the RICRMP. The desirability of a Rhode Island coastal resource management program will be examined in light of John Kingdon's work on agenda-setting (Kingdon, 1984). The development of the CRMC's current policies and enforcement mechanisms will be described with the help of adaptive implementation theory. Following these discussions on how Rhode Island's CRMP enforcement efforts evolved, the use of the enforcement mechanisms and compliance with these efforts will be evaluated.
Chapter 2 - The Federal Contribution to the RICRMP

The federal Office of Ocean and Coastal Resource Management (OCRM) is largely responsible for the RICRMP and is partly responsible for the effectiveness of the Rhode Island program due to its control of federal CZMP funds and its monitoring responsibilities under the federal Coastal Zone Management Act (CZMA). The authority of the states under the CZMA comes from the perceived need by national decision makers in the 1960s, the Act itself, and the implementation of the CZMA by the federal coastal resource management office.

The Creation of the CZMA

The CZMA was "brought about by discrete and sometimes discordant constituencies motivated by a variety of concerns advocating the pursuit of diverse goals by a wide range of means" (Zile, 1974). Simply put, in the 1960s, the coastal areas were becoming increasingly valuable to multiple and often conflicting user groups.

In the early 1960's, coastal areas were increasing in recreational value (Zile, 1974). By the mid 1960's, outdoor recreation was one of the top ten U.S. economic activities with annual federal expenditures around $1 billion (National Water Commission, 1973).
At the same time that recreational concerns were emerging for the coastal zone the ecological importance of estuaries was becoming a focus for public concern, resource management efforts and scientific research. In the early 1960's, a number of initiatives were debated in Congress that would have provided for a national program for the protection of estuaries. At the time, estuaries were viewed as the most critically endangered coastal habitats (Zile, 1974). These initiatives led to the passing of the Estuary Protection Act of 1968 (16 U.S.C. 1221 et.seq.). In 1966, the Clean Water Restoration Act launched a comprehensive study of the effects of pollution on estuaries. This resulted in the National Estuarine Pollution Study which concluded that the management problems of estuaries were inseparably related to the surrounding coastal zone and that a sound management system should encompass the coastal zone in its entirety (U.S. Department of Interior, 1970).

The study set forth a detailed blueprint of how this could be accomplished. Other studies and investigations of this period came to similar conclusions. These included the Commission on Marine Science, Engineering and Resources 1969 report, the Workshop on Critical Problems of the Coastal Zone (Ketchum, 1972) and studies such as those of the National Academy of Sciences (1970) on waste disposal in the coastal zone. Nevertheless, a comprehensive approach to estuarine policy as suggested by these studies was not
achieved.

From the mid to late 1960's, coastal zone management initiatives became more development-oriented. In 1966, Congress passed the Marine Resources and Engineering Act (MREA). Unlike the estuarine initiatives, the MREA favored development over environmental quality (Zile, 1974).

In 1969 the Commission on Marine Science and Resources Report, Our Nation and the Sea, commonly referred to as the Stratton Commission and Stratton Report, was released. The Stratton Commission was established by section five of the MREA and mandated that the commission report on ocean issues. Much of what the commission recommended was later incorporated into the CZMA in some form.

The report recommended that the states should have primary responsibility for implementation of a Coastal Zone Management Act. The report also proposed that this program be housed in a new National Oceanic and Atmospheric Administration (NOAA). While the Stratton Commission's independent NOAA proposal was not supported, a less ocean centralized NOAA was created under the Department of Commerce. Eventually the federal Coastal Zone Management Program office was placed under NOAA.

The impetus to create a comprehensive coastal Zone Management Act was still not strong enough in the late 1960's. This was due primarily to congressional battles as to what form the legislation should take.
Congressional and Administration interest focused on land use legislation. These decision makers felt that there could be no rational policy toward the land component of the coastal zone in the absence of a policy toward the management of all lands (Zile, 1974).

Despite the interest given the land use bills, supporters of coastal zone management legislation were succeeding in Congress. In the Spring of 1972, the Subcommittee on Oceanography of the House Committee on Merchant Marine and Fisheries unanimously approved the coastal zone bill, HR9229, with amendments (H. Rep. No. 1544, 92d Cong, 2nd Session. 10(1972)). A similar Senate bill passed, S582, and in April of 1972, a new Senate bill was passed and referred to the House, which became the CZMA (Zile, 1974).

The CZMA Mandate

The U.S. Congress specifically designated the states as "The key to more effective protection and use of the land and water resources of the coastal zone... (16 USC 1451 (i))." Congress declared four basic national policies and nine performance standards for states to follow as the underlying base for the national coastal management program.

The four basic national policies are:

(1) "to preserve, protect, develop, and where possible, to
restore or enhance" the coastal resources of the United States (section 303(1)).

(2) "to encourage and assist the states" to develop and implement "management programs to achieve the wise use of the land and water resources of the coastal zone... (section 303(2))."

(3) "to encourage the preparation of special area management plans" to increase the "specificity in protecting significant natural resources" and addressing various coastal related activities (section 303(3)).

(4) "to encourage the participation and cooperation of the public, state and local governments," interstate, regional and federal agencies... "in carrying out the purposes of this title (section 303(4))."

Section 303(2) of the CZMA specifies the minimal performance standards that state programs should provide for. They are:

(1) "the protection of natural resources...within the coastal zone (section 303(2)(A))."

(2) "the management of coastal development to minimize the loss of life and property caused by improper development... (section 303(2)(B))."

(3) "priority consideration...to coastal development uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation and the location" of new development to areas of similar development (section 303(2)(c)).

(4) "public access to the coasts for recreation purposes (section 303(2)(D))."

(5) "assistance in the redevelopment of deteriorating urban waterfronts and ports and ... preservation and restoration of historic, cultural, and aesthetic coastal features (section 303(2)(E))."

(6) simplify procedures to "ensure expedited" coastal resource management decision-making (section 303(2)(F)).

(7) "consultation and coordination with" and "consideration
to the views of, affected federal agencies (section 303(2)(G))."

(8) providing for "public and local government participation in coastal management decision-making (section 303(2)(H))."

(9) "assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone and improve coordination between State and Federal...agencies... (section 303(2)(I))."

These national policies and state program performance standards provided the federal authority for Rhode Island to enforce its coastal management laws.

Federal CZMA Implementation

Some of Rhode Islands enforcement problems can be traced back to federal implementation of the CZMA. The early years were characterized by the rush to approve state programs (Matuszeski, 1985). Congress had allotted finite section 305 planning funds. Programs that had been approved would then be eligible for section 306 implementation funds. The success of the federal Coastal Zone Management Program was measured by the number of states approved by the federal CZM officials (Matuszeski, 1985), but not necessarily on the substance of the programs or the enforceability of the state programs. Congressional support for the program would probably have waned if few states were approved.

By 1979 nineteen of the thirty-five states and
territories eligible under the program were approved. By 1982 this number grew to twenty-eight, the twenty-ninth, Virginia, being added in 1986.

The emphasis on program approval was a disappointment to advocates of strong federal oversight of the program (Matuszeski, 1985). Matuszeski also notes that opponents to a strong federal role "were relieved to see that Congress had enacted a statute that not only limited the federal role, but assured that federal officials were totally occupied trying to define its requirements for the states" (Matuszeski, 1985).

Problems began to arise when it became clear that some states had enacted or would enact coastal management legislation while others were developing programs based on existing programs and statutes called the "networking" approach. The networking approach was used for states with insufficient direct regulatory authority. These programs were approved if they developed a coordinating process among the various state agencies that would carry out the state CZMP. The lead agencies in these states were to monitor the day to day business of the other state agencies (Lowry, 1985). Networking was endorsed by the federal officials because of difficulties in passing coastal specific legislation in state legislatures. Rhode Island was initially a "networked" state but with coastal specific legislation and a statewide coastal development permit.
In the end the federal office required three key areas be addressed for program approval:

(1) The scope of the proposed program to address the major coastal issues in that state;
(2) Level of specificity required in the state policies to deal with the major issues; and,
(3) Enforceability of the policies through statutes, regulations, and other authorities (Matuszeski, 1985).

The federal office addressed the question of what is sufficient to meet the three requirements by a program of "clear flexibility" (Matuszeski, 1985). This enabled the federal office to approve programs based on individual state issues and legislation.

The CZMA was vague, planning funds were finite, Congressional support was needed for the program's survival, and the programs dealt in the extremely controversial area of governmental regulations over private land use. However, with emphasis on program approval and a lack of substantive enforcement provisions, the coastal programs were approved too easily and with not enough "teeth" in them.

While it is debatable as to the quality of some of the federally approved coastal programs, there was, and still is, the opportunity for the federal office to influence the direction a state program can take through the implementation grants. The Office of Ocean and Coastal
Resource Management (OCRM), formerly the Office of Coastal Zone Management, of NOAA is the federal CZMA implementing agency. States with federally approved CZM programs apply to OCRM each year for grants which vary in dollar amounts depending on the federal budgetary allocation and a Congressional allocation formula based on a states' population and length of shoreline. States work with OCRM staff to address monitoring and enforcement efforts by agreeing on Significant Improvement Tasks, Special Award Conditions, local projects, various proposed section 306 tasks, and basic program administration which includes monitoring and enforcing the state's CZM program. All of these are how the federal coastal zone managers can influence Rhode Island's resource conservation and program enforcement efforts.

Section 306 Tasks

Some section 306 Tasks of a state's CZMA grant include basic operating tasks, i.e., administration, salary, travel, supplies, state agency coordination, monitoring of projects, etc. These tasks do not change much year to year. Other section 306 tasks may include enforcement/monitoring projects, special management or scientific studies, that are either done in-house or contracted out, or grants to local governments to produce local plans, projects, and
ordinances, etc, to enforce coastal management laws and policies at the local level.

Significant Improvement Tasks

Some 306 tasks or portions of 306 tasks are determined to be Significant Improvement Tasks or SIG tasks. The CZMA mandates that state CZM programs spend an increasing amount of 306 funds each year, up to 30 percent, on SIG tasks that are approved by OCRM (16 U.S.C. 1455(9) (1982)). These tasks are supposed to be innovative initiatives that address national coastal zone management issues. SIG tasks are often in response to recommendations that the OCRM includes in section 312 evaluation findings. However, the federal office has not required the CRMC to improve its enforcement capabilities through the use of SIG tasks.

Special Award Conditions to Financial Assistance Awards

Special Award Conditions (SACs) are used by NOAA to condition federal grants to states. SACs insure state adherence to the relevant NOAA/OCRM regulations, policies, and OCRM staff conditions. OCRM staff conditions are usually based on previous state performance in administering their 306 awards and on the section 312 evaluation recommendations. States must adhere to the SACs in order to
receive project funds. Special award conditions are one of the few tools available to the OCRM to affect the performance of a State's grant. However, special award conditions have not been utilized to affect CRMC enforcement efforts.

Section 312 Evaluations

Section 312 of the CZMA mandates that, "the Secretary of Commerce] shall conduct a continuing review of the performance of coastal states..." (sec. 312(a)). The evaluation also includes a review of the state's implementation and enforcement of their approved programs, addressing the coastal management needs specified in section 303(2)(A-I), and determines if the state is adhering to its current grant award.

The states are generally reviewed every two years. The evaluation team consists of a staff member from the OCRM's Policy and Coordination Division, the state's OCRM Coastal Program Division (CPD) lead staff contact and usually a CZM program representative from another state.

Written evaluations have been, for the most part, of limited use in determining actual state performance. One reason for this is that the site evaluation lasts for no more than a week. With such little time the written reports are never very probing (Archer, 1987). Another problem is
the rigidity of the review process. This has resulted in many reports being very similar (Archer, 1987). The federal government is also inhibited by a shortage of program management funds. The OCRM lacks the resources and staff to more effectively investigate and monitor the state programs.

The 312 evaluations are one of the few tools available to OCRM to affect state CZM performance. However, they have not been used by the OCRM to improve CRMC enforcement capabilities.

State Benefits from the Federal Contribution

Most coastal states, including Rhode Island, had realized the need for some type of coastal resource management from the late 1960's to the early 1970's. Even without the federal CZMA there would probably have been, and there were, coastal zone management efforts. The CZMA gave all the coastal states a process and guidelines to follow to arrive at enforceable coastal resource management programs. The CZMA also offered the states limited program development and implementation funds and the use of federal consistency to enforce coastal management laws.

Federal CZMA Funding

Federal CZMA funds, though limited, play an important
role in Rhode Island's CZMP enforcement efforts. The coastal states have received various levels of funding for their CZMA programs since 1974. The states are required to match a certain percentage of this federal award. This match will increase to 60% federal and 40% state for fiscal 1988. The state match will increase and remain at 50% in fiscal 1989.

As the section 305 development funds declined in the late 1970s section 306 implementation funds rose to almost $36 million in 1978 (figure 1). This funding level steadily increased to over $41 million by 1982. However, during this time other CZMA funds were being cut. The large drop in total CZMA funding between 1978 and 1983 was largely due to the end of 305 development funds and section 308 Coastal Energy Impact Program (CEIP) funds declining from $132 million in 1978 to under $7 million in 1983 (figure 2).

CEIP funds were largely the result of the 1970's energy crisis. Large amounts of funding were allotted for energy facility impact analyses. As the energy crunch waned so did the CEIP funds.

Section 306 funding was also drastically cut in 1983 and 1984. However, Congress restored implementation funds to near previous levels in 1985. In 1983 Congress also amended the CZMA to include section 309 interstate grants (16 U.S.C. 1451, as amended). These grants were designed to foster increased federal/state/interstate coordination and
Figure 1

Total CZMA Section 305/306 Funding

Source: NOAA Grants Office Budget Reports/OCRM Grant Files
### Federal CZMA Funding (1986 Dollars)

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management of interstate waterbody resource needs.

The remaining CZMA funds include a few years of limited section 310, Research and Technical Assistance for Coastal Zone Management funds, and section 315, the Estuarine Reserve Research System, funds. Section 310 funding stopped in 1980 and the section was repealed in 1986. Section 315 has been subject to the same lack of Reagan Administration support as has section 306.

Adequate financial resources are essential for successful implementation and enforcement of coastal resource management regulations. Without the section 305 federal funds in the mid 1970s, the initial planning work would not have been carried out. In fact, during its early years, the Coastal Resources Center at the University of Rhode Island had to rely upon Sea Grant funds and direct support from the Graduate School of Oceanography to carry out its responsibilities to the CRMC (Robadue, 1986). Financial resources declined steadily during the implementation phase after 1976, at a time when development activity in the coastal region was expanding, and the CRMC was adopting many new policies and plans which required implementation and enforcement efforts.

The federal funds have been instrumental in state program development and implementation. In the case of Rhode Island, when federal funds are cut CRMC management and enforcement efforts suffer (see chapter 4).
The Reagan Administration has consistently zero-budgeted the CZMA program. However, Congress has allotted CZMA funds to keep the programs alive. CZMA proponents fear that without the federal support many of the state programs would be disbanded.

Federal Consistency

The other impetus for state participation in the CZMA was the use of federal consistency. The federal consistency doctrine requires that federally permitted, funded, and direct federal activities "directly affecting" the coastal zone be consistent "to the maximum extent practicable" with the states' federally approved coastal zone management programs (16 U.S.C. 1456(c)(1)(3)1982).

Consistent to the "maximum extent practicable" for activities by federal agencies is determined by the federal agency (15 CFR 930.32). If a state disagrees they may find the consistency determination and the project to be inconsistent with their CZM programs.

If the state denies a federally permitted activity the permit applicant may appeal to the Secretary of Commerce. The state's objection may be overturned if the Secretary finds the project to be consistent with the national objectives of the CZMA or necessary in the interest of national security (16 U.S.C. 1456(c)(3)1982).
Much has been written on the Federal Consistency Doctrine and how it has been interpreted under the Reagan Administration. What is meant by "directly affecting" and "consistent to the maximum extent practicable" is still not clear, despite the Supreme Court decision in California v. the Secretary of the Interior, 104 S. Ct. 656 (1984). It will probably take additional legislative action to clarify the Consistency Doctrine. Despite the confusion that federal consistency has caused, through both judicial interpretation and OCRM requirements on the use of federal consistency, many states have been able to utilize this as an implementation/enforcement mechanism to halt or modify direct federal, federally permitted, and federally funded activities. A recent article claims that the federal consistency provisions are unconstitutional, superfluous and should be repealed (Whitney, 1988). However, this article fails to realize the Congressional intent in including the federal consistency provisions, as noted in a response to Whitney (Archer, 1988).

There has been a serious level of mistrust between the state program managers and the federal office. This was due in large part to the political appointees in NOAA who were opposed to the goals of coastal zone management (Archer, 1987). OCRM leaders made it difficult for states to use federal consistency in some instances and did not allowed the federal OCRM CPD staff to promote innovative coastal
management initiatives (Archer, 1987). There have been serious allegations that the federal office has been influenced by the Department of the Interior's Mineral Management Service, and the oil and gas industry (Archer, 1987 and CZM Newsletter, 1987). This has made it difficult for the federal office to work with the states in a more innovative and effective fashion to secure greater compliance to state programs.
The impetus for coastal resource management enforcement in Rhode Island began in the late 1960s as more people became aware of the importance of environmental protection. However, initial interest in addressing coastal issues in Rhode Island was primarily from the academic and planning communities of the state and not from the general public.

An early study from the academic community received considerable publicity because it contained the first comprehensive summary of environmental conditions and economic uses of Narragansett Bay (Alexander, 1966). The study proposed that the Bay be zoned by the state in the same manner that coastal municipalities were regulating land use. An administrative mechanism for enforcing the Bay zoning plan was also encouraged.

During the next three years, as coastal issues grew in the state and across the nation, additional studies of the value of Narragansett Bay were published. The final report of the National Estuarine Pollution Study in 1969 called for the establishment of a new program for pollution control which focused on cleaning up polluted water bodies such as estuaries (U.S. Dept. of the Interior, 1970). That same year the National Commission on Marine Science, Engineering and Resources called attention to the increased degradation of marine resources in the United States (National Academy
of Sciences, 1970). The University of Rhode Island community was involved in both of these projects. The University community and public officials of the Rhode Island Statewide Planning Program, were aware of new state and local coastal management initiatives throughout the United States especially the establishment of the San Francisco Bay Conservation and Development Commission (BCDC) in 1969.

The result of this intense interest in coastal resources was the preparation of a report by the National Resources Group, a private organization composed of research, business and civic leaders on the administration of Narragansett Bay (Natural Resources Group, 1969). Rhode Island Governor Frank Licht responded to the proposal by establishing a Committee on the Coastal Zone to identify the state's coastal resource problems and recommend a course of action.

The political support needed to obtain legislative approval for a new coastal environmental policy was increased when, beginning in the early 1960's, a series of potentially harmful environmental uses had been proposed for Narragansett Bay. The U.S. Army Corps of Engineers was serious about creating a massive hurricane barrier at the mouth of the bay, stimulated by the widespread destruction caused by Hurricane Carol in 1954. In addition several companies were acquiring sites and preparing proposals to construct oil refineries and nuclear power plants in
Narragansett Bay.

In response to this the Governor's Committee on the Coastal Zone prepared a 135 page report, released in March 1970, discussing coastal environmental resources, uses and problems, and proposed the creation of an 11 member coastal zone council. This new agency was to include four state agency heads and seven public members representing environmental, business, research and local government perspectives. This proposal for coastal resources management was submitted to the General Assembly but was so controversial that it was never reported out of committee (Robadue, 1986).

The major issue raised was that the legislature did not want to preempt traditional local control over land use decisions (Cole, 1975). A new governor's committee was formed in November 1970, composed of 68 members representing every municipality, numerous federal and state agencies, and a dozen invited private organizations. This expanded committee debated the basic approach to be taken and recommended increasing the representation of local communities on the new agency.

The idea of creating a new mechanism for administering coastal resources did not have much political salience in itself. However, Kingdon's work on agenda setting illustrates how a coastal resource management institution developed and was implemented in Rhode Island (Kingdon,
1984). According to Kingdon, regulatory agenda setting consists of four processes:

(1) The setting of an agenda.
(2) The specification of alternatives from which a choice is made;
(3) An authoritative choice among the specified alternatives; and,
(4) The implementation of the decision (Kingdon, 1984).

Kingdon sees these processes as largely independent of one another with each developing according to its own dynamics and rules. But if the problems identified are to get on the agenda, Kingdon argues, these processes must be joined at some critical juncture or focusing event. The greatest policy changes are associated with the coupling of problems, policy proposals, and politics (Kingdon, 1984).

This coupling is most likely to occur when opportunities for advancing particular views, or policy windows, are open. As Kingdon observes, "Thus agendas are set by problems or politics and alternatives are generated in the policy stream." And, "While governmental agendas are set in the problems on political streams, the chances of items rising on the decision agenda--a list of items up for actual action--are enhanced if all of the streams are coupled together (Kingdon, 1984)."

In the early 1970s a policy window opened when a proposal to construct an oil refinery in Tiverton, Rhode Island provided the critical focusing event which placed
coastal resource management high on Rhode Island's public agenda. Public officials, legislators, and finally the general public realized that the town council of Tiverton, a rural community, would make the final decision on whether the refinery was built. The town's only regulatory tool was a zoning ordinance that gave it no authority to control environmental impacts.

In 1971 Save the Bay, a new citizen group formed to fight the refinery, and John Lyons, a state representative from Tiverton, lead a successful fight in the General Assembly to create a new agency which could effectively regulate such large industrial projects and serve as the key institution in managing coastal resources. In July 1971 a problem, policy proposals, and politics came together to create the Coastal Resources Management Council.

**Initial RICRMP Dynamics**

The Rhode Island General Assembly did not wish to create a new state bureaucracy, particularly in view of intense local concern over this encroachment by the state into a traditionally local decision-making arena. As a result, the CRMC was initially a "networked" CZM program with direct permitting authority. The Division of Coastal Resources, formerly the Division of Rivers and Harbors, located in the Department of Environmental Management (created in 1977 to
consolidate resource management and protection agencies), provided administrative, engineering and clerical assistance. Research and planning tasks were handled on a contractual basis by the newly created Coastal Resources Center at the University of Rhode Island. Legal assistance was obtained from the firm of Goldman, Biafore and Hines, although in theory the Attorney General's Office was supposed to represent the CRMC in court cases. The federally mandated project review coordination and federal consistency determination, as well as numerous planning tasks, were carried out by the Statewide Planning Program.

Control over the federal funds received by the state shifted several times. Until 1978, the federal funds were administered by the Statewide Planning Program. After the state became eligible for Section 306 implementation funds in 1978, administration was shifted to a new Governor's Office of Coastal Zone Management. This office was subsequently abolished in 1981 due to its high cost and the sharp decline in federal funds. Grant administration then was placed directly in the Governor's Office. The CRMC was composed of 17 members selected using a complex formula to assure local representation:

**Governor's Appointees**

2 local officials from towns less than 25,000 in size
2 local officials from towns more than 25,000 in size
3 at large public members, approved by the Senate, the
Director of the Department of Environmental Management and the Director of the Department of Health.

General Assembly Appointees

2 representatives, one from a coastal town
2 senators, both from coastal towns
2 at large public members
2 at large public members from coastal towns

This formula was quite different from the one originally proposed by the 1970 Governor's Task Force and reflects the result of bargaining during the 1971 legislative session (Robadue, 1986). The CRMC's own staff remained small through the mid 1970s, consisting only of the executive director, an administrative assistant and the staff biologists, who were transferred to the Division of Fish and Wildlife during the creation of the Department of Environmental Management in 1978.

Legislative Mandate of the Coastal Resources Management Council

Rhode Island's authority to promulgate and enforce coastal resource management laws and regulations is derived from two main sources. (1) Initially, the state coastal resource management legislation created the CRMC and mandated that the CRMC adopt and enforce policies and regulations to protect coastal resources (Section 46-23-1 of
the General Laws of Rhode Island of 1956 as amended). (2) Later, the federal Coastal Zone Management Act of 1972 (CZMA) allowed Rhode Island to further develop and enforce coastal resource management laws and policies that met federal guidelines (Chapter 3).

The State legislative findings declared that "preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured, judged and regulated." The enabling legislation of the CRMC specified the basic policy to

"preserve, protect, develop and where possible, restore the coastal resources of the state for this and succeeding generations through comprehensive and coordination long-range planning and management designed to produce the maximum benefit for society from such coastal resources; and that preservation and restoration of ecological systems shall be the primary guiding principle upon which environmental alteration of coastal resources will be measured, judged and regulated" (Chapter 23 of the General Laws of Rhode Island, section 46-23-1, legislative findings).

The legislative standards set for CRMC plans and programs requires the CRMC to perform a balancing act, instructing the CRMC to consider:

(1) The need and demand for various activities and their impact upon ecological systems.
(2) The degree of compatibility of various activities.
(3) The capability of coastal resources to support various activities (Chapter 23 of the General Laws of Rhode Island, section 46-23-1, legislative findings).
The General Assembly required the CRMC to "formulate plans and programs for the management of each resource, identifying permitted uses, location, protection measures, etc (Chapter 23 of the General Laws of Rhode Island, section 46-23-1, legislative findings)." The statute directs the CRMC to focus its attention on a specific list of activities and areas for which it was given jurisdiction:

a. Power generation and desalination plants.

b. Chemical or petroleum processing, transfer or storage.

c. Minerals extraction.

d. Shoreline protection facilities and physiographic features.

e. Intertidal salt marshes.

f. Sewage treatment and disposal and solid waste disposal facilities (Chapter 23 of the General Laws of Rhode Island, section 46-23-1, legislative findings).

The CRMC's enabling legislation specified the use of a resource management process in which studies and plans were to provide decision making criteria for the CRMC to employ in exercising its implementing authority (permit process) and its coordination responsibilities.

Planning methods were to be employed to generate consensus on goals, conduct research on problems, analyze alternative policies and produce a plan that the CRMC would implement through regulation and coordination. However, the General Assembly did not establish a time deadline for carrying out this planning process nor did it instruct the
CRMC on how to carry out the multiple roles of regulator, policy maker and enforcer.

Actual enforcement authority is under Chapter 23, Section 3, Subsection 46-23-7 of the General Laws of Rhode Island, which authorizes the CRMC to issue cease and desist orders to stop and/or remedy a violation of the Rhode Island coastal program. A violation of the program is defined as, "any development, operation, alteration or construction in an area under Council jurisdiction which is:

(1) Undertaken without a valid Council assent.

(2) Undertaken in a manner other than that prescribed in such as assent where one has been issued.

(3) Continued after a written cease and desist order has issued by the Council or its authorized agents; or

(4) Undertaken after a restoration order has been issued by the Council.

The Chairman of the Council and state conservation officers are empowered to issue written cease and desist orders, "in any instance where activity is being conducted which constitutes a violation of the Program or a violation of the Statute, regulations or decisions of the Council."

The Chairman is empowered to issue restoration orders when the violation is not redressed and is determined to be capable of causing adverse environmental impacts or is inconsistent with program regulations.

A violation of a Council cease and desist order is a
misdemeanor and is punishable by no more than a $300 fine or three months imprisonment, or both if convicted. Each day a violation or failure to comply continues is deemed a separate offense.

The Rhode Island legislative mandate authorizes the CRMC to enforce its regulations and policies. The next section discusses the implementation of the RICRMP policies.

Implementation of the RICRMP

CRMC enforcement efforts are partially shaped by the development of the RICRMP. The development of the RICRMP includes not only the federal coastal resource management office's contribution and responsibilities, the creation of the CRMC, and the enabling legislation, but, also the implementation of their coastal resource management mandate.

Coastal resource management must take place within an institutional setting and policy process which attempts to reconcile the differing values and objectives of a variety of user groups and the general public and then provide the means for implementing chosen objectives (Robadue, 1986).

Implementation refers to those activities that follow statutes, policies, and goals as specified by legislators and government officials (Ripley and Franklin, 1982). Implementation includes actions and non-actions by a variety of actors, especially bureaucrats, mandated to put programs
into effect, hopefully in such a way as to achieve the program's goals (Sproule-Jones, 1977).

In Rhode Island, the CRMC was established to implement new coastal resource management policies and goals. However, a major part of the work of the new agency was to develop the specific procedures and regulatory policies to be implemented. The traditional model of implementation assumes that "policy making supercedes policy implementation" and that compliance follows directly from the creation of a hierarchical, centrally controlled government institution (Nakamura, 1980). However, this traditional model is unable to explain much of the behavior which has taken place in the implementation of the RICRMP. The nature of the CRMC's mandate as an ecosystem management agency precluded the General Assembly from being overly specific about objectives and decision rules. The CRMC was expected to engage in an adaptive implementation process where policy is made by those who implement it (Robadue, 1986). Under the adaptive implementation model policy is shaped and transformed by the people who implement it (Wildavsky, 1979). This approach explicitly recognizes the importance of "effective bargaining arenas."

"Bargaining, for example requires real stakes. Local actors have no incentive for participation in a bargaining arrangement unless the possible pay-off is tangible and valuable...sufficient flexibility must exist in the outlines of a policy to allow the local bargaining process to work. Carefully specified, hierarchically controlled, policies limit incentives
to form strong local bargaining coalitions (Elmore, 1980)."

These interactive dynamics contribute modification, specification and revision in policy implementation. Outcomes are neither automatic nor assured. Regulatory institutions must continue the search for consensus and viable policy options through adaptive implementation.

In Rhode Island the CRMC has carried out this mission. In the fifteen years of implementation which followed passage of the Rhode Island Coastal Resource Management law, adaptability and change figure prominently.

The implementation of the Rhode Island Coastal Resources Management Act consists of three stages of adaptive behavior. The first stage took place between 1971 and 1976. The CRMC began the process of formulating policies and obtaining legislation for its regulatory program. After 1977, in the second stage, the CRMC's jurisdiction and mandate was more clearly defined and expanded as a result of attempting to comply with federal requirements under Section 305 and 306 of the Coastal Zone Management Act. However, the CRMC adopted very few of the decision criteria or water use designations required under its legislation.

In the third stage, which began in 1983, the CRMC adopted a substantially revised, site specific regulatory program as well as special area management plans for key regions of the coastal zone; the deteriorating Providence
Harbor, and the rural south shore coastal lagoons threatened by rapid development. The CRMC is currently faced with the serious challenge of implementing these new policies and rules through its regulatory, enforcement, and coordinating functions during a period of dramatically reduced financial resources and questionable state administrative support.

**CRMC Implementation, 1971-1976**

In the first stage (1971-1976) the CRMC attempted to gain legitimacy as it sought to add content to its mandate. Sophisticated planning backed by sound scientific information was lacking during this period. The CRMC was created because of the legal limitations faced by local governments as they attempted to regulate environmentally damaging activities. Since Rhode Island politics has a strong element of localism, a statewide institution was created to do ecosystem management, but a struggle continued with respect to the representation of local interests and the CRMC (Robadue, 1986). The result was a state agency with a broad mandate for statewide ecosystem management but whose dominant orientation was local. During this time the state sought to comply with the federal CZMA standards.
CRMC Implementation, 1977-1982

In stage two (1977-1982) the CRMC's efforts to implement its coastal program was given a large boost by federal implementation section 306 grants. In the process, however, the emphasis upon expanded jurisdiction, program approval, and employing an environmental impact assessment approach to decision making required by the Office of Coastal Zone Management as a condition of funding, drove out issues and substantive decision criteria from the regulatory process (Robadue, 1986).

This is particularly ironic since it was federal funding which made it possible for the CRMC to fulfill its legislative mandate to conduct a resource oriented and policy development process.

CRMC Implementation, 1983-1986

Stage three (1983-1986) involved responding to decreasing resources and increasing coastal development pressures. Budgetary famine occurred as the federal allocation was drastically reduced and state funding remained constant or slightly declined. At the same time the regulatory workload increased due to a boom in coastal county housing development. The CRMC altered its operation in light of these resource constraints. The CRMC adopted
specific decision-rules which would permit the CRMC staff to issue administrative assents on a variety of routine applications. The decision to implement this part of the legislative mandate was seen largely as a way to be more efficient with fewer resources. The improvements to the policy and decision process were a by-product of this adaptive response rather than its primary goal. Practical implementation considerations then were largely responsible for achieving specific decision rules.

The implementation of Rhode Island's 1971 coastal resources management act has been an adaptive process. The unique mandate to manage ecosystems rather than specific resources, and structural weaknesses in the law formed the basis for a policy development process which was considerably influenced by implementation problems such as inadequate resources, minimal federal support, increasing coastal development and regulatory workloads, little administrative support and resistance by the implementing agency to the establishment of decision criteria (Robadue, 1986).
Chapter 4 - Agency Legitimation Through the Courts

Through adaptive implementation the CRMC has developed policies and regulations without legislative scrutiny to determine if the original mandate was being followed. The CRMC chose to implement its mandate of interagency coordination through the permit decision making process by placing itself last in line, declaring that an applicant must first pass all other local and state approvals. This procedure, determined in part by the stringent Rhode Island Administrative Procedures Act, placed the CRMC squarely as the focal point for a series of preliminary decision making activities by numerous agencies with only the State Superior Court to supervise its decisions.

The capability to defend these policies, regulations, and decisions against legal challenges is a crucial ingredient in implementing and enforcing a regulatory program. The aggressiveness with which management agencies pursue their mandate is influenced by a perceived strength to withstand court scrutiny. The experience of the CRMC in the Superior Court indicates a general pattern of success.

There are three basic types of CRMC court cases. There are CRMC enforcement cases, which are dealt with in the enforcement section, appeals to CRMC decisions by permit applicants, and third party, or outside objector, appeals to CRMC decisions.
From 1971-1985 the CRMC denied between 5-10 percent of their applications. It is not surprising then, that, the CRMC has been sued just 57 times by permit applicants after they have denied an application or modified a permit against the wishes of the applicant.

Of the cases brought against the CRMC by applicants, 82 percent involve residential projects or are for rights-of-way designation appeals (Figure 3). The remainder of the cases were brought by dissatisfied commercial project applicants. This is because approximately 70 percent of all CRMC permits are for residential projects (CRMC Assent file). The CRMC has lost 15 percent of the applicant cases, won 32 percent with 53 percent still undecided by 1987. However, 11 of the 30 undecided cases are rights-of-way cases and 9 others have been consolidated into one future decision on assents with stipulations for private homes.

Public Right-of-ways

Over time the public access nature of some public right-of-ways had been forgotten. In 1979 and 1980 the CRMC searched the public records and identified thirteen existing public right-of-ways. The town of Westerly and several affected landowners separately sued the CRMC on various
# Figure 3

## Disposition of Legal Appeals to CRMC Decisions

### Outcome

<table>
<thead>
<tr>
<th>Category</th>
<th>CRMC Affirmed</th>
<th>CRMC Reversed</th>
<th>CRMC Reversed/Remanded</th>
<th>Undecided</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential construction, piers, dredging, filling.</td>
<td>15</td>
<td>0</td>
<td>5</td>
<td>16</td>
<td>36</td>
</tr>
<tr>
<td>Right of way designations.</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>Commercial construction, dredging, piers.</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>5</td>
<td>10</td>
</tr>
<tr>
<td>Outside objections to assents issued.</td>
<td>12</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td>24</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>30</strong></td>
<td><strong>5</strong></td>
<td><strong>11</strong></td>
<td><strong>35</strong></td>
<td><strong>81</strong></td>
</tr>
</tbody>
</table>

Source: CRMC Rhode Island Superior Court Cases
civil and constitutional grounds (see *Town of Westerly v. the CRMC*, (R.I. Superior Ct., 81-330, 1981)). A judicial decision has yet to be rendered for these right-of-way cases, with one exception.

In *Pearson et.al. v. the CRMC* (R.I. Superior Ct., 81-702, 1981) the court found for the landowner, Pearson. On November 15, 1980 the CRMC declared a portion of the plaintiff's property as a public right-of-way. The plaintiff's were unable to attend the public hearing and requested a special hearing to present their evidence to the CRMC. The CRMC denied this request and the Pearsons sued the CRMC claiming the CRMC decision deprived them of their property rights without due process. The court agreed and remanded the case to the CRMC for an additional hearing.

The eleven undecided right-of-way cases center on constitutional legal issues regarding public v. private property. Unless an appellant's motion to stay the CRMC decision is granted by the Court the CRMC maintains the position that the properties in question are public right-of-ways (Fugate, 1988). The CRMC does not pursue the cases. The CRMC waits for the appellant to continue the appeal process. If, after five years, there is no activity on the part of the appellant the CRMC files for dismissal of the case (Fugate, 1988). These undecided appeals are represented by the following cases.

In *L. Horner, et.al. v. Lyons* (R.I. Superior Ct., 81-
the plaintiffs claimed their civil and constitutional rights were violated when the CRMC designated a public right-of-way on their property in Westerly, R.I. The plaintiffs maintained they were never informed of any statutes, policies, regulations, or any of the factual/legal issues to be adjudicated at the public hearings.

In *R. Thurston v. the CRMC* (R.I. Superior Ct., 81-1385, 1981) the CRMC had designated a public right-of-way for the property adjoining the plaintiff's property. Thurston had entered into an agreement to purchase the piece of property on the other side of the right-of-way. He did not like the idea of a public right-of-way between his two properties.

**Early Appeals, 1971 - 1977**

Early appeals to CRMC decisions may have been an indicator of frustration by permit applicants to the CRMC's lack of procedures, policies and specific decision criteria. Between 1971 and 1977, the CRMC had to defend itself against numerous applicant appeals. Of the 17 cases from this period the CRMC won 53 percent, lost 18 percent with the remaining 29 percent left undecided.

In *D.P. Sherman, et.al. v. Miner* (R.I. Superior Ct, 74-1890, 1974) the court found for the landowner basing its decision on the violation of the plaintiffs constitutional rights to private property and on a lack of evidence to
support the CRMC's case. The plaintiff had purchased a lot to build a house which was on a partially developed barrier beach in Charlestown, R.I. After various ISDS tests were approved by the Rhode Island Department of Health, Sherman applied for a construction permit. The CRMC denied the application, the plaintiff sued and the court ordered the case remanded to the CRMC with instructions to grant the application.

Another example of the CRMC's early litigation problems is N.B. Fillmore v. Lyons (R.I. Superior Ct., 73-2373, 1973). The plaintiff was granted two building permits by the town of South Kingstown, R.I. for houses above mean high water. One month later the CRMC issued a cease and desist order but construction continued. The CRMC then filed a complaint in the Rhode Island Superior Court and obtained a restraining order. Several months later the plaintiff hired a contractor who would proceed with the construction regardless of the restraining order. The then Rhode Island Department of Natural Resources (DNR) served a verbal cease and desist order, but to no effect. The DNR then served a criminal summons to the contractor for violating Rhode Island coastal resource laws. The plaintiffs then sued to stop the CRMC from interfering with the construction and for damages and attorney fees. The court restrained the CRMC from further action in this case but denied the appeal for monetary damages and attorney fees.
It would be interesting to see what the pecuniary outcome would be today given the Supreme Court's decision in First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, California, 107 S.Ct. 2378 (1987) (First Church). In First Church monetary damages were awarded after the court determined that a temporary taking had occurred.

Appeals from 1978 -

An even greater number of court cases followed a few years after the CRMC adopted its federally approved coastal program in 1978. This was due to increased CRMC permit and enforcement activity as a result of increased federal implementation funds. New permit applicant appeals increased from 10 during 1979 and 1980, to 37 during 1981 and 1982 (figure 4). During this period the CRMC won 23 percent of the 39 cases and lost 15 percent. The other 61 percent includes the bulk of the total undecided cases (80 percent) for applicant appeals.

The cases won by the CRMC during these years are generally for small projects denied due to proximity to tidal wetlands. Although the projects themselves were minor the legal decisions should have given increased force to CRMC efforts to control the cumulative effect of the minor residential projects. Typical cases include E.W. Burdick v.
Figure 4

Appeals to CRMC Decisions Initiated
in Rhode Island Superior Court

Source: Rhode Island Superior Court Records
In *Burdick*, the CRMC denied the plaintiff's application for an ISDS on Ninigret Pond in Charlestown, R.I. They found that the area would be exposed during a flood period harming nearby scallop beds and other salt marsh habitat. Plaintiff argued that this decision was an infringement of his constitutional private property rights but the court affirmed the CRMC decision.

In *Vare* the CRMC denied an application to construct a private dwelling near an extensive area of tidal wetland in Narragansett, R.I. The plaintiff's arguments and the court's ruling were the same as in *Burdick*.

Cases lost by the CRMC at this time were usually due to various procedural problems including insufficient public hearings and notification of the hearings and the issues to be covered. *W. Zanghi, et. al. v. CRMC* (R.I. Superior Ct., 82-1583, 1982) typifies these cases.

The plaintiff, Zanghi, applied to the CRMC to construct a private dwelling. The CRMC granted general approval with whatever CRMC restrictions were deemed necessary since Zanghi was going to sell the property as soon as a determination was made as to whether the property was buildable. The CRMC then denied the application due to incomplete information as to where the dwelling would be
placed. Zanghi applied again but the CRMC again denied the application. Prior to the final written CRMC decision Zanghi filed a motion to reopen the application record under the Rhode Island Management Procedure 4.11. This would have allowed the CRMC to reconsider CRMC staff modifications which the staff indicated would have totally eliminated the problems. The CRMC did not respond to this motion and issued its final written denial. Zanghi sued and motioned to remand the issue back to the CRMC for further proceedings. The court found for the plaintiff and the CRMC was required to consider and vote on the staff's modified application.

The CRMC adopted much more specific procedures, policies and decision criteria in 1983. Since then, there has been only one permit applicant appeal (Appendix A). It is possible that appeals have declined due to CRMC willingness to grant permits more readily and with fewer modifications. However, data from 1987 for CRMC permit application activity shows that the CRMC is denying more applications than prior to 1986 (CRMC Assent File, 1987).

Most of the CRMC applicant appeals have asked the Court for reversals on jurisdictional and constitutional grounds. However, the courts found that, as long as there were no arbitrary environmental decisions, the enabling legislation was constitutional and that agency decisions did not overreach the bounds set in the legislation. Thus, CRMC
applicant decisions have stood up fairly well in the courts. Future CRMC success for applicant appeals will depend primarily on the rights-of-way and consolidated case decisions.

**Appeals to Agency Decisions by Objectors to the Granting of a Permit**

With the large number of CRMC assents and low denial rates a greater number of objector cases than those observed would be expected. (Objectors are those who sue both the agency and assentee for permits issued on various environmental, riparian rights or historic preservation reasons). There have only been 24 objector cases brought against the CRMC. Objector cases comprise 30 percent of the appeals to CRMC decisions.

While CRMC program changes appear to have a positive effect on reducing permit applicant appeals they have no effect on objector appeals to CRMC permit approvals. The number of objector appeals has remained consistently low throughout the CRMC's existence.

Unlike applicant appeals 75 percent of the CRMC objector cases dealt with more serious coastal projects. These included cases dealing with projects affecting water quality, impeding vessel traffic, excess of CRMC authority concerning riparian rights, and commercial development. Of all 16 CRMC decisions reversed and remanded by the court, 44 percent were objector appeals to more important CRMC
actions. In J. Saccocia, et. al. v. CRMC (R.I. Superior Ct., 75-2680, 1975) the CRMC granted a permit to J. Ginals to construct piers into the Warren River for boat services. The plaintiffs appealed on the grounds that the project would cause environmental harm and impede vessel traffic. The court ordered the case be remanded to the CRMC to take these issues under consideration. The CRMC has not done well when defending appeals to major permit approvals.

The CRMC has lost seven of their objector cases, winning twelve with five still undecided. However, four of the seven reversals came in the CRMC's first years when its decisions were reversed because they failed to make adequate findings of fact as required by Section 42-35-12 of the Rhode Island Administrative Procedures Act (Laverty, 1980). In E. Greenwich Yacht Club, et. al. v. CRMC (R.I. Superior Ct., 73-2852, 1973) the yacht club and Save the Bay objected to a CRMC permit granted to the Bayside Development Corp. to erect a high rise apartment complex in Warwick, R.I. The plaintiffs claimed the project would adversely affect the waters of Narragansett Bay. The court remanded the case to the CRMC for further hearings on the grounds that the CRMC failed to make findings in fact. The original case was brought in 1973. The decision was rendered in 1975. The CRMC appealed the decision to the State Supreme Court in 1977. By then the Bayside Corp. had enough, dropped the project, and ended the State Supreme Court appeal.
One explanation proposed for these early inadequate CRMC decisions was that the CRMC was pro-development and granted permits without fully considering the environmental impact:

"Therefore, when decisions to issue permits were challenged as being contrary to Council legislative mandate, the Council could not justify its position based on substantial evidence and related findings of fact demonstrating that its decisions were not essentially arbitrary and irresponsible." (Laverty, 1980)

The counter argument by the CRMC was that the lack of technical support from the Division of Coastal Resources, when coupled with the increasing rate of application activity, did not allow for thorough investigation of all applications. Thus, the CRMC was rendering decisions based on insufficient facts. However it was the lack of specific procedures, policies and decision criteria that precluded satisfactory application processing. As CRMC decision criteria developed and more and more procedures were upheld in court objector cases subsided. Of the 24 objector cases 54 percent were in the early period from 1971-1977, 37 percent from 1978-1982, and only 8 percent after the CRMC adopted more specific decision criteria and procedures. The CRMC has not lost an objector case since 1975.

There have been very few appeals to CRMC decisions despite the length of time the agency has existed and the number of applications processed. CRMC regulations and decisions for less important applicant cases have been upheld by the courts. In recent State Supreme Court cases
the CRMC's legality was not challenged in the CRMC's decision concerning Easton's Beach and an order to remove docks in front of the Wellington Hotel upheld. By increasing the degree of specificity of its policies, regulations, and decision criteria the CRMC seems to have reduced applicant challenges to a low level in recent years. Generally, the courts have found the CRMC accountable for the Rhode Island coastal resource management laws and regulations and upheld the CRMC's implementation and enforcement of the RICRMP.
Chapter 5 - CRMC Enforcement Efforts

The CRMC issues permits to regulate coastal activity and to protect Rhode Island's marine environment. Despite the broad goals listed earlier the CRMC has directed its permitting behavior toward minor residential projects. Of the 3543 assents issued by the CRMC from 1971 - 1985 approximately 70% were for five types of minor projects and an estimated 95% of all applications for CRMC permits were approved (CRMC assent file). Recent permit data from 1986-1988 shows applications are substantially higher than approvals on a monthly and annual basis. Many applications are dropped or not completed. It is unclear if this is a recent phenomenon or that the CRMC's new computer permit tracking system is compiling a more accurate record. However, it appears that the CRMC has been regulating private homeowners who are rarely denied permits. These minor projects include single family dwelling units, residential accessory structures, residential piers, and individual sewage disposal systems.

Prior to late 1986 cease and desist orders were issued when a violation of a permit or of the regulations was reported to the CRMC by either private citizens, town officials but most often by the Rhode Island Department of Environmental Management (DEM) enforcement staff, which supports the CRMC. Cease and desist orders were also issued
when a permit is violated and discovered by the CRMC staff.

In a hierarchy of enforcement actions this notification would normally be seen as the first step. In Hawkins' compliance strategy negotiation toward voluntary compliance would follow progressing to more formal legal sanctions if negotiations fail (Hawkins, 1984). However, the CRMC preferred to have a written record of every detected violation. The cease and desist order was thus formal notification and a stop-work-order calling for either restoration or that the violator apply for a CRMC permit.

The CRMC has preferred to work with the violator on a conciliatory basis but in many cases that is not possible for two reasons: (1) there is little or no follow up on cease and desist orders due to manpower shortages; and (2) violators blatantly ignore the orders continuing their project either because they are naturally antagonistic toward governmental interference or are aware of CRMC enforcement ineffectiveness and do not worry about formal legal sanctions rarely used by the CRMC. There are those who initially follow the rules but become discouraged when no action is taken on their application.

Major and Minor Violations

On a case-by-case basis many of the violations are considered minor (Pisani, 1987). Since 70% of the CRMC's
workload is processing minor residential project applications this is not surprising. However, these detected minor violations have over time probably had a negative cumulative impact on Rhode Island's coastal resources. Added to this are the detected major violations and those violations not detected. The negative impact of the violations is further evident because there has been a high level of non-compliance with the detected violations (see Chapter 5). Thus, not only are the resources impacted, but the CRMC has been unable to effectively carry out its enforcement responsibilities.

It is difficult to determine the severity of the detected violations. Unless the CRMC followed-up on a case there was no further CRMC record of the violations outcomes. The CRMC staff assert that half of the cease and desist orders from 1973 - 1986 were for minor wetland fill violations (Pisani, 1987). When the cease and desist orders were issued the illegal action often ceased but no further action was taken, either by the violator or the CRMC. Years later the landowner might apply for a permit to place a structure on the fill. The CRMC is then unable to determine if there was a violation because the illegal fill has revegetated and become part of the site. This enforcement failure increases the cumulative impact of the minor illegal fills.

Other times the cease and desist orders were ignored,
the illegal activity continued and there was no further record of CRMC enforcement action. For example, in 1981 the CRMC issued a cease and desist order to the Newport Shipyard, Inc. to stop illegal filling and remove the fill which had been placed below mean high water. Two months later the CRMC discovered that the illegal fill had been paved over and another cease and desist order was issued. That was the last action taken and CRMC staffers do not know if corrective action was taken (Pisani, 1987). The large number of unresolved, probably minor, violations and the incomplete CRMC records draws attention to the limited ability of the CRMC to enforce the Rhode Island coastal management regulations and the limited mandate the CRMC has made for itself from their enabling legislation. The following sections discuss the reasons the CRMC was not successful in enforcing the RICRMP prior to late 1986.

Effects of Funding on Enforcement

Funding levels play a key role in CRMC enforcement efforts. Funding provides the resources needed to formulate the policies, regulations and procedures to implement the coastal program's goals. The CRMC's use of cease and desist orders and other informal enforcement mechanisms, i.e., staff vigilance, CRMC members and citizen complaints, and follow-up on these orders was tightly coupled to funding and
personnel levels and not to potential violations due to CRMC permits or levels of coastal development activity. The state of Rhode Island created a new entity to deal with their coastal management concerns but was unwilling to provide the support to carry out the CRMCs mandate.

Prior to 1977 funding for the Rhode Island coastal program was low. Most of the available resources were used to implement the 1971 mandate to prepare plans and regulations. In 1978 the Rhode Island program received federal approval. However, federal funding steadily decreased from $1,670,000 in 1978 to $285,966 in 1983 (1986 dollars). In 1983 the CRMC adopted sweeping amendments to its statewide regulatory program in part to compensate for loss in resources by approving more specific decision criteria, water and shore use designations, prohibited uses and special area management plans. However, these specific criteria did little to improve the enforcement efforts of the CRMC.

The decline in program funding has had a major adverse effect on enforcement of coastal program rules and regulations. The CRMC has issued a total of 431 cease and desist orders from 1973-1985. Available data suggests that the fluctuation in enforcement activity is closely linked to funding levels, manpower and the initiation of new programs.

There is a negative relationship between enforcement activity and coastal development (figures 5 and 6).
RHODE ISLAND CRMC CEASE & DESIST ORDERS

Source: Rhode Island CRMC Cease and Desist Files
Figure 6

Rhode Island Single Family Coastal Permits

YEAR: 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85

Source: Providence Journal Bulletin Almanac
Enforcement was very low in the early years of the CRMC, but steadily increased at the same time that the development rate was dropping to a historic low in 1982 (figure 6). CRMC enforcement efforts then fell sharply just as the Rhode Island economy recovered and building in coastal municipalities began a rapid rise. When increased permitting and enforcement measures were needed the CRMC was without the resources and political will to increase the detected violations.

Finally, CRMC enforcement can be shown to follow closely the Rhode Island coastal program long term funding cycle (figures 5 and 7). Enforcement peaked shortly after funding peaked in 1978-1980. Following the decrease in federal and state funds enforcement activity also decreased.

The dramatic increase in cease and desist orders in 1985 was not due to an increase in the detection of violations but because one enforcement administrator was hired by the CRMC to issue long overdue orders (Seavey, 1987). However, this enforcement official notes that the 90 orders issued in 1985 were a "drop in the bucket" and that many more could be issued. They were not issued due to lack of time and resources and the inability of the CRMC, DEM and CRMC's legal counsel to follow up even for the orders issued.

Indeed, from January to October of 1986 the CRMC issued only 30-35 cease and desist orders, down from 90 in 1985, because the one CRMC enforcement administrator had to take
Rhode Island CRMC Funding

Figure 7

Source: OCRM Rhode Island Section 306 Files
over other administrative responsibilities. Since then, another enforcement administrator was hired who was subsequently let go when the former enforcement administrator had to resume his former duties.

Management Problems and Enforcement

The Rhode Island coastal program has constantly been plagued with a personnel problem. There have been too few staff members to efficiently issue administrative assents in a timely manner, follow up on known violations and cease and desist orders, and increase the detection of violations.

In the CRMC's early years, 1971-1973, the CRMC's staff support was provided by the forerunner of the DEM, the Department of Natural Resources (DNR). Because of disputes between the CRMC chairman, Dr. Vincent Oddo; DNR Director, Edward Hayes; and DNR chief of the Division of Planning and Development, Calvin Dunwoody; no working relationship could be established between the CRMC and the DNR (Laverty, 1980). The CRMC lacked the staff support for application processing and enforcement. At one point the CRMC complained it could not even get a letter typed and that the DNR told the CRMC it should do its own enforcement (Laverty, 1980).

The CRMC lacked either the leadership and/or the understanding to attempt to move ahead with its own enforcement or enlist the aid of the state administration or
legislature. If the CRMC had been serious about coastal management an increased enforcement effort would have been expected. However, the state appeared to have forgotten the CRMC. The General Assembly had dealt with the initial problem by creating the CRMC and was not interested or aware of the implementation problems. The issue of coastal management was no longer on the state "agenda" and the CRMC proceeded in an "adaptive implementation" mode.

The scattering of regulatory, planning and administrative responsibilities among several agencies also set the stage for conflicts and discontinuities in leadership (Laverty, 1980). Examples of this include the continual shifting of responsibility for grant supervision among agencies and the dispersal of permit processing staff among various divisions of the Department of Environment Management.

Much of the increased enforcement funding in 1979 went to DEM to conduct an improved program to, "ensure compliance with coastal laws, regulations, permit conditions and CRMC cease and desist orders" (CZMA section 312 review, 1979). These efforts resulted in over 500 reported violations of shellfish, lobster, shellfish pollution, barrier beach and other regulations. The 1979 312 review incorrectly credited the DEM and the R.I. Fish and Game enforcement to the CRMC pointing out that, ". . .95% of these 500 cases resulted in guilty verdicts and payment of fines levied by the courts.
Enforcement personnel also inspect the progress of CRMC permitted activities and ensure compliance with cease and desist orders (CZMA section 312 Review, 1979).

However, there were no CRMC enforcement court cases in 1979 and there has never been a fine levied by the court for a violation of a CRMC order. Thus, at least 475 of these cases had nothing to do with CRMC enforcement. What the federal review failed to recognize was, that, the federal funds allocated to increase the enforcement of the RICRMP were used to enforce the DEM's mandate. The CRMC should have been enforcing its efforts to control coastal development. This review actually illustrated the ineffective and uncoordinated efforts by the CRMC, DEM, and the federal government to improve RICRMP enforcement efforts. This is a clear indication that the enforcement efforts of the late 1970's did not provide much support to the coastal program. Even when some enforcement action was taken, compliance did not necessarily follow. For example, the section 312 review from 1982 noted that,

"The staff increased its efforts to identify those situations on non-compliance to avert potentially damaging conditions prior to their development. These activities revealed a rather consistent lack of compliance with stipulations imposed upon authorized projects. Many of the violations recorded during the review period reflected situations where imposed conditions were ignored or not carried through properly" (CZMA 312 review, 1982).

The 312 reviews show that when increased enforcement efforts were made the number of detected violations rose
dramatically. Figure 8 shows this increased non-compliance during 1979-1981 and again in 1985 when the number of cease and desist orders per assents issued rose significantly. In 1979 and 1980 there were 20 cease and desist orders issued for every 100 permits granted. This number increased to 28 cease and desist orders/100 permits in 1985. This ratio is probably significantly higher due to undetected violations. What makes this enforcement ineffectiveness more apparent is, that, even during those times of increased detection there was still inadequate follow-up and thus the cease and desist orders went largely unenforced. The CRMC was wasting scarce resources to increase detection of, without securing compliance, the violations.

The CRMC has experienced great difficulty in operating a consistent and effective enforcement program. Enforcement of Rhode Island's coastal regulations has been hindered by weak staffing, variable funding, heavy reliance on cease and desist orders which usually receive no follow-up, thus diminishing the reasons for increasing enforcement efforts, and a complex regulatory program that imposes many stipulations on individual permits without a good enforcement information system. To determine exactly how successful CRMC enforcement efforts have been the next section will examine the CRMC compliance process and actual levels of compliance with cease and desist orders.
Figure 8

Ratio of CRMC Cease and Desist Orders/

100 Permits by Year

C&Ds / 100 Permits

Year

Source: Rhode Island CRMC Cease and Desist and Permit Files
Compliance in any regulatory or enforcement system must be examined from two sides. The first is the regulatory framework which creates incentives designed to encourage compliance (Young, 1979). The second is the individuals response to the regulatory system. Young notes that these systems are variations on three forms:

1. Punishments or rewards.
2. Inspection systems designed to reduce the probability of subjects engaging in undetected violations.
3. Burdening subjects by keeping public records of past violations.

Public authorities choose among these mechanisms to determine the optimal mix which will most likely deal with future compliance problems (Young, 1979). Constraining these decisions are budgetary and manpower limitations, political and administrative will.

These choices are determined by how much compliant behavior the institutions are interested in eliciting in environmental regulation and the resources available. The choices must then be evaluated by what impact the compliance mechanisms are actually having on the environment. If there is a strong environmental mandate but little political or administrative initiative is success measured by the original legislative mandate or by what the regulatory institution is willing or able to implement? If we assume
agency/program legitimacy and that something is better than nothing in environmental protection, then we must analyze compliance mechanisms in light of what is available, in terms of funding, manpower, etc., and not the ideal of the enabling legislation. We must also look for mis-management or a lack of political and/or administrative will even when there is adequate resources.

A compliance system also includes an individual's choice to comply with or violate the regulations. Young, Becker and Stigler all point out that enforcement systems attempt to influence individual cost-benefit calculations. Therefore, "it is important to identify the variables that the subject will take into account in computing the expected value of violation." (Young, 1979).

The implied probabilities that an individual weighs are:

(1) The probability of violating without detection.
(2) The benefits associated with undetected activities.
(3) The probability of being detected but avoiding sanctions.
(4) The benefits associated with being detected but avoiding sanctions.
(5) The probability of being detected and sanctioned and the associated costs.

After determining the probable costs of violation, the individual will, consciously or sub-consciously, weigh the expected value of violation with the expected value of
compliance, choosing to comply only if the probability of
Therefore, the regulatory body should minimize the
probability of undetected violations and insure some level
of sanctions will follow every violation (Stigler, 1970).
Coastal resource management enforcement actions need to be
periodically followed up, at least when sanctions are
minimal. The CRMC is seriously lacking in this capability.

Becker, Tullock, et al., stress that the probability of
being sanctioned is a greater deterrent than the size of
sanctions (Becker, 1968 and Tullock, 1974). Often times a
violator simply makes large fines a cost of doing business
using the courts to prolong the "pain" associated with
immediate payment (Matera, 1986, et al.). The sanctions
would need to be marginally more than the benefits of
violation. This would insure quicker payment and still
cause more "pain" to the violator. However, the CRMC has
not appeared to affect any individuals expected probability
of sanctions, large or small. There has been no threat of
sanctions when violators have been detected by the CRMC.
The CRMC could probably have elicited greater compliance by
sanctioning even a few violators because individuals make
choices about compliance in an essentially self-interested
fashion (Frohlich, 1974). The level of compliance will drop
when violators estimate how many others are violating the
same regulations at the same time (Young 1979). This
reduces the chances of being caught in an enforcement system that does not increase its monitoring capabilities.

How then do public authorities bring about compliance? Young points out that compliance is pursued using two methods, inducement and enforcement (Young, 1979). Enforcement consists of systems associated with the use of punishments. Inducement, on the other hand, seeks to increase the individual's expected value of compliance rather than to reduce the expected value of violation (Young, 1979). That is, point out the overall good to society, the environment, and the individual, and possibly reward compliance in some fashion. Hawkins uses the same "carrot and stick" approach when he talks about conciliatory methods and sanctions in environmental enforcement (Hawkins, 1984).

Hawkins' compliance strategy relies on bargaining to "prevent a harm rather than punish an evil" (Hawkins, 1984). This conciliatory approach seeks to do what is necessary to remedy a bad situation rather than the all or nothing - punishment or acquittal formal approach of the sanction strategy (Black, 1976). Regulatory agencies employ the compliance strategy when violations provide for the development of social interaction between agency officials and the regulated (Hawkins, 1984).

This style of enforcement has a more positive effect in environmental regulation than the sanctioning strategy
because the coastal zone agencies ideally would prefer to rationally develop and conserve resources, not prosecute landowners after ecological damage has been done (McAdam, 1983). Working effectively with developers, within the regulations, promotes a greater willingness on the part of the developers to cooperate with, and not fight with the agency (Hawkins, 1984). However, Hawkins points out that the conciliatory method of enforcement should incorporate elements of the sanctioning strategy, such as, imposing penalties when violators are unwilling to negotiate with the agencies as a deterrent effect. The enforcement of environmental regulations incorporates elements of both compliance and sanctioning strategies. Unfortunately, the CRMC does not back-up its bargaining with sanctions or follow-up on enforcement efforts.

Initially, some regulatory violations are dealt with by a formal style of enforcement and at other times conciliatory methods will yield to sanctioning if the struggle for conformity is lost. However, since those who are regulated have either good economic or social reasons not to comply with environmental regulation, compliance is not always secured given the "frailty" of the formal legal process and its limited usage (Hawkins, 1984).

Hawkins notes that, "in enforcement of regulation, a distinct aversion is noticeable to sanctioning rule-breaking with punishment... writers have observed a style of
enforcement which seems to be predominantly conciliatory. Some, as a result, have complained that regulations are poorly enforced and legislation is ineffective, or that a tradition of relatively weak enforcement prevails (Hawkins, 1984)." Hawkins suggests that a crucial part of this problem is the ambivalence of environmental regulatory agencies because their authority is not "secured on a perceived moral and political consensus about the ills they seek to control. Police, in comparison, enjoy a relatively secure moral mandate...the lack of a moral mandate threatens the agency's legitimacy as an enforcement authority (Hawkins, 1984)."

However, Young points out, that, in the long run it may be more efficient to "pursue compliance through methods of altering incentive systems other than those associated with the use of rewards and punishments" (Young 1979). However, bringing about effective habits of compliance through socialization may take several generations (Young 1979). In terms of some environmental problems, this may be too late.

Thus, the public authorities have a dilemma as to what mix of enforcement schemes they can utilize effectively to secure some level of compliance. Until very recently there was an unwillingness by the CRMC to improve enforcement and to sanction violators. The level of non-compliance will determine whether the CRMC can continue to function in an effective manner.
Compliance with the Rhode Island coastal resource management regulations is dependant upon the number of violations detected and the outcome of those violations (figure 9). The flow of violations starts with the coastal activities subject to the regulations (figure 9). In this scheme some individuals subject to regulation follow the law and apply for a permit. Others violate the regulations, are detected and are issued a cease and desist order. Then there are those who violate the regulations and are not detected.

Applications for a permit are either denied or approved. In either case there may be detected or undetected violations. Those who are denied a permit may proceed with their project anyway. Those who are issued a permit may not adhere to the permit stipulations.

Prior to late 1986, when a violation was detected a violator was either ordered to apply to the CRMC for a permit or to restore the damage. These orders were either complied with, not complied with or there was no CRMC follow-up and it was unclear whether there was compliance. Those that were ordered to apply for a permit and complied went back through the system. Again, these may either be denied or approved. As figure 9 shows these may lead to further violations and non-compliance.

When non-compliance of cease and desist orders is detected and the CRMC takes legal action four outcomes are
Figure 9

The Flow of Violations in the Rhode Island CRMC Enforcement System

COASTAL ACTIVITIES SUBJECT TO REGULATION, 1980 - 1985

PERMIT APPLICATIONS

DENIED

VIOLATIONS NOT DETECTED or VIOLATIONS DETECTED

APPROVED

APPLY FOR PERMIT

RESTORATION ORDER

COMPLIANCE

UNCLEAR

NON-COMPLIANCE

LEGAL ACTION

CRMC WIN/REMANDED FOR PERMITTING PROCESS

CRMC LOSE

UNDECIDED

CRMC WIN

Source: Kaiser, 1988 (unpublished)
possible:

(1) The CRMC may win but the case is remanded to the CRMC for the permitting process. Figure 9 demonstrates that this does not necessarily assure compliance because the process starts over again.

(2) If the CRMC were to lose an enforcement case the activity in question would be assumed to be legal and would be in compliance.

(3) Some cases are still undecided.

(4) If the CRMC wins the case outright there is no permitting recourse and the violator is ordered to comply with the CRMC Restoration order. However, this may not be complied with and the violation goes through the system again.

The information available to evaluate the CRMC enforcement and regulatory efforts as identified in figure 10 are:

(1) The permits issued by year from 1971 to the present. These permits may be broken down into one of thirty project types: by town, by waterbody and whether the permit was issued by the CRMC support staff (Administrative Permits) or by a full Council vote.

The level of full Council permits has remained fairly constant through the years at around 100/year (figure 11). Initially, the Council issued approximately eighty percent of the permits (figure 12). As the CRMC increased its
Figure 10

INFORMATION AVAILABLE FOR EVALUATING RHODE ISLAND CRMC ENFORCEMENT/REGULATORY ACTIVITIES

<table>
<thead>
<tr>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>* BY PROJECT TYPE</td>
</tr>
<tr>
<td>* BY TOWN</td>
</tr>
<tr>
<td>* BY WATERBODY</td>
</tr>
<tr>
<td>* ADMINISTRATIVE OR FULL COUNCIL PERMIT</td>
</tr>
</tbody>
</table>

|------------------------------------------------------------------|

<table>
<thead>
<tr>
<th>LEVELS OF COMPLIANCE WITH DETECTED VIOLATIONS, 1980 - 1985. SAMPLE OF A 30%/YEAR OR 90 OUT OF 300 TOTAL FOR THE SIX YEARS.</th>
</tr>
</thead>
<tbody>
<tr>
<td>* DETECTED VIOLATIONS OF PERMITS</td>
</tr>
<tr>
<td>* DETECTED VIOLATIONS OF REGULATIONS</td>
</tr>
<tr>
<td>- ORDERED TO APPLY FOR PERMIT</td>
</tr>
<tr>
<td>- ORDERED TO RESTORE DAMAGE</td>
</tr>
<tr>
<td>* PERCENTAGE IN COMPLIANCE OF ABOVE SAMPLE</td>
</tr>
</tbody>
</table>

|------------------------------------------------------------------------|

| CRMC FORMAL LEGAL PROCESS, 1972 - 1986                                 |
Rhode Island CRMC Permits

1971-1985

Permits

Year

0 50 100 150 200 250 300 350 400 450

71 72 73 74 75 76 77 78 79 80 81 82 83 84 85

- Administrative Permits
- Full Council Permits
- Total CRMC Permits

Source: Rhode Island CRMC Permit Files
Percentage of Rhode Island CRMC Administrative and Council Permits

Source: Rhode Island CRMC Permit Files
permitting ability the percentage of full Council permits has dropped to where the CRMC staff is now handling roughly seventy percent of the permits.

(2) The total violations detected from 1971 - 1986. There were approximately 466 cease and desist orders issued by the CRMC during this time. However, due to insufficient CRMC cease and desist order records prior to 1980 and from 1985 to 1987 CRMC enforcement analysis will focus on violations that occurred from 1980 - 1985. Enforcement efforts stalled in 1986 due to a CRMC reorganization.

(3) The levels of compliance with detected violations from 1980 - 1985. Of the 300 violations from 1980 - 1985 a random sample of thirty percent was taken for each year. These 90 violations fall into three main categories: compliance, non-compliance and unclear (figure 13). Initial investigations showed that forty-four percent of the cease and desist orders were complied with, forty-four percent were not and twelve percent were unclear. These percentages were acquired through CRMC staff interviews and by examining the CRMC records. Unclear violations were never followed up, there was no subsequent application and no further record kept by the CRMC after the initial cease and desist order was issued.

Some of the violations the CRMC maintained were complied with were eliminated from further investigation because permits had been issued for the work done (after-the-fact enforcement).
Figure 13

Disposition of a 30% Sample of Rhode Island CRMC Cease and Desist Orders, 1980 - 1985 by Year (%)

<table>
<thead>
<tr>
<th>Year</th>
<th>80</th>
<th>81</th>
<th>82</th>
<th>83</th>
<th>84</th>
<th>85</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance</td>
<td>7(47)</td>
<td>7(35)</td>
<td>5(56)</td>
<td>4(40)</td>
<td>5(63)</td>
<td>9(35)</td>
<td>37(41)</td>
</tr>
<tr>
<td>Non-Compliance</td>
<td>9(53)</td>
<td>13(65)</td>
<td>4(44)</td>
<td>6(60)</td>
<td>3(38)</td>
<td>15(58)</td>
<td>50(56)</td>
</tr>
<tr>
<td>Unclear (no application, no follow up)</td>
<td>1(6)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>2(8)</td>
<td>3(3)</td>
</tr>
<tr>
<td>Total</td>
<td>17(100)</td>
<td>20(100)</td>
<td>9(100)</td>
<td>10(100)</td>
<td>8(100)</td>
<td>26(100)</td>
<td>90(100)</td>
</tr>
</tbody>
</table>

Source: Kaiser, 1988 (unpublished)
permits). However, following field checks of eleven unclear violations and eighteen of the violations that were considered in compliance, it was discovered that five of the eleven unclear violations and six of the eighteen complied violations were actually not in compliance. In reality, only forty-one percent of the sample were in compliance, fifty-six percent were not in compliance and three percent were still unclear (figure 13). The remaining unclear three percent includes one from those that were originally unclear and two from those that were originally thought to be in compliance.

The fifty-six percent non-compliance is significant. Having over half of the detected violations in non-compliance is unacceptable. Not realizing that violations thought to be in compliance were not demonstrates the inability of the CRMC to enforce the coastal regulations and the complacency that existed in the implementation of the RICRMP.

The levels of compliance with detected violations can be broken down further into the following three areas of violations:

(1) Violation of the regulations where the violator is ordered to apply for a permit;

(2) Violation of the regulations where the violator is ordered to restore the damaged area to its original condition; and,
(3) Violation of an existing permit.

Sixty percent of the sampled violations are for violations of the regulations where the violator is ordered to apply for a permit. Thirty-two percent are for violation of the regulations/restoration order and eight percent are for violation of a permit (figure 14).

Although violations of permits are only eight percent of the total sample seventy-one percent of these violations are complied with (figure 15). This may be because permits are easier or more likely to be followed up by CRMC staff than detecting violations of the RICRMP.

Those who were caught violating the regulations and ordered to apply for a permit were not as apt to adhere to the cease and desist orders. There was a 50% non-compliance of the orders in these cases. However, once an application was made there was often no further action taken (Pisani, 1987). The CRMC may deny the application or wait for further information before rendering a decision. It is often not clear to the CRMC what happens to these cases. Thus, the level of compliance may actually be lower than 46% for these cases.

Perhaps most significant is the seventy-two percent of non-compliance for restoration orders. These tend to be the more important environmental violations where the violator has no alternative other than returning the affected area to its original state. The 72% non-compliance demonstrates
Figure 14

Distribution of a 30% Sample of Rhode Island CRMC Cease and Desist Orders, 1980 - 1985 by Violation Area and Year (%)

<table>
<thead>
<tr>
<th>Year</th>
<th>80</th>
<th>81</th>
<th>82</th>
<th>83</th>
<th>84</th>
<th>85</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Violation of Regulations (apply for permit)</td>
<td>12(71)</td>
<td>12(60)</td>
<td>7(78)</td>
<td>6(60)</td>
<td>6(75)</td>
<td>11(42)</td>
<td>54(60)</td>
</tr>
<tr>
<td>(2) Violation of Regulations (order to restore)</td>
<td>4(24)</td>
<td>6(30)</td>
<td>1(11)</td>
<td>3(30)</td>
<td>2(25)</td>
<td>13(50)</td>
<td>29(32)</td>
</tr>
<tr>
<td>(3) Violation of Permit</td>
<td>1(5)</td>
<td>2(10)</td>
<td>1(11)</td>
<td>1(10)</td>
<td>0(0)</td>
<td>2(8)</td>
<td>7(8)</td>
</tr>
<tr>
<td>Total</td>
<td>17(100)</td>
<td>20(100)</td>
<td>9(100)</td>
<td>10(100)</td>
<td>8(100)</td>
<td>26(100)</td>
<td>90(100)</td>
</tr>
</tbody>
</table>

Source: Kaiser, 1988 (unpublished)
Figure 15

Disposition of a 30% Sample of Rhode Island CRMC Cease and Desist Orders, 1980 - 1985 by Violation Area (%)

<table>
<thead>
<tr>
<th>Violation Area</th>
<th>(1) Violation of Regulations (apply for permit)</th>
<th>(2) Violation of Regulations (order to restore)</th>
<th>(3) Violation of Permit</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance</td>
<td>25 (46)</td>
<td>7 (24)</td>
<td>5 (71)</td>
<td>37 (41)</td>
</tr>
<tr>
<td>Non-Compliance</td>
<td>27 (50)</td>
<td>21 (72)</td>
<td>2 (29)</td>
<td>50 (56)</td>
</tr>
<tr>
<td>Unclear</td>
<td>2 (4)</td>
<td>1 (4)</td>
<td>0 (0)</td>
<td>3 (3)</td>
</tr>
<tr>
<td>Total</td>
<td>54 (100)</td>
<td>29 (100)</td>
<td>7 (100)</td>
<td>90 (100)</td>
</tr>
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</table>

Source: Kaiser, 1988 (unpublished)
that there was little incentive to comply with the restoration orders. This may be because it is usually expensive to restore an affected area and violators may have believed there was little probability of further CRMC action.

In all of these cases, if the public perceives that there is little chance of further enforcement action, following a cease and desist order, they may proceed with the illegal activity or stop but not repair the damage.

(4) The CRMC funding levels. Funding levels play a key role in CRMC enforcement efforts. Funding provides the resources needed to formulate the policies, regulations and procedures to implement the coastal program's goals. The CRMC's use of cease and desist orders and follow-up on these orders is tightly coupled to funding and personnel levels (see previous enforcement section).

(5) The formal legal process is the last enforcement action for non-compliance of cease and desist orders. This includes the use of fines which may be issued after conviction. However, to date these fines have not been used. Administrative fines would be a most useful tool for violations of the regulations and/or a cease and desist order.
The Formal Legal Process

The Chairman of the CRMC, at the direction of the Council, may seek judicial relief whenever such action is necessary for CRMC performance, or CRMC orders are not complied with. The Superior Court has the jurisdiction to enforce CRMC decisions. In the early 1970s cases were prosecuted by the Attorney General in the name of the CRMC (Chapter 23, Section 3, Subsection 46-23-7 (1)(b) of the General Laws of Rhode Island). However, the CRMC eventually utilized the firm of Goldman, Biafore and Hines when prosecuting violators. According to the Director of the CRMC, this was due to the inability of the Attorney General's Office to fulfill its responsibilities because of staff limitations (Fugate, 1988).

Of the approximately 3500 assents issued by the CRMC from 1971-1986 there have been 431 cease and desist orders but only 15 instances where the CRMC prosecuted a violator. While this low number could reflect a high compliance rate to CRMC cease and desist orders and regulations this has not been the case. The low probability of prosecution is due to little or no follow up on cease and desist orders and the unwillingness or inability of the CRMC and Attorney General to prosecute. Thus, it is not surprising that many of the cease and desist orders were ignored.

When the CRMC does prosecute it has been successful.
They have won thirteen of the fifteen Superior Court cases. Eight of these were remanded back to the CRMC for the permitting process. The other two cases are still undecided.

Thirteen of the cases were for non-compliance of a cease and desist order. The remaining two are for similar violations but with no cease and desist order issued. The cases dealt with residential construction on barrier beaches/tidal areas and filling tidal areas without a permit and construction/ filling beyond the terms of a permit. Ten of the cases were for violations of non-permitted activities and five for violations of CRMC permits. One case was for the removal of a grounded barge in coastal waters.

Typical cases include Lyons v. G. Pontes, et.al. (R.I. Superior Ct., 81-2902, 1981) where the CRMC prosecuted Quito Shellfish, Co. for placing various types of debris, including fill rock, into coastal waters without a permit since the summer of 1980. The CRMC issued various cease and desist orders in the Spring of 1981 to remove the debris which had become a hazard to the environment and to navigation. The defendant refused to comply and continued to fill. The case then went to court and the defendant admitted to unloading fish debris from two of its boats at the state dock in Jerusalem, R.I. but denied placing the fill rock material there. The court found otherwise and held that the defendant must remove all the debris or pay
the state to remove it and never dump again.

Another enforcement case initiated in 1981 was Lyons v. J. Gencarella, et. al. (R.I. Superior Ct., 81-2454, 1981). In April, 1980 the CRMC gave the defendant permission to fill a 30 x 30 foot area of his property on a barrier beach at Ninigret Pond. The defendant filled far more than stipulated and altered and destroyed the coastal environment. In October of 1980 the CRMC issued a restoration order which the defendant refused to obey. In July of 1981 the CRMC subpoenaed Gencarella. The defendant claimed that the CRMC gave permission to fill his entire property. One year later the court ordered the defendant to eliminate the sedimentation and runoff occurring, as a result of the illegal filling, at the direction of the CRMC. The defendant was restrained from further filling and the case was remanded to the CRMC to determine the effects of the filling on the coastal resources. One year later the defendant was found in contempt for not taking the ordered steps.

Enforcement is a crucial element of coastal zone management. The Rhode Island CRMC has employed an approach which seeks to obtain compliance through negotiation rather than sanctions. However, formal sanctions were rarely used by Rhode Island to back-up failed negotiations or ignored cease and desist orders.
Chapter 7 - Conclusions

With limited resources the CRMC must determine what level of compliance will be acceptable or is desired. There must then be a determination as to whether the desired or selected level of compliance is adequate to fulfill the goals of the regulatory program. The agency must then decide what mix of compliance mechanisms will best utilize the scarce resources to attain the selected level of compliance.

The mechanisms the CRMC has employed to secure compliance to the regulations have not been effective. While it is unclear as to the level of compliance with permits, there is the same lack of resources and monitoring with permits as there is with cease and desist orders. The State should commit additional resources for increased staff and enforcement needs. There should be increased monitoring of the coastal zone for undetected violations and follow-up on permits and detected violations. This study has shown that when the CRMC employed its enforcement mechanisms they only reached a 41% compliance rate for detected violations (see Appendix B - Statistical Analysis - for extrapolation of the sample to all cease and desist orders). Is this an acceptable level of compliance? The answer is, no, for several reasons.

First, the CRMC has a mandate to manage many coastal
activities. The mandate called for the "...preservation and restoration of ecological systems..." Yet, for the most part, it was involved in relatively minor permitting activities which they could not enforce.

Secondly, the CRMC has not been aware of the actual levels of compliance. The cease and desist order data shows that violations thought to be in compliance were not and the CRMC files and interviews with staff show that there are many cases they know nothing about. Presumably, this could be the case with permits as well.

Third, the federal coastal managers pointed out, in several 312 evaluations, that, there was an enforcement problem that needed to be addressed. The OCRM has the ability to bring state programs into compliance with the evaluations through Special Award Conditions and Significant Improvement Tasks. This has not been done. It was not until the 1986 312 evaluation that the federal government recommended that,

"The CRMC, in consultation with the Governor's Office, should assess the steps necessary to insure that coastal projects conform with the specific policies of the RICRMP and the stipulations of CRMC assents. At the very least, the CRMC should begin to exercise its authority to issue subpoenas to violators who have not complied with Cease and Desist orders as a means of bringing them before the full CRMC to discuss possible resolutions before legal action is taken."

The document also reports that the OCRM will closely monitor CRMC's enforcement actions and that the CRMC needs to report quarterly on all outstanding violations. The CRMC
has not reported on the outstanding violations (Cousins, 1988). The CRMC turned its efforts toward new violations but only reported on these for one quarter (Cousins, 1988).

The CRMC has not enforced its regulatory responsibilities well. This has been due to administrative problems, both within the CRMC and between the CRMC and other state agencies; insufficient staff and resources, particularly from the state since federal funds are limited and vary year to year; and minimal federal oversight and pressure to correct the problems.

Recently, the CRMC alleges that it has improved its enforcement capabilities. This has been due in part to the work done by Hennessey and Robadue (Robadue, 1986) and the information gathered and used for this report (Kaiser, 1986).

When a violation is detected now, the CRMC issues a Notice of Violation (NOV). The CRMC asserts that most violations are cleared through the NOVs (Fugate, 1988). If compliance is not secured within 20 days a cease and desist order is issued which is attached to the property's title. This has now become fairly routine (Fugate, 1988). If there is still non-compliance the violator is subpoenaed before the CRMC council. If this is ineffective then formal legal action will be taken.

From May 1988 through October 1988, the CRMC has subpoenaed approximately five individuals. Four of the
individuals complied by applying for an application while legal action is being taken against one.

In addition, the CRMC has started to impose administrative fees for after-the-fact permits. Fees are assessed for the extra CRMC staff time needed for mitigation planning as a result of the unpermitted activity. There is no limit set on these fees. The permit is then attached to the title of the property with a clause that states that the violator admits to the violation, agrees to a CRMC mitigation plan, agrees to the fee imposed and agrees to the penalty that will be imposed if there is still non-compliance (Fugate, 1988).

The CRMC has also begun issuing specific restoration orders. When a restoration order is issued a site visit is made to determine what is necessary and a plan is then drawn up by the CRMC (Fugate, 1988).

The CRMC asserts that these actions and a better relationship with the Rhode Island's Attorney General's Office have been effective in securing a greater level of compliance to detected violations. However, there needs to be a greater use of the subpoena power of the CRMC for unresolved violations. In addition, sufficient resources need to be provided by either the Governor's office or the CRMC to the Attorney General's office for processing civil and criminal court actions involving coastal management actions. The CRMC could hire a paralegal for handling
enforcement and legal issues, and preparing Attorney General cases, etc.

It is too early to measure the success of these new initiatives. Compliance was previously assumed in cases which were actually not in compliance. Certainly, these measures are a step in the right direction.

However, to secure a higher level of compliance the CRMC and the State need to take additional measures that include: formalized letters for permits and violations that include the location of the project, a detailed description of the projects location on the property, the plat and lot numbers, town, street address, waterway, and CRMC file number; specific forms that the CRMC must issue to remove a cease and desist order, for project monitoring, and for permit compliance; site inspections by enforcement personnel made in a timely manner once a permit application has received an assent or denial; development of a computer tracking system which will interface with the permit tracking system; strengthening the penalty provisions of the CRMC statute; and administrative fines issued by the CRMC. In addition, the state should develop a far reaching educational program to alert Rhode Island citizens of environmental dangers caused by illegal development. There should also be an effort to educate the legal community of the ramifications of various legal decisions on the ability of the CRMC to implement an effective coastal resource management program.
Another way for the CRMC to improve its enforcement capabilities with limited resources is to develop a training program for local building inspectors. The inspectors are already in the field, are familiar with their areas, and already have the expertise to issue minor CRMC permits and to enforce the RICRMP regulations since many of the permits issued by the CRMC are for small residential projects. To implement these new initiatives, increase the level of compliance, and decrease the suspected levels of undetected violations new state resources and political commitment will be needed to further the effectiveness of CRMC enforcement activities.
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Appendix B - Statistical Analysis

The level of compliance with CRMC cease and desist orders was deemed a reasonable measure of the agency's enforcement efforts. It would also have been useful to determine the level of compliance with CRMC permits. However, this would have required a large sample and time and resources that were not available. This was discussed with the thesis committee and Don Robadue of the Coastal Resources Center. All agreed that an indepth analysis of the cease and desist orders would be sufficient.

The cease and desist orders issued from 1980 - 1985 were chosen for two reasons:

(1) CRMC records become very incomplete and untraceable prior to 1980. From 1980 - 1985 the records were in sufficient enough shape to follow through the system, with field checks. After 1985 enforcement efforts declined due to new administrative initiatives. There was not the time or the resources to continue issuing cease and desist orders in any regular fashion (Seavey, 1987). During 1986 the CRMC hired more staff, started placing records on computers and began following up on violations in a more regular fashion. The results of these new efforts is unclear at this time.

(2) Field checks to verify CRMC violation dispositions was often difficult if the violation was a few years old. Many of the violations were for illegal filling. Prior to 1980 and even for 1980 - 1983 many of these violations had become
revegetated. This made it difficult to determine where the violation had occurred and if the area was still in violation. This, along with the lack of information, excluded violations prior to 1980 from this study.

There were 300 cease and desist orders issued from 1980 -1985. A random sample was taken of 30% for each year (figure 13). CRMC personnel were interviewed and the samples tracked through the CRMC cease and desist order, permit application, and permit files. This check yielded 44% of the Cease and desist orders in compliance, 44% not in compliance and 12% that were unclear. Some that were in compliance had been issued permits, which was verified through CRMC records. However, a field check was performed on nineteen of those thought to be complied with and on the eleven that were unclear. As a result 41% were found to be in compliance, 56% in non-compliance and 3% still unclear (figure 13).

To determine the significance of this information a "One Sample Runs Test for Large Samples" was performed to test for randomness, and a "Binomial Test for Large Samples" was run to determine the "goodness-of-fit" of the data. The tests were done by following the instructions in Siegel (Siegel, 1956).
One Sample Runs Test

Eliminating the three unclear violations, it was determined that there were 46 separate runs of complied and non-complied violations. Thus:

\[ N = 87 \]
\[ N \text{ (Non-compliance)} = 50 \]
\[ N \text{ (Compliance)} = 37 \]
\[ R = 46 \]

Null hypothesis = the order of occurrence is random
Research Hypothesis = the order of occurrence is not random
Significance level = \( \alpha = .05 \)

\[ \text{Mean} = \frac{2N_1 N_2}{N_1 + N_2} \]
\[ = \frac{2(50)(37)}{(50)+(37)} \]
\[ = 43.53 \]

\[ \text{Standard Deviation} = \sqrt{\frac{2N_1 N_2 (2N_1 N_2 - N_1 - N_2)}{(N_1 + N_2) (N_1 + N_2 - 1)}} \]
\[ = \sqrt{\frac{2(50)(37)(2(50)(37) - 50 - 37)}{(50 + 37) (50 + 37 - 1)}} \]
\[ = 4.53 \]

\[ \text{z score} = \frac{R - \text{Mean}}{\text{Std dev}} \]
\[ = \frac{46 - 43.53}{4.53} \]
\[ = .55 \]

The probability of occurrence under the null hypothesis of \( z \geq .55 \) is \( p = .2912 \). Since the probability associated with the observed occurrence, \( p = .2912 \), is greater than the level of significance, \( \alpha = .05 \), the null hypothesis for this test is accepted and the order of occurrence is random.
**Binomial Test**

This test is used to determine if the sample taken can be extrapolated to the whole population (300 cease and desist orders). The test will determine if the probability for non-compliance is greater than the probability for compliance. Therefore, the null hypothesis is, that, there is a greater tendency toward compliance. The research hypothesis is a greater tendency toward non-compliance as the data from the sample implies.

Sample \( (N) = 87 \)
Non-compliance \( (P) = 50 \) (observed frequency = .57)
Compliance \( (Q) = 37 \) (observed frequency = .43)
Significance level \( (\alpha) = .05 \)

\[ z \text{ score} = \frac{(x + .5) - NP}{NPQ} \]

Where \( x \) is the smaller occurrence and \( P \) and \( Q \) are the observed frequencies. .5 is added since \( x(37) < NP \).

\[ = \frac{(37 + .5) - 49.59}{(87)(.57)(.43)} \]

\[ = -2.62 \]

The probability associated with the occurrence of \( x \) is .0197. Since this number is less than the significance level the null hypothesis is rejected and the greater tendency toward non-compliance is accepted.
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