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STATE-FEDERAL RELATIONSHIPS IN THE 09745
DEVELOPMENT OF COASTAL ZONE MANAGEMENT PROGRAMS

(Final Draft)

A HANDBOOK FOR THE COASTAL STATES

Prepared By

Harold F. Wise, Project Director,
with David K. Hartley and John J. Bosley

September 23, 1974

A publication of the Office of Coastal Zone Management, National
Oceanic and Atmospheric Administration, U. S. Department of
Commerce.



FROM THE OFFICE OF HAROLD F. WISE A.I.P. *Planning Consultant*

(Final Draft)

STATE-FEDERAL RELATIONSHIPS
IN THE DEVELOPMENT OF
COASTAL ZONE MANAGEMENT PROGRAMS

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A Handbook for the Coastal States

U. S. DEPARTMENT OF COMMERCE NOAA
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21 Dupont Circle Washington, D. C. 20036 (202) 872-1422

HT 392, WS 7 1974
12226061

DEC 18 1996

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I. INTRODUCTION AND PURPOSE

A. Purpose of this Handbook on Federal/State Relations-- Aid States in Preparing CZM Program for Approval by Department of Commerce

This Informational Handbook has been prepared for the use of coastal states as they develop and then administer their Coastal Zone Management Programs under the provisions of the Coastal Zone Management Act of 1972 (P.L. 92-583).

A state's coastal zone management program is concerned with:

- The definition and explication of the range of appropriate, and therefore, permitted uses of the land and the water within the zone; and
- The development and application of management tools to regulate and control the zone, in terms of permitted uses, and in terms of:
 - actions by private parties; and
 - actions by public agencies.

In the development and administration of a state's coastal management program, the standards and rationale applied by the state in determining:

- "...what shall constitute permissible land and water uses...";
- "...areas of particular concern..."; and
- "...priority of uses in particular areas...";^{1/}

^{1/} See Section 305(b) of the Act.

should be basically the same whether the land is publicly held or privately held and whether the use-triggering actions are public or private.

It is recognized, of course, that there are important exceptions to this general rule. National defense and certain other constitutionally based Federal activities are given overriding consideration, for example.

The Handbook is principally concerned with the state management of public actions in the coastal zone and, most particularly treats with State-Federal relationships as these relationships and inter-actions effect:

- state management program development;
- program preview by OCZM during development process;
- submission for Federal and Department of Commerce approval;
- State implementation;
- and
- recycling, certification and annual review of the program.

State-Federal relationships are of many types and will occur at various times:

- identification of Federal interests and activities and contact by states
- early, program development period, consultation
- information--technical assistance--cooperation
- incremental articulation of affected Federal interests
- some Federal agency "early consistency" with state policy, as management program is developing
- substantive Federal agency participation in program development
- Federal agency management program "previews"

- dispute amelioration-settlement

In short, it is intended that this Handbook to be used by coastal states during their program development phase, as a basis for Federal agencies previews of aspects of the management program, for Federal agency review and for final Secretarial approval.

B. Standing, Modification, and Revision of Handbook

This Handbook is advisory only; it provides guidelines which represents suggestions for assurance that proper national and Federal agency interests are reflected in a State coastal zone management program. As such it is for the guidance and assistance of the coastal states. As new experience is gained and as the basic Act continues to be interpreted, it is intended that partial revisions or additions will be issued in order that the most current information will be available to Handbook users.

II. PROVISIONS IN THE COASTAL ZONE MANAGEMENT ACT OF 1972 MANDATING FEDERAL-STATE COOPERATION

The whole thrust of the Coastal Zone Management Act of 1972 (P. L. 92-583) is the provision of Federal financial and technical assistance to the states so that the states may develop management programs for their own coastal land and water resources.

The Act contains several substantive requirements (in addition to procedural requirements) as to the concerns to be addressed by a state in the preparation and development of its management program. Section 305(b) declares that a state management program will include:

- "(1) an identification of the boundaries of the coastal zone subject to the management program;
- (2) a definition of what shall constitute permissible land and water uses within the coastal zone which have a direct and significant impact on the coastal waters;
- (3) an inventory and designation of areas of particular concern within the coastal zone;
- (4) an identification of the means by which the state proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, . . .;
- (5) broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority;
- (6) a description of the organizational structure proposed to implement the management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process."

Under Section 306(d) and (e), the Act further deals with substantive requirements to be set forth in the management program, including the authority and power to:

" . . . administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and . . . acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.";

and, the provision for the control of land and water uses in the state's coastal zone utilizing any one or a combination "of the following general techniques":

- "(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;
- (B) Direct state land and water use planning and regulation; or
- (C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings."

There is one further substantive requirement in the Act, namely, that a method be developed, and included in the management program for:

"Assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit."

While these provisions are mandates, and must be included in every state coastal zone management program, there is every indication that each coastal zone state will address these requirements in its own way, reflective of individual state institutional, economic, social and legal history and traditions. However, each state must, one way or another, address the need for building new governmental institutions and relationships, including innovative approaches to the formulation and carrying out of state coastal zone management goals and objectives. Few states, if any, have in place now the complete institutional machinery necessary to administer the coastal zone management process envisioned by the Act.

Some direction as to the range of concerns and content of a state management program, within the framework of the substantive requirements outlined above, are explicitly set forth in the Congressional "Declaration of Policy" contained in Section 303 of the Act, which declares that it is the national policy:

". . . (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state, and local governments and of regional agencies in the development of coastal zone management programs. . . ."

Several key words, for the purposes of this handbook, are contained in this policy statement:

". . . all Federal agencies . . . to cooperate and participate . . . in effectuating the purposes of this title. . ."; and

". . . encourage the participation of the public, of Federal, state and local governments and . . . regional agencies in the development of coastal zone management programs."

The thrust of this language is that although states prepare and administer their own coastal zone management programs (i.e., they exercise their own constitutionally based police powers to regulate and control, within their own definition of the public interest), Federal and state and local public agencies are to cooperate fully.

Section 307(c) explicates this policy directive to Federal agencies, when it indicates:

- (1) "Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.
- (2) "Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.
- (3) "After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program." (Emphasis added)

Section 307(d) provides another directive to Federal agencies when it indicates:

"State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security." (emphasis added)

Thus, Sections 307(c) and (d) speak directly to Federal agencies that deal with a variety of programs and activities that effect or operate in the coastal zone, including:

- Activities conducted or supported by Federal agencies;
- Direct Federal development actions;
- Federally issued licenses and permits; and
- Federal programs which provide assistance to state or local activities.

The Act recognizes that the coastal zone contains a mixture of public and private uses and ownerships. On the public side there are ownerships and activities, including regulatory activities, by a broad variety of Federal agencies, as well as state and local general governments, regional organizations, and special purpose governmental units.

The Act, in requiring certification of applications from private developers for Federal permits in the coastal zone for conformance with an adopted state Coastal Zone Management Program, addresses a mixture of private and public actions.

A state's coastal zone management program must take into account public activities,

To recapitulate this summary of the management aspects of the Federal law, the Act:

- mandates states to indicate proper and appropriate uses for specific areas in their coastal zones;
- directs that administrative machinery be established by each state to carry out the elements of its management program in the coastal zone; and
- indicates that Federal agencies will, for the most part, conduct their activities in accordance with the state's management program.

The above three broad mandates are to be undertaken within the spirit of the purposes of the Act, which provides for "full consideration to ecological, cultural, historic and esthetic values, as well as to needs for economic development."

This handbook is concerned with the identification of those public actions that a state coastal zone management program should be cognizant of and the available range of management techniques to deal with such public actions.

While the primary focus of the handbook relates to how a state should deal with Federal agencies and when, the same principles, in general, apply to state agency actions and local public actions in the zone.

This is the essence of the Federal Act. It calls for a single, unified and integrated process that deals in the most comprehensive sense with the many and often complex considerations outlined above.

In this context, coastal zone management is not another categorical Federal grant-in-aid assistance program. It is not single purpose. It is, rather, a program to encourage the development and accomplishment of the management of all the activities and resources within the coastal zone, to decide between competing interests and resolve other similar conflicts, tempered of course by the operation of the political and social forces involved in any decision making process.

III. SUBSTANTIVE ELEMENTS IN STATE MANAGEMENT PROGRAMS OF PARTICULAR CONCERN TO FEDERAL AGENCIES

The Act has as its foundation the development in our coastal states of a process for making reasoned decisions for the management in the coastal zone. But it also establishes certain substantive program elements that must be incorporated within the management process. In turn, NOAA has promulgated performance standards under which objective judgments can be made by the Secretary of Commerce as to whether the substantive program elements are adequately reflected in the state's management process. Secretarial approval under Section 306 will provide a legal status to the management program requiring adherence to it by the Federal government in carrying out its activities and programs within the state's coastal zone. Moreover, such approval will make the state's management entity eligible for continuing Federal administrative grants under Section 306.

The formulation of state policies and programs in meeting these substantive programs elements provide an opportunity for Federal/state coordination. Consultation at these stages of evolving the management process should provide a better understanding of the respective Federal/state interest and will emphasize the reciprocal nature of the management process.

In most cases, Federal and state interest in coastal zone management will be congruent. But in those few instances, where there is a potential for conflict, it can best be reconciled by early identification and negotiation. One method of obtaining this early warning approach to Federal/state coordination is to engage in a dialogue

with Federal officials when the state is developing policies and programs to meet the requirements in Section 306.

Many of the mandated program elements in Section 306 involve organizational and process requirements which will not affect substantively Federal agency interest, there are certain other elements that will have a direct impact on Federal programs, activities and interests. Consequently, without restating the regulations establishing performance standards for complying with the Act, there is listed below the citation of regulations to those mandated elements which ought to be developed with the full involvement of concerned Federal agencies (15 CFR 923, published August 15, 1974, in the Federal Register):

Subpart A - General

923.4 Evaluation of Management Programs-General

Comment: In reviewing management programs submitted by a coastal state, the Secretary will evaluate not only all of the individual program elements required by the Act and set forth in the regulations but the objectives and policies of the State program as well to assure that they are consistent with national policies declared in Section 303 of the Act.

923.5 Environmental Impact Assessment

Subpart B - Land and Water Uses

923.11 Boundary of Coastal Zone

923.12 Permissible Land and Water Uses

923.13 Areas of Particular Concern

923.14 Guidelines on Priorities

923.15 National Interest in Siting Facilities

Comment: Obviously this element is of the highest priority and should be developed with a maximum of Federal agency consultation. A management program must evolve a policy on the siting of facilities having greater than local concern. These decisions will have regional and, in some cases, statewide and national implications. It will be essential, therefore, to develop a body of information relating to the national interest involved in and such siting through consultation with cognizant Federal and regional bodies, as well as adjacent and nearby states. The identification of national interests is assisted in the regulations by a checklist for facilities and cognizant Federal agencies which raise the question of national interest in the formulation of the state's management program. This list is reproduced on the following page to provide a ready reference in securing Federal agency involvement in this mandatory program element.

923.16 Areas Designated for Preservation and Restoration

923.17 Local Regulations and Uses of Regional Benefit

Subpart C - Authorities and Organization

923.21 Means of Exerting State Control Over Land and Water Uses

923.24 Authoratives to Administer Land and Water Uses, Control
Development and Resolve Conflicts

923.26 Techniques for Control of Land and Water Uses

**REQUIREMENTS WHICH ARE OTHER THAN LOCAL IN NATURE
AND IN THE SITING OF WHICH THERE IS A CLEAR NATIONAL INTEREST**
(With Associated Facilities and Cognizant Federal Agencies)

Requirements

- | | | |
|---|--|---|
| 1. Energy production and transmission | Oil and gas wells, storage and distribution facilities; refineries; nuclear, conventional and hydroelectric power plants; deepwater ports. | Federal Energy Office, Federal Power Commission, Bureau of Land Management, Atomic Energy Commission, Maritime Administration, Geological Survey, Dept. of Transportation, National Park Service, Forest Service, Bureau of Outdoor Recreation. |
| 2. Recreation (of an interstate nature) | National Seashores, Parks, Forests; large and outstanding beaches and recreational waterfronts, wildlife reserves. | Federal Highway Administration, Federal Aviation Administration Coast Guard, Corps of Engineers Maritime Administration, Interstate Commerce Commission |
| 3. Interstate transportation | Interstate highways, airports, aids to navigation, ports and harbors, railroads. | Soil Conservation Service, Forest Service, NOAA. |
| 4. Production of food and fiber | Prime agricultural land and facilities; forest, mariculture facilities. | Corps of Engineers, Federal Insurance Administration, NOAA, Soil Conservation Service |
| 5. Preservation of life and property | Flood protection facilities, Disaster warning facilities. | Department of Defense. |
| 6. National Defense | Military installations; defense manufacturing facilities. | National Register of Historic Places, National Park Service, Fish and Wildlife Service, NOAA's National Marine Fisheries Service. |
| 7. Historic, cultural, esthetic and conservation values | Historic sites; natural areas; areas of unique cultural significance; wildlife refuges; areas of species and habitat preservation. | |

Subpart D - Coordination

Comment: This entire subpart is completely relevant to the Federal interest requirement in the Act. It does not represent a substantive program element but its regulations are republished to emphasize that nature and scope of the process for Federal interest and agency involvement.

923.31 Full Participation by Relevant Bodies in the Adoption of Management Programs

(a) Requirement:

In order to fulfill the requirement contained in Section 306(c)(1), the management program must show evidence that:

(1) the management program has been formally adopted in accordance with State law or, in its absence, administrative regulations;

(2) the State has notified and provided an opportunity for full participation in the development of its management program to all public and private agencies and organizations which are liable to be affected by, or may have a direct interest in, the management program. The submission of the management program shall be accompanied by a list identifying the agencies and organizations referred to in (2), the nature of their interest, and the opportunities afforded such agencies and organizations to participate in the development of the management program. These organizations should include those identified pursuant to part 923.32, which have developed local,

areawide or interstate plans applicable to an area within the coastal zone of the State as of January 1 of the year in which the management program is submitted for approval; and

(3) the management program will carry out the policies enumerated in Section 303.

(b) Comment:

Statutory citation: Section 306(c)(1)

"Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find that . . . the State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in Section 303 of this title."

This requirement embodies the actual approval by the Secretary of Commerce of a State's coastal zone management program pursuant to all of the terms of the Act, plus associated administrative rules and regulations. As the operative section, it subsumes all of the requirements included in this part, which shall be considered the "rules and regulations promulgated by the Secretary" mentioned in Section 206(c)(1).

The citation, however, also includes some specific additional requirements, for which guidance and performance criteria are necessary. These additional requirements include:

(1) Adoption of the management program by the State. The management program must demonstrate that it represents the official policy and objectives of the State. In general, this will require certification in the management program that (1) the State management entity has formally adopted the management program in accordance with either the rules and procedures established by statute, or in the absence of such law, administrative regulations.

(2) Opportunity for full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, public and private. A major thrust of the Act is its concern for full participation and cooperation in the development and implementation of management programs by all interested and affected agencies, organizations and individuals. This is specifically included in the statement of national policy in Section 303(c). The State must provide evidence that the listed agencies and parties were, in fact, provided with an opportunity for full participation. It will be left to the States to determine the method and form of such evidence, but it should contain at a minimum:

(a) a listing, as comprehensive as possible, of all Federal and State agencies, local governments, regional organizations, port authorities and public and private organizations which are likely to be affected by, or have a direct interest in, the development and implementation of a management program (including those identified in part 923.32), and

(b) a listing of the specific interests of such organizations in the development of the management program, as well as an identification of the efforts made to involve such bodies in the development process.

"Opportunity for full participation" is interpreted as requiring participation at all appropriate stages of management program development. The assistance which can be provided by these public and private organizations can often be significant, and therefore contact with them should be viewed not only as a requirement for approval, but as an opportunity for tapping available sources of information for program development. Early and continuing contact with these agencies and organizations is both desirable and necessary. In many cases it may be difficult or impossible to identify all interested parties early in the development of the State's program. However, the public hearing requirements of part 923.41 should afford an opportunity to participate to interested persons and organizations whose interest was not initially noted.

(3) Consistency with the policy declared in Section 303 of the Act. In order to facilitate this review, the State's management program must indicate specifically how the program will carry out the policies enumerated in Section 303.

923. 32 Consultation and Coordination with Other Planning

(a) Requirement:

In order to fulfill the requirements contained in Section 306(c)(2), the management program must include:

(1) an identification of those entities mentioned which have plans in effect on January 1 of the year submitted [paragraph (a)],

(2) a listing of the specific contacts made with all such entities in order to coordinate the management program with their plans [paragraph (B)],

(3) an identification of the conflicts with those plans which have not been resolved through coordination, and continuing actions contemplated to attempt to resolve them [paragraph (A)], and

(4) indication that a regular consultive mechanism has been established and is active, to undertake coordination between the single State agency designated pursuant to part 923.23, and the entities in paragraph (B).

(b) Comment:

Statutory citation: Section 306(c)(2)

"Prior to granting approval of a management program submitted by a coastal State, the Secretary shall find . . . that the State has:

(A) coordinated its program with local, areawide and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the State's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

(B) establish an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title."

Relevant background information on this requirement appears in 15 CFR 920.45(f), and is incorporated by reference herein.

While the State will exercise its authority over land and water uses of Statewide significance in the coastal zone by one or more of the techniques set forth in part 923.28, the State management program must be coordinated with existing plans applicable to portions of the coastal zone. It should be noted that this section does not demand compliance of the State program with local plans, but the process envisioned should enable a State not only to avoid conflicts and ambiguities among plans and proposals, but to draw upon the planning capabilities of a wide variety of governments and agencies. Coordination implies a high degree of cooperation and consultation among agencies, as well as a mutual willingness on the part of the participants to accommodate their activities to the needs of the others in order to carry out the public interest. Perceptions of the public good will, of course, differ and it is recognized that not all real or potential conflicts can be resolved by this process. Nevertheless, it is a necessary step. Effective cooperation and consultation must continue as the management program is put into operation so that local governments, interstate, regional and areawide agencies can continue to participate in the carrying out of the management program.

The "plans" referred to in (A) shall be considered those which have been officially adopted by the entity which developed them, or which are commonly recognized by the entity as a guide for action.

The list of relevant agencies required under part 923.31 will be of use in meeting this requirement. It will enable the State to identify those entities mentioned in (A) which have such plans and to provide evidence that coordination with them has taken place.

The process envisioned should not only enable a State to avoid conflicts between its program and other plans applying within its coastal zone, but to draw upon the planning capabilities of a wide variety of local governments and other agencies.

In developing and implementing those portions of the program dealing with power transmission lines, pipelines, interstate transportation facilities and other facilities which will significantly impact on neighboring States of a region, particular attention should be paid to the requirements of this section.

Subpart E - Miscellaneous

923.41 Segmentation

Comment: This is not a substantive program element. However, it is a critical decision that in many cases could have immediate and direct implication on the Federal interest. Consequently, it is suggested that a decision to proceed with applying the management program on a piecemeal basis should be a subject of Federal/state coordination.

IV. THE APPROACH OF THE U.S. OFFICE OF COASTAL ZONE MANAGEMENT TO STATE-FEDERAL RELATIONS

The initiative for coordinating Federal activities in a state's coastal zone rests with the state. Given this view it then follows that one of the principal missions of NOAA's Office of Coastal Zone Management is that of assisting the coastal states as they seek to arrange with Federal agencies for their participation in the state's coastal zone management program.

A. OCZM Organization for Coordination^{1/}

Chapter II of this Handbook detailed the provisions in the Coastal Zone Management Act of 1972 that require interagency and intergovernmental coordination.

Carrying out the coordinative provisions of the Act, and the regulations that are based on the statutory provisions, will be the responsibility of all components of the Office of Coastal Zone Management. Two organizational steps, however, have been taken specifically to deal with coordination matters.

A State Liaison Officer has been established in OCZM Washington headquarters, assisted by four Regional Coordinators. The Regional Coordinators will provide day-to-day liaison with the states in their regions (Northeast, Southeast, Gulf and Pacific).

Complementing the State Liaison Office is the Federal Interagency Office which is to inform:

- Federal agencies as to the nature of the coastal zone management program, and their role in such state developed programs; and

^{1/} Much of this discussion is based on Draft Work Program for Interagency and Intergovernmental Coordination (OCZM, August 1974, processed).

- States as to the nature of Federal programs and the role of programs in state coastal zone management activities.

The development of this Handbook, as a matter of fact, is a part of to State-Federal liaison needs.

The purposes of OCZM's work program for interagency and intergovernmental coordination include:

- (1) To clarify in workable language the major steps involved in developing the "coordination" processes of the Act;
- (2) To identify coordination priorities by agency, and by programs where possible, in light of statutory and program development requirements;
- (3) To define major coordination objectives, milestones, tasks and anticipated products;
- (4) To develop measures, the means to display them, and the approximate timing of coordination progress; and
- (5) To begin to define individual--and more usually shared--OCZM responsibilities for coastal zone management coordination.

Thus interagency coordination, in service of assisting states in their CZM activities, is considered to be a major responsibility of the Office of Coastal Zone Management.

These responsibilities will be organized in two ways:

- (1) By levels of government; and
- (2) by agency or program function.

Two of the categories based on governmental levels involve Federal agencies--
OCZM-Federal Agency Coordination, and Federal Agency-State CZM Coordination.

B. OCZM-Federal Agency Coordination

This function is being pursued through five activities during fiscal year 1975:

- (1) Contact at the Washington and field levels with "all Federal agencies engaged in programs affecting the coastal zone."
- (2) Distribution and exchanges of program information, including regional-state administration.
- (3) Development of OCZM-Federal agency priorities, based upon:
 - Requirements in the Coastal Zone Management Act of 1972;
 - State program designs and 305 regulations;
 - Identified key issues and "national interest" considerations;
 - Problems and "natural affinities"; and
 - Timing of development-approval needs.
- (4) Consultation with Federal agencies, based on:
 - Functional groupings and program activities;
 - Direct effects of CZM development;
 - Anticipated 306 review and adoption processes; and
 - Early conflicts or "consistency" issues.
- (5) Institution and maintenance of working relationships with Federal agencies through:
 - Staff level;
 - Policy level;

- Formal (i.e., memos of agreement);
- Informal (ad hoc working groups);
- Existing interagency structures (such as those outlined in Chapter IX of this Handbook); and
- New mechanisms created by OCZM.

Referring to the third activity listed above, OCZM recognizes that immediate in-depth contact cannot be made with all the Federal agencies that administer programs affecting the coastal zone. OCZM has therefore identified a tentative ordering of such agencies:

First Priority

- (1) Environmental Protection Agency
 - Office of Federal Activities
 - Transportation and Land Use Work Group
 - Policy Planning Division
 - Bilateral Programs Division
 - Water Planning and Standards
 - Washington Research Center
- (2) Department of the Army, Corps of Engineers (Civil Works)
 - Legislation and Administration Branch
 - Policy and Analysis Division
 - Regulatory Functions Branch
 - Coastal Engineering Research Center.

- (3) Department of the Interior
 - Bureau of Sport Fisheries and Wildlife
 - Office of Land Use and Water Planning
 - Bureau of Land Management
- (4) Federal Energy Administration
 - Federal Programs Division
 - Intergovernmental Relations Division
- (5) Department of Housing and Urban Development
 - Federal Insurance Administration
 - Planning and Management (701)

Second Priority

- (1) Department of Agriculture
 - Soil Conservation Service
- (2) Department of the Interior
 - Bureau of Outdoor Recreation
- (3) Department of Commerce
 - National Oceanic and Atmospheric Administration
- (4) Department of Transportation
 - Intermodal planning group
 - Coast Guard

Third Priority

- (1) Defense Department agencies other than Corps Civil Works
- (2) Atomic Energy Commission
- (3) Federal Power Commission
- (4) Federal Coordinating Agencies

While every attempt is being made to notify all agencies of their new responsibilities and opportunities under the Coastal Zone Management Act of 1972, the above ordering is expected to affect the manner in which the agencies deal with coastal states.

C. Federal Agency-State Coordination

This function is more directly focused on specific arrangements between particular Federal programs, as they affect the coastal zone, and the management program of each state. A major instrument of this coordination will be the OCZM Regional Coordinators, who will be devoting a good deal of their time to fostering contact between relevant Federal agencies and the states. While OCZM will clearly be tailoring its approach to individual state styles, institutions and work programs, it will also be attempting to regularize relations between Federal agencies and states. OCZM's activities are expected to include the following:

- (1) Identify Federal agencies that are "principally affected by the development and approval of state programs"; also identify potential sources of Federal assistance.
- (2) Foster Federal-OCZM Contact on a reciprocal basis:
 - through Washington;
 - in regions; and
 - at the local or Office/laboratory level.

- (3) Develop the means to secure (or provide the opportunity for) exchange of information between Federal agencies and coastal states on such matters as planning and regulation.
- (4) Initiate and suggest means to guide "consultation" in such areas as:
 - policy, standards, law;
 - procedures and regulations;
 - problems and issues;
 - shared interest, duplication, overlap;
 - consideration of Federal views; and
 - Federal cognizance of evolving state views.
- (5) Support the establishment of working relationships with regard to:
 - Federal agency involvement in program development;
 - Assessment of state needs and directions;
 - Early identification of serious disagreements between a state and a Federal agency;
 - Initiation of approval process;
 - Federal review of a state's program and its possible modification;
 - Dispute mediation;
 - Secretarial approval; and
 - OCZM Administration.

D. Assistance to States in Selected Areas of Opportunity

In addition to the incremental and continuing work on the "coordination" elements discussed above, there will be concerted one time tasks that demand OCZM attention.

Although they generally relate to the goal of state program approval, these tasks can be considered sufficiently distinct to warrant specialized attention. Some of the projects that now might fall into this category include:

- (1) Development of the substantive and procedural means by which the Air and Water requirements of EPA are "incorporated" into State CZM programs.
- (2) Development and implementation of the other elements contained in Section 307 of the Act.
- (3) Consideration, design, and testing of a process by which Federal agencies would "preview" a state's CZM program prior to its formal submission for approval by the Secretary of Commerce.
- (4) Definition of approaches to and utilization of Federal Regional Councils and other field structures of Federal agencies.
- (5) Supplementary language to the Council on Environmental Quality Guidelines to strengthen its provisions for consultation by state CZM entities in preparing and reviewing Environmental Impact Statements.

Through these activities and officers, OCZM seeks to act as an expediter on behalf of the states as they develop their relationships with the elements of the Federal establishment which conduct or support activities in the coastal zone.

States should feel free to utilize these liaison mechanisms as they seek to wrap Federal activities into their coastal zone management programs. Questions and requests for guidance can be addressed to the Regional Coordinators or OCZM's Interagency Coordinator.

VI. FEDERAL PROGRAMS AND ACTIVITIES THAT ARE
RELEVANT TO A STATE'S COASTAL ZONE MANAGEMENT PROGRAM

A. State Strategies for Dealing with Federal Programs in the Coastal Zone

The degree of interaction between states and Federal agencies in the coastal zone will relate directly to the detail of the state's coastal zone management program as it:

- defines what shall constitute permissible land and water uses;
- designates areas of particular concern;
- determines priority of uses in particular areas, including uses of lowest priority; and
- identifies the means by which the state proposes to exert control.

Each state coastal zone management program, when it is submitted to the Secretary of Commerce for approval, must address the four requirements detailed above.

Section 307(c) of the Act is directive to Federal agencies when it says:

"Each Federal agency conducting or supporting activities directly effecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs."

Hence, Federal agencies and their activities in the coastal zone must, to the maximum extent practicable, be consistent with state determined permissible and priority (including lowest priority) land and water uses and in accordance with state designated areas of particular concern.

Chapter V of this Handbook, and Appendix 1, displays and discusses Federal activities and programs within three broad categories, and a series of sub-categories, as follows:

1. Federal Grants, Loans and Guarantees
 - a. Grants for Planning and Management
 - b. Grants for State, Local and Private Development
 - c. Operational, Service and Research Grants
2. Federal Regulatory and Licensing Responsibilities
3. Direct Federal Actions
 - a. Direct Federal Development
 - b. Operational, Research and Service Functions
 - c. Coordinative

In the development of a state strategy for dealing with the elements and programs of the Federal Establishment, states would be well advised to determine the means of contact, control, and cooperation for each of these three categories. Sections 307(c) and 307(d) of the Act provide legal directives to Federal agencies within each of these categories as follows:

For the most part, these requirements for Federal agency compliance and consistency with state management programs relate directly to the state's determination as to permissible land and water uses.

There are two distinct periods of time that will determine the nature of a state-Federal relationships strategy; i.e., the program development phase under Section 305 and the program management phase under Section 306. It is to be expected that states will update and revise their management programs while they are in the management phase and as they resubmit their program annually to the Secretary of Commerce for recertification and refunding.

*over
"Excluded"
works*

There is no real substitute for knowledge of the nature and extent of Federal program activity in a state's coastal zone and, further, no real substitute for personal contact with Federal program managers. Hence, an initial comprehensive inventory of Federal activities in the coastal zone, and the identification of key Federal program managers, is an essential step.

In the development of such an inventory, the organization and cataloguing of Federal activity in accordance with the classification system contained in the Appendix and Chapter ~~IV~~ of handbook should prove to be useful. One of the products of such an inventory should be an evaluation of the relative significance of each activity and the identification of areas of possible conflict.

~~In identified areas of possible conflict, negotiation is going to be necessary. The Office of Coastal Zone Management stands ready to assist in these negotiations.~~

In Section 304 (a), the Act defines the coastal zone and includes the following language:

"Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents."

Although some Federal lands may be excluded from the state designated coastal zone, per se, there continues to be a separate mandate for Federal-state coordination or activities on Federal lands as a matter of Federal law. Such coordination is the policy enunciated in Title IV of the Intergovernmental Cooperation Act of 1968 and its implementing regulations contained in Part II of OMB Circular No. A-95. As discussed earlier in this Handbook, Congressional policy requires Federal government projects and activities to be consistent with state, areawide and local plans to the greatest extent possible.

During the program development phase, state coastal zone personnel would be well advised to develop a working liaison with local and regional planning agencies and, most particularly, with the state's A-95 clearinghouse in order that they might be advised of pending Federal activities.

The A-95 process envisions the establishment of an "early warning system" so that comprehensive planning agencies (and coastal zone management entities) can be forewarned of a proposed action prior to the actual submittal of an application or plan for final review and comment by the Clearinghouse. These processes can be most useful in the management program development phase to assist the state coastal zone entity in becoming familiar with what is going on.

During the management phase of the program, A-95, through Parts I and II can and will provide the mechanism through which the state's coastal zone management entity will be informed and will be able to comment directly on pending Federal activities under the provisions of Sections 307(c) and (d) of the Act.

In the past, state and regional clearinghouses established under the terms of A-95 have not necessarily been even in their responses, as they review proposed Federal actions in relation to locally developed plans and policies. To a large extent this has been due to the unevenness of local planning and policy determination. It is to be expected that the A-95 process, as a means of communication and review, will reflect the level of particularity, concern, and control reflected in state developed and Department of Commerce approved, coastal zone management programs. In other words, the A-95 process, as means of communication and flow of information, will, in terms of the coastal zone management program, reflect directly and perform to the degree that its processes are built directly and consciously into the state's coastal zone management program itself.

State strategies for dealing with Federal interests and Federal activities during the development phase and the management phase of a state's coastal zone management program must be developed by each state, individually, depending on how it views its own coastal zone, the activities to manage in the zone and the goals to be achieved by the state in its management program. All of these things should be consciously and thoughtfully worked out and put together as the state develops and applies its management strategies.

B. The Phases of the State's Program

The distinction in Chapter V between Federal grants, regulatory activities and direct development is a standard one. To maximize the utility of these Federal activities to state coastal zone management programs, however, each must be related to the appropriate phase of the state's CZM program:

1. Developing the State Program. ✓
2. Incorporating Federal Agency Interests into the State Program. ✓
3. Review by Federal Agencies
4. Approval of the State Program by the Secretary of Commerce.
4. Implementation of the State Management Program.
5. Assuring Federal Consistency with the Approved State Program.

There is a good deal of overlap between the five phases. Federal agencies-- particularly regional offices of agencies that are especially concerned with the coastal zone--will be partners with the states in all phases.

Appendix 1 should help in determining at what juncture the Federal activities will intervene in the state's management process. This information should also be valuable in meeting the consultation requirements with affected Federal agencies provided in Section 307(b) of the Act, and should assist in identifying the nature of the agencies' interest, and the probable impact, if any, on the state management program.

To help the state and affected Federal agencies to identify the Federal interests and their place in the state management program, the attached form (Federal Agency Contact and Approval Log) is suggested for adaptation and incorporation into the state's management program. This form can provide in summary fashion the Federal agency concerns that have been identified, evaluated and made a part of the management program. Examples would include consultation on status of military establishments in the coastal zone (Office of the Secretary, Department of Defense); Air and Water Quality Standards (Environmental Protection Agency); and status and procedures for permits for solid wastes disposal in coastal waters and rivers (Corps of Engineers, Department of the Army and EPA).

FEDERAL INTERESTS IN STATE
COASTAL ZONE MANAGEMENT PROGRAM

A Federal Agency Contact and Approval Log

(To be attached to (1) applications for second and third-year 305 grants; (2) submission of state program for Federal approval; and (3) applications for 306 grants.)

State _____

Federal Interest	Reference in State Management Program	Federal Agency Responsible for the interest	Federal Officials Consulted During Development of the State Program(Dates)

To be accompanied by summaries of consultation and results when state program is submitted for approval; together with any Federal comments.

Date _____

The state's entries on its "Federal Agency Contact and Approval Log" will constitute a summary and index of state-Federal agency contacts, arrangements and understandings arrived at and incorporated into the state's coastal zone management program. The Log will indicate, from the state's point of view, that there has been "opportunity of full participation by relevant Federal agencies" in the development and adoption of a state Coastal Zone Management Program, as provided for under Section 306(c)(1) of the Act. (Each state will want to adapt this form to meet their own needs.)

The form will be useful as a cumulative record of the contacts between state and Federal agencies as the management program evolves. As such, the form would be attached to continuing applications for Federal assistance and reviews:

1. Second- and third-year applications for development grants under Section 305.
2. Requests for approval of completed state management programs.
3. Notifications of amendments to approved state programs.

Federal agency comments on state programs could be attached to the Log at the time the state submits its management program to the Department of Commerce for approval. The comments will have the effect of certifying that serious disagreements between the state and any Federal agency have been resolved before submission for approval.

Federal agency review of the adequacy of state consideration of Federal agency interest in the management program proposed for Secretarial approval at the Washington level should be facilitated if the procedures and processes suggested above have been carried out, with the documentation indicated. In other words, Federal agency involvement should be considered as an integral part of the program development process.

C. Other Key Considerations in Dealing with Federal Programs

1. Air and Water Pollution Control Programs

Section 307(f) of the Act specifically references the Federal Water Pollution Control Act and the Clean Air Act, and provides:

"...nothing in this title shall in anyway affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program."

The application of air and water act requirements must be understood in terms of other mandatory requirements of the Coastal Zone Management Act.

The CZMA requires a state, under Section 305(b), to determine:

"...what shall constitute permissible land and water uses...;"

"...areas of particular concern...;" and

"...priority of uses in particular areas, including specifically those uses of lowest priority."

The water and air requirements would, then, be applied in accordance with state determined uses, concerns and priorities. During the process of making such determinations, the state coastal zone management program development entity, should, of course, determine State and Federal water and air requirements to ascertain what effect such requirements would exercise on the basic determination of permissible and priority uses and area of particular concern.

Air and water requirements, of course, are going to vary as between, for example, coastal areas designated for intensive recreation use and development, and wetlands areas set aside for no use to preserve ecological systems.

The following summaries of the principle provisions of the Federal Water Pollution Control Act and the Clean Air Act are set forth to assist state in the development of their coastal zone management program. It should be noted that both acts have strongly mandated planning requirements. It is during the planning and program development phase that coastal zone planners and administrators should maintain close working relationships with air and water planners and administrators. As a matter of principle, coastal zone managers should determine the location and extent of uses to be permitted in coastal areas. Such uses would then be subject to air and water requirements.

a. Federal Water Pollution Control Act

The Federal Water Pollution Control Act of 1972 (FWPCA) relates to the management and control of two sources of pollutants: point sources and non-point sources.

Point sources have an obvious and relatively easily managed impact on the quality and use of water in coastal areas, while non-point sources are less manageable. Generally, point sources and related controls are defined by the Federal government through the permit system and through effluent limitations which are applied to the development and operation of sewage treatment works. Procedures for control of non-point sources have not been totally formulated to date but will be developed largely through land use and management regulations.

The primary barrier to active regulatory responsibilities for non-point sources is the lack of management techniques for pollutant abatement. It is difficult to control a pollution source which can not be specifically identified. Negligent land and water use are the major causes of non-point source pollutants. NPS's include such activities as poor construction practices, urban storm water run-off, sedimentation, and erosion. To control

these sources, regulations must be broad in application. Water quality managers will find it necessary to specifically define those activities which must be regulated, and the appropriate terms of the regulations.

The EPA Water Quality Strategy Paper of March 15, 1974, states:

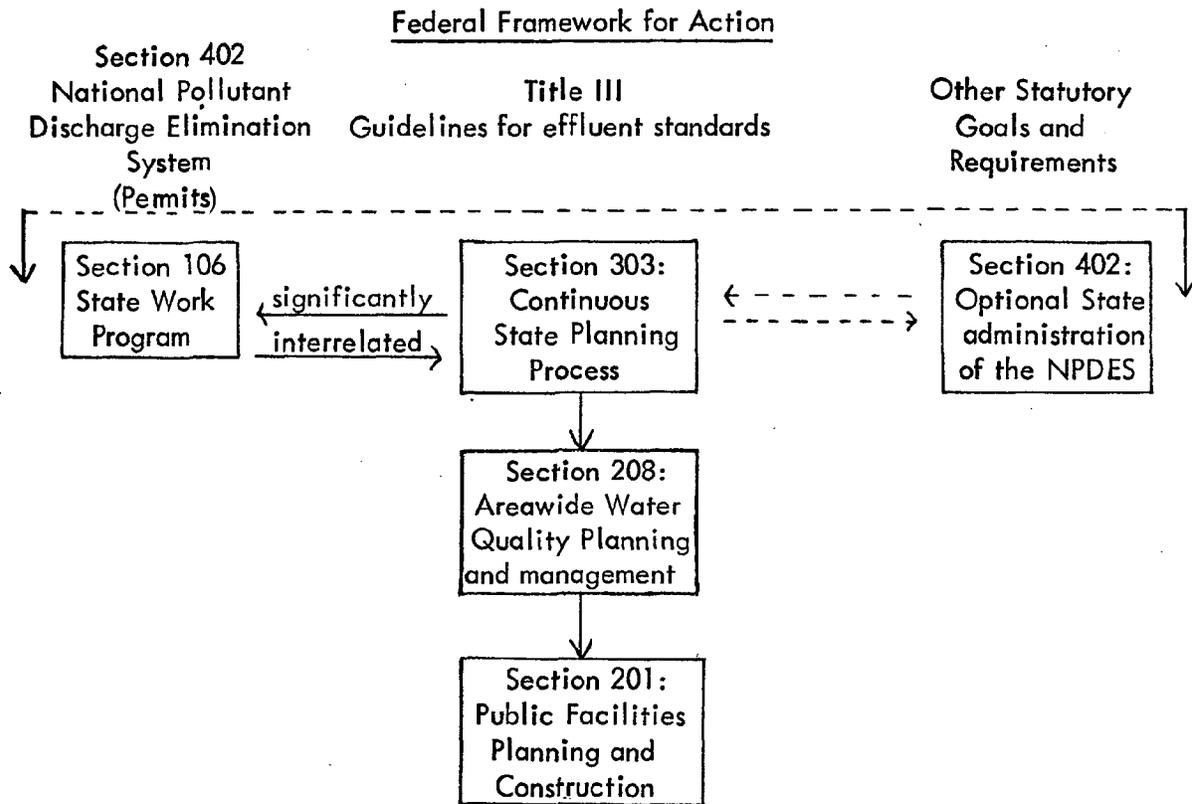
"NPS control is a cooperative, intergovernmental responsibility, with authorities divided among EPA, other Federal agencies, and State and local units. Principal authority for a full control program is vested, under the Act, in the States and areawide management agencies.

"Additionally, numerous Federal agencies have power to include NPS measures as an aspect of various programs. Finally, EPA is charged with conducting research and demonstrations, developing guidance and supply support, to further NPS awareness and abatement at all levels of government and in the private sector."
(Emphasis added) (p. 62)

EPA recognizes its responsibility to guide the states and areawide agencies in NPS control. Information relating to control of seven non-point sources was published in EPA in October 1973, and is available at EPA Regional Offices. However, this publication does not address the institutional framework, or specific use of land use and management controls for regulation of non-point sources. Information on these aspects of NPS control are to be published in the future.

The planning structure of the FWPCA and a brief explanation of the primary elements of the statute is included at the end of this section. Within this structure, the state is responsible for the State strategy, which includes the goals, standards, priorities and foundation for action by the areawide planning agencies. The role of the state in point source control is apparent in the rules and regulations published by EPA.

Planning Structure of the FWPCA



Explanation

Federal Role: The Federal Government provides the guidelines and funds for state and areawide fulfillment of its responsibilities under the FWPCA. Additional functions include:

- Publication of an annual National Water Quality Strategy Paper which sets forth the policies for implementation of the FWPCA.
- Approval of all plans submitted by states or designated areas under FWPCA.
- Administration of the NPDES unless the state develops the necessary capabilities to assume the responsibility.
- Assurance that all Federal grants and activities are consistent with adopted 208, areawide, or 201, facilities, plans.

Section 106: The state is required to provide an annual work program for achievement of water quality standards. The findings, priorities, and expectations of the 303(e) planning process are reported in this annual program.

Section 303(e): Initial planning and problem definition is conducted under this section for river basins and sub-basins within a state. The state investigates the problems and potentials, and subsequently develops a water strategy. This water strategy and background information is the foundation for areawide (208) planning. Effluent standards for water segments are also established. These standards must be updated every three years.

Section 201: This section focuses primarily on the 1977 goals of secondary treatment facilities, and is oriented toward the problems of public treatment plans. All facilities planning must be in accordance with the priorities set forth in the 303(e) plan. Upon implementation of the 208 plan, all 201 planning activities will be absorbed into the 208 planning process.

Section 208: This section dealing with areawide, intergovernmental water quality management planning, focuses on the 1983 water quality goals which address all levels of water quality management. Major responsibilities of goal attainment, planning, and program management are shifted to the designated 208 planning and management agencies. Federal and state water quality activities must be consistent with the adopted 208 plan.

Section 403: This section requires the establishment of discrete water quality standards for coastal zone waters by the EPA, and incorporation of such standards by the states into the water quality control program. Obviously, these requirements will establish absolute constraints on development and use of both land and waters in the state's coastal zone.

As the preceding description of the planning structure relates, planning and programming under the FWPCA is phased over the years until 1983. Initially general planning and problem definition is focused at the State and Federal level. Throughout the process, all levels of the public sector are expected to develop a certain level of expertise in water quality management.

b. The Clean Air Act

The Clean Air Act addresses land use regulation through direct and indirect sources controls. Indirect sources are developments or facilities which will attract sufficient traffic to impede attainment of air quality goals. Therefore, the impact of direct sources can be ameliorated through regulation of development location and design, and/or the mode of access.

A discussion of selected clauses from the statute and guidelines which relate to indirect source/transportation regulations follows. The program elements which implement these requirements must be included as part of the CZMA regulatory program.

All indirect sources which will begin site grading or construction after January 1, 1975, are subject to regulation. These regulations must ensure that large scale facilities, highways, and airports will be designed in accordance with air quality standards. The State may develop its own indirect source regulations and procedures, or utilize those promulgated by EPA. The Administrator published the initial review procedures as of January 1, 1974. The EPA timetable requires review procedures to be implemented for proposed facilities in July 1974, and actual regulation of sites and construction in January 1975.

A 10-Year Air Quality Maintenance Plan (AQMP) must be prepared for all areas designated as a "potential problem area" by the EPA Administrator.

The AQMP must include a land use analysis, and a transportation plan analysis as part of the indirect source control strategy. If such an area is located within the Coastal Zone, this control strategy must be included in the CZMA program.

The following table indicates the indirect sources which require approval according to Federal regulations. States have the option of utilizing these regulations, or preparing their own requirements.

Indirect Sources Requiring Approval

Location	Sources	Minimum size for review
Urban area (SMSA)	New roads and highways	20,000 vehicles per day (average)
	Modified roads and highways	10,000 vehicles per day over existing traffic (average)
	New airports	50,000 scheduled operations or 1.6 million passengers per year
	Modified airports	50,000 scheduled operations per year over existing level, or of 1.6 million passengers per year
	Other indirect sources, new	Parking for 1,000 cars or more
	Other indirect sources, modified	Parking for 500 cars or more over existing number
Nonurban areas	Airports	Same as in urban areas
	Other indirect sources, new	Parking for 2,000 cars or more
	Other indirect sources, modified	Parking for 1,000 cars or more over existing number

Source: 40 CFR 52.22 (b) (2), (February 14, 1974).

Pursuant to designation of Air Quality Maintenance Areas and analysis of existing, potential, and projected air quality problems, the state must develop alternative "maintenance strategies." The strategies are to be developed in cooperation with relevant State and local agencies (see "Guidelines for Preparation of a 10-Year Air Quality Maintenance Program," published by EPA, March 1974):

"A partial listing of the types of agencies that must be considered includes those engaged in water planning pursuant to sections 201, 208, and 303 of the Federal Water Pollution Control Act Amendments of 1972; solid waste planning; comprehensive and environmental health planning; transportation planning; coastal zone management; environmental impact statement preparation; '109(j)' review procedures; comprehensive (p. 16) land-use planning; and other planning activities at the State and local level."

The "Guidelines" generally encourages coordination among the different environmental quality programs:

"2. Basic Considerations

The AQMP shall be designed to yield the maximum possible integration with other State pollution control activities. The plan shall define these relationships. As an aid to States, EPA will publish guidelines for the coordination of the air quality maintenance activities with other environmental protection activities in April 1974.

"The plan shall describe the relationship between air quality maintenance activities and the State land-use and transportation planning process." (p. 5-6)

Cooperation with these agencies must also be instituted in the process of evaluation and selection of a maintenance strategy. "Maintenance requisites, institutional structure, economic resources, human resources, existing legal authority, and existing land use and transportation plans are some of the factors that must be considered in the selection process." (p. 19)

The selected strategy is then included in the AQMP. The final plan will indicate who, what, when, where, and how the strategy will be implemented. Internal review of the plan by the relevant State and local agencies is conducted prior to public hearings and Federal review.

2. State Plans Under the Flood Insurance and Flood Disaster Acts

State coastal zone program managers should be particularly aware of the provisions of the Flood Insurance and Flood Disaster Acts as they relate to disaster prone areas in the state's coastal zone.

The Flood Disaster Act of 1973 was conceived as a means of adding mandatory provisions to the Flood Insurance Act of 1968. The 1968 statute made flood insurance available on a voluntary basis to residents of disaster prone areas. The two principal objectives of the 1968 Act were to make flood insurance available at reasonable rates, and to encourage local jurisdictions to regulate land use in disaster prone areas. Despite the intent of this Act, it was recognized that without creating statutory requirements with great disincentives to non-participation, the objectives would not be attained. As will be evidenced by the discussion below, the 1973 Act remedies many of the inadequacies to the Flood Insurance Act of 1968.

The major purpose of the Flood Disaster Act of 1973 is to:

- alleviate the distress of mudslides and floods, and subsequent reconstruction;
- encourage the use of land use controls to regulate construction in disaster prone areas.

The Act provides a national flood insurance program which will make insurance available for personal and real property to all interested persons in designated disaster prone

communities. In accordance with Section 201, the Administrator is responsible for the designation of these communities not later than six months following enactment of this statute:

"Notification to Flood Prone Areas

"Sec. 201. (a) Not later than six months following the enactment of this title, the Secretary shall publish information in accordance with subsection 1360 (1) of the National Flood Insurance Act of 1968, and shall notify the chief executive officer of each known flood-prone community not already participating in the national flood insurance program of its tentative identification as a community containing one or more areas having special flood hazards.

"(b) After such notification, each tentatively identified community shall either (1) promptly make proper application to participate in the national flood insurance program or (2) within six months submit technical data sufficient to establish to the satisfaction of the Secretary that the community either is not seriously flood prone or that such flood hazards as may have existed have been corrected by floodworks or other flood control methods. The Secretary may, in his discretion, grant a public hearing to any community with respect to which conflicting data exist as to the nature and extent of a flood hazard. If the Secretary decides not to hold a hearing, the community shall be given an opportunity to submit written and documentary evidence. Whether or not such hearing is granted, the Secretary's final determination as to the existence or extent of a flood hazard area in a particular community shall be deemed conclusive for the purposes of this Act if supported by substantial evidence in the record considered as a whole.

"(c) As information becomes available to the Secretary concerning the existence of flood hazards in communities not known to be flood prone at the time of the initial notification provided for by subsection (a) of this section he shall provide similar notifications to the chief executive officers of such additional communities, which shall then be subject to the requirements of subsection (b) of this section.

"(d) Formally identified flood-prone communities that do not qualify for the national flood insurance program within one year after such notification or by the date specified in section 202, whichever is later, shall thereafter be subject to the provisions of that section relating to flood-prone communities which are not participating in the program."

Designated communities which do not take the necessary steps to participate in this program will be denied Federal financial assistance within the disaster prone areas:

"Effect of Nonparticipation in Flood Insurance Program

"Sec. 202. (a) No Federal officer or agency shall approve any financial assistance for acquisition or construction purposes on and after July 1, 1975, for use in any area that has been identified by the Secretary as an area having special flood hazards unless the community in which such area is situated is then participating in the national flood insurance program.

"(b) Each Federal instrumentality responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions shall by regulation prohibit such institutions on and after July 1, 1975, from making, increasing, extending, or renewing any loan secured by improved real estate or a mobile home located or to be located in an area that has been identified by the Secretary as an area having special flood hazards, unless the community in which such area is situated is then participating in the national flood insurance program."

Originally in the 1968 statute, disaster relief was denied to persons who could have purchased flood insurance for a year or more and did not do so. This was considered a disincentive for participation in the program as well as inequitable since only those persons living in participating communities would be penalized. This section (1314) was repealed and replaced with section 202 of the 1973 statute cited above. In essence, the penalty is the denial of Federal assistance for the acquisition of land or buildings within non-participating communities. However, non-participating communities are still entitled to disaster relief assistance.

Any potential program participant must have adopted adequate land use and control measures prior to participation in the flood insurance program. The land use measures (with effective enforcement provisions) must be consistent with the comprehensive criteria for land management and use in accordance with section 1361(c).^{1/}

These criteria for land management as currently set forth by the Secretary are "to encourage, where necessary, the adoption of adequate state and local measures which to the maximum extent feasible, will

- (1) constrict the development of land which is exposed to flood damage where appropriate,
- (2) guide the development of proposed construction away from locations which are threatened by flood hazards,
- (3) assist in reducing damage caused by floods, and
- (4) otherwise improve the long-range land management and use of flood-prone areas, and he shall work closely with and provide any necessary technical assistance to State, interstate, and local governmental agencies, to encourage the application of such criteria and the adoption and enforcement of such measures. (Sec. 1361(c)).

Regulations for implementation of this program were published in: Title 24 of the Department of Housing and Urban Development, Chapter X - Federal Insurance Administration, Subchapter B - National Flood Program. Minimum standards for land use and control measures for flood and mudslide prone areas are stated in part 1910 of these regulations.

These standards differ in their application among communities in which:

- The administrator has not identified the hazard areas.

^{1/} This information received from HUD staff member, Joe Coughlin on September 18, 1974.

- The Administrator has identified the hazard areas but not supplied supporting data and land characteristics.
- The Administrator has identified the hazard areas and supplied varying amounts of supporting data.

As the terms of these different standards do not differ substantially, only the major elements of the standards are listed below. A reproduction of the detailed standards follows this discussion. The principal elements include:

- building permit requirements;
- review procedures for building and subdividing;
- regulation of new construction and non-conforming uses;
- water and sewer system replacement;
- coordination with other hazard area management programs.

The regulations further explicitly address this last element. Section 1910.26 relates that participating communities should coordinate their flood control programs with other relevant programs:

"§1910.26 Local Coordination;

"(a) Local flood plain and mudslide area management, flood forecasting, flood and mudslide emergency preparedness, and flood and mudslide control and damage abatement programs should be coordinated with relevant Federal, State, and regional programs.

"(b) A locality adopting land use and control measures pursuant to these criteria should arrange for coordination with the appropriate State agency of its program of information and education designed to promote public acceptance and use of sound flood plain and mudslide area management practices."

Although this coordination is not mandatory, it should facilitate coordination with the statutory requirements and land use controls under Federal resource management

programs, with particular relevance to the CZMA and FWPCA programs. In addition, state leadership is encouraged in the flood control program. This will further enhance coordination among related programs. The states role in the application and administration of the flood control program should include:

"§1910.25 State coordination.

- "(1) Enacting land use and control measures which regulate flood plain and mudslide area land use;
- "(2) Enacting where necessary, legislation to enable counties and municipalities to regulate flood plain and mudslide area land use;
- (3) Designating an agency of the State government to be responsible for coordinating Federal, State, and local aspects of flood plain and mudslide area management activities in the State;
- "(4) Assisting in the delineation of mudslide areas, riverine floodways, and coastal high hazard areas and providing all relevant technical data to the Administrator;
- "(5) Establishing minimum State flood plain and mudslide regulatory standards consistent with those established in this part;
- "(6) Guiding and assisting municipal and county public bodies and agencies in developing flood plain and mudslide in developing flood plain and mudslide area management plans and land use and control measures;
- "(7) Recommending priorities for ratemaking studies among those communities of the State which qualify for such studies;
- "(8) Communicating flood plain and mudslide area information to local governments and to the general public;
- "(9) Participating in flood and mudslide warning and emergency preparedness programs;
- "(10) Assisting communities in disseminating information on minimum elevations for structures permitted in flood plain and mudslide areas having special hazards;

"(11) Advising public and private agencies (particularly those whose activities or projects might obstruct drainage or the flow of rivers or streams or increase slope instability) on the avoidance of unnecessary aggravation of flood and mudslide hazards;

"(12) Requiring that proposed uses of flood plain and mudslide-prone areas conform to standards established by State environmental and water pollution control agencies to assure that proper safeguards are being provided to prevent pollution; and

"(13) Providing local communities with information on the program, with particular emphasis on the coordination of State and Federal requirements pertaining to the management of flood-prone and mudslide-prone areas.

"(b) For States whose flood plain management program substantially encompass the activities described in paragraph (a) of this section, the Administration will -

"(1) Give special consideration to State priority recommendations before selecting communities for ratemaking studies from the register described in §1909.23 of this subchapter; and

"(2) Seek State approval of local flood plain and mudslide area land use and control measures before finally accepting such measures as meeting the requirements of this part."

As most subdivision, construction, and house purchases today receive some form of Federal financial assistance, there is sufficient incentive for state and local participation in the program. This will consequently result in the regulation of all land uses in recognized disaster prone areas of the nation. Such regulation will be most effective as a part of the land and resource management programs established under the Federal water, air and coastal zone statutes. Assuming effective program implementation, and integration with these relevant regulatory programs, the greatest merit of this program is the deterrence of continued construction which is destined to risk the lives and property of citizens.

Title 24 of the Department of Housing and Urban Development, Chapter X -
Federal Insurance Administration, Subchapter B - National Flood Program sets forth
the following Requirements for Land Use and Control Measures:

"§1910.3 Required land use and control measures for flood-prone areas.

"Minimum standards for communities are as follows:

"(a) When the Administrator has not defined the special flood hazard areas within a community, has not provided water surface elevation data and/or has not provided sufficient data to identify the floodway or coastal high hazard area, the community must --

"(1) Require building permits for all proposed construction or other improvements in the community;

"(2) Review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a location that has a flood hazard, any proposed new construction or substantial improvement (including prefabricated and mobile homes) must (i) be designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, (ii) use construction materials and utility equipment that are resistant to flood damage, and (iii) use construction methods and practices that will minimize flood damage;

"(3) Review subdivision proposals and other proposed new developments to assure that (i) all such proposals are consistent with the need to minimize flood damage, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided so as to reduce exposure to flood hazards; and

"(4) Require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

"(b) When the Administrator has identified the flood plain area having special flood hazards, but has produced neither water surface elevation data nor data sufficient to identify the floodway or coastal high hazard area, the minimum land use and control measures adopted by the community for the flood plain must--

"(1) Take into account flood plain management programs, if any, already in effect in neighboring areas;

"(2) Apply at a minimum to all areas identified by the Administrator as flood plain areas having special flood hazards;

"(3) Provide that within the flood plain area having special flood hazards, the laws and ordinances concerning land use and control and other measures designed to reduce flood losses shall take precedence over any conflicting laws, ordinances, or codes;

"(4) Require building permits for all proposed construction or other improvements in the flood plain area having special flood hazards;

"(5) Review building permit applications for major repairs within the flood plain area having special flood hazards to determine that the proposed repair (i) uses construction materials and utility equipment that are resistant to flood damage, and (ii) uses construction methods and practices that will minimize flood damage;

"(6) Review building permit applications for new construction or substantial improvements within the flood plain area having special flood hazards to assure that the proposed construction (including prefabricated and mobile homes) (i) is protected against flood damage, (ii) is designed (or modified) and anchored to prevent flotation, collapse or lateral movement of the structure, (iii) uses construction materials and utility equipment that are resistant to flood damage, and (iv) uses construction methods and practices that will minimize flood damage;

"(7) Review subdivision proposals and other proposed new developments to assure that (i) all such proposals are consistent with the need to minimize flood damage, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located, elevated, and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided so as to reduce exposure to flood hazards; and

"(8) Require new or replacement water supply systems and/or sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and require onsite waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding.

"(c) When the Administrator has identified the flood plain area having special flood hazards, and has provided water surface elevations for the 100-year flood, but has not provided data sufficient to identify the floodway or coastal high hazard area, the minimum land use and control measures adopted by the community for the flood plain must--

"(1) Meet the requirements of paragraph (b) of this section.

"(2) Require new construction of substantial improvements of residential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood;

"(3) Require new construction or substantial improvements of non-residential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood or, together with attendant utility and sanitary facilities, to be floodproofed up to the level of the 100-year flood; and

"(4) In riverine situations, provide that until a floodway has been designated, no use, including land fill, may be permitted within the flood plain area having special flood hazards unless the applicant for the land use has demonstrated that the proposed use, when combined with all other existing and anticipated uses, will not increase the water surface elevation of the 100-year flood more than 1 foot at any point.

"(d) When the Administrator has identified the riverine flood plain area having special flood hazards, has provided water surface elevation data for the 100-year flood, and has provided floodway data, the land use and control measures adopted by the community for the flood plain must --

"(1) Meet the requirements of paragraph (b) of this section;

"(2) Require new construction or substantial improvements of residential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood.

"(3) Require new construction or substantial improvements of nonresidential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood or, together with attendant utility and sanitary facilities, to be floodproofed up to the level of the 100-year flood;

"(4) Designate a floodway for passage of the water of the 100-year flood. The selection of the floodway shall be based on the principle that the area chosen for the floodway must be designed to carry the waters of the 100-year flood, without increasing the water surface elevation of that flood more than 1 foot at any point;

"(5) Provide that existing nonconforming uses in the floodway shall not be expanded but may be modified, altered, or repaired to incorporate floodproofing measures, provided such measures do not raise the level of the 100-year flood; and

"(6) Prohibit fill or encroachments within the designated floodway that would impair its ability to carry and discharge the waters resulting from the 100-year flood, except where the effect on flood heights is fully offset by stream improvements.

"(e) When the Administrator has identified the coastal flood plain area having special flood hazards, has provided water surface elevation data for the 100-year flood, and has identified the coastal high hazard area, the land use and control measures adopted by the local government for the flood plain must --

"(1) Meet the requirements of paragraph (b) of this section;

"(2) Require new construction or substantial improvements of residential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood;

"(3) Require new construction or substantial improvements of nonresidential structures within the area of special flood hazards to have the lowest floor (including basement) elevated to or above the level of the 100-year flood or, together with attendant utility and sanitary facilities, to be floodproofed up to the level of the 100-year flood;

"(4) Provide that existing uses located on land below the elevation of the 100-year flood in the coastal high hazard area shall not be expanded; and

"(5) Provide that no land below the level of the 100-year flood in a coastal high hazard area may be developed unless the new construction or substantial improvement (i) is located landward of the reach of the mean high tide, (ii) is elevated on

adequately anchored piles or columns to a lowest floor level at or above the 100-year flood level and securely anchored to such piles or columns, and (iii) has no basement and has the space below the lowest floor free of obstructions so that the impact of abnormally high tides or wind-driven water is minimized.

"§1910.4 Required land use and control measures for mudslide areas.

"Minimum standards for communities are as follows:

"(a) When the Administrator has determined that a community is subject to mudslides but has not yet identified any area within the community as an area having special mudslide hazards, the community must--

"(1) Require the issuance of a permit for any excavation, grading, fill, or construction in the community; and

"(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides. If a proposed site and improvements are in a location that may have mudslide hazards, a further review must be made by persons qualified in geology and soils engineering; and the proposed new construction, substantial improvement, or grading must (i) be adequately protected against mudslide damage and (ii) not aggravate the existing hazard.

"(b) When the Administrator has delineated the mudslide areas having special mudslide hazards within a community, the community must (1) meet the requirements of paragraph (a) of this section and (2) adopt and enforce as a minimum within such area or areas the provisions of the 1970 edition of the Uniform Building Code, sections 7001 through 7006, and 7008 through 7015. The Uniform Building Code is published by the International Conference of Building Officials, 50 South Los Robles, Pasadena, Ca. 91101"

VII. FEDERAL ACTIVITIES IN THE WATERS OF THE COASTAL ZONE

While a state might well put major emphasis on the land-use dimensions of its program for managing its coastal zone, the water side is significant as well.

Indeed, the definition of coastal zone in the Coastal Zone Management Act of 1972 clearly includes a water dimension:

"Coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states and includes transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands, the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents." [Section 304(a)]

There is an inevitable interaction between coastal lands and coastal waters--both constituting the coastal zone--and the purpose of the Coastal Zone Management Program, as stated in the Congressional Findings section of the Act, is "to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water uses programs for the coastal zone..." [Section 302(h)].

Federal agencies are to cooperate with the states in managing the coastal waters. There is, of course, a certain amount of controversy between some states and the Federal

government as to jurisdiction over some coastal waters. Some states, for instance are claiming their jurisdiction extends 200 miles from the coastline. However, the Act delimits the boundary for the purpose of the Act to international boundaries of the coastal waters. This in effect delimits the water portion of the zone to the three mile limit.

It is certainly true that the Federal government has a long-standing and deep interest in coastal waters, an interest that is being intensified with searches for energy and the dangers of pollution of the ocean environment.

Within the Federal government, too, there is a good deal of overlap as between agencies in their responsibility for aspects of coastal waters. Just as there is no single Federal interest or overarching program on the land side of the coastline, so different laws and agencies represent different approaches to regulating the use of coastal waters.

A coastal state that wishes to participate in the Coastal Zone Management program must thread its way through uncoordinated Federal policies in coastal waters in sufficient detail to (1) assure Federal approval of its management program, and (2) facilitate Federal agency compliance with that management program.

The brief description of Federal coastal-water programs that follows is designed to help states in this task. These Federal programs may be divided into those research activities that will help a state prepare its management program, and those direct Federal activities that will influence the coastal zone over which the state hopes to consolidate its management responsibilities.

A. Federal Marine Science

One of the most helpful documents is the Annual Report to the President from the Office of Science and Technology, The Federal Ocean Program, which is prepared in

accordance with the Marine Resources and Engineering Development Act of 1966. The April 1973 report describes a representative number of Federal activities in the field of marine sciences from which the following discussion is derived.^{1/}

The Environmental Protection Agency (EPA) is presently designing a National Coastal Water Quality Monitoring Network integrating existing capabilities at the Federal, state, and local levels of government. NOAA's National Marine Fisheries Service, working in cooperation with EPA, maintains 190 coastal stations to establish baselines and examine trends in areas where pesticide residues may be accumulating.

Preliminary results from EPA contracts indicate that, of more than 3,000 coastal and Great Lakes public beaches surveyed, some 300 were closed in 1972. In most instances these closings were directly attributable to sewage treatment system breakdowns. The effect of pollution on shellfish-growing areas in the coastal zone was also reviewed by EPA. The results of these surveys will be published as a series of National Ocean Survey charts.

The Department of the Interior's National Water Data Program continues to provide multipurpose water data to agencies at all governmental levels responsible for managing, developing, improving, or protecting the coastal environment. In 1972, data on long-term fresh water inflow were obtained at more than 600 gauging stations in the Nation's estuaries, with water quality data available from about 30 stations.

The Naval Civil Engineering Laboratory in 1972 continued development of the Navy Environmental Protection Data Base, which will serve over 240 major naval activities in the continental United States and foreign countries. The pollutants to be monitored will be based upon the results of a two-year pilot program conducted at three representative

^{1/} The Federal Ocean Program (Washington: U.S. Government Printing Office, April 1973).

sites--a naval fleet activity, a naval air station, and a naval munitions depot. The major aim of the program is to enable the Navy to evaluate the effects of its operation on the environment, as well as the success of pollution-abatement programs. Additionally, the Navy will compile an inventory of appropriate Federal, state and local laws to insure that its pollution-abatement program meets legislative requirements.

The Corps of Engineers' conducts on-going research into general coastal engineering problems. This research supports the Corps' extensive civil works programs and regulatory responsibilities in the coastal zone and on the Outer Continental Shelf. The results are widely disseminated and are extensively used by the private sector, local and state governments, and other Federal agencies as well as the Corps.

A national assessment of the shores and beaches of coastal and Great Lakes waters is available in maps and reports which show shore erosion, ownership and use, shoreline characteristics and erosion effects, and the location of shore parks and protective works. This is part of the National Shoreline Study of the Corps, which has been transmitted to Congress.

Research in coastal zone regions is emphasized in the National Science Foundation's (NSF) Research Applied to National Needs (RANN) program. The RANN program in 1972 included studies of the effects on estuaries of waste discharge and dumping, effects of engineering activities, management strategies for ecologically important areas, and methods for restoring damaged areas. The goal of RANN is to define workable strategies for resolving conflicts between regional growth and development, and environmental quality.

NOAA's Marine Ecosystem Analysis (MESA) program presents a major effort to describe in a systematic way the significant features of marine environmental interrelationships.

Estuarine and coastal zone research is being carried out on both coasts and in Alaska with support from the Atomic Energy Commission (AEC).

The marine sciences research program of the AEC is directed toward determining those environmental factors which influence the movement of radioelements through the marine environment, the possible means and rates of return of radioactivity to man through marine food webs, and basic ecological processes. Within this broad program are studies of biological, physical, and chemical oceanography, and studies related to operational activities such as the impact of waste heat from nuclear power stations on the local ecology at such sites.

As nuclear power-plant siting in the estuarine and coastal areas increases, studies must be accelerated on trace-element cycling, modeling of water circulation and sedimentation, productivity at various levels of the food web, and the effects of waste heat and other non-nuclear discharges on the general ecology of the region. Insight into the physical and biological dynamics of the system is essential in order to predict the response of the marine ecosystem to man-induced stresses. The AEC is accelerating portions of its marine research program toward increasing present understanding of effects on the marine environment of nuclear power-plant operations. The U.S. Coast Guard, in 1972, collected periodic temperature-salinity-depth profiles at 12 stations on the continental shelf as part of the light-ship/light-station sampling program. In addition, monthly maps showing sea surface temperature variations and certain biological phenomena were prepared from airborne radiation thermometer coverage of Atlantic and Pacific shelf areas.

Prediction of tides and tidal currents by NOAA's National Ocean Survey is the Nation's oldest marine environmental service. In 1972, 125 permanent tide gauges were in operation along the coasts and within major embayments of the United States, Puerto Rico, and other territories and possessions. The National Ocean Survey also operated 51 permanent water-level gauging stations and 60 to 80 temporary ones in the Great Lakes area last year.

While there is an Interagency Committee on Marine Science and Engineering (chaired and staffed by NOAA), there is no single place for a state to secure information about these Federal research activities. Contact must be maintained in most cases with each Federal agency and its state research counterpart.

There would appear to be two major current areas of direct Federal activity that affect a state's coastal management: offshore drilling for minerals, and deepwater ports.

B. Development of the Outer Continental Shelf

There is no question but that offshore drilling will assume greater proportions as the search for new energy sources is accelerated, and the major responsibility is the Federal government's.

The President's Council on Environmental Quality, however, in a 1974 environmental impact evaluation of drilling in the outer continental shelf for petroleum, observed:

The Department of the Interior administers oil and gas leases on the outer continental shelf. Within the Interior, the Bureau of Land Management (BLM) administers the leasing

1/ OCS Oil and Gas --An Environmental Assessment, A report to the President by the Council on Environmental Quality (Washington: CEQ, April 18, 1974), p. 8-9.

provisions of the Outer Continental Shelf Lands Act, and the U.S. Geological Survey oversees development of a tract once it has been leased and provides technical information to BLM.

Within the Department of Defense, several agencies operate upon or have jurisdiction over parts of the outer continental shelf and the superjacent waters. The Army Corps of Engineers issues permits for any use of navigable waters, including dredging and filling, which may affect navigation. The Secretary of Defense has the power, with the approval of the President, to withdraw any area of the shelf from exploration and development if there is a national defense need, although he must "avoid interference with the exploration and exploitation of mineral resources of the Outer Continental Shelf...to the maximum extent practical."

In addition to his responsibilities under the Coastal Zone Management Act and under the Marine Protection, Research and Sanctuaries Act, the Secretary of Commerce may designate marine sanctuaries as far seaward as the edge of the outer continental shelf for the preservation or restoration of recreational, ecological, and aesthetic values. He may issue regulations applicable within such sanctuaries, and no permit or license may be granted for an activity within a sanctuary unless he certifies that it is consistent with the act and his regulations.

Within the Department of Transportation, the U.S. Coast Guard has general jurisdiction to "enforce or assist in the enforcement of all applicable Federal laws upon the high seas and waters subject to the jurisdiction of the United States" and to

"promulgate and enforce regulations for the promotion of safety of life and property on the high seas and on waters subject to the jurisdiction of the United States covering all matters not specifically delegated by law to some other executive department."

The Outer Continental Shelf Lands Act charges the Coast Guard with regulating structures on the shelf to ensure safety and to protect navigation. The Coast Guard inspects and certifies drilling rigs, maintains surveillance for oil spills, and enforces provisions of international conventions relating to vessels and fisheries.

The Atomic Energy Commission has recently indicated interest in licensing nuclear generating plants offshore. The Federal Power Commission and the Interstate Commerce Commission have specific authority over pipelines in interstate commerce, the FPC over gas lines and the ICC over common carrier oil lines.

Under the Federal Water Pollution Control Act, the Environmental Protection Agency has comprehensive regulatory authority over discharges of pollutants into U.S. navigable waters, including the territorial sea, and into the high seas from U.S. point sources other than vessels. The Act prohibits the discharge of a pollutant into U.S. waters or the ocean (except from vessels) without a prior permit from EPA.

Geophysical information indicates the existence of favorable geological structures for future discovery of petroleum at many places beneath the U.S. Outer Continental Shelf (OCS). Federal leasing of OCS tracts, which permits exploratory drilling and subsequent production from the favorable structures, has been limited chiefly to the Gulf of Mexico and selected areas off the southern California coast. Altogether the leased areas, which amount to almost 8 million acres, constitute but a small fraction of the total area of the shelf. Of the leases, about one-third are sites of present production, one-third are sites of continuing exploration or development, and one-third have been terminated following failure to find commercially producible reserves.

The President has directed the Secretary of the Interior to take steps which would triple the annual acreage leased on the OCS by 1979, beginning with expanded sales in 1974 in the Gulf of Mexico and including areas beyond 200 meters in depth under conditions consistent with the President's Ocean Policy statement of May 1970. By 1985, this accelerated leasing rate could increase annual production of hydrocarbons by an estimated 1.5 billion barrels of oil and 5 trillion cubic feet of natural gas.

There are legitimate concerns over the threat of environmental damage. The Council on Environmental Quality, working with the Environmental Protection Agency and in consultation with the National Academy of Sciences and appropriate Federal agencies, has completed a study of the environmental impact of oil and gas production on the Atlantic OCS and in the Gulf of Alaska.

The President has asked the Secretary of the Interior to develop a long-term leasing program for all energy resources on public lands, based on a thorough analysis of the nation's energy, environmental, and economic objectives.

CEQ has recommended that the Secretary of Commerce require that state coastal zone plans consider refineries, transfer and conversion facilities, pipelines, and related development as a condition of approval. It states that state coastal zone management agencies and concerned Federal agencies should jointly participate in developing these portions of the plans.

C. Deepwater Ports

The expanding fleet of supertankers that now serves Europe, Japan, and other foreign areas having deepwater ports has demonstrated the economy and other benefits of transporting oil by this means. Using supertankers rather than smaller vessels to

deliver oil from the Middle East to the Atlantic and Gulf coasts of the United States would allow major savings in transportation costs.

The waterway system of the United States consists of about 24,000 miles of navigable rivers, canals and coastal waterways. About 16 per cent of domestic inter-freight ton miles moves by water, with approximately 100 billion ton miles on the Great Lakes and 200 billion ton miles on the inland waterway systems, much of which is in the coastal zone. About 1800 companies operate about 21,000 barges and over 4000 towbars on the inland waterways. These operations represent an extremely efficient use of energy.

Traffic on the St. Lawrence Seaway--which is part of the Great Lakes portion of the coastal zone--although at a record high, has been leveling off in recent years. Future traffic trends are unclear as trade patterns and cargo-carrying technologies continue to change, although some growth in overall volumes seems most likely. In the long run, however, successful efforts to increase the Seaway system season, increase the use of containers, and provide uninterrupted shipper/receiver service, combined with a more stable world charter market, should provide for increasing traffic through the St. Lawrence Seaway. Its capacity can easily be raised many-fold.

America's 130 deepwater ports (those with channels of 25 feet or more)--including those on the Great Lakes--are a vital link between land and sea transportation. Responsibility for transportation to, from and through these ports is divided at the Federal level among:

- Corps of Engineers, channel and harbor projects;
- Maritime Administration, promotion of maritime commerce; and
- Department of Transportation (primarily through the Coast Guard), safety, navigation and security in ports, plus a general role in the coordination of the transportation system.

The principal port problems, according to a March 1974^{1/} statement by the Secretary of Transportation, are: (1) the need to provide off-loading facilities for very large crude carriers (VLCC's); (2) the dislocations being produced by the rapid shift of general cargo from general cargo ships to container and barge-carrying ships; and (3) concern about environmental impacts of port activities in the coastal zone.

There are at present approximately 600 active ocean-going U.S. flag ships aggregating slightly more than 13.5 million deadweight tons. As a result of 1970 legislation, U.S. shipyards now have their greatest volume of business for large ocean-going ships in any peacetime year. Eighty-eight ocean-going vessels are under construction or on order valued at more than \$3.4 billion. The fleet now contains highly specialized cargo carriers such as containerships, roll-on/roll-off ships, and very large crude-carrying tankers.

A major cause of inefficiency in both passenger and freight transportation is the lack of close coordination among the various modes. This problem is compounded by the historical development of separate systems of terminals by each of the modes. A priority program is needed to lift unneeded restraints to intermodal cooperation and to encourage the joint use of terminal and other facilities by all transportation modes.

Establishing the feasibility of deepwater port systems involves not only economic, engineering, environmental, and operational factors for the offshore terminal itself, but also such other considerations as distances to markets, availability of sites for storage or refining facilities, and routes for interconnecting pipelines. Past and continuing activities within the Federal marine science and engineering program have provided much essential basic data for relevant studies.

^{1/} Statement by Claude S. Brinegar, Secretary of Transportation, before the House Appropriations Subcommittee on Transportation, March 5, 1974, pp. 32-38, 49.

The Corps of Engineers was authorized by Congress to conduct regional deepwater^{1/} port studies on the North Atlantic, Gulf, and Pacific coasts to determine efficient, economic, and logical means of developing facilities to accommodate very large bulk cargo carriers. This authorization resulted from the growing concern over the adequacy of present U.S. harbor and channel facilities to accommodate the future needs of our waterborne commerce, much of which will be moving in these supersize ships.

Prior to the initiation in FY72 of the regional deepwater port studies, the Corps of Engineers undertook two major research efforts to provide an overall appraisal of U.S. deepwater port needs. The first research, completed in December 1971, provided an assessment of foreign experience with deepwater port development. The second major research, completed in August 1972, examined the overall need for deepwater ports. It concentrated on identification of the factors critical to U.S. deepwater port decisions, on development of the engineering, economic, and environmental criteria appropriate to the evaluation of deepwater port policies, on analyses of the development options available at this time and the critical issues surrounding each, and an identification of the critical issues which need further analysis.

Interim reports for the regional deepwater port studies are nearing completion and will be concerned with unique conditions in the respective regions under study. Each report will strive to achieve two common objectives:

- (1) Demonstrate the net advantage or disadvantage to the employment of supership technology, and

^{1/} This section based on discussion in the Federal Ocean Program, op. cit., pp. 26 ff.

- (2) In the event of adequate net advantage, identify the most likely or most feasible sites or locations for the employment of supership technology within the respective regions under study; or conversely, identify the most likely transportation system alternatives and associated problems in the absence of deepwater port facilities.

Other Federal and state agencies, and industry, have contributed to coordinated studies with the Corps to establish the most feasible solutions to the need for deepwater ports. The Maritime Administration has supported a study of concepts and potential sites for artificial islands along the Atlantic and Gulf coasts. The Coast Guard has undertaken analyses of the anticipated effects of deepwater ports and use of supertankers on management of vessel traffic, incidence of accidents, and control of potential oil spillage. The Department of the Interior assembled pertinent environmental, engineering, and operational data for offshore oil platforms and pipelines as a guide to the analysis of deepwater port impacts.

Results of studies undertaken for other purposes have also proved useful. Studies of offshore airports, powerplants, and waste disposal, or of wave effects on offshore structures, have obvious relevance. Others, such as offshore cities, aquaculture, and seafloor habitation, may seem less pertinent but have led to results and interpretations that also apply to deepwater port considerations.

Academic institutions, industry, and the public have also contributed to agency and interagency studies of deepwater port concepts. The Sea Grant Program of NOAA, under the guidance of the Council on Environmental Quality, supported investigations of potential environmental impacts of offshore terminals. With direct interest in constructing

and using the offshore facilities, various industry groups, especially those of the petroleum industry having extensive foreign experience, have made independent studies and contributed advice on all aspects of deepwater facilities. Oil industry groups are at present in advanced stages of planning for monobuoy facilities on the Gulf coast and elsewhere.

All of these efforts, together with appropriate inputs from an interagency group of legal experts and from the Council of Economic Advisers, were coordinated in a White House-sponsored study which resulted in the President's recent legislative proposal for Federal licensing of offshore deepwater ports beyond the jurisdiction of the states. The proposed legislation, which emphasizes environmental protection and requires compliance with applicable laws and regulations of adjacent coast states, is consistent with U.S. policies on law of the sea. The construction and operation of deepwater ports with appropriate safeguards is deemed to be a reasonable use of the high seas and not to imply national sovereignty in such areas.

It should also be mentioned that there is some competition between states in offshore drilling and superports. Some states want such activity in their coastal waters and others do not; and in some cases, adjacent coastal states are vying for the same investment.

The point is that Federal activities in coastal waters do significantly affect a state's coastal management.

Perhaps the Federal Energy Administration, in its liaison with the National Governors Conference and with each Governor's office, will be the most appropriate place for current information about direct Federal activities in the coastal waters.

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