

APPENDIX XVII

Summary and Background

Coastal Zone Management Act of 1972

Federal Consistency Requirement of the Coastal Zone Management Act Coordinating the Coastal Zone Management Act and the Oil Pollution Act Area Contingency Plan Process

The Federal consistency requirement of the Coastal Zone Management Act of 1972 (CZMA) requires that federal actions which are reasonably likely to affect any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a state coastal management program (CMP). In 1993, several states requested the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management's (OCRM) view on the application of Federal consistency to activities conducted under the Oil Pollution Act (OPA) of 1990. OCRM and the US Coast Guard evaluated this issue and concluded that the best way to address this issue is to actively involve state CMP managers in the Area Contingency Plan (ACP) process. State CMP participation should ensure that oil spill contingency plans and response efforts are consistent with state CMP policies including pre-approval of countermeasures, ensuring that the Federal Consistency Requirement is complied with in an effective and efficient manner. This fact sheet reiterates this approach. OCRM worked with several Federal agencies on the issue of Federal CZMA consistency in OPA activities. On August 13, 1993, OCRM sent general guidance to the states on coordinating state input into the OPA process. The Federal Consistency Bulletin, Issue No. 2, August 1993 reiterates the guidance provided by OCRM. To expand upon that guidance, the discussion below explains the CZMA and Federal consistency requirements, and stresses the importance of the involvement of the state CMP managers while the ACPs are being developed and revised.

COASTAL ZONE MANAGEMENT ACT

The CZMA was passed to effectively manage uses and resources of the Nation's coastal zone. A major premise of the CZMA is that such management is best achieved at the state and local level. Participation in the coastal management program by states and US territories and commonwealths is voluntary. Participating coastal states must develop comprehensive management programs based on minimal federal approval standards. Once approved, states receive annual grants from OCRM to implement their programs.

FEDERAL CONSISTENCY REQUIREMENTS FOR ALL FEDERAL AGENCIES

The CZMA was intended to cause substantive changes in Federal agency decision-making within the context of the discretionary powers residing within the agencies. The CZMA requires Federal agencies, whenever legally permissible, to consider state-management programs as supplemental requirements to be adhered to in addition to existing agency mandates. If a Federal agency determines that the activity is reasonably likely to affect any land or water use or natural resource of a state's coastal zone, the Federal agency must provide the state with a consistency determination.

The Federal consistency requirement of the CZMA requires that Federal actions which are

reasonably likely to affect any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of an approved state CMP. Federally permitted actions must be fully consistent, whereas direct Federal actions must be consistent to the maximum extent practicable (fully consistent unless the Federal agency's legal authority prohibits full compliance). The consistency determination is provided to state agencies at least 90 days before final approval of the Federal activity unless both the Federal agency and the state agency agree to an alternative notification schedule. Federal agency consistency determinations must describe the proposed activity and its coastal effects.

If a Federal agency asserts that compliance with the management program is prohibited, it must clearly describe to the state agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to comply with the provisions of the state management program. In the event of a serious disagreement between a Federal agency and a state agency regarding a determination related to whether a proposed activity affects the coastal zone, either party may seek mediation from the Secretary of Commerce or initiate informal negotiations through OCRM. The state may also bring suit against the Federal agency.

NRT S&T COMMITTEE COORDINATING FEDERAL AND STATE PROGRAMS UNDER OPA MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

One of the purposes of OPA was to ensure that federal agencies responsible for implementing OPA recognize that direct community participation is vital to the viability of the OPA contingency planning process. Consequently, the involvement of state CMP representatives in the development of the ACPs further implements this purpose. This involvement will facilitate the integration of relevant state CMP policies into the Area planning process. Proposed activities that are identified as likely to affect the coastal zone of a state can be reviewed, changed or modified at the Area Committee meetings. OCRM has strongly encouraged state CMP representatives to actively participate, at some level, in the ACP process, since the ACP is concerned with protection and mitigation of spill effects in the coastal zone.

The Area Committees must realize that a state CMP representative and the state designated Area Committee member or Regional Response Team member may represent two separate state organizations; consequently, both state groups must be involved in the ACP process. By working together, the state CMP and Area Committee can ensure that the ACP reflects state CMP policies. Coastal states and Federal agencies, through Area Committees, should focus their resources on cohesive and complete response plans that will help protect the environment. Pre-approval for in-situ burns, dispersants, and other specific portions of the ACP should also be included in these discussions. Bringing the Area Committee and the state CMP together supports one of the objectives of CZMA - "To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the Federal consistency provisions of the Act are satisfied." The OPA Area Committee process, when properly implemented, can provide an effective means of federal-state coordination of activities affecting state coastal resources and uses, and ensure a smooth Federal consistency process.

REFERENCES

Coordinating Federal and State Programs Under the Oil Pollution Act of 1990, NOAA OCRM Memorandum to State Coastal Program Managers, dated Aug.13, 1993.

Federal Consistency Bulletin, Issue No. 2, dated August 1993,

pp. 7-10, Office of Ocean and Coastal Resource

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