

## COASTAL ZONE MANAGEMENT ACT (CZMA)

### Useful references:

- Coastal Zone Management Act, 16 U.S.C. §§ 1451 *et seq.*, specifically § 307.
- NOAA Federal Consistency Regulations, 15 CFR part 930.
- Preamble to the final rule published at 65 FR 77123 (Dec. 8, 2000).
- NOAA Ocean Service Federal Consistency Workbook and updates at [http://coastalmanagement.noaa.gov/czm/federal\\_consistency.html](http://coastalmanagement.noaa.gov/czm/federal_consistency.html)
- Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management, NOAA, Silver Spring, MD (David Kaiser, as of September 2003).

### Principal objectives:

- to encourage and assist coastal states, Great Lake States, U.S. Territories and Commonwealths in developing management programs to manage uses of and impacts to coastal resources
- to coordinate state and Federal activities within the context of federalism and emphasizing the important role of state decision making regarding the coastal zone.

### Section 307-- The Federal Consistency Provision:

- Requires that Federal actions that have reasonably foreseeable effects on any land use, water use, or natural resource of the coastal zone must be consistent with the enforceable policies of a coastal state's federally approved coastal management program (CMP).
- Applies to 4 types of Federal actions:
  - “Federal agency activities and development projects”
  - “Federal license or permit activities”
  - “Federal financial assistance activities”
  - “Outer Continental Shelf plans” [*pertains to applications to DOI for OCS exploration, development and production activities and is not discussed further here*]

### Federal agency activities and development projects:

- Activities and development projects performed by a Federal agency, or a contractor for the benefit of a Federal agency; e.g., implementation of fishery management plans, MMPA take reduction plans, ESA regulations to protect a listed species, ESA sec. 6(c) management agreements.
- Any Federal action not deemed a “Federal license or permit activity” or a “Federal financial assistance activity” is a Federal agency activity.

## CZMA - cont'd

### Federal agency activities and development projects (cont'd):

- Follow requirements in CZMA §307(c)(1) and (2); 15 CFR part 930, subparts A, B, C.
  - determine whether Federal activity will have reasonably foreseeable coastal effects
  - if coastal effects are reasonably foreseeable, then submit a Consistency Determination to state Coastal Management Program (CMP) at least 90 days before activity starts, explaining why the proposed action is consistent to the maximum extent practicable with the enforceable policies of the state's approved coastal zone management program.
    - need to identify the applicable enforceable policies of the state's approved CMP.
    - Consistency Determination letter must contain detailed description of proposed activity, its reasonably foreseeable coastal effects, and an evaluation of the activity in light of the applicable enforceable policies in the state's approved CMP.
    - state has 60 days, plus an automatic 15-day extension if requested, to concur with or object to the Consistency Determination
    - if state agrees, or NMFS presumes concurrence due to lack of timely response, then NMFS may proceed at any time with the proposed action.
    - if state properly objects, the state and NMFS should try to resolve differences within the remainder of the 90-day period.
    - if resolution fails, NMFS may proceed with the proposed action at the end of the 90-day period ONLY if NMFS writes to state and describes the specific legal authority that limits NMFS's discretion to comply with the state's enforceable policies of its approved coastal zone program.
- Remember: two clocks – 60-day clock (max. 75 with extension) for state to comment; 90-day clock if state objects; plan for the 90-day clock.; clocks start upon receipt of letter from NMFS by state CMP.

### Federal license or permit activities:

- Activities not performed by a Federal agency, but requiring Federal permits, licenses or other forms of Federal approval. [does not apply to fishing permits issued pursuant to an FMP or regulations; whether EFPs fit in this category is unclear.]
- Follow CZMA §307(c)(3)(A) and 15 CFR part 930, subparts A, B, and D.
- State- and applicant-driven process, rather than Federal action agency-driven, but affects Federal action
- Process depends on whether the Federal license or permit is
  - listed v. unlisted form of approval in the state's CMP, and
  - inside v. outside the coastal zone
- Listed approval activity in coastal zone, or outside of coastal zone for which state described geographic area: applicant submits a Consistency Certification to the Federal agency issuing the permit or license

## CZMA - cont'd

### Federal license or permit activities (cont'd):

- Unlisted approval activity (or listed activity outside of coastal zone for which state did not describe geographic area): state may require applicant to submit Consistency Certificate, subject to NOS/OCRM approval.
- Once state receives Consistency Certification, it has up to 6 months to review it.
- NMFS may not issue permit, license or other form of approval until consistency process is complete; if state objects to issuance within time frame, then NMFS may approve project only if Secretary of Commerce overrides state's objection.

### Federal financial assistance activities to state and local governments:

- Applications from state agency or local government for Federal financial assistance; e.g., state application for funding under ESA sec. 6(d).
- Follow CZMA §307(d); 15 CFR part 930, subparts A, B, and F
- State agency- and local govt- driven process, but it affects the Federal action
- State "listed" Federal financial assistance activities are automatically subject to state CMP review; "unlisted" activities may be reviewed.
- NMFS may not issue the funding until state CMP has concurred with consistency determination or Secretary of Commerce overrides state CMP's objection.

### Important definitions:

- **coastal zone:** coastal waters (including 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 coastal states. The zone extends seaward to the outer limit of state waters. [See CZMA §304 for full definition.]
- **enforceable policy:** State policies that are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a state exerts control over public and private land and water uses and natural resources in the coastal zone (and which are incorporated into the state's approved CMP).
- **coastal uses:** include activities such as public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas, flood plain management, scenic and aesthetic enjoyment, etc
- **coastal resources:** include biological and physical resources found within a coastal zone on a regular or cyclical basis.
- **effects on any coastal use or resource:** any reasonably foreseeable effect on any coastal use or resource resulting from a Federal action. Effects are not just environmental, but include effects on coastal uses. Effects include both direct effects, which result from the activity and occur at the same time and place, and indirect (cumulative and secondary) effects, which result from the activity and are later in time or farther removed in distance, but are reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the Federal action when added to other past, present, and reasonably foreseeable actions.

## CZMA - cont'd

### **Proposed changes:**

- NOS issued proposed rule on June 11, 2003; comment period ended August 25.
- See Federal Consistency web page for details; watch for final rule.

### **Judicial review:**

- Agency compliance with the CZMA is subject to judicial review.
- In January 1998, the State of Florida and Florida Department of Community Affairs brought suit against the Secretary, NOAA, and NMFS on the grounds that the agencies did not follow the procedure for consistency review under the CZMA prior to final adoption of a regulatory amendment.