

**FEDERAL CONSISTENCY REVIEW FOR THE ALBEMARLE-PAMLICO
ESTUARINE STUDY**

By

Julie M. Duffin
Research Triangle Institute
Center for Environmental Analysis
P.O. Box 12194
Research Triangle Park, NC 27709-2194

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ABSTRACT

This project proposes a Federal consistency review strategy for the Albemarle-Pamlico (A/P) Estuarine Study, as required by Section 320(b)(7) of the Clean Water Act. The report reviews several alternative strategies for implementing a Federal consistency review process. The report also includes a list of Federal assistance programs, direct development activities, and Federal permit and licensing activities which should be reviewed for consistency with the Comprehensive Conservation and Management Plan (CCMP).

A Federal consistency review program encourages Federal agencies to cooperate in implementing the CCMP. Through the review process, the A/P Management Conference can scrutinize proposed Federal activities, identify potential conflicts with the CCMP, and negotiate project modifications with the responsible Federal agency.

The proposed strategy resulted from an examination of existing Federal consistency review programs coordinated by the N.C. Division of Coastal Management (DCM) and the State Clearinghouse. The proposed strategy integrates the A/P Federal consistency program with the DCM consistency review program. The strategy can be implemented by submitting the CCMP to DCM for adoption into the North Carolina Coastal Management Program. DCM will be responsible for determining consistency with the CCMP after the CCMP is incorporated into the Coastal Management Program. An A/P reviewer (from the Management Conference or the A/P program staff) may be added to the circulation list maintained by DCM. Alternatively, DCM may acquire CCMP review responsibility if the A/P program is terminated following completion of the CCMP.

This approach minimizes review duplication and maximizes the A/P Management Conference's authority to review and influence Federal activities. The A/P program gains the ability to stop inconsistent Federal activities through integration with the DCM review process, and also expands A/P review authority to include Federal issuance of licenses and permits.

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ABBREVIATIONS

A/P	Albemarle-Pamlico
CAMA	Coastal Area Management Act
CCMP	Comprehensive Conservation and Management Plan
CD	Consistency Determination
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DCM	Division of Coastal Management
DEHNR	Department of Environment, Health, and Natural Resources
DEM	Division of Environmental Management
EIS	Environmental Impact Statement
EO	Executive Order
EPA	Environmental Protection Agency
MOUs	Memoranda of Understanding
NCEPA	North Carolina Environmental Policy Act
NEP	National Estuary Program
NEPA	National Environmental Policy Act
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NPS	Nonpoint Source
POC	Point of Contact
RC	Regional Clearinghouse
SC	State Clearinghouse

EXECUTIVE SUMMARY

This document proposes a Federal consistency review strategy for the Albemarle-Pamlico (A/P) Estuarine Study, which satisfies Section 320(b)(7) of the Clean Water Act. The report also includes a list of Federal assistance programs, direct development activities, and Federal permit and licensing activities that should be considered in an A/P consistency review program.

A consistency review process encourages intergovernmental cooperation to minimize adverse effects from Federal activities that could jeopardize the implementation of the Comprehensive Conservation and Management Plan (CCMP). Such activities could include channelization, dredging, highway construction, and sewage treatment plant construction. Through the review process, the A/P Management Conference can scrutinize proposed Federal activities and identify potential conflicts with the CCMP. The review process also enables the Management Conference to comment on Federal programs which could enhance CCMP implementation.

Research Triangle Institute (RTI) examined existing consistency review programs coordinated by the North Carolina State Clearinghouse and the Division of Coastal Management (DCM). Options for integrating an A/P reviewer into the existing review programs were assessed. North Carolina's NPS consistency review process was examined as a model for designing an A/P consistency strategy. An independent A/P review process would duplicate existing State programs and was not considered. The 401 Certification Program was also eliminated from consideration because its limited scope (i.e., issuance of Federal licenses and permits) and criteria (i.e., water quality standards) cannot accommodate an A/P consistency program.

Section 320(b)(7) ties estuarine consistency programs to the requirements of Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs." EO 12372 allows States to review proposed Federal assistance applications and direct development plans. The EO requires Federal agencies to inform States of their activities, but does not obligate the Federal agencies to modify or suspend projects that raise State concerns. The Federal agencies may accept the State recommendation, negotiate project modifications with the State, or explain in detail why the State's recommendation cannot be accepted.

In North Carolina, the State Clearinghouse implements EO 12372. The Clearinghouse also coordinates the review of environmental impact documents submitted under the National Environmental Policy Act (NEPA) and the North Carolina Environmental Policy Act (NCEPA). The Clearinghouse receives plans for Federal assistance projects and direct development projects. The plans are distributed to interested State agencies and local governments for review. The Clearinghouse consolidates the comments from State and local reviewers into a State Process Recommendation. The State Process Recommendation and any dissenting comments

are forwarded to the Federal agency sponsoring the proposed activity. The Federal agency must respond to the State Process Recommendation.

The A/P and Clearinghouse review programs can be integrated by designating an A/P reviewer to receive notices of Federal activities from the Clearinghouse. The A/P Management Conference (consisting of the Technical Committee, the Policy Committee, and the two Citizen's Advisory Committees), would submit to the Clearinghouse a list of Federal project categories to be reviewed for CCMP consistency. The A/P reviewer might consult with other State agency reviewers (e.g., in the Division of Environmental Management) to determine consistency with CCMP goals. The A/P comments would be submitted to the Clearinghouse and consolidated in the State Process Recommendation, or submitted as a dissenting comment to the responsible Federal agency.

DCM coordinates the Coastal Zone Management (CZM) Consistency Program. In addition to Federal financial assistance and direct development activities, DCM is authorized to review Federal licensing and permitting decisions and NEPA documents for consistency with the North Carolina Coastal Management Program. The Coastal Management Program is a network of State agency statutes aimed at enhancing coastal resources. DCM reviews consistency determinations prepared by the Federal agency sponsoring a proposed activity, or private applicants who must receive a Federal permit. DCM can confirm the submitted consistency determination, request project modifications, or deny the consistency determination and halt the project (unless the decision is overturned in a Federal appeal to the Secretary of Commerce). The majority of DCM's decisions are based upon mandatory and enforceable provisions of the Coastal Management Program (e.g., potential violations of regulations or land use plans). DCM relies upon other State agencies to provide technical information to document conflicts with the water quality provisions in the Coastal Management Program.

The A/P and CZM consistency review programs can only be integrated by incorporating the CCMP goals into the Coastal Management Program. The CCMP goals could be adopted as a package into the Coastal Management Program exclusively for consistency review purposes. This strategy would require approval by the National Oceanic and Atmospheric Administration, but would not require approval by the North Carolina Coastal Resources Commission. Alternatively, individual CCMP goals could be incorporated into local land use plans, or introduced as new regulations by State agencies. However, these integration strategies require approval by the Coastal Resources Commission, which could stall implementation. After integrating the CCMP goals into the Coastal Management Program, DCM would route consistency determinations to an A/P reviewer for input. If the A/P program is terminated, DCM can take over responsibility for determining consistency with CCMP goals.

The A/P Management Conference should pursue integration with the DCM consistency program. The Management Conference would have to: (1) designate an A/P reviewer, (2) ensure that Federal program categories selected by the Management Conference are eligible for DCM

review, and (3) establish the A/P reviewer on the circulation list for selected program categories. If an A/P reviewer cannot be appointed, the Management Conference must educate DCM about the CCMP goals to enable DCM to carry out the A/P consistency process.

CONCLUSIONS AND RECOMMENDATIONS

- The A/P consistency review process should be integrated into the existing CZM program coordinated by DCM. The A/P program would maximize authority and jurisdiction by interacting with the CZM consistency review program.
- Integrating the A/P consistency review procedures into the CZM consistency program would minimize review duplication. Many of the CCMP goals could overlap or complement the goals of the Coastal Management Plan. DCM's broad jurisdiction could also easily encompass the A/P study area.
- The A/P program would gain the ability to stop inconsistent Federal activities through integration with the CZM review process. In contrast, the Clearinghouse process would provide authority to comment on Federal projects, but not to deny Federal activities.
- Integration with the CZM review process would expand A/P review authority to include Federal issuance of licenses and permits. License and permit decisions are not subject to review under Section 320(b)(7) or the Clearinghouse process. The A/P program would also gain easy access to NEPA documents circulated by DCM.
- To integrate the A/P and CZM consistency programs, the goals of the CCMP must be incorporated into the North Carolina Coastal Management Program. Adoption of the CCMP goals into the Coastal Management Program for consistency purposes would require approval by NOAA, but would not require approval by the North Carolina Coastal Resources Commission. A Memorandum of Understanding between NOAA and EPA encourages this approach and should ensure rapid approval by NOAA.
- The Management Conference should draft specific CCMP goals and objectives. Under the CZM consistency program, inconsistent positions on Federal activities are usually based upon conflicts with specific regulations or land use plan provisions in the Coastal Management Plan. The consistency review process is a futile exercise without specific goals against which consistency can be assessed.
- The A/P Management Conference should designate a Point of Contact to interact with DCM. DCM would add the A/P contact to their circulation list of reviewers to receive Federal proposals. If the A/P program is terminated, DCM staff would assume responsibility for determining consistency with the CCMP goals.

- The Management Conference should finalize the inventory of Federal activities to be reviewed for consistency with the CCMP. Some selected Federal programs would not be subject to review by DCM. A Management Conference representative should meet with DCM to negotiate additions to the list of Federal activities eligible for consistency reviews.
- The Management Conference should establish consistency review criteria which consider potential threats (and benefits) to the CCMP objectives. The specific criteria would depend upon the content and format of the CCMP objectives. In general, the Management Conference should determine project characteristics which are inconsistent with the CCMP goals (e.g., filling of wetlands). Beneficial project characteristics should also be identified.
- The A/P staff should develop consistency guidance for potential reviewers and Federal agencies proposing projects in the A/P region. The guidance should explain the CCMP goals and objectives and the consistency review criteria.
- The Management Conference should explore other options for improving Federal cooperation with CCMP implementation. Memoranda of Understanding should be pursued with Federal agencies operating facilities (e.g., military installations) in the A/P region. The CCMP cannot be effectively implemented without cooperative agreements with Federal agencies.

CHAPTER 1

INTRODUCTION

A. PURPOSE

This document presents alternative strategies for reviewing Federal activities for consistency with the Albemarle-Pamlico Comprehensive Conservation and Management Plan (CCMP). The Albemarle-Pamlico Management Conference will use this report to select a Federal consistency review strategy in compliance with Section 320(b)(7) of the Clean Water Act (CWA). This document also provides a preliminary list of Federal activities that could conflict with or further the CCMP goals. The Management Conference will use this list to select Federal activities subject to consistency review with the Albemarle-Pamlico CCMP.

B. BACKGROUND

Section 320 of the Clean Water Act, as amended in 1987, establishes the National Estuarine Program (NEP) to identify, protect, and restore estuaries of national significance (Appendix A). The Albemarle-Pamlico (A/P) estuarine system was designated an estuary of national significance in 1987. A Management Conference made up of representatives from Federal and State agencies, academic institutions, industries, and citizen groups was convened to fulfill seven purposes outlined in Section 320(b). The A/P Management Conference consists of a Policy Committee, a Technical Committee, an Albemarle Citizens' Advisory Committee, and a Pamlico Citizens' Advisory Committee. The primary purpose of the Management Conference is to prepare a CCMP for the A/P system. The CCMP will recommend priority corrective actions and compliance schedules to restore and maintain the ecological integrity of the estuary and to protect designated uses.

In addition to requiring preparation of the CCMP, Section 320(b)(7) requires the Management Conference to review Federal financial assistance programs and direct development projects for consistency with the CCMP goals. In general, consistency reviews provide a role for State and local agencies in the planning of Federal activities. Under Section 320(b)(7), the Management Conference can identify conflicts between proposed Federal activities and State and local programs, policies, and regulations that make up the CCMP. The review process encourages intergovernmental cooperation to minimize inconsistent Federal activities that could jeopardize the success of the CCMP. The review process can also identify proposed Federal actions that can enhance CCMP implementation.

Effective implementation of the Albemarle-Pamlico CCMP depends upon a solid consistency review process. Federal programs sponsor numerous activities throughout the A/P region (e.g., channelization, dredging, sewage treatment plant construction, and military base operations). These programs have multiple objectives that are likely to conflict with the goals and policies of the CCMP. Through the consistency review process, the Management Conference can recommend project modifications to minimize conflicts with the CCMP.

C. NEP CONSISTENCY GUIDELINES

Section 320(b)(7) specifies that the NEP review process be conducted in accordance with the requirements of Executive Order (EO) 12372, "Intergovernmental Review of Federal Programs," (see Appendix B). EO 12372 allows States to review Federal assistance applications and direct development plans (see Chapter 3 for a full discussion of EO 12372). The EO requirements ensure Federal cooperation with State review programs. Essentially, the EO requires the following:

- Federal agencies must notify States of proposed activities subject to EO review
- Prior to funding decisions, Federal agencies must allow State and local agencies to comment on proposed activities in a State Process Recommendation
- Federal agencies must accommodate State concerns presented in the State Process Recommendation, or explain their decision not to address State comments

Note that the EO does not obligate Federal agencies to modify or suspend projects that raise State concerns. Federal agencies have the option to "accommodate or explain." Section 320(b)(7) does not endow the Management Conference with additional authority beyond the requirements of EO 12372. Therefore, the Management Conference cannot force Federal agencies to modify inconsistent projects through the EO requirements.

Section 320(b)(7) does provide additional jurisdiction to the Management Conference. The NEP review may include all programs and projects listed in the Catalog of Federal Domestic Assistance in addition to the programs and projects subject to EO 12372.

D. CONSISTENCY STRATEGIES

The requirements of Section 320(b)(7) can be satisfied by a number of strategies. The plans discussed in this document incorporate CCMP consistency review with existing review programs coordinated by the State Clearinghouse (Chapter 3) and the Division of Coastal Management (Chapter 4). Chapter 5 profiles the Nonpoint Source Federal Consistency Review

Program, which provides a model for implementing the A/P consistency program. Recommendations are presented in Chapter 6.

Two options are not discussed: (1) an independent CCMP review process, which would duplicate existing intergovernmental review activities; and (2) coordination with the Section 401 Certification Program. Under Section 401 of the Clean Water Act, Federal agencies cannot license or permit an activity until the State certifies that the proposed activity will not violate State water quality standards. In North Carolina, the 401 Certification Program provides a vehicle for the Division of Environmental Management (DEM) to comment on Section 404 permits to fill wetlands. Although DEM seldom denies 401 certification, the program enables DEM to require modifications that minimize the acreage of wetlands impacted by proposed projects.

The Section 401 Certification Program is too limited in its scope (i.e., Federal licenses and permits) to serve as the basis for a consistency process. The 401 Program cannot provide access to review Federal assistance programs or direct development projects, as mandated by Section 320(b)(7). Due to these limitations, the 401 Program cannot accommodate the A/P consistency program.

Further, the primary benefit from integration with the 401 Certification Program (access to review issuance of Federal licenses and permits) can be obtained through integration with the Coastal Zone Management consistency program. The Coastal Zone Management consistency program also requires 401 Certification for applicable projects. Therefore, integration with the Coastal Zone Management consistency program would indirectly integrate the A/P consistency process with the 401 Certification Program. The A/P program can also interact directly in the 401 review process by submitting comments during the public comment period required for 401 certification of individual 404 permits.

The final selection of an A/P consistency review strategy will depend upon whether the A/P study is terminated following completion of the CCMP. To date, the future of the Management Conference and the A/P staff positions is uncertain. The Management Conference will have to assign A/P review authority to other State agencies if the Management Conference and the the A/P staff positions are eliminated.

CHAPTER 2

INVENTORY OF FEDERAL PROGRAMS

A. INTRODUCTION

The CWA states that "all Federal financial assistance programs and Federal development projects" should be reviewed for consistency with the CCMP. Clearly, it is not possible or necessary to address every Federal program with equal attention. One purpose of the Management Conference is to identify Federal programs with the greatest potential to conflict with or further the CCMP objectives.

This chapter presents a comprehensive list of Federal programs affecting the estuary and a priority list of programs that deserve immediate attention. These preliminary lists are based upon current expectations of CCMP goals and policies not yet drafted. The Management Conference will need to review and refine the preliminary lists when the CCMP is finalized.

B. PROCEDURES FOR SELECTING FEDERAL PROGRAMS AND ACTIVITIES

B. 1. Sources

The Management Conference may select for review any Federal assistance program or development project listed in the most recent Catalog of Federal Domestic Assistance that may affect the purposes and objectives of the CCMP. Direct development activities are also eligible for consistency review but are listed in other sources. To ensure a comprehensive inventory, the preliminary lists were derived from multiple sources:

1. The Catalog of Federal Domestic Assistance 1990
2. The N.C. Clearinghouse List of Federal Assistance and Direct Development Projects Subject to EO 12372 Intergovernmental Review
3. The list of Federal activities eligible for Coastal Zone Management consistency review (maintained by the N.C. Division of Coastal Management)
4. The list of Federal activities eligible for Section 319 NPS consistency review (maintained by the N.C. Division of Environmental Management)

5. The Office of Marine and Estuarine Protection (OMEP) document, entitled **Federal Financial Assistance Programs: Targeting Programs Applicable to Coastal Management**

B. 2. Criteria for Program Selection

Criteria were developed to identify the Federal programs with significant potential to affect the A/P system. The following general criteria were identified first:

- Program association with water quality problems in the A/P region (identified in the A/P Source Document [NC DNRCD 1987] and the Trends Assessment [Copeland et al. 1989])
- Typical "red flag" activities (e.g., hazardous waste handling, electrical utility siting)
- Program funding and prevalence in the A/P region
- Program or project size

Based upon the general criteria, and concerns expressed in the A/P Source Document, program categories deserving particular attention were identified. Ideally, the selection criteria would reflect the goals and purposes of the CCMP. The CCMP will not be drafted until 1991, however, so criteria are based upon concerns depicted in the A/P Source Document. These concerns are expected to be addressed in the CCMP goals and policies. Program selection for the comprehensive list focused on the following categories: (1) fishery programs, (2) agricultural programs, and (3) development programs.

Fishery production, protection, and management programs. Declining fisheries are a dominant concern in the A/P Source Document. Programs that address fishery problems through education, research, or management planning will probably further the CCMP goals.

Agricultural programs. Agriculture, the largest industry in the A/P region, has been implicated as a source of (1) nutrient loading, (2) increased freshwater peak flows into saline nursery areas, (3) degradation of water bodies from sedimentation, and (4) bacterial contamination in shellfish areas (Copeland et al. 1989). Federal assistance programs aimed at stabilizing soil erosion, implementing Best Management Practices, and improving water management on farms have potential to further the estuarine protection goals of the CCMP. However, agricultural programs that encourage drainage and wetlands conversion projects may conflict with the CCMP.

Development and infrastructure programs. Federal assistance for infrastructure (e.g., highway construction and wastewater treatment plant construction) directly and indirectly affects

estuarine health. Infrastructure indirectly affects water quality by directing growth of residential and commercial development. These programs should be monitored for potential conflicts with the overall CCMP goals of protecting estuarine productivity.

A subset of the comprehensive list, the priority list, includes Federal activities that receive substantial funding and may have widespread effects. The priority list also includes activities that have been identified previously in the A/P Source Document or the Trends Assessment as sources of water quality problems (e.g., operations at the Cherry Point Marine Air Station).

C. FEDERAL ACTIVITIES THAT AFFECT THE CCMP GOALS AND OBJECTIVES

The comprehensive inventory of Federal activities is divided into three categories: (1) Federal assistance programs (see Table 1), (2) direct Federal projects and activities (see Table 2), and (3) Federal permit and license actions (see Table 3). Each table lists the entity with existing authority to review each Federal program or activity (i.e., the State Clearinghouse, the NPS program, the N.C. Division of Coastal Management program). The tables also identify programs and activities that are not eligible for review under existing programs but are listed in the Catalog of Federal Domestic Assistance and are eligible for review under Section 320(b)(7). Table 4 lists Federal activities which are not eligible for review under the above criteria, but may affect CCMP implementation. The priority inventory list is presented in Table 5.

In addition to the direct Federal activities listed in Table 2, the Management Conference should consider a blanket request to review all Federal construction projects (over a specific size), and land acquisition and disposal activities. DCM's existing authority could provide a model for an A/P blanket review request. Currently, DCM has authority to review all purchases, sales, and leases of Federal real property above 20 acres in size (within the coastal zone), as well as construction of major Federal facilities which disturb at least 20 acres or 60,000 square feet (Wuenscher 1990).

Table 1. Federal Assistance Programs That Are Likely to Affect the CCMP Goals

				Authority for Review				Potential to Conflict with CCMP Goals	Potential to Further CCMP Goals
Federal Department	Sub-Agency	Program Citation Number in Catalog of Federal Domestic Assistance	Program Title	On NC Clearinghouse List	On NC 319 NPS List	On NC DCM List	Section 320(b)(7) only		
Department of Agriculture (USDA)	Agricultural Stabilization and Conservation Service	10.062	Water Bank Program				•		•
		10.063	Agricultural Conservation Program				•		•
		10.068	Rural Clean Water Program				•		•
		10.069	Conservation Reserve Program		•				•
	Cooperative State Research Service	10.215	Low Input Farming Systems, Research, and Education				•		•
	Farmers Home Administration	10.414	Resource Conservation and Development Loans	•	•	•		•	•
		10.418	Water and Waste Disposal Facilities for Rural Communities	•	•	•		•	•
		10.419	Watershed Protection and Flood Prevention Loans	•	•	•		•	•
		10.422	Business and Industrial Development Loans	•	•	•		•	
		10.423	Community Facilities Loans	•	•	•		•	
		10.424	Industrial Development Grants	•		•		•	
	Forest Service	10.664	Cooperative Forestry Assistance				•	•	•
	Rural Electrification Administration	10.850	Rural Electrification Loans and Loan Guarantees				•	•	
		10.854	Rural Economic Development Loan and Grant Program	•				•	

Table 1. (con.)

Federal Department	Sub-Agency	Program Citation Number In Catalog of Federal Domestic Assistance	Program Title	Authority for Review				Potential to Conflict with CCMP Goals	Potential to Further CCMP Goals
				On NC Clearinghouse List	On NC 319 NPS List	On NC DCM List	Section 320(b)(7) only		
USDA (con.)	Soil Conservation Service	10.901	Resources Conservation and Development	•	•	•		•	•
		10.904	Watershed Protection and Flood Prevention	•	•	•		•	•
Department of Commerce (DOC)	Economic Development	11.300	Economic Development – Grants and Loans for Public Works and Development Facilities (proposed for termination in FY 91)	•	•	•		•	•
		11.301	Economic Development – Business Development Assistance (proposed for termination in FY 91)	•				•	
	National Oceanic and Atmospheric Administration (NOAA)	11.420	Coastal Zone Management Estuarine Research Reserves		•				•
		11.427	Fisheries Development and Utilization Research and Development Grants (proposed for termination in FY 91)		•				•
Department of Defense (DOD)	Army Corps of Engineers	12.100	Aquatic Plant Control	•	•			•	•
		12.101	Beach Erosion Control Projects (Section 103)	•	•	•		•	
		12.105	Protection of Essential Highway, Highway Bridge Approaches, and Public Works (Section 14)	•	•			•	
		12.106	Flood Control Projects (Section 205)	•	•			•	

Table 1. (con.)

				Authority for Review				Potential to Conflict with CCMP Goals	Potential to Further CCMP Goals
Federal Department	Sub-Agency	Program Citation Number In Catalog of Federal Domestic Assistance	Program Title	On NC Clearinghouse List	On NC 319 NPS List	On NC DCM List	Section 320(b)(7) only		
(DOD) (con.)	Army Corps of Engineers (con.)	12.107	Navigation Projects (Section 107)	•	•			•	•
		12.108	Snagging and Clearing for Flood Control (Section 208)	•	•			•	
		12.109	Protection, Clearing, and Straightening Channels (Section 3)	•	•			•	
	Department of the Army	12.400	Military Construction, Army National Guard				•	•	
	Office of Economic Adjustment	12.610	Joint Military/Community Comprehensive Land Use Plans				•		•
Department of Education		84.040	Impact Aid – Construction for Schools	•		•		•	
Department of Energy (DOE)	Conservation and Renewable Energy	81.048	Priorities and Allocations for Energy Programs and Projects				•	•	•
		81.049	Basic Energy Sciences	•				•	•
		81.065	Nuclear Waste Disposal Siting				•	•	
Environmental Protection Agency (EPA)		66.418	Construction Grants for Wastewater Treatment Works (proposed for termination in FY 91)	•		•		•	•
		66.458	Capitalization Grants for State Revolving Funds				•	•	•
		66.460	Nonpoint Source Implementation				•	•	•
		66.461	Wetlands Protection – State Development Grants				•	•	•

Table 1. (con.)

				Authority for Review				Potential to Conflict with CCMP Goals	Potential to Further CCMP Goals
Federal Department	Sub-Agency	Program Citation Number in Catalog of Federal Domestic Assistance	Program Title	On NC Clearinghouse List	On NC 319 NPS List	On NC DCM List	Section 320(b)(7) only		
Housing and Urban Development (HUD)		14.117	Mortgage Insurance – Homes				•	•	
		14.127	Mortgage Insurance – Manufactured Home Parks	•				•	
		14.133	Mortgage Insurance – Purchase of Condominium Units				•	•	
		14.134	Mortgage Insurance – Rental Housing	•				•	
		14.174	Housing Development Grants	•				•	
		14.218	Community Development Block Grants – Entitlement Grants	•	•	•		•	•
		14.219	Community Development Block Grants/Small Cities Program				•		•
Department of the Interior (DOI)	Fish and Wildlife Service	15.600	Anadromous Fish Conservation			•		•	
		15.605	Sport Fish Restoration		•	•		•	
		15.607	Environmental Contaminants				•	•	
		15.611	Wildlife Restoration		•	•		•	
		15.612	Endangered Species Conservation				•	•	
	National Park Service	15.904	Historic Preservation Grants-in-Aid	•		•		•	
		15.910	National Natural Landmarks Program				•	•	
		15.916	Outdoor Recreation – Acquisition, Development, and Planning	•	•	•		•	•

Table 1. (con.)

Federal Department	Sub-Agency	Program Citation Number in Catalog of Federal Domestic Assistance	Program Title	Authority for Review				Potential to Conflict with CCMP Goals	Potential to Further CCMP Goals
				On NC Clearinghouse List	On NC 319 NPS List	On NC DCM List	Section 320(b)(7) only		
Department of Transportation (DOT)		20.106	Airport Improvement Program	•	•			•	
		20.205	Highway Planning and Construction	•	•	•		•	
		20.500	Urban Mass Transportation Capital Improvements Grants	•		•		•	•
		20.505	Urban Mass Transportation Technical Studies Grants (Demonstration Projects)	•		•		•	•
		20.507	Urban Mass Transportation Capital and Operating Assistance Formula Grants	•		•		•	•
		20.509	Public Transportation for Nonurbanized Areas (Section 18)	•				•	•

Table 2. Direct Federal Activities That Are Likely to Affect the CCMP Goals

Federal Department	Sub-Agency	Program Title	Authority for Review				Potential to Conflict with CCMP Goals	Potential to Further CCMP Goals
			On NC Clearinghouse List	On NC 319 NPS List	On NC DCM List	Section 320(b)(7) only		
Department of Agriculture (USDA)	Forest Service	Forest System Practices That Involve Direct Federal Development Program	•				•	
		Forest Plans		•			•	•
		Timber Activities/Sales				•	•	
		Transportation Plans/Road Construction		•			•	
		Recreation Development		•			•	•
		Chemical/Pesticide Use		•			•	
		Hydrologic and Floodplain Modifications		•			•	•
		Soil and Watershed Management		•			•	•
		Wetlands Protection		•			•	
Department of Commerce (DOC)	National Marine Fisheries	Fisheries Management Plans		•			•	
Department of Defense (DOD)		Location, Design, and Acquisition of New or Expanded Defense Installations		•			•	
		Real Property Acquisition and Disposal	•				•	•
		Withdrawals of Public Domain Land for Military Use	•				•	
		Comprehensive Master Plans for Installations	•				•	•

Table 2. (con.)

Federal Department	Sub-Agency	Program Title	Authority for Review				Potential to Conflict with CCMP Goals	Potential to Further CCMP Goals
			On NC Clearinghouse List	On NC 319 NPS List	On NC DCM List	Section 320(b)(7) only		
(DOD) (con.)		Substantial Change in Existing Use of Installation	•				•	•
		Military Construction	•				•	
		Family Housing	•				•	
		Natural Resource Plans	•					•
		Flood Plain Management	•				•	•
		Wetlands Protection	•					•
		Pesticide Use/Aquatic Plant Control		•			•	
	Army Corps of Engineers	Planning, Design, and Construction of Civilian Works Projects	•				•	
		Recreation Facilities at Completed Projects	•				•	•
		Section III Mitigation of Shore Damages Attributable to Navigation Projects	•				•	•
Department of Energy (DOE)		Transportation and Storage of Radioactive or Hazardous Wastes				•	•	
Environmental Protection Agency (EPA)		Real Property Acquisition or Disposition	•				•	•
		EPA Issued Plans and Permits That Do Not Impact Interstate Areas	•				•	•
General Services Administration		Public Building Construction – Lease Construction Projects	•				•	

Table 2. (con.)

			Authority for Review					
Federal Department	Sub-Agency	Program Title	On NC Clearinghouse List	On NC 319 NPS List	On NC DCM List	Section 320(b)(7) only	Potential to Conflict with CCMP Goals	Potential to Further CCMP Goals
Department of the Interior (DOI)	Fish and Wildlife Service	Management of National Wildlife Refuges and Proposed Acquisitions		•				•
Department of Justice	Bureau of Prisons	Construction Projects	•				•	
Department of Transportation (DOT)		Direct Highway Construction and Reconstruction Activities		•			•	

Table 3. Federal Permit and License Programs That Are Likely to Affect the CCMP Goals

Federal Department	Sub-Agency	Program Title	On NC DCM List
Department of Agriculture (USDA)	Forest Service	Timber Harvest Contracts and Permits	
Department of Defense (DOD)	Army Corps of Engineers	Permits Under Sections 10 and 11 of the River and Harbor Act Ocean Dumping Permits Under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 Dredge and Fill Permits Under Section 404 of the Federal Water Pollution Control Act of 1972	<ul style="list-style-type: none"> • • •
Department of Energy (DOE)	Federal Energy Regulatory Commission	Permits for Construction and Operation of Interstate Gas Pipelines and Storage Facilities Licenses for Construction and Operation of Non-Federal Hydroelectric Projects and Associated Transmission Lines	<ul style="list-style-type: none"> • •
Environmental Protection Agency (EPA)		NPDES Permits for Federal Facilities Waivers for Compliance Under the Clean Air Act Waivers for Compliance With Secondary Treatment Requirements Under the Federal Water Pollution Control Act	

Table 3. (con.)

Federal Department	Sub-Agency	Program Title	On NC DCM List
Department of the Interior (DOI)	Minerals Management Service	Approvals of Oil and Natural Gas Pipeline Rights-of-Way (in Federal waters)	•
	Minerals Management Service	Permits Required for Off-Shore Drilling	•
Nuclear Regulatory Commission		Licenses for Siting, Construction, and Operation of Nuclear Power Plants Licenses for Production, Transfer, Import, and Export of Fissionable Material Licenses for Disposal of Radioactive Waste	•
Department of Transportation (DOT)	Coast Guard	Permits Under Section 1503 of the Deepwater Port Act Permits for Bridges, Causeways, and Pipelines Over Navigable Waters	• •
	Federal Highway Administration	Contracts for Stormwater Management Projects That Accompany Federal Highway Projects	

Table 4. Listed Activities That Are Currently Exempt from Consistency Review Requirements

Federal Department	Sub-Agency	Federal Activity
Department of Agriculture (USDA)	Forest Service	Timber Harvest Contracts and Permits Timber Activities/Sales
Department of Energy (DOE)		Transportation and Storage of Radioactive or Hazardous Wastes
Environmental Protection Agency (EPA)		NPDES Permits for Federal Facilities Waivers for Compliance with the Clean Air Act Waivers for Compliance with Secondary Treatment Requirements Under the Federal Water Pollution Control Act
Nuclear Regulatory Commission		Licenses for Production, Transfer, Import, and Export of Fissionable Material Licenses for Disposal of Nuclear Waste
Department of Transportation (DOT)	Federal Highway Administration	Contracts for Stormwater Management Projects that Accompany Federal Highway Projects

Table 5. Priority Inventory List of Federal Programs and Activities Likely to Conflict with the CCMP Goals

Federal Department	Sub-Agency	Program Citation Number In Catalog of Federal Domestic Assistance	Program Title
Department of Agriculture (USDA)	Farmers Home Administration	10.414	Resource Conservation and Development Loans
		10.418	Water and Waste Disposal Facilities for Rural Communities
		10.419	Watershed Protection and Flood Prevention Loans
		10.422	Business and Industrial Development Loans
		10.423	Community Facilities Loans
		10.424	Industrial Development Grants
	Soil Conservation Service	10.901	Resources Conservation and Development
		10.904	Watershed Protection and Flood Prevention
Department of Commerce (DOC)	Economic Development	11.300	Economic Development – Grants and Loans for Public Works and Development Facilities (proposed for termination in FY 91)
		11.301	Economic Development – Business Development Assistance (proposed for termination in FY 91)
Department of Defense (DOD)	Army Corps of Engineers	12.100	Aquatic Plant Control
		12.101	Beach Erosion Control Projects (Section 103)
		12.105	Protection of Essential Highway, Highway Bridge Approaches, and Public Works (Section 14)
		12.106	Flood Control Projects (Section 205)

Table 5. (con.)

Federal Department	Sub-Agency	Program Citation Number in Catalog of Federal Domestic Assistance	Program Title
(DOD) (con.)	Army Corps of Engineers (con.)	12.107 12.108 12.109 NA NA	Navigation Projects (Section 107) Snagging and Clearing for Flood Control (Section 208) Protection, Clearing, and Straightening Channels (Section 3) Planning, Design, and Construction of Civilian Works Projects Dredge and Fill Permits Under Section 404
		NA NA NA NA NA NA	Location, Design, and Acquisition of New or Expanded Defense Installations Withdrawals of Public Domain Land for Military Use Comprehensive Master Plans for Installations Military Construction Flood Plain Management Pesticide Use/Aquatic Plant Control
Department of Energy (DOE)		81.065 NA	Nuclear Waste Disposal Siting Transportation and Storage of Radioactive or Hazardous Wastes
Environmental Protection Agency (EPA)		66.418 66.458 NA	Construction Grants for Wastewater Treatment Works (proposed for termination in FY 91) Capitalization Grants for State Revolving Funds NPDES Permits for Federal Facilities

NA – Not Applicable

Table 5. (con.)

Federal Department	Sub-Agency	Program Citation Number In Catalog of Federal Domestic Assistance	Program Title
Housing and Urban Development (HUD)		14.174 14.218 14.219	Housing Development Grants Community Development Block Grants – Entitlement Grants Community Development Block Grants/Small Cities Program
Department of the Interior	Minerals Management Service	NA	Permits Required for Off-Shore Drilling
Nuclear Regulatory Commission		NA	Licenses for Siting, Construction, and Operation of Nuclear Power Plants
Department of Transportation (DOT)		20.106 20.205 20.509 NA	Airport Improvement Program Highway Planning and Construction Public Transportation for Nonurbanized Areas (Section 18) Direct Highway Construction and Reconstruction Activities

NA – Not Applicable

CHAPTER 3

STATE CLEARINGHOUSE INTERGOVERNMENTAL REVIEW

A. INTRODUCTION

The North Carolina State Clearinghouse in the Department of Administration coordinates reviews of Federal activities by State and local agencies under EO 12372 (Appendix B). The Clearinghouse also coordinates reviews of environmental impact statements required under the National Environmental Policy Act (NEPA) and the North Carolina Environmental Policy Act (NCEPA). The general review process is described in Section B.2, followed by a discussion of conditions for integrating A/P consistency reviews into Clearinghouse procedures.

B. EXECUTIVE ORDER 12372

B. 1. Jurisdiction and Authority

EO 12372 authorizes States to review most Federal assistance grants and direct development activities for consistency with State policies, programs, and regulations. The Executive Order, issued in 1982, does not allow the States to veto or deny Federal activities, but requires Federal agencies to inform States of their activities. States must be allowed to comment on Federal activities before proposed funding or direct development can proceed.

B. 2. Review Procedures

EO 12372 requires States to establish a single point of contact, the Clearinghouse, to coordinate intergovernmental reviews. Figure 1 illustrates the review process. Federal agencies (in the case of direct development projects) or applicants for Federal funds can initiate the review process.

The Clearinghouse maintains a master list of Federal activities that are eligible for review under EO 12372. The master list is a composite of lists submitted by State agencies indicating the Federal activities they wish to review. Each State agency may request additions or deletions to the master list at any time.

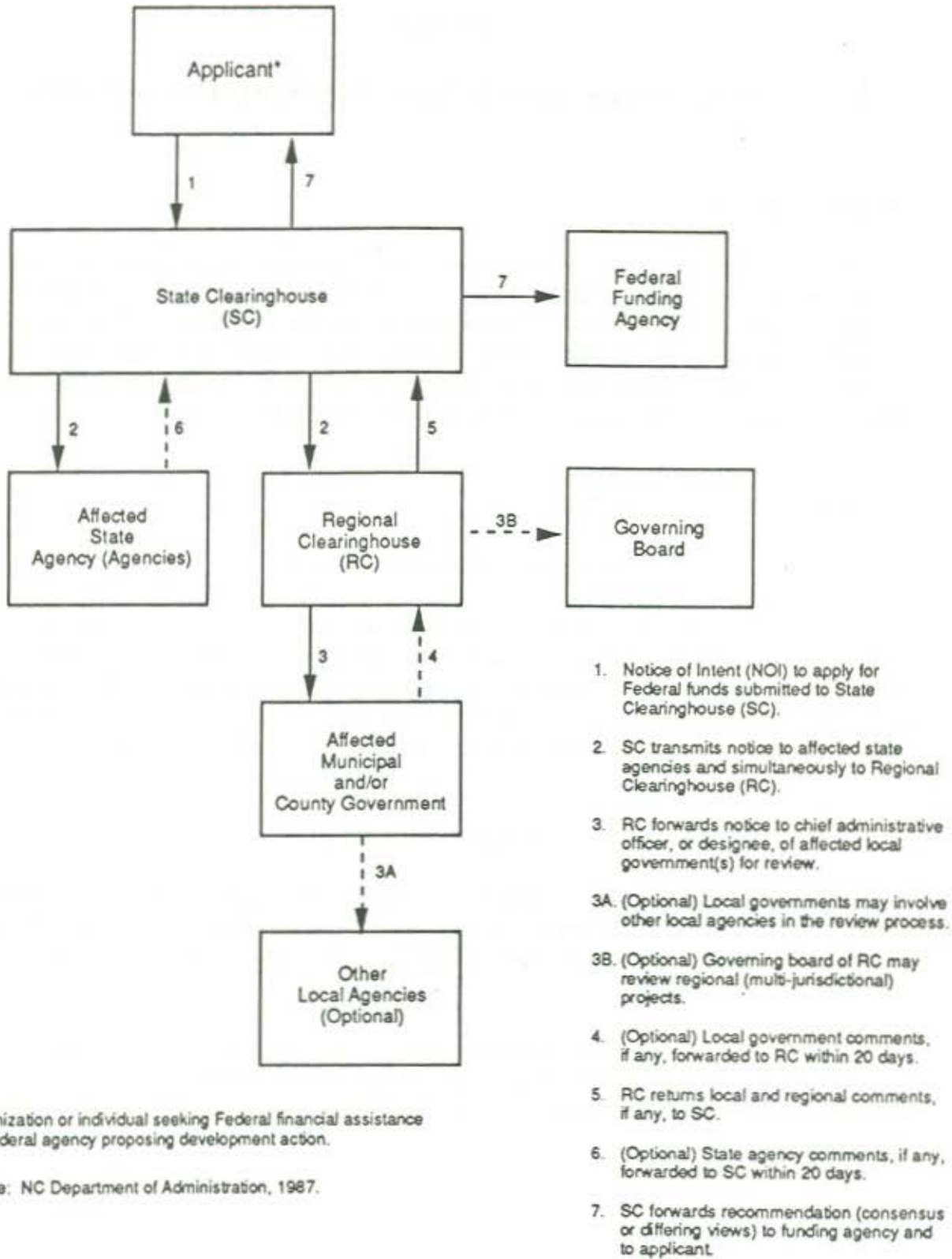


Figure 1. North Carolina Intergovernmental Review Process (Effective October 1, 1983).

The Federal agencies determine which of their development projects or applicants for financial assistance are on the Clearinghouse master list and are subject to intergovernmental review. The Federal agencies (or applicants for Federal assistance) submit proposed project descriptions and Notices of Intent (NOIs) to apply for Federal grants to the Clearinghouse.

Submitted projects are classified as "major" and "non-major" actions. State agencies are notified of non-major projects in a weekly listing and allowed 20 days to request a review. If the time limit elapses without comment, the non-major project review is terminated.

The central Clearinghouse distributes major project descriptions and NOIs to interested State agencies and the appropriate Regional Clearinghouse. The Regional Clearinghouse coordinates comments from local government officials on conflicts with local plans and programs (e.g., zoning ordinances). Concurrently, State agencies comment on consistency with individual programs and regulations (e.g., stormwater runoff regulations, 401 certification program). Comments from agencies within the Department of Environment, Health, and Natural Resources (DEHNR), are channeled through a single contact.

The cover sheet circulated with project descriptions and NOIs lists all the State agencies reviewing the project and specifies the due date for comments to be returned to the Clearinghouse. Most reviews are limited to a 30-day comment period, with a possible extension if conflicts are identified. The entire review process cannot exceed 60 days. State agencies forfeit the authority to comment on projects if the deadline is missed and an extension is not requested.

The review process is intended to enhance project planning rather than deny projects. Therefore, reviewers must justify adverse comments on proposed projects with specific reference to:

- State laws or local ordinances that will be violated
- Documented duplication of existing services
- Conflicts with adopted plans or policies

Alternative actions or project modifications should accompany negative comments. This information encourages the Federal agencies or applicants to adapt project plans to improve consistency with State programs.

The Clearinghouse identifies negative comments and notifies the applicant as soon as possible. The Clearinghouse encourages direct negotiations between the Federal agency or applicant and the State or local agency noting an inconsistency. Often, the Clearinghouse files for an extension to allow the applicant to modify inconsistent projects before the State position is finalized.

Conflicts between two or more State or local agencies are resolved informally prior to review termination. If the conflicts are resolved, the Clearinghouse issues a single statement, the State Process Recommendation. Otherwise, dissenting comments are submitted with the overall State position (N.C. Department of Administration 1983).

The Governor can appeal to the Secretary of the appropriate Federal Department if a Federal project is found to be inconsistent with a State or local program and the responsible Federal agency refuses to modify the project. However, this situation has never arisen in North Carolina. Federal agencies have demonstrated a willingness to cooperate with the Clearinghouse by either withdrawing or modifying inconsistent projects (Chrys Baggett, pers. comm., July 2, 1990).

C. NEPA AND NCEPA REVIEW PROCEDURES

The National Environmental Policy Act of 1969 allows State and local agencies to comment on the adequacy of Federal assessments of environmental impacts. Under NEPA, Federal agencies must assess the environmental consequences of proposed projects. Section 1502.16(c) of NEPA requires environmental impact statements (EISs) to include a discussion of potential conflicts between the proposed action and State and local land use plans, policies, and controls.

Federal agencies submit NEPA documents (including EISs, environmental assessments, findings of no significant impact, and negative declarations) to the Clearinghouse for distribution to the appropriate State agencies and Regional Clearinghouse. The Clearinghouse employs the same circulation and comment consolidation procedures adopted to implement EO 12372, although time limits may vary depending upon the requirements of the submitting agency. Reviewers may critique the assessment procedures selected by the Federal agency and comment on potential environmental impacts that were not addressed in the NEPA document.

The North Carolina Environmental Policy Act (NCEPA) requires State agencies to assess the potential environmental impacts from proposed projects that meet the following criteria (N.C. Department of Administration 1987):

- Public funds are expended, and
- The project requires a State action to proceed (e.g., a grant, appropriation, permit, or license), and
- The project potentially affects natural resources, public health and safety, natural beauty, or historical or cultural elements of the State's common heritage.

The State agency performing the necessary State action is responsible for filing an EIS, or an environmental assessment and a finding of no significant impact to the Clearinghouse. The Clearinghouse also coordinates intergovernmental review of NCEPA environmental review documents with EO 12372 procedures. However, the review process is limited to 15 to 30 days.

D. INTEGRATION STRATEGY

D. 1. General Strategy

The flow chart in Figure 2 illustrates a strategy for integrating CCMP consistency review with State Clearinghouse procedures. The strategy consists of inserting an A/P contact into the existing review structure. The A/P contact would receive notices of Federal activities in categories selected by the Management Conference. The A/P contact might consult with other agencies (e.g., Division of Environmental Management [DEM]), to evaluate consistency with technical water quality issues addressed in the CCMP. However, the A/P contact would be responsible for preparing a distinct statement of project consistency with the CCMP and forwarding the statement to the Clearinghouse.

Potential conflicts between Federal activities and the CCMP goals should be reported to the Clearinghouse at the earliest opportunity. The A/P contact would negotiate directly with the responsible Federal agency to modify the inconsistent project. If the conflicts could not be resolved, the State Clearinghouse would report the inconsistent finding to the Federal agency.

Alternatively, A/P review authority could be deferred to reviewers in DEHNR if the A/P program is dissolved. Reviewers within DEHNR already comment on project impacts that are likely to affect CCMP goals. For example, DEM's Nonpoint Source Branch routinely comments on secondary impacts of Farmers' Home Administration water projects (see Chapter 5 for a discussion of the Nonpoint Source Federal Consistency Review Program). However, additional comments from an independent A/P reviewer would substantiate and strengthen concerns expressed by DEHNR reviewers in the Clearinghouse process.

D. 2. Integration Requirements

Integrating the CCMP and Clearinghouse review procedures will depend upon implementation of the following activities:

- The Management Conference must submit to the Clearinghouse a list of Federal project categories to be reviewed for CCMP consistency. Initially, the

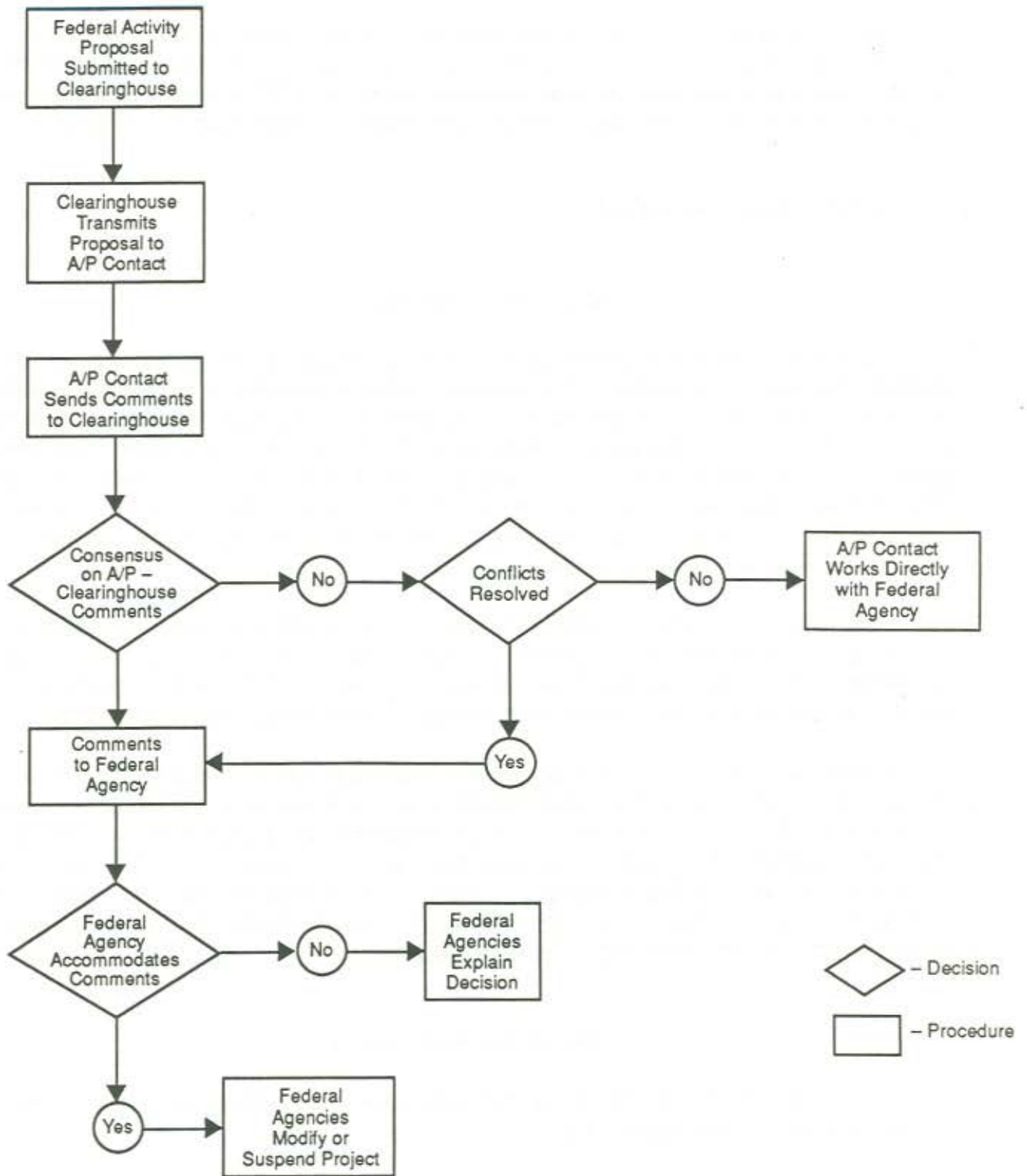


Figure 2. Strategy for Integrating Albemarle-Pamlico Consistency Review with North Carolina Clearinghouse Procedures.

The Clearinghouse master list may not include all of the programs selected by the Management Conference for CCMP consistency review. However, the Clearinghouse list can be expanded to include most Federal programs, and the Clearinghouse is willing to accommodate the needs of the Management Conference.

- To maximize influence in the review process, the Management Conference should designate an A/P contact to receive selected project proposals from the Clearinghouse and relay CCMP consistency concerns to the Clearinghouse. Designating an A/P contact could be a difficult task. It is unclear whether the A/P estuarine project will be authorized to exist following completion of the CCMP, or whether staffing levels will be sufficient to assume the A/P consistency review responsibilities. Current staffing of the A/P estuarine project is limited to a Director, an assistant, two secretaries, and a public coordinator.
- Alternatively, if the A/P program is dissolved and cannot appoint an A/P contact, reviewers within DEHNR should be educated about the CCMP goals to fulfill the consistency review requirements of Section 320(b)(7).

D. 3. Advantages of Integration

Integrating A/P consistency review procedures into the Clearinghouse process minimizes review duplication and can be accomplished with relative ease. The State Clearinghouse is designed to coordinate consistency reviews for numerous State programs and can easily expand to accommodate new programs such as the CCMP consistency program. The circulation structure already exists and the Clearinghouse is willing to add an A/P reviewer to the review process. The Clearinghouse can add programs and projects to the master review list to accommodate A/P review needs (and is willing to do so) (Chrys Baggett, pers. comm., July 2, 1990).

Integration with the Clearinghouse also enables the A/P Management Conference easy access to NEPA and NCEPA reviews coordinated by the Clearinghouse, which are not explicitly cited in Section 320(b)(7). Integration with the Clearinghouse would enhance access to review State actions in addition to Federal activities.

D. 4. Disadvantages of Integration

The Management Conference sacrifices authority to the Clearinghouse by integrating A/P consistency review with the Clearinghouse process. The A/P consistency determination is not submitted directly to the Federal agency under the integration scenario. Instead, the Clearinghouse has the authority to consolidate the A/P consistency determination with other

State agency positions. Consolidation with comments from agencies such as the Department of Agriculture, Department of Transportation, and the Department of Economic and Community Development could dilute an inconsistent A/P determination.

Another disadvantage is that the Clearinghouse has limited authority to modify or halt inconsistent projects. The Federal agencies do not have to accommodate State concerns channeled through the Clearinghouse. Other options, such as integration with the Coastal Management Program, can provide additional authority to the A/P Management Conference (see Chapter 4).

E. SUMMARY

The Clearinghouse provides an existing structure for obtaining notice of Federal activities that might affect the A/P region. The consistency review process can readily accommodate the addition of an A/P reviewer. However, other options (e.g., integration with the Coastal Management Program discussed in Chapter 4) provide broader power to the Management Conference to ensure consistency with the goals of the CCMP.

CHAPTER 4

THE COASTAL ZONE MANAGEMENT CONSISTENCY PROGRAM

A. PROGRAM DESCRIPTION

A. 1. Jurisdiction and Authority

The Federal Coastal Zone Management Act (CZMA) of 1972, as amended, authorizes States to review virtually all Federal activities in the coastal region for consistency with approved State Coastal Management Programs. Congress confirmed this broad authority in the 1990 reauthorization of the CZMA which reinstated the States' power to review proposed Outer Continental Shelf lease sales. The 1990 amendments clarify that all Federal agency activities that affect natural resources, land uses, or water uses in the coastal zone are subject to consistency requirements in Section 307(c)(1) of the CZMA, whether the Federal activity occurs inside or outside of the coastal zone.

North Carolina's approved Coastal Management Program is a network of rules, programs, and policies implemented by numerous State and local agencies (e.g., DCM, DEM, the Division of Marine Fisheries, and local land use commissions). These rules and policies are defined in several documents:

- The North Carolina Coastal Area Management Act (CAMA)
- The original Coastal Management Program document of 1977
- The 1979 amendments to the Coastal Management Program document
- Regulations in North Carolina Administrative Code Title 15 Chapter 7, Coastal Management
- Local land use plans approved by the N.C. Coastal Resources Commission

DCM coordinates the entire Coastal Management Program, manages several key components (including the CAMA permit program), and administers the CZM Federal consistency review process. In contrast to the CAMA permit program, the Federal consistency review process is independent of the North Carolina Coastal Resources Commission and has jurisdiction beyond Areas of Environmental Concern within the twenty coastal counties. The CZM consistency review process can be applied to any Federal activity which may adversely

affect the goals of the Coastal Management Program. DCM's jurisdiction to review Federal activities extends beyond the borders of North Carolina into Virginia.

The following activities may be reviewed for consistency with the Coastal Management Program under the CZMA:

- Federal activities and development projects that directly affect the coastal zone
- Federal assistance projects to State and local governments that affect the coastal zone
- Licenses and permits issued by Federal agencies to private applicants or State, local, or other Federal agencies
- Federal grants, permits, licenses, and lease sales for Outer Continental Shelf activities

The CZM program has the most extensive jurisdiction of the existing consistency programs. The CZM program provides a key avenue for States to comment upon Outer Continental Shelf activities and is an important mechanism for State review of 404 dredge and fill permits issued by the U.S. Army Corps of Engineers. In contrast, EO 12372 does not authorize the State Clearinghouse to review licenses and permits issued by Federal agencies.

The CZM program also has unique authority to require modifications or stop Federal activities that are inconsistent with the Coastal Management Program. In contrast, EO 12372 does not authorize the State Clearinghouse to halt Federal activities that raise State concerns.

The Federal agencies are responsible for initiating consistency reviews, but the CZM consistency review process is not voluntary. DCM can force a Federal agency to comply with the consistency program even if the Federal agency believes the review is unnecessary.

A. 2. Review Procedures

Figure 3 illustrates the CZM consistency review process. DCM obtains notices of Federal activities through two mechanisms. First, the Clearinghouse will forward NOIs and/or project plans to DCM to evaluate if a CZM consistency review is required. DCM informs the Clearinghouse if a CZM review is necessary, and the Clearinghouse relays the information to the responsible Federal agency. The Federal agency must then prepare a consistency determination and submit it to DCM for review. The majority of Federal assistance packages reviewed by DCM are routed through the Clearinghouse.

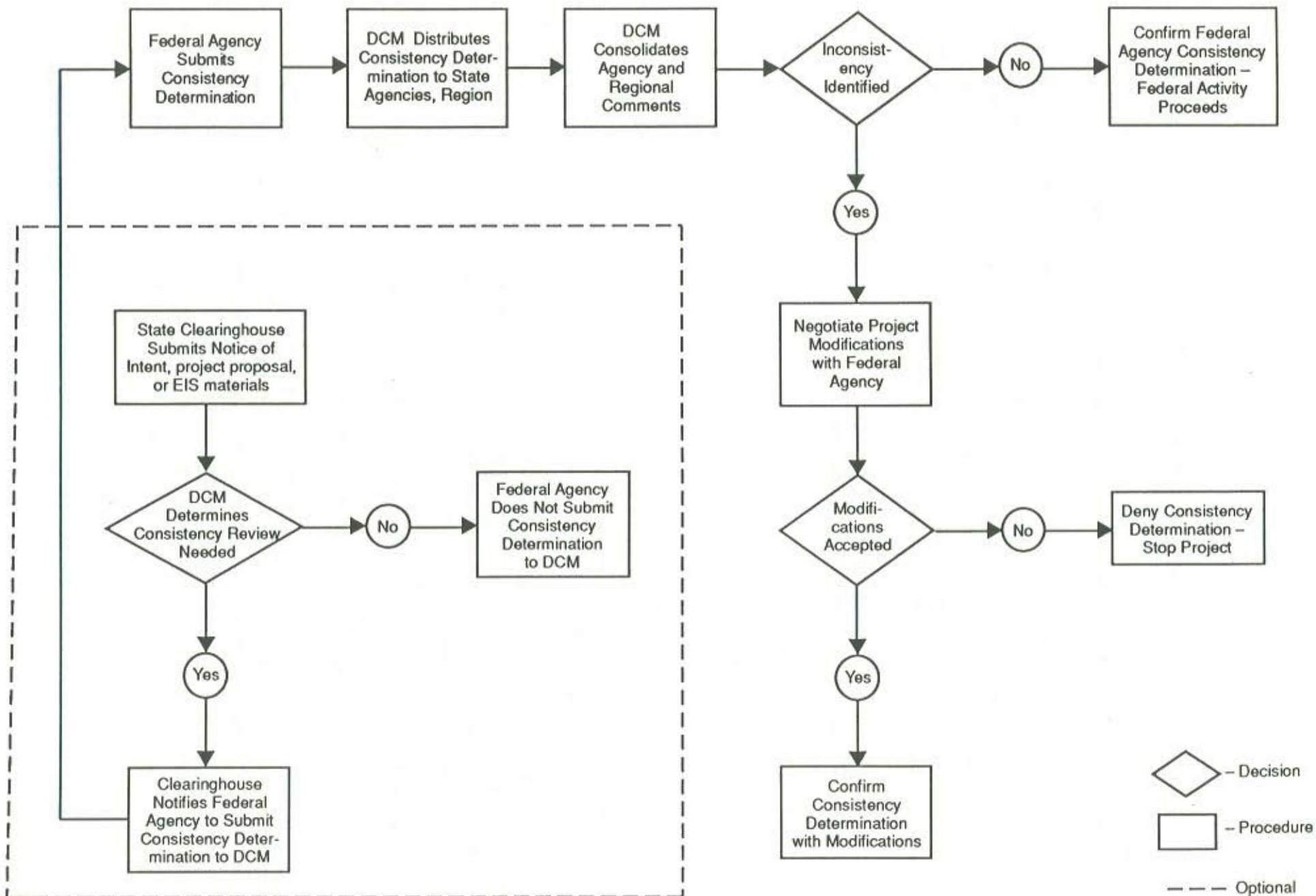


Figure 3. Division of Coastal Management Consistency Review Process.

Alternatively, the Federal agencies may bypass the Clearinghouse and submit consistency determinations directly to DCM. Regardless of which mechanism is pursued, the Federal agencies prepare the initial consistency determination and a detailed project plan. DCM reviews the adequacy of the consistency determinations prepared by the Federal agencies.

DCM distributes the Federal agency's consistency determination and project plans to various State agencies, local governments, and regional DCM staff for additional review. The Coastal Management Program is really a network of State agency statutes and programs. Therefore, each participating agency must review proposed Federal activities for consistency with its own statutes and programs within the Coastal Management Program (Wuenscher 1990). Proposed actions are circulated to the following agencies:

- Division of Environmental Health
- Division of Environmental Management
- Division of Land Resources
- Division of Marine Fisheries
- Division of Parks and Recreation
- Division of Water Resources
- Wildlife Resources Commission
- Outer Continental Shelf Office
- Division of Archives and History
- Division of Community Assistance
- Department of Transportation
- State Property Office

DCM can directly comment upon consistency with certain provisions of the Coastal Management Program but must rely upon technical comments from other State agencies to determine if biological and water quality provisions of the Coastal Management Program are adequately addressed in the Federal agency's consistency determination. For example, CAMA has specific rules prohibiting degradation of primary nursery areas and violations of water quality standards. DCM depends on the Division of Marine Fisheries to document potential adverse effects on primary nursery areas and on the Division of Environmental Management to comment on potential violations of water quality standards.

In most cases, reviewers justify inconsistent determinations with mandatory and enforceable provisions in the Coastal Management Program. Recommendations and general goals in the Coastal Management Program (e.g., protection of estuarine productivity) can be used to justify an inconsistent determination, but the burden of proof is on the State to document the potential conflict (e.g., loss of productivity). Potential violations of regulations, land use plans, or other enforceable provisions provide the strongest argument for an inconsistent determination.

Each category of Federal activity has a review schedule that must be strictly observed. The time limits in Table 6 are initiated on the day the State receives notice of a project. DCM must circulate the project, acquire comments from the other review agencies, and formulate a consolidated position during the time period indicated in Table 6.

Table 6. Time Limits for Coastal Zone Management Consistency Reviews

Category	Time Limit
Federal assistance projects	15-20 days
Direct Federal development projects	45 days
Federal licenses and permits	90 to 180 days

DCM consolidates the comments and either accepts, rejects, or requires modifications of the Federal agency's initial consistency determination. In contrast to the State Clearinghouse review program, the CZM consistency review program can halt Federal activities or force the Federal agency to negotiate project modifications if a consistency determination is found to be inadequate. The Secretary of Commerce can reverse DCM's decisions.

B. INTEGRATING CCMP GOALS

B. 1. Integration Strategies

The CCMP goals must be incorporated into the Coastal Management Program to integrate the A/P and CZM consistency review programs. There are several options for amending the Coastal Management Program to include the CCMP goals. The amendments do not require approval by the N.C. Coastal Resources Commission unless individual goals are incorporated into the N.C. Administrative Code in the Coastal Management Rules.

The simplest method is to adopt the entire set of CCMP goals as a component of the Coastal Management Program (similar to the mechanism for adopting local land use plans into the Coastal Management Program). This approach would require public notification and approval by the National Oceanic and Atmospheric Administration (NOAA). Both the Environmental Protection Agency (EPA) and NOAA encouraged this approach in a 1988 Memorandum of Agreement (Appendix C).

The CCMP goals could also be integrated with local land use plans. For example, a county with extensive wetlands could amend the local land use plan with a policy prohibiting wetlands development. The amended land use plan would have to be approved by the N.C. Coastal Resources Commission for incorporation into the Coastal Management Program.

Alternatively, individual CCMP goals could be introduced as new regulations by DCM or sponsored by another State agency, such as DEM. For example, State agencies could propose amendments to CAMA which protect critical habitats. Existing CAMA protection of primary nursery areas was introduced by the Division of Marine Fisheries. Regulatory revisions would require approval by the N.C. Coastal Resources Commission.

The Management Conference could install an A/P reviewer on DCM's distribution list to receive notice of Federal activities under review. If the entire CCMP were adopted into the Coastal Management Program, the A/P reviewer could review proposed Federal consistency determinations for consistency with the CCMP, and submit comments to DCM. DCM would use the A/P comments to make the overall CZM consistency decision. DCM could forward the A/P comments to the Federal agency if they did not agree with DCM's final consistency determination.

Alternatively, the Management Conference might delegate the entire A/P consistency review process to DCM. This may be the only acceptable option if the A/P study is terminated following completion of the CCMP, and an A/P contact cannot be created. After the CCMP is adopted into the Coastal Management Program, DCM will be required to consider the CCMP goals when reviewing Federal activities for consistency. It may be desirable, but not essential to have an independent A/P reviewer with special knowledge of the CCMP goals.

B. 2. Integration Requirements

Each proposed integration strategy involves amending the Coastal Management Program. The CCMP can be adopted into the Coastal Management Program for consistency review purposes without approval by the N.C. Coastal Resources Commission, as long as changes are not proposed to the N.C. Administrative Code in the Coastal Management Rules. Federal consistency is mandated by the CZMA and is not, strictly speaking, under the jurisdiction of the N.C. Coastal Resources Commission. DCM must follow the NOAA requirements for amending the Coastal Management Program, which require public notification and specific submission procedures. NOAA has three weeks to determine if the submitted change is routine or requires preparation of an Environmental Impact Statement. The submission of the CCMP should be considered routine and receive automatic approval because the Memorandum of Agreement between EPA and NOAA encourages adoption of the CCMP into the State's Coastal

Management Program. The entire process could be completed in several months (Jim Wuenscher, pers. comm., January 31, 1991).

The key to effective integration with the CZM consistency program is enforceable and specific CCMP goals. The Management Conference should draft clear CCMP goals and objectives to strengthen consistency review options through the coastal zone program. Vague goals (e.g., protecting fishery resources) cannot be enforced through the CZM consistency review process.

B. 3. Advantages of Integration

Integrating with the CZM consistency process generates three clear advantages for the A/P program:

- The A/P program gains the authority to stop inconsistent projects. In contrast, integration with the State Clearinghouse process provides authority to comment but not to deny Federal activities.
- The A/P program gains authority to review the issuance of Federal licenses and permits for CCMP consistency review. Under Section 320(b)(7), only direct Federal projects and financial assistance programs are subject to CCMP consistency review. If the CCMP is incorporated into the Coastal Management Program, Federal license and permit decisions are also eligible for CCMP consistency review.
- Adoption of the CCMP into the Coastal Management Program automatically ensures that Federal activities are reviewed for consistency with the CCMP goals. This option enables the A/P consistency review process to continue after the A/P study is terminated.

B. 4. Disadvantages of Integration

Integration with the CZM consistency review program excludes direct A/P participation in the State Clearinghouse process. The A/P program acquires CZM authority to stop or modify Federal projects if the A/P program becomes a part of the CZM consistency review program. The A/P program loses CZM authority if it interacts directly with the State Clearinghouse (i.e., the Clearinghouse routes Federal proposals directly to an A/P reviewer).

C. SUMMARY

The CZM consistency program has extensive geographic and programmatic jurisdiction and the authority to stop projects found to be inconsistent with the North Carolina Coastal Management Program. Integration with the CZM consistency program would also ensure that A/P consistency review continues after dissolution of the A/P study. The CZMA restricts review to determining consistency with specific policies in the Coastal Management Program. Therefore, the A/P and CZM review processes could be integrated only by adopting the CCMP goals into the Coastal Management Program. Integration would require public notice and approval by NOAA, which could be completed in several months.

CHAPTER 5

NONPOINT SOURCE CONSISTENCY REVIEW PROCESS

A. INTRODUCTION

This chapter presents North Carolina's Nonpoint Source (NPS) consistency review process as a model for designing the A/P consistency strategy. The NPS review process satisfies consistency requirements very similar to those imposed on the A/P program by CWA Section 320(b)(7). The NPS review process also illustrates the mechanics of integrating a consistency program with both the State Clearinghouse and the CZM consistency program.

B. PROGRAM DESCRIPTION

B.1. Jurisdiction and Authority

Section 319 of the CWA requires each State to develop a NPS Management Program with a Federal consistency review component. Under Section 319(b)(2)(F), each State must identify Federal activities to review for consistency with its NPS Management Program (see Appendix D). Section 319(b)(2)(F) closely resembles Section 320(b)(7) which establishes the NEP consistency requirement. As a result, both the NPS Management Program and the A/P Study must develop strategies for reviewing Federal assistance programs and direct development projects according to the procedures specified in EO 12372.

The EPA Office of Marine and Estuarine Protection recommends coordinating, rather than integrating the NEP and NPS consistency processes because the goals of the CCMP may differ from those of the State NPS Management Program. Although the CCMP and NPS Management Program are likely to share common goals, the CCMP will probably include social and ecological goals not included in the NPS Management Program, which concentrates on water quality goals. Therefore, the A/P study should maintain a separate review of Federal activities for consistency with the CCMP goals.

B.2. Review Procedures

The NPS Branch in DEM implements the North Carolina NPS Management Program. The NPS Branch is pursuing integration with both the State Clearinghouse intergovernmental review process and the CZM consistency review program managed by DCM. For over a year, the NPS Branch has reviewed Federal activity proposals routed through the Clearinghouse.

More recently, the NPS Branch submitted the NPS Management Program to DCM for incorporation into the Coastal Management Program, which will enable the NPS Branch to participate in the CZM consistency review program.

The NPS Branch submitted a list of Federal programs to the Clearinghouse to be reviewed for consistency with the NPS Management Program. The NPS Branch also appointed an NPS reviewer from their staff to interact with the Clearinghouse and the DEHNR consistency coordinator, Melba McGhee. Consistency reviews occupy a small portion of the NPS reviewers work load (Alan Clark, pers. comm., March 19, 1991).

The State Clearinghouse channels notice of proposed Federal activities to the NPS reviewer through the DEHNR consistency coordinator. Financial assistance applications and NEPA scoping documents comprise the majority of projects reviewed by the NPS contact. The NPS reviewer analyzes the proposed activity for conflicts with the goals of the NPS Management Program, paying close attention to potential adverse effects on water quality. The NPS reviewer may discuss the proposed activity with other reviewers to gather additional information and coordinate comments.

The NPS reviewer comments on secondary and cumulative effects of the proposed activity. For example, the NPS reviewer may question how a community will treat the additional waste load imposed by construction of a water supply expansion project funded by the Farmers Home Administration.

The DEHNR consistency coordinator receives the comments from the NPS contact, identifies conflicts within the Department and assists in their resolution, generates a cover letter for the Department comments, and forwards the comments to the Clearinghouse. The Clearinghouse consolidates the DEHNR comments with comments from other State departments into the State Process Recommendation. This document is forwarded to the responsible Federal agency.

The NPS Branch has limited access to direct interaction with Federal agencies sponsoring development activities. The NPS Branch must convince superior officials within DEM and DEHNR to pursue negotiations with Federal agencies and support NPS Branch objections to a proposed project. The Secretary of DEHNR must pursue negotiations with the responsible Federal agency.

The NPS Branch also submitted the NPS Management Program to DCM for adoption into the Coastal Management Program for consistency review purposes. DCM forwarded the NPS Management Program to NOAA on April 10, 1991, and approval is expected in the near future.

C. CONCLUSIONS DRAWN FROM NPS CONSISTENCY REVIEW EXPERIENCE

C.1. Clearinghouse Limitations

It is difficult to assess the effectiveness of the intergovernmental review process conducted by the Clearinghouse because the commentors seldom receive feedback to their comments. The lack of feedback is partially due to slow NEPA procedures. During the past year and a half, the NPS Branch commented on approximately 30 NEPA scoping proposals, but none of the scoping documents have been followed up by a formal Environmental Impact Statement or Environmental Assessment. Therefore, the NPS Branch cannot determine if its comments were addressed in the final NEPA documents.

The NPS Branch is satisfied with the routing procedures coordinated by the Clearinghouse. However, the NPS Branch is pursuing integration with the CZM consistency program to reinforce the influence of NPS Branch comments. Integration with the CZM program will enable the NPS Branch to require modifications or halt inconsistent projects in the coastal region. The NPS Branch has Statewide physical jurisdiction which exceeds CZM jurisdiction. Therefore, The NPS Branch will continue to interact with the Clearinghouse to review Federal activities outside of the coastal region. Reviews routed through the Clearinghouse will have less influence on Federal activities than those routed through DCM.

In contrast to the NPS Management Program, the A/P Study has similar jurisdiction as the CZM consistency program (which extends beyond the 20 CAMA counties to include all projects which could have an adverse impact on coastal resources). Therefore, the A/P study does not need to interact with both the Clearinghouse and DCM. The A/P Study will maximize its influence on Federal activities by integrating exclusively with the CZM consistency program.

The Clearinghouse represents a broader constituency of State agencies than the CZM consistency program. The comments of the NPS Branch may be opposed by numerous State agencies submitting comments to the Clearinghouse. In such circumstances, it may be difficult to convince DEM officials and the Secretary of DEHNR to advocate the NPS Branch comments, unless the comments address a major issue (e.g., omission of data in an Environmental Impact Statement). Comments from the NPS Branch or the A/P reviewer are less likely to be opposed by other reviewers within the CZM consistency program. DCM may also be more inclined to advocate A/P comments because the CCMP goals will be incorporated into the Coastal Management Program.

CHAPTER 6

RECOMMENDATIONS FOR AN A/P CONSISTENCY REVIEW PROGRAM

A. GENERAL STRATEGY RECOMMENDATION

The A/P Federal consistency program would maximize jurisdiction and authority by integrating with the CZM consistency review program. Integration with the CZM program would also ensure that an A/P consistency review process would continue even if the A/P Study is terminated following completion of the CCMP. DCM could assume responsibility for reviewing Federal activities for consistency with the CCMP goals after the CCMP is adopted into the Coastal Management Program. This strategy would also encourage coordination with the NPS consistency process which will be integrated with the CZM program in the near future.

Integration with the State Clearinghouse is not recommended because this strategy would interfere with integration of the A/P and CZM programs. The A/P program would sacrifice the authority of the CZMA consistency provisions if the A/P program were to interact directly with the State Clearinghouse (Weunscher, pers. comm. January 31, 1991). Integration with the State Clearinghouse would also require appointment of an A/P reviewer to prepare A/P comments and submit them to the Clearinghouse. It might be impossible to appoint an A/P reviewer if the A/P program is eliminated following CCMP development.

The overall strategy is presented in Figure 4, adapted from the sample strategy proposed by the EPA Office of Marine and Estuarine Protection (OMEP 1990). This chapter describes the tasks required to integrate the A/P and CZM consistency programs.

B. SPECIFIC PROGRAM RECOMMENDATIONS

B. 1. Develop Specific and Enforceable CCMP Objectives

The Management Conference should incorporate specific objectives into the CCMP. Specific CCMP goals would provide stronger ammunition for DCM to reject proposed Federal activities or require project modifications. DCM can reject Federal consistency determinations primarily on the basis that mandatory land use provisions or enforceable regulations will be violated by a proposed activity. It is more difficult to prove that general objectives and goals will be violated by proposed Federal activities. The Management Conference should discuss CCMP development with DCM in order to maximize effective language in the CCMP.

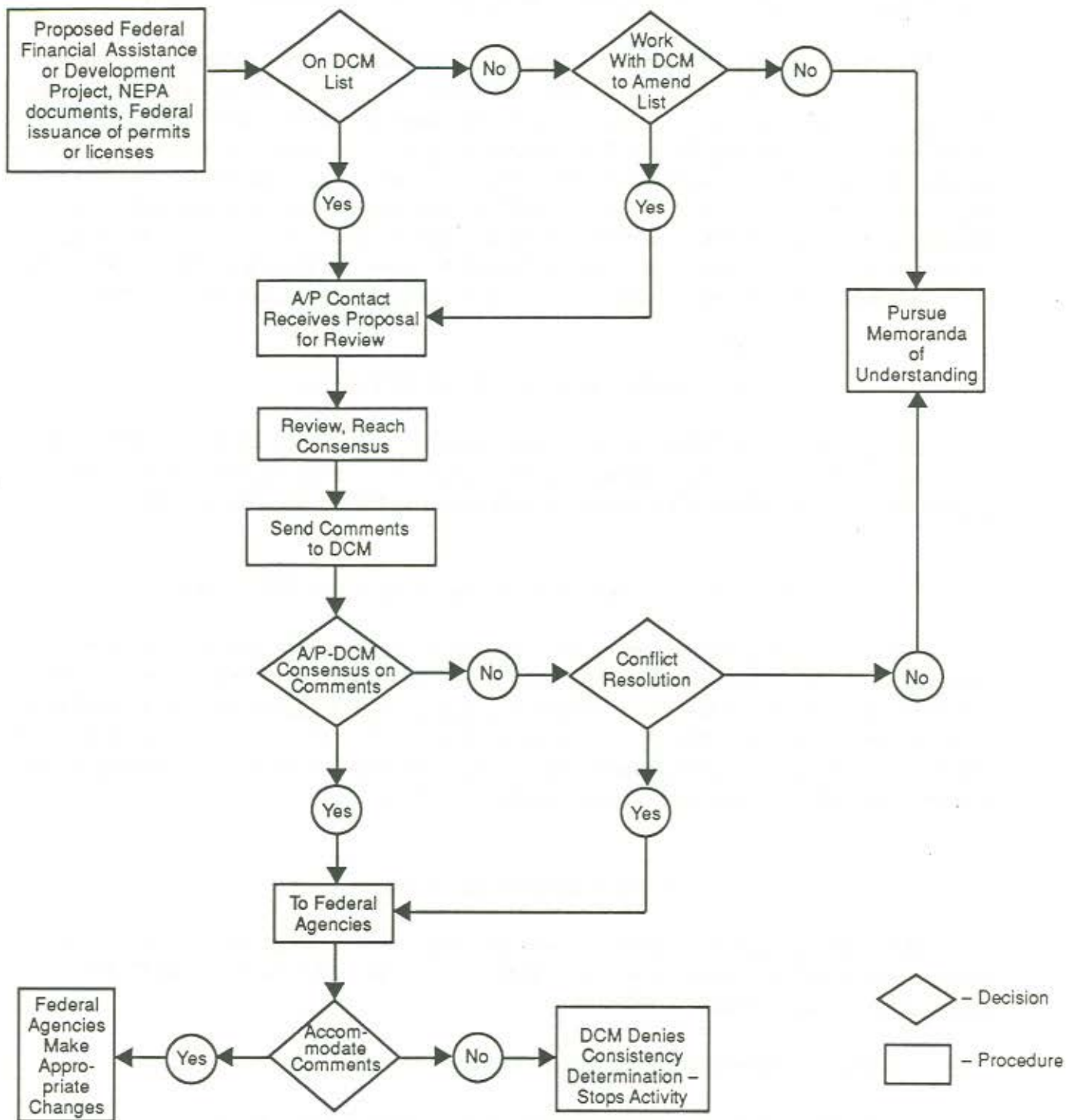


Figure 4. Proposed Review Strategy for Albemarle-Pamlico Estuarine Study.

B. 2. Submit the CCMP for Adoption into the Coastal Management Program

The Memorandum of Understanding between EPA and NOAA requires the Management Conference to submit the CCMP to DCM for consistency review with the Coastal Management Program. Following consistency approval, the Management Conference should submit the CCMP for adoption into the Coastal Management Program. The incorporation should proceed rapidly, assuming DCM would certify the CCMP as consistent with the Coastal Management Program. DCM staff would fulfill the NOAA requirements for amending the Coastal Management Program. DCM would file the required forms with NOAA and notify the public of the proposed adoption of the CCMP into the Coastal Management Program. The entire process could be completed in several months (James Wuenscher, pers. comm., January 31, 1991).

B. 3. Finalize Inventory of Federal Programs

The inventories of Federal programs presented in Chapter 2 will have to be revised after the CCMP is completed. The preliminary inventories were compiled before the CCMP was drafted and may not include all programs that will affect the final goals of the CCMP.

B. 4. Expand List of Federal Programs Subject to CZM Review

The Management Conference may wish to review Federal programs not currently reviewed by DCM. The Management Conference should negotiate with DCM to incorporate all programs on the final A/P inventory of Federal programs into the list of programs eligible for CZM review. Currently, DCM is revising the list of Federal activities subject to CZM consistency review, and is willing to expand the list to accommodate the A/P consistency review process. (James Wuenscher, pers. comm., January 31, 1991).

B. 5. Establish Review Criteria

The Management Conference should develop criteria and guidelines for reviewing Federal programs based upon the eventual goals, objectives, and policies of the CCMP. The criteria should address (OMEP 1990):

- Potential threats to the specific CCMP objectives
- Priority environmental problems in the A/P region and their causes
- Specific geographic areas targeted in the CCMP (e.g., critical habitats, pristine areas, degraded areas, recreational areas, and highly valued commercial areas)

- Potential effects from typical "red flag" activities and projects in the estuarine region (e.g., hazardous waste disposal or destruction of critical habitats)

The review guidelines should address indirect effects and cumulative impacts resulting from Federal activities as well as direct impacts. The NPS Branch in DEM should be consulted for expertise in determining secondary impacts.

B. 6. Develop Guidance for Reviewers

The A/P staff should prepare a guidance document that summarizes the CCMP, the consistency review procedures, and review criteria. The guidance should highlight major goals, policies, programs, requirements, and targeted areas in the CCMP (OMEP 1990). The guidance should be distributed to reviewers and Federal agencies managing programs selected for CCMP consistency review.

B. 7. Designate a Point of Contact

The Management Conference should designate a Point of Contact to coordinate A/P consistency review within the context of CZM review procedures. The A/P contact would receive Federal project proposals from DCM, formulate the CCMP consistency position, and forward it to DCM. The A/P contact might solicit technical information from other agencies (e.g., DEM) while preparing the A/P consistency position.

The EPA Office of Marine and Estuarine Protection suggests that the A/P contact be a member of the A/P estuarine program staff with expert knowledge of the CCMP goals. However, current A/P staffing levels may be incapable of supporting a contact position, and A/P staff positions may be eliminated following completion of the CCMP. Under these circumstances, DCM staff could assume responsibility for the A/P consistency process after the CCMP is adopted into the Coastal Management Program.

B. 8. Specify Mechanisms for Obtaining Federal Proposals

The A/P contact would obtain Federal proposals and assistance applications, Federal permit and license proposals, and NEPA materials from DCM. The A/P contact would be added to the existing circulation list maintained by DCM.

B. 9. Establish Time Restrictions for Reviews

Review time restrictions would vary, depending upon the type of Federal activity under review. Specific time restrictions should be negotiated with DCM. In general, DCM allows reviewers 21 days to comment on direct development and Federal license activities.

B. 10. Design a Strategy for Resolving Conflicts

Consistency review programs are intended to enhance intergovernmental cooperation. Prior to transmitting a negative recommendation, the Management Conference should negotiate with Federal agencies to modify proposed actions that will conflict with the CCMP goals. The following conflict resolution strategy is recommended by the EPA Office of Marine and Estuarine Protection:

- The A/P reviewer notifies DCM of project conflicts with the Albemarle-Pamlico CCMP
- DCM informs the responsible Federal agency of conflicts with the CCMP and encourages negotiations
- Representatives of the Federal agency and the A/P Policy Committee, Technical Committee, and Citizen's Advisory Committees meet to resolve conflicts
- If the conflicts are not resolved, formal comments are submitted to the responsible Federal agency through DCM
- The Federal agency must respond to the State comments by modifying the project plans, withdrawing the project, or explaining the reasons for not accommodating the State's concerns (e.g., national security interests).
- If the Federal agency's response is unsatisfactory, the conflict is elevated to the EPA Region IV Office. The Regional staff would negotiate the State's position directly with NOAA (which oversees the CZM consistency program).

The A/P contact should work closely with DCM to ensure that the Management Conference's concerns are represented in the final consistency determination.

C. ADDITIONAL TASKS

C. 1. Investigate Federal Facility Operations

A comprehensive Federal consistency strategy should include a study of ongoing operations at Federal facilities. Section 313 of the Clean Water Act requires any Federal entity having jurisdiction over property and facilities, or engaged in any activity that may result in water pollution, to comply with all State and local water pollution control requirements. States may review Federal activities to ensure such compliance under the authority of EO 12088. Office of Management and Budget Circular A-106 provides the mechanism for implementing the State's authority. However, in North Carolina, the A-106 process is not carried out by the State but by the EPA Region IV Office.

Office of Management and Budget Circular A-106 requires Federal agencies to identify facilities that are not in compliance with Federal, State, or local standards. Facilities not in compliance must develop 5-year plans to correct standard violations reported by EPA or the State. The plans are updated and reviewed biennially.

The Management Conference could gain access to review operations at Federal facilities through the A-106 process. The EPA representative on the Management Conference could act as liaison between the Management Conference and the EPA personnel in Region IV who review A-106 plans.

The Management Conference should identify Federal facilities in the A/P region where operations might conflict with CCMP goals. (Note: this task is scheduled to be performed by Research Triangle Institute as part of A/P Study 452, Evaluation of Federal Program Impacts, in Fiscal Year 1991.)

C. 2. Develop Memoranda of Understanding (MOUs)

The Management Conference should encourage Federal agencies to commit to furthering the CCMP goals in written memoranda of understanding (MOUs). MOUs result from negotiation and are not mandatory. However, through negotiation, the Management Conference may be able to influence operations at Federal facilities such as defense installations. MOUs can include contingencies for future Federal assistance proposals and development projects (OMEP 1990). The goals of the CCMP could also be enhanced by MOUs committing Federal agencies that operate conservation and education programs to focus on Management Conference concerns (e.g., the Agricultural Stabilization and Conservation Service).

Both the Chesapeake Bay and Puget Sound Estuarine Programs have pursued MOUs to enhance implementation of their management plans. These MOUs formalize remediation

schedules at contaminated defense installations, as well as outline technical assistance to be provided by cooperating Federal agencies (e.g., the U.S. Fish and Wildlife Service and the Soil Conservation Service). Similar MOUs should be developed to address the concerns of the A/P Management Conference.

D. SUMMARY

The A/P program will probably have to rely upon technical assistance from other agencies (e.g., DEM, DCM, Division of Marine Fisheries) to determine consistency with the CCMP goals. Therefore, the A/P Study must coordinate the development of Federal consistency review criteria and policy statements with other relevant agencies, especially DEM and DCM. Through cooperation, the A/P Study can enhance the existing review process by addressing areas currently outside of DCM jurisdiction. The goals of the CCMP are also likely to complement the NPS Management Program and strengthen the review comments prepared by the NPS Branch of DEM. Ultimately, the success of the A/P Federal consistency review process depends upon negotiation and coordination with DCM and DEM.

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APPENDIX A
SECTION 320 OF THE CLEAN WATER ACT

100th Congress
2d Session

COMMITTEE PRINT

S. PR.
100-91

THE CLEAN WATER ACT
AS AMENDED BY
THE WATER QUALITY ACT OF 1987
PUBLIC LAW 100-4



MARCH 1988

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73-355

ble water quality standards, and (ii) the goals and requirements of this Act;

(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and

(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.

(n) **SET ASIDE FOR ADMINISTRATIVE PERSONNEL.**—Not less than 5 percent of the funds appropriated pursuant to subsection (j) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

SEC. 320. NATIONAL ESTUARY PROGRAM.

(a) MANAGEMENT CONFERENCE.—

(1) **NOMINATION OF ESTUARIES.**—The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

(2) CONVENING OF CONFERENCE.—

(A) **IN GENERAL.**—In any case where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

(B) **PRIORITY CONSIDERATION.**—The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; and Galveston Bay, Texas.

(3) **BOUNDARY DISPUTE EXCEPTION.**—In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management

conference with respect to such estuary before a final adjudication has been made of such dispute.

(b) **PURPOSES OF CONFERENCE.**—The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

(1) assess trends in water quality, natural resources, and uses of the estuary;

(2) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

(3) develop the relationship between the in-place loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

(4) develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

(5) develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;

(6) monitor the effectiveness of actions taken pursuant to the plan; and

(7) review all Federal financial assistance programs and Federal development projects in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

(c) **MEMBERS OF CONFERENCE.**—The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of—

(1) each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;

(2) international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;

(3) each interested Federal agency, as determined appropriate by the Administrator;

(4) local governments having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and

(5) affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

(d) **UTILIZATION OF EXISTING DATA.**—In developing a conservation and management plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, and local agencies.

(e) **PERIOD OF CONFERENCE.**—A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(f) **APPROVAL AND IMPLEMENTATION OF PLANS.**—

(1) **APPROVAL.**—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

(2) **IMPLEMENTATION.**—Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under titles II and VI and section 319 of this Act may be used in accordance with the applicable requirements of this Act to assist States with the implementation of such plan.

(g) **GRANTS.**—

(1) **RECIPIENTS.**—The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

(2) **PURPOSES.**—Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development of a conservation and management plan under this section.

(3) **FEDERAL SHARE.**—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of such research, survey, studies, and work and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources.

(h) **GRANT REPORTING.**—Any person (including a State, interstate, or regional agency or entity) that receives a grant under subsection (g) shall report to the Administrator not later than 18 months after receipt of such grant and biennially thereafter on the progress being made under this section.

(i) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Administrator not to exceed \$12,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991 for—

(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

- (2) making grants under subsection (g); and
- (3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to \$5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j).

(j) RESEARCH.—

(1) PROGRAMS.—In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones—

(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameters which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

(2) REPORTS.—The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including—

(A) a listing of priority monitoring and research needs;

(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (b)(4) of this section.

(k) **DEFINITIONS.**—For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in section 104(n)(4) of this Act, except that the term "estuarine zone" shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

TITLE IV—PERMITS AND LICENSES

CERTIFICATION

SEC. 401. (a)(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301(b) and 302, and there is not an applicable standard under sections 306, and 307, the State shall so certify, except that any such certification shall not be deemed to satisfy section 511(c) of this Act. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administra-

APPENDIX B
EXECUTIVE ORDER 12372

Presidential Documents

Title 3—

Executive Order 12372 of July 14, 1982

The President

Intergovernmental Review of Federal Programs

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 401(a) of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4231(a)) and Section 301 of Title 3 of the United States Code, and in order to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development, it is hereby ordered as follows:

Section 1. Federal agencies shall provide opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development.

Sec. 2. To the extent the States, in consultation with local general purpose governments, and local special purpose governments they consider appropriate, develop their own processes or refine existing processes for State and local elected officials to review and coordinate proposed Federal financial assistance and direct Federal development, the Federal agencies shall, to the extent permitted by law:

(a) Utilize the State process to determine official views of State and local elected officials.

(b) Communicate with State and local elected officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

(c) Make efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the designated State process. For those cases where the concerns cannot be accommodated, Federal officials shall explain the bases for their decision in a timely manner.

(d) Allow the States to simplify and consolidate existing Federally required State plan submissions. Where State planning and budgeting systems are sufficient and where permitted by law, the substitution of State plans for Federally required State plans shall be encouraged by the agencies.

(e) Seek the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. Existing interstate mechanisms that are redesignated as part of the State process may be used for this purpose.

(f) Support State and local governments by discouraging the reauthorization or creation of any planning organization which is Federally-funded, which has a Federally-prescribed membership, which is established for a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

Sec. 3. (a) The State process referred to in Section 2 shall include those where States delegate, in specific instances, to local elected officials the review, coordination, and communication with Federal agencies.

(b) At the discretion of the State and local elected officials, the State process may exclude certain Federal programs from review and comment.

Sec. 4. The Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development. The Office of Management and Budget shall disseminate such lists to the Federal agencies.

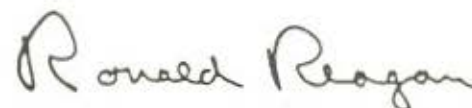
Sec. 5. (a) Agencies shall propose rules and regulations governing the formulation, evaluation, and review of proposed Federal financial assistance and direct Federal development pursuant to this Order, to be submitted to the Office of Management and Budget for approval.

(b) The rules and regulations which result from the process indicated in Section 5(a) above shall replace any current rules and regulations and become effective April 30, 1983.

Sec. 6. The Director of the Office of Management and Budget is authorized to prescribe such rules and regulations, if any, as he deems appropriate for the effective implementation and administration of this Order and the Intergovernmental Cooperation Act of 1968. The Director is also authorized to exercise the authority vested in the President by Section 401(a) of that Act (42 U.S.C. 4231(a)), in a manner consistent with this Order.

Sec. 7. The Memorandum of November 8, 1968, is terminated (33 *Fed. Reg.* 16487, November 13, 1968). The Director of the Office of Management and Budget shall revoke OMB Circular A-95, which was issued pursuant to that Memorandum. However, Federal agencies shall continue to comply with the rules and regulations issued pursuant to that Memorandum, including those issued by the Office of Management and Budget, until new rules and regulations have been issued in accord with this Order.

Sec. 8. The Director of the Office of Management and Budget shall report to the President within two years on Federal agency compliance with this Order. The views of State and local elected officials on their experiences with these policies, along with any suggestions for improvement, will be included in the Director's report.



THE WHITE HOUSE,
July 14, 1982.

APPENDIX C

MEMORANDUM OF UNDERSTANDING BETWEEN EPA AND NOAA



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
Washington, D. C. 20230

TO: Program Managers
FROM: *James P. Burgess*
James P. Burgess, Chief
Coastal Programs Division
SUBJECT: NOAA/EPA Agreement on the National Estuary Program
DATE: September 13, 1988

Attached is a copy of the NOAA/EPA agreement on the National Estuary Program (NEP), recently signed by both Bill Evans, NOAA Administrator and Lee Thomas, EPA Administrator. This document, the result of considerable negotiation, reflects an effort to better coordinate EPA activities in the NEPs with states' coastal zone management programs. We believe it can greatly improve the ability of czm program managers to help guide the NEPs, where you believe it is appropriate. We want to avoid duplication of effort, and to utilize the wealth of experience that coastal zone programs can offer. This agreement has been made with EPA headquarters here in Washington, D.C. As such, it will guide the efforts of the EPA regions as well. We will be working with you and with EPA to ensure its speedy implementation.

Briefly, here is the essence of the NOAA/EPA agreement, as it affects coastal zone management programs:

1. EPA will treat the EPA Administrator's approval of the CCMPs as a direct Federal activity, directly affecting the coastal zone.
2. EPA guidance will reflect that should any additional estuaries be considered for nomination to the NEP program, existence of a federally approved czm program will be a favorable criteria for approval.
3. To increase cooperation and to stress existing czm mechanisms, NOAA will stress activities of the management conferences convened under Section 320 of the Clean Water Act as part of Section 312 evaluations.
4. EPA has also agreed that NOAA and EPA will encourage and/or require that the CCMPs be submitted for incorporation into the czm program, as appropriate. In effect, this means that whatever plans, laws, regulations or policies arise from the NEP must be approved by the state czm program. This should assure czm programs an opportunity for early involvement in the NEPs.



4. CZM/NEP program efforts are aimed at encouraging state initiative and implementation through guidance and cooperative planning -- not unilateral Federal regulation or direction.
5. Mechanisms will be put in place to ensure that Management Conferences convened under the NEP will be coordinated with applicable State CZM planning processes and administration of CZM plans. Similarly, CZM program reviews and grant decisions will seek opportunities to coordinate activities where Management Conferences have been convened, or where objectives of the national demonstration program have been defined, under the NEP.

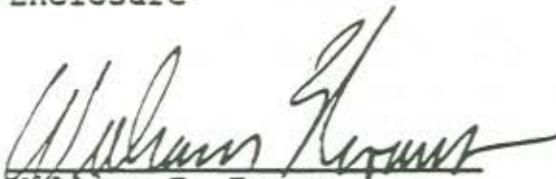
THE COASTAL ZONE MANAGEMENT PROGRAM
AND THE NATIONAL ESTUARY PROGRAM

In order to avoid duplication of effort, unnecessary expenditures of Federal funds, and the development of conflicting regulatory mechanisms, involving the Coastal Zone Management Program (CZMP) and the National Estuary Program (NEP), the enclosed coordination paper, which we endorse, has been prepared to address NOAA and EPA responsibilities.

This paper serves as guidance to NOAA and EPA program managers in carrying out their respective responsibilities under these two programs. Steps will be undertaken to begin implementation of the specific actions called for under Section V, including the establishment of a mechanism at the national level for coordination and oversight of individual estuary programs under the NEP and to ensure continued integration of the NEP and CZMP.

Coordination of NOAA and EPA activities related to this agreement will be handled by John J. Carey, Deputy Assistant Administrator, NOAA, National Ocean Service and Tudor T. Davies, Director, Office of Marine and Estuarine Protection, EPA.

Enclosure



William E. Evans
Under Secretary for
Oceans and Atmosphere
Department of Commerce

DATE Sept, 12, 1988



Lee M. Thomas
Administrator
Environmental Protection
Agency

DATE August 18, 1988

THE COASTAL ZONE MANAGEMENT PROGRAM AND THE NATIONAL ESTUARY PROGRAM

I. GOALS OF THE TWO PROGRAMS

The Coastal Zone Management Act (CZMA) was enacted by Congress to create a comprehensive management umbrella for the beneficial use, protection, and development of the resources of the nation's coastal zone. Coastal management was conceived as a voluntary program that States would undertake in partnership with the Federal government. To achieve comprehensive management of coastal resources, States wishing to participate were required to develop programs that addressed protection of coastal development in coastal areas to avoid loss of life and property, priority consideration of water dependent uses, improved access to and enjoyment of the coastal zone, conservation and management of living marine resources, and increased coordination of governmental activities. Wetlands and water quality in estuaries are important elements of State coastal management programs.

States are required to weigh the concerns of different levels of government, various interest groups, and the general public in both the development and implementation of coastal management programs. There are 29 approved State CZM programs. Coastal zone programs encompass, through the application of program policies, interagency and Federal coordination and a wide range of management issues throughout the State's entire coastal zone.

The National Estuary Program (NEP) was established in the Water Quality Act of 1987 to develop and implement plans to protect the integrity of nationally significant estuaries threatened by pollution, development or overuse. In some estuaries, the water pollution control requirements have been shown to be inadequate to protect the environment from degradation. The main direction of the NEP is to strengthen these requirements.

Some nationally significant estuaries will be selected for inclusion in the program. In the estuaries selected, the participants of a Management Conference are responsible for defining the environmental problems, investigating and determining the causes of system-wide problems, and developing and implementing plans of action to address the problems. Sources of point and non-point pollution are the focus, although the management of living resources, water resources, and land use in the watershed may also be identified causes of some environmental problems.

The conference membership consists of representatives of EPA, each affected State and foreign nation, international, interstate, or regional agencies, each interested Federal agency, local governments, affected industries, public and private educational institutions, and the general public.

II. A MUTUAL GOAL

Although the CZMA is broader in scope, both the NEP and CZMA are focused on the protection of coastal resources and share a common environmental goal; to maintain and enhance or protect the health of the nation's coastal resources. In achieving this goal both EPA's and NOAA's programs seek to ensure that population growth and corresponding development occurs in an environmentally sound manner.

III. POINTS OF INTERSECT OF: NEP AND CZM

- Both NEP and CZM are dependent on the political will and institutions of State and local government to take action. These Federal programs depend on the establishment and implementation of effective programs through State and local government.
- Both NEP and CZM have a strong orientation for public education, awareness and involvement.
- Both NEP and CZM programs require the development of comprehensive plans but also have a strong action orientation.
- Both NEP and CZM are designed to comprehensively address pollution abatement, living resources, and land and water resource management.

IV. TOOLS

There are several distinct tools available within the two programs to integrate these programs and work toward the same environmental goal:

- A NEP Management Conference is convened under Section 320 of the Clean Water Act to provide a forum for consensus building and problem solving.
- A NEP Comprehensive Conservation and Management Plan (CCMP) is developed by the Management Conference. The plan specifies goals and objectives for restoring and maintaining the estuary, and identifies actions, schedules and resources to meet the goals.
- A Special Area Management Plan is developed by CZM States which create a comprehensive program providing special protection for a designated geographic area.
- A CZM Section 312 evaluation is a biennial review of a CZM program which recommends future actions.
- Section 307(c)(1) of the CZMA requires Federal agencies conducting or supporting activities directly affecting

the coastal zone to do so in a manner which is consistent, to the maximum extent practicable, with Federally-approved State coastal zone management programs.

- A CZM implementation grant is made to States with approved CZMPs requiring "significant improvements" ensured in part by Section 312 evaluations.
- A CZM Section 309 grant is a competitive grant to States to integrate coastal programs and solve problems in Coastal Zones affecting more than one State.

V. EPA/NOAA CONCEPTS TO INTEGRATION OF NEPs AND CZMPs

NOAA

- To the extent permitted by law, States will be required to submit CCMPs developed under the NEP for incorporation into approved State CZM programs after approval by the Governor(s) and the EPA Administrator. CZMA Section 312 biennial evaluations will be used to ensure compliance.
- CZMA Section 312 biennial evaluations will stress activities identified by Management Conferences convened under the NEP, including activities outlined in a CCMP, or activities to support the overall objectives of the national demonstration program as defined under the NEP. As appropriate, an EPA representative would be invited to participate on the evaluations.
- CZM guidance governing the allocation of Section 309 grants for interstate coastal waters will give priority consideration to interstate estuaries and seek opportunities to coordinate activities where Management Conferences have been convened under the NEP.
- NOAA will provide scientific support and technical assistance to EPA for the development of national guidance on the management of pollution abatement and control programs to better address the survival and health of living estuarine and marine resources.

EPA

- CCMPs developed under the NEP will voluntarily, as a matter of policy, be submitted for review under the Federal consistency provisions of Section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended.

- NEP guidance and/or regulations will provide that CCMPs should be incorporated into approved CZMPs and will stress the use of existing CZMA tools, including the designation of areas of special concern and public participation and education programs, for implementation activities identified by the Management Conference.
- Decision criteria for the selection of new estuaries for the National Estuary Program will include the existence of federally approved CZMPs.
- In order to facilitate the development of CCMPs such that they are consistent, to the maximum extent practicable with the state CZMPs, NEP guidance and/or regulations will require a state coastal zone management liaison to participate on the management committee of the conferences convened pursuant to the NEP and in the development of the CCMP.

EPA/NOAA Joint Activities

- NOAA and EPA will jointly sponsor a national workshop for estuary and coastal zone management program staff, headquarters, regional, and state participants, to further explore avenues and mechanisms for coordination between and integration of these programs at the national, regional and state level.
- NOAA and EPA will conduct, where appropriate, joint reviews of state programs to facilitate the coordination of the Management Conference with state CZM programs, sharing of information sources, and the use of existing CZM tools to solve problems.
- EPA/OMEP and NOAA/OCRM will establish a mechanism at the national level for coordination and oversight of individual estuary programs under the NEP and to ensure continued integration of the NEP and CZMP.

VI. SUMMARY AND CONCLUSIONS

1. The National Estuary Program and Coastal Zone Management Program are being coordinated between NOAA and EPA.
2. The CZMA provides the broad umbrella for state management actions in the entire coastal zone; the NEP focuses on estuaries and supports the overall achievement of CZMA goals.
3. NEP is a demonstration program to show how Federal/State/local agencies can develop effective programs for dealing with environmental problems.

5. EPA guidance will require that a state coastal zone management liaison must be a member of the NEP management committee.

6. NOAA's guidance on Section 309 grants will be revised to reflect that priority consideration will be given to:
a) interstate estuaries where Management Conferences have been convened under the National Estuary program or; b) interstate projects where the knowledge and experience learned under the NEP will be expanded to additional estuaries.

APPENDIX D
SECTION 319 OF THE CLEAN WATER ACT

Sec. 319. Nonpoint Source Management Programs.

[Sec. 319 added by PL 100-4]

(a) State Assessment Reports. --

(1) Contents. -- The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which --

(A) identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act;

(B) identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

(C) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and

(D) identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i).

(2) Information Used in Preparation. -- In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), and 314, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 208(b) and 303, to the extent such elements are consistent with and fulfill the requirements of this section.

(b) State Management Programs. --

(1) In General. -- The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.

(2) Specific Contents. -- Each management program proposed for implementation under this subsection shall include each of the following:

(A) An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or particular nonpoint source designated under paragraph

(1)(B), taking into account the impact of the practice on ground water quality.

(B) An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).

(C) A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.

(D) A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.

(E) Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

(F) An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.

