

Lawrence Berkeley National Laboratory

Recent Work

Title

LESSENING THE SCOPE OF FEDERAL COASTAL ZONE MANAGEMENT: WHAT'S AT STAKE?

Permalink

<https://escholarship.org/uc/item/57w8h7nv>

Authors

Kaplan, E.
Ritschard, R.

Publication Date

1982-06-01



Lawrence Berkeley Laboratory

UNIVERSITY OF CALIFORNIA

ENERGY & ENVIRONMENT DIVISION

RECEIVED
LAWRENCE
BERKELEY LABORATORY

NOV 16 1982

LIBRARY AND
DOCUMENTS SECTION

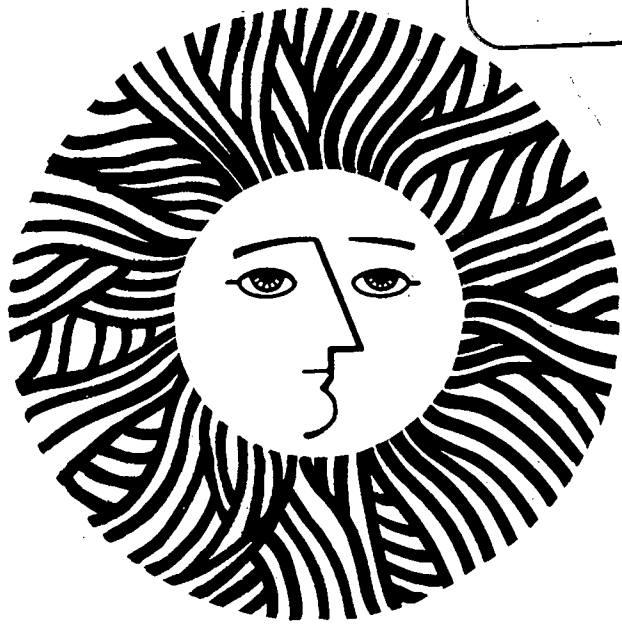
LESSENING THE SCOPE OF FEDERAL COASTAL ZONE
MANAGEMENT: WHAT'S AT STAKE?

E. Kaplan and R. Ritschard

June 1982

TWO-WEEK LOAN COPY

*This is a Library Circulating Copy
which may be borrowed for two weeks.
For a personal retention copy, call
Tech. Info. Division, Ext. 6782.*



LBL-14164
c.2

Order no.	Author (last name first)		<input type="checkbox"/> Rush order <input type="checkbox"/> Rush catalog	
Date ordered <i>11/18/82</i>	LBL-14887 Report (J) New Developments in Acid Precipitation Research, Jun. 1982, 15p. Invited Talk to be presented at the First U.S.-China Conference on Energy, Resources and Environment, Beijing, China, November 7-12, 1982, J. Harte (LBL) UC11 <i>4000</i>			
Dealer <i>JK phoned</i>	LBL-14164 Report (J) Lessening the Scope of Federal Coastal Zone Management: What's at Stake?, Jun. 1982, 49p. 11, E. Kaplan (BNL) and R. Ritschard (LBL) UC11			
LC card:	Edition		Date of pub.	
Received <i>od 7/3/83</i>	No. of vols.	No. of copies	List price	Estimate
Destination	Secondhand dealer (other references on verso)		Cat. no.	Item no.
	Fund (If dept. fd. give acct no. only)		Requested by:	
			Authorized by:	

LEGAL

This book was prepared of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, their employees, makes any warranty, implied, or assumes any legal liability for the accuracy, completeness, or of any information, apparatus, product disclosed, or represents that its use will infringe privately owned rights. Reference to any specific commercial product, service, or trademark, or otherwise, does not necessarily constitute an endorsement or commendation by the United States Government or thereof. The opinions of those expressed here do not necessarily state those of the United States Government or any agency thereof.

Printed in the United States of America
 Available from
 National Technical Information Service
 U.S. Department of Commerce
 5285 Port Royal Road
 Springfield, VA 22161
 Price Code: A

DISCLAIMER

This document was prepared as an account of work sponsored by the United States Government. While this document is believed to contain correct information, neither the United States Government nor any agency thereof, nor the Regents of the University of California, nor any of their employees, makes any warranty, express or implied, or assumes any legal responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by its trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof, or the Regents of the University of California. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof or the Regents of the University of California.

LBL-14164
BNL-30948

LESSENING THE SCOPE OF FEDERAL COASTAL ZONE MANAGEMENT:
WHAT'S AT STAKE?

E. Kaplan,* and R. Ritschard**

JUNE 1982

*ENERGY AND ECONOMIC ANALYSIS DIVISION
DEPARTMENT OF ENERGY AND ENVIRONMENT
BROOKHAVEN NATIONAL LABORATORY
UPTON, NEW YORK 11978
Undercontract No. DE-AC02-76CH00016

**ENERGY AND ENVIRONMENT DIVISION
LAWRENCE BERKELEY LABORATORY
BERKELEY, CALIFORNIA 94720
Under Contract No. DE-AC03-76SF00098
with the U.S. Department of Energy

LESSENING THE SCOPE OF FEDERAL COASTAL ZONE MANAGEMENT:
WHAT'S AT STAKE?

E. Kaplan, and R. Ritschard

June 1982

TABLE OF CONTENTS

1. INTRODUCTION 2

2. OPERATION AND COORDINATION OF COASTAL PROGRAMS 3

 Roles of Federal Agencies 5

 State Involvement 10

 Coastal Energy Impact Program 11

3. IMPACT OF DECREASED FEDERAL CZM FUNDING ON THE STATES. 19

4. REGIONAL COORDINATION 24

5. THE NATIONAL INTEREST. 26

 Conflicting National Priorities 26

 National Interest Energy Programs 28

 The Conflict with States Rights 31

 The "Consistency" Provision 34

 The California OCS Controversy. 35

 The "Directly Affecting" Controversy. 36

 OCS Five-Year Leasing Plans 38

6. PLANNING AND MANAGEMENT. 41

7. CONCLUSIONS. 44

LIST OF TABLES

<u>Table</u>		<u>Page</u>
1	Federal Laws Affecting Energy Development On Coastal Areas	4
2	Federal Agencies Concerned with Use Management	4
3	Major Regulatory Functions of Federal Agencies by Energy Category	6
4	Status of State Coastal Zone Management Programs	12
5	Federal Levels for Coastal Energy Impact Program	14
6	Predicted Impact on States of Phase-Out of CZM Implementation Grants in Fy 1982	21
7	Major Energy Facilities	30

1. INTRODUCTION

Widespread cutbacks in the federal budget have affected federal, state, and local coastal zone management programs. The possible effects of these budgetary cuts on the operation and coordination of coastal programs are reviewed in this report. Of special interest are impacts relating to energy exploration and development.

Federal legislation introduced during the past two decades has dramatically increased the protection and management of valuable coastal resources. At the same time, systems for managing coastal development have become more complex and costly. Although many coastal development projects are approved, the present pluralistic system of regulatory review has been criticized because it has occasionally contributed to protracted disputes and required increased coordination among federal, state, and local agencies assessing development proposals. Inconsistent interpretation of national policies, uncertainty in the permit process, and other aspects of the current system can sometimes delay or "kill" economic development or energy-related projects, cause the loss of ecologically valuable coastal resources, or generate excessive costs to both private investors and the public. For these reasons, the Office of Management and Budget (OMB) has proposed eliminating or greatly reducing federal support of coastal management programs, and Congress has already reduced funding.

Federal support of coastal management programs is mandated chiefly by the 1972 Coastal Zone Management Act (CZMA), P.L. 92-583, its 1976 amendments, P.L. 94-370, and the Coastal Zone Management Improvement Act of 1980 (CZMIA). The 1972 law allocated Federal funds--about \$40 million a year--to help states and localities develop coastal zone management plans; these plans also had to meet specified criteria. The purpose was to help coastal states adjust to increased economic activity, including energy development, along their shores.

The CZM program is the primary focus of this report, although many federal agencies with little or no formal role in the CZM also affect coastal affairs, a circumstance that complicates any analysis of the impact of cutbacks. Energy development, for example, involves a broad

range of concerns: offshore oil and gas; petroleum transshipment; nuclear power plants; coal exports; ocean thermal energy conversion (OTEC) facilities; wave and tidal power generators; and storage and refining of petroleum.

The present scope of federal and state involvement in coastal zone management is reviewed particularly in relation to energy development. The impact of decreased federal coastal zone funding is next outlined as it pertains to individual states. A brief description of efforts at regional coordination of coastal zone resources as well as the important issues of national interest and consistency are reviewed using specific examples. Finally, we conclude by characterizing the need for an effective coastal planning and management scheme, which includes DOE in an advisory role.

2. OPERATION AND COORDINATION OF COASTAL PROGRAMS

Under present coastal zone management schemes each coastal state has been encouraged to establish its own management program. Inland boundaries, administrative structures, and developmental priorities are left up to each state; the outer limit of jurisdiction is the edge of the three-mile territorial sea. Coordination between these state efforts and various federal ocean programs depends on negotiations by each state with each federal agency. Each state establishes its own policies, so that the degree of consistency between state and federal programs varies from segment to segment of the territorial sea. Because the CZM program relies on voluntary participation by states, some segments of the coast may lack comprehensive and coordinated planning and management, while adjacent segment may have an approved program.

Section 302(j) of the Coastal Zone Management Improvement Act of 1980 (CZMIA) refers to state planning in terms of a delicate balancing of power, that "...encourages(s) the states to exercise their full authority over the land and waters of the coastal zone..." The Act does not further define "full authority." Recent federal-state conflicts over the question of state authority are discussed later. Besides the CZMIA, at least 16 other federal laws relate environmental concerns to energy development in the coastal zone (Table 1). These laws involve at least eight major federal agencies, and over twenty offices, administrations, surveys, and services within these agencies (Table 2).

Table 1. Federal laws affecting energy development on coastal areas.

Coastal Zone Management Act (1972) and 1976 Amendments
Clean Air Act
Coastal Zone Management Improvement Act of 1980
Deepwater Port Act
Endangered Species Act
Federal Aviation Act of 1958
Federal Water Pollution Control Act
Fishery Conservation Act
Intervention on the High Seas Act
Marine Mammal Protection Act
Marine Protection, Research, and Sanctuaries Act
Marine Resources and Engineering Development Act
Military Public Lands Withdrawals Act
National Environmental Policy Act
Outer Continental Shelf Lands Act
Ports and Waterways Safety Act
Rivers and Harbors Act of 1899
Water Resources Planning Act

Table 2. Federal agencies concerned with coastal use management.

Department of Commerce
 National Oceanic and Atmospheric Administration
 Office of Coastal Zone Management
 National Ocean Survey
 Economic Development Administration
 National Marine Fisheries Service
 Sea Grant
 Environmental Data and Information Services
Department of Defense
 (Corps of Engineers)
Department of Energy
 (Federal Energy Regulatory Commission)
Department of Health & Human Services
Department of Interior
 Bureau of Outdoor Recreation
 Bureau of Land Management
 Fish and Wildlife Service
 National Park Service
 U.S. Geological Survey
Department of Transportation
 Coast Guard
 Maritime Administration
 Office of Pipeline Safety
Environmental Protection Agency
National Aeronautics and Space Administration

Several other agencies--for a total of about 15--also have some role to play in coastal affairs. The large number of federal agencies with some interest in the coastal zone contributes to a lack of focus and a lack of accountability. This is a key consideration for all future analysis of coastal management programs at the Federal level. Which is the lead agency? Who is to coordinate? Who is to listen? Who is to adjudicate? Table 3 lists most of these and their functions by energy category, and the most important are described below.

Roles of Federal Agencies

Department of the Interior, Bureau of Land Management (BLM)

The Outer Continental Shelf Lands Act of 1953 gave BLM mineral disposal responsibilities on submerged lands under the Outer Continental Shelf (OCS). The Classification and Multiple Use Act of 1964 classified public lands for retention in public ownership, and the Federal Land Policy and Management Act of 1976 provided a comprehensive multiple-use charter for public lands under BLM stewardship. This includes 417 million acres of public land, subsurface rights to 840 million acres, and more than one billion acres of submerged lands on the Outer Continental Shelf.

The bureau issues onshore leases, holds competitive sales on the OCS, and processes operations plans required under new surface management regulations. Its offshore energy program is intended to ensure the environmental integrity of areas affected by OCS oil and gas development and the receipt of fair market value for resources sold.

Department of the Interior, U.S. Geological Survey (USGS)

Perhaps best known for its cartographic surveys, the USGS also evaluates mineral resources of federal lands, monitors seismic and volcanic processes, appraises water resources, and supervises activities authorized under mineral leases granted by the Bureau of Land Management. The Outer Continental Shelf and coastal areas are included in these programs.

Table 3. Major regulatory functions of Federal agencies by energy category.

Executive Department/Agency	DOC	DOD	DOE		DOI				DOT	EPA	NRC	USDA
Sub-Unit	NMFS	COE	DOE	FERC	BLM	FWS	GS	NPS	CG			FS
ENERGY CATEGORY												
Oil & Gas - OCS	C	P	C	P	F	C	P,F	C	P	P		
Oil, Gas, LNG - Onshore		P		P	F	C			P			
Oil Refineries	C	P			C				P	F		
Hydroelectric	C	P		P	F	C		F		P		F
Nuclear - Onshore	C	P			F	C				P	P	F
Nuclear - Offshore	C	P				C			P	P	P	
Fossil-fuel power plants	C	P		P	F	C		F		P		F
Transmission Lines		P	C	P	F	C		F				F

LEGEND

P - Permits on public and private lands
 F - Permits, leases and rights-of-way on Federal lands
 C - Consultation or review

BLM - Bureau of Land Management
 CG - U.S. Coast Guard
 COE - Corps of Engineers
 DOC - Department of Commerce
 DOD - Department of Defense
 DOE - Department of Energy
 DOI - Department of Interior
 DOT - Department of Transportation

EPA - Environmental Protection Agency
 FERC - Federal Energy Regulatory Commission
 FS - U.S. Forest Service
 FWS - Fish & Wildlife Service
 GS - U.S. Geological Survey
 NMFS - National Marine Fisheries Service
 NPS - National Park Service
 NRC - Nuclear Regulatory Commission
 USDA - US Department of Agriculture

Department of the Interior, Fish and Wildlife Service

This agency is responsible for protecting certain marine mammals and other endangered species, and their habitats.

Department of Commerce, National Oceanic and Atmospheric Administration
(NOAA)

The NOAA is responsible for identifying and conserving marine and coastal resources, predicting weather, and providing maps and data for navigation. Its Office of Coastal Zone Management encourages coastal states and territories to develop coastal management programs and administers grants-in-aid for areas affected by offshore oil and gas development.

The NOAA has programs to predict the effects of ocean dumping and funds research to model the spread of oil spills. It has identified about 20 areas that are vulnerable to oil spills because of proximity to seaports, refineries, petrochemical industries, and crude-oil pipeline terminals.

Department of Defense, Army Corps of Engineers

Under Section 10 of the Rivers and Harbors Act of 1899, the Corps of Engineers grants permits for the construction of facilities that are sited in or affect navigable waters. Section 404 of the Federal Water Pollution Control Act Amendments of 1972 requires the Corps to use a permit system to regulate the discharge of dredged or fill material into navigable waters. The Ocean Dumping Act (Title 3 of the Marine Protection, Research and Sanctuaries Act) gives the Corps additional permitting authority for dumping of dredged material, subject to approval of the Environmental Protection Agency, on sites, materials, and quantities. Additionally, the Corps carries out a range of dredging, construction, flood control, erosion control, and development projects in the coastal zones.

Department of Transportation, U.S. Coast Guard.

The Coast Guard is responsible for search and rescue, enforcement of marine laws and treaties, marine safety, and clean-up of oil spills.

The Coast Guard plans to establish a comprehensive system of liability and compensation for damages caused by oil pollution for oil discharges and a per-barrel fee levied on owners and operators of potential sources of oil discharges.

A massive-spill plan which is being developed outlines equipment sites, equipment-moving strategies, and response-time requirements. The Coast Guard plans to use its open-water oil-containment barriers as recovery systems, and to obtain new systems. The highest priority locations for recovery systems are New York; Galveston, Texas; Los Angeles; Kodiak, Alaska; Clearwater, Florida; Philadelphia; Boston; and Seattle.

Council on Environmental Quality

The assigned responsibilities of the Council on Environmental Quality (CEQ) are contained in the National Environmental Policy Act (PL-91-190), the Environmental Quality Act of 1970 (PL-91-224), and Executive Order No. 11514, as amended by Executive Order No. 11991, and Reorganization Plan No. 1 of 1977. The Council provides the President and federal agencies with policy advice on environmental matters, including coastal issues, and develops new environmental initiatives for the President.

Environmental Protection Agency (EPA)

The EPA carries out a wide range of tasks relating to the coastal zone. Under the Clean Water Act it administers the National Pollutant Discharge Elimination System (NPDES), which includes issuing and enforcing permits in cooperations with the states. The agency monitors ocean dumping under the Marine Protection, Research and Sanctuaries Act, as well as ocean discharge of industrial and municipal waste; it also it regulates treatment, disposal, and shipment of hazardous waste in the coastal zone.

Nuclear Regulatory Commission (NRC)

The NRC is responsible for ensuring that nuclear facilities are operated with regard for the environment, public health and safety, and security. The Commission issues construction permits and operating licenses for nuclear power plants, inspects facilities, and sets standards for equipment, waste management, and transport of radioactive materials. It is engaged in coastal issues primarily when coastal sites are chosen or proposed for nuclear facilities. Ocean dumping of radioactive wastes and ship-to-shore transfer of radioactive materials may also involve the NRC.

Department of Energy (DOE)

DOE includes national environmental protection goals in its energy programs. These goals include restoring, protecting, and enhancing environmental quality and ensuring public health and safety. The Office of Environmental Policy has the responsibility to assess the environmental, health, and safety factors related to all energy programs, and to assess control and safety requirements, oversee compliance with standards and regulations, and to plan and conduct health and environmental effects research.

With respect to coastal management, DOE at one time was to provide technical assistance, review state CZM Programs as they relate to energy issues, advise the states and the Office of Coastal Management (OCZM) of its findings, and become involved in implementation of CZM Programs.¹

State Involvement

Some laws and agencies directly or indirectly authorize state, regional, or local institutions to concern themselves with energy issues. The CZMA encourages states to develop a planning process for energy facilities that are within or are affected by the coastal zone. This planning includes program development and implementation and may be delegated by states to units of local government. From the perspective of energy development this involves more entities in energy planning programs, and increases opportunities for conflict because of "...a tendency on the part of local planners to let someone else worry about accommodating energy facilities and to set correspondingly restrictive land and water use regulations."²

State and local participation is encouraged in the Coastal Energy Impact Program (CEIP), established by the 1976 CZMA amendments. This program provides financial assistance "to meet state and local needs resulting from new or expanded energy activity affecting the coastal zone" [CZMA, Sec. 302(j)]. The CEIP has thus provided the DOE with an exceptional opportunity for two-way communication with units of government and the private sector most directly concerned with possible impacts from energy-related activities, although to date this role has been informal at best.

¹Guidebook, "Coastal Zone/Energy Review," DOE Office of Leasing Policy Development (August 1979). This office was transferred in 1982 to the Department of the Interior.

²Ibid, p. 19

State (rather than federal) control of coordinated programs such as CZM tends to increase the likelihood of fragmented approaches to problems. Nevertheless, regional variations in physical characteristics (current, temperature, bottom topography), historical patterns of use, political structure, and legal systems may make it essential to allow for a wide degree of variation in coastal management programs if they are to successfully meet the diversity of state and local interests and needs. The present status of state CZM programs is summarized in Table 4.

Coastal Energy Impact Program (CEIP)

The 1976 amendments to the Coastal Zone Management Act (CZMA, Sec.302(i)) state that "the national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone." The Coastal Energy Impact Program (CZMA, Section 308) is the central element of the 1976 amendments for implementing this policy.

Table 4. Status of state coastal zone management programs.

State or Commonwealth	Actual or estimated federal approval date, by fiscal year (ends 9/30)	Status as of 10/1/82
Washington	1976	Approved
Oregon	1977	Approved
California	1978	Approved
Massachusetts	1978	Approved
Wisconsin	1978	Approved
Rhode Island	1978	Approved
Michigan	1978	Approved
North Carolina	1978	Approved
Puerto Rico	1978	Approved
Hawaii	1978	Approved
Maine	1978	Approved
Maryland	1978	Approved
New Jersey (Bay and Ocean Shore Segment)	1978	Approved
Virgin Islands	1979	Approved
Alaska	1979	Approved
Guam	1979	Approved
Delaware	1979	Approved
Alabama	1979	
South Carolina	1979	Approved
Louisiana	1980	Approved
Mississippi	1980	Approved
Connecticut	1980	Approved
Pennsylvania	1980	Approved
New Jersey (Remaining Section)	1980	Approved
Northern Marianas	1980	Approved
America Somoa	1980	Approved
Florida	1981	Approved
New York	1982	Approved
New Hampshire	(1)	(1)
Ohio	Probably Not	(2)
Indiana	Probably Not	(2)
Georgia	Probably Not	(2)
Virginia	Probably Not	(2,3)
Minnesota	Probably Not	(2)
Illinois	Probably Not	(2)
Texas	Probably Not	(2)

Source: U.S. Department of Commerce, NOAA, Office of Coastal Zone Management.

- (1) Phase 1, the ocean and harbor segment, was approved May 1982. The remaining segment, covering all areas under tidal influence, will be developed over the next two years.
- (2) These states are termed "non-participating". That is, they do not have an approved program nor are they planning to submit one for review and approval.
- (3) Governor Robb has requested reinitiation of Virginia's status. Since April 1979, Virginia was classified as non-participating.

CEIP is designed to help states minimize the social, economic and environmental disruptions that result from new or expanded coastal energy activity, especially oil and gas exploration and development of the Outer Continental Shelf (OCS). By helping states to plan for and provide needed new public facilities and services while preventing or reducing "unavoidable" losses of environmental or recreational resources, the program is intended to balance the need for more energy resources, in the national interest, with the need to preserve our coastal areas for the many other valuable functions they perform.

Money for CEIP grants, loans, and guarantees comes from two interlocking sources: the Coastal Energy Impact (CEI) Fund and formula grants. The CEI Fund is for public facilities and services required by all new coastal energy activity. Congress authorized \$40 million a year until October 1, 1986, for a total appropriation of \$800 million over 10 years. Formula grants provide additional money (up to \$50 million annually until September 30, 1984) to states to help them mitigate the impacts of OCS activity. The total authorized was \$1.2 billion: grants may be used only after a state has exhausted its CEI Fund allotment and after offshore leasing begins.

Support for the CEIP has changed drastically in fiscal year 1982. Congress decided in 1981 to support both the formula grants for coastal zone management and the CEIP using the \$40 million left in the CEIP loan fund. Most of the funds (\$33 million) were allocated for state coastal management programs, while CEIP received only \$7 million. The CEIP in FY 1982 is scheduled to grant this money to participating states for the following specific activities: energy impact planning, OCS state participation, and mitigation of impacts from the transport and storage of coal at coastal sites. In addition, this will probably be the last year of the CEIP program. This change in funding is outlined in Table 5.

Table 5. Federal levels for Coastal Energy Impact Program. (CEIP)

Before 1981:

\$40 million/year for CEI Fund

Up to \$50 million/year in formula grants

Total for 1976-1986 period: up to \$1.2 billion

1981:

\$40 million for CEI Fund and formula grants, combined

\$7 million for CEIP

\$33 million for state programs

After 1981:

No funding planned

Several important energy-related issues have been addressed by CEIP over the past five years. The following examples, illustrate the variety of programs created by the states and supported by CEIP:

Louisiana. CEIP funds have already financed 100 projects costing \$56 million; another \$144 million worth of projects are jeopardized by the proposed budget cuts. The projects focus on existing proposals.

- Preventing saltwater intrusion into and freshwater diversions from marshes caused by access canals and other marsh damage from oil and gas activities.
- Helping local communities affected by oil and gas activities to maintain adequate fresh-water supplies.
- Protecting shrimp fisheries from petroleum industry activities.

- Financing other infrastructure need (police, fire, hospitals) created by the influx of migrant and temporary oil and gas company employees.
- Preventing coastal erosion.

Maryland.

Maryland, due in part to its geography, had established coastal-related state programs prior to the Federal CZM Act. Federal support however, allowed the state to consolidate its activities into an effective program. The following programs would cease if CEIP funds were curtailed:

- Mitigation of coal transshipment impacts
- Mitigation study of Outer Continental Shelf exploitation.
- OTEC research
- Studies of power plant conversions to coal.

New Jersey.

New Jersey has had no new state-funded staff or contract work for coastal management since the CZM Act passed eight years ago. All new staff and programs are supported by federal funds. State funding in the matching portion of the CZM/CEIP grants is used only for the mapping of tidelands.

California.

California had a coastal management program long before enactment of the federal CZM Act and is one of the states likely to be least affected by cuts in federal CZM funding. This is partly because regulatory responsibilities are being gradually turned over to counties and localities, transforming state regulation into a monitoring program. Overall, state CZM regulatory costs are expected to decline from \$16 million to \$11 million this year, to \$7-8 million in 1982, and thereafter to \$4-5 million. California's regulatory and review activities will therefore

not be affected by cuts in federal CZM support. The state, however, does not have a program to replace federal CEIP funds.

Development of Ports and Waterfronts

This nation's 170 ports represent one of the most important economic entities and are another source of CZM program accomplishments. In 1970 the port industry contributed \$15 billion to GNP; it provided 1,046,800 jobs; and contributed \$13.3 billion in personal and business income, \$5.2 billion in federal taxes, and \$2 billion in state and local taxes.

Several state coastal management programs have undertaken extensive port planning and management efforts, in conjunction with state port authorities, federal and other state agencies. They have, where possible, fostered redevelopment, retrofitting, and more intensive use of available port facilities, and promoted port expansions where appropriate. Several states have acted to prevent the exclusion of marine industrial uses by placing the highest priority on coastal-dependent uses. To the same end, the Coastal Zone Management Program has designated 12 areas as suitable for ports. These efforts provide port planners and government officials with clearly defined locations for future development and expansion. State coastal management programs have also enhanced the management of commercial waterfront areas and have been a catalyst for state, local, and private investment in these areas. Many waterfront programs will be terminated if federal CZM funds are eliminated.

In FY 1980, the CEIP came under extensive criticism from Congressional and Executive sources, the Office of Management and Budget. There were doubts whether some of the negative effects that the program was intended to address had actually materialized, as well as whether CEIP had met the purposes of its enabling legislation (i.e., to help states cope with expanded energy activities). The NOAA Office of Coastal Zone Management and its Office of Budget and Program Evaluation

conducted a review of CEIP on these issues,³ reaching the following conclusions:

A. Did presumed negative effects materialize?

Generally, the answer was no. Not as much new coastal energy developments occurred as were expected. The negative socioeconomic and environmental effects thus did not materialize as well, though it can be [and was] argued that such was the case because CEIP allows States to develop necessary expertise to plan for, and thus mitigate, expected negative impacts.

B. Did CEIP fulfill its establishing legislation?

The answer was mixed. CEIP apparently did improve state and local capacities to deal with expanded energy activities [which to date have not fully materialized]. CEIP also encouraged state participation in the CZM program. The program (i.e., CEIP) did not affect "basic attitudes toward energy development... [And] generally has not muted any opposition to or encouraged supporters of energy development."⁴

The underlying assumption of the CEIP is that an acceptable accommodation, rather than a stalemate, should be achieved between the national policies of energy independence and environmental protection. In this respect, the CEIP may be considered successful, insofar as it has encouraged expertise and institutions at state and local levels to develop and help reasoned negotiation take the place of outright opposition to coastal energy activities.

CEIP has created a system in which state and local opposition to OCS and other energy activities is lessened by joint planning and problem solving.

³U.S. Department of Commerce, "Coastal Energy Impact Program, An Evaluation," NOAA (Ocean and Office of Budget and Program Evaluation, August 1980.

⁴See Reference 3.

Such efforts will not do as well in a poorly funded program or will under no program at all. Since most coastal states still believe that impacts are going to occur, the issue is who is responsible for dealing with them.

It is too early to predict whether the administration's change in policy regarding coastal energy planning will result in delays in energy development or in expedited activities. One can foresee, however, that many of the conflicts previously moderated by the CEIP could become more critical and could result in further litigation.

3. IMPACT OF DECREASED FEDERAL CZM FUNDING ON THE STATES

The authors conducted telephone interviews with state and Federal officials, CZM experts, and industry representatives. In addition, the Coastal States Organization canvassed nearly all the coastal states and territories to determine the impact of proposed federal cutbacks, particularly the OMB proposal, on their programs.⁵ Anticipated impacts of decreased federal funding may be summarized as follows.

- State and federal regulations regarding Outer Continental Shelf oil and gas activities (OCS) is a key problem. Decreased federal CZM support comes at a time when OCS activity is rising, in part due to an accelerated federal leasing program.
- Most states will be forced to dismantle or reduce their CZM programs. The Coastal States Organization found that the termination of funding would result in full dismantlement of CZM agencies and abandonment of coastal management efforts in 10 states. Another 10 states would discontinue separate planning efforts but may be able to continue some program activities at a very curtailed level. Only five of the 25 approved state programs would remain intact, and even these would be significantly reduced in scope. States currently developing CZM programs would be unable to complete their efforts (Table 6).
- Local participation in CZM programs will cease in most states for lack of funds.
- State coordination with federal agencies will decline.

⁵Coastal States Organization, "Coastal Management--A Sound Investment," April 1981.

- States remain adamant about maintaining their regulatory and review powers. For example, CZM officials in Louisiana, Maryland, California, and New Jersey stated that their governors intend to keep such powers intact and would provide some state funds if necessary.
- If state staffs are curtailed due to decreases in federal support while state regulations and permit requirements remain unchanged, then the time needed to review and process energy development proposals will lengthen. This will create project delays and raise project costs.

Table 6. Predicted impact on states of phase-out of CZM implementation grants in FY 1982.

I. States with approved programs likely to dismantle the CZM agency and discontinue coastal planning efforts (includes U.S. territories and protectorates):

Alabama	Maine
Alaska	Massachusetts
American Samoa	Northern Marianas
Connecticut	Pennsylvania
Guam	Virgin Islands

II. States with approved programs likely to terminate most coastal management functions but continue to carry out basic laws at a greatly reduced level of staffing and enforcement:

Delaware	North Carolina
Hawaii	Oregon
Maryland	Puerto Rico
Michigan	Washington
Mississippi	Wisconsin

III. States with approved programs likely to continue the coastal management functions at a reduced level:

California	Rhode Island
Louisiana	South Carolina
New Jersey	

IV. States without approved programs and unlikely to pursue federal approval:

Florida	New York
Indiana	Ohio
New Hampshire	Texas

Source: Coastal States Organization, "Coastal Management--A Sound Investment," April 1981, p. 10.

Clearly, the states are not yet in a position to assume the full financial burden of coastal zone management. Of the 25 coastal states and territories with approved coastal management programs, seven received approval in 1980, six in 1979, and ten in 1978. In other words, nearly half of the approved programs have been functioning for less than two years, and all but two programs (Washington and Oregon) have been functioning for less than three years. Most of these programs have had little opportunity to become institutionalized and still rely heavily on the federal government's commitment to support their

implementation efforts. Until recently, they had no reason to believe that they would be forced to immediately assume the full financial burden for coastal management programs. As a result, they are totally unprepared to absorb these costs.

Notwithstanding OMB statements to the contrary, there are two primary reasons why it is impossible for the coastal states to assume the full financial burden of implementing their coastal management programs at the end of the current fiscal year. First, many of them face the same fiscal pressures that the federal government does; they do not have the funds available for sudden, unanticipated expenses. Second, the abruptness of the proposed termination does not provide the states with the lead time they need to adjust their budgets.

The federal government established a national coastal program with federal funding to states through at least 1985 to encourage state participation. The CZM program turns primary management responsibility over to each state once its CZM plan has been approved by the federal government. Many states have already scheduled projects through 1985. The federal government's "good faith" may be shattered in the eyes of the states according to several state and federal CZM managers, if federal support is cut.

As part of its 1980 reauthorization actions, Congress also recognized that most state programs are not fully institutionalized and indicated that this must occur before federal financial assistance could be withdrawn.

It noted that coastal management programs in the 25 coastal states and territories currently receiving Section 306 implementation funds have reached "a critical stage during which the tools of implementation must be enhanced to encourage substantive results from the processes which states have been developing under Section 305."⁶

Despite the high approval rate of state programs, it is misleading to suggest that the CZMA has achieved all its objectives. Eight coastal states remain "outside" the program, and it is unlikely that they will adopt management programs if federal financial assistance is terminated. Indeed, just last year, Congress indicated its hope that first reauthorization of the CZMA would be an incentive for nonparticipating states to join.

No matter how farsighted the actions of Congress may be, however, the fact remains that the present Administration has no firm policy regarding the coastal zone or coastal energy development, beyond the broad desire to maximize the development of energy sources across the board.

Although tangible accomplishments have been achieved as a result of the coastal zone management program, much remains to be done. As members of the House Oceanography Subcommittee heard in testimony presented by various interest groups on March 31, 1981, there is great concern that without continued federal funds the state programs will fail before all of the objectives of the federal programs are achieved.

⁶House Committee Report No. 96-1012, May 16, 1980, p. 15.

4. REGIONAL COORDINATION

Few regional coordination efforts exist to manage the coastal zone. One can point to the regional river basin commissions, but they dealt with freshwater issues, not with the coastal zone as such. They were established to coordinate fragmented local and state water jurisdictions and to allocate interstate and interbasin waters. Funding for most basin commissions ended at the close of FY 1981.

An exception to the lack of coordinating organizations, and an example of a successful multiagency effort to review permit applications, is provided by a group of federal and state resource management agencies in the State of Washington. The group, which calls itself "Muskoxen," was organized in 1978 by representatives of the Environmental Protection Agency, the Fish and Wildlife Service, the National Marine Fisheries Service, and the State of Washington's Department of Ecology. The group holds informal monthly meetings to discuss, at the preapplication state, proposed projects, including energy facilities, that will be coming before one or more of the agencies for licensing, permitting, or some other form of review and approval. Developers are encouraged to present their proposals to the group at a very early stage, before major design work is complete and while there is still opportunity to consider alternatives.

Proposed projects are placed on an agenda for discussion at the request of any participating agency. That agency leads the discussion, stating its concerns and asking others' opinions. A site visit may be reported, with photographs and other materials presented to document vegetation, wildlife, and apparent water quality. The group attempts to reach a consensus on the impact of the proposed project, the value of the resource to be affected, alternative actions, potential mitigation measures, and conditions that may be set on permits. However, no pressure is exerted to force a group decision. Coordination may also be furthered through discussion with local planners. The preapplication review saves the developer time and money during initial project design. Benefits of this informal regional coordination effort include:

- Problem areas are identified early in process, and applicants are alerted to the full range of federal and state agency requirements and concerns.
- The formal regulatory review and approval process under these agencies' authorities is accelerated by reducing the need for each agency to conduct an independent investigation.
- The agencies can achieve an optimal decision by balancing the viewpoints of all agencies involved.

Informal coordinating mechanisms of this kind could be established in any area, using existing federal agency authority and operating requirements and without elaborate arrangements for structure and procedure. In the new fiscal climate, they may be the best way to coordinate coastal zone planning.

5. THE NATIONAL INTEREST

[The relationship of federal and state governments] "cannot be settled by the opinion of any one generation, because it is a question of growth, and every successive state at our political and economic development gives it anew aspect, makes it a new question."

--Woodrow Wilson

The national interest is perhaps the most important and complex of several major legal issues related to energy development, environmental protection, and coastal management. It involves two national priorities, and their sometimes irreconcilable conflicts: energy self-sufficiency and environmental protection.

Conflicting National Priorities

The Department of Energy Organization Act of 1977 (42USC 7101 et seq.) clearly states Congressional desire for a strong, well-coordinated national policy of energy self-sufficiency. Congress based this policy on conservation, the development and commercialization of technologies using renewable energy resources, the cooperation of federal, state, and local governments, and the incorporation of national environmental goals. The Act established DOE as the federal agency entrusted with these responsibilities.

The Coastal Zone Management Act of 1972 was enacted because of Congressional recognition of the economic and ecological importance of the coastal zone and of the public's concern about this area. The statute recognized the need for adequate consideration of national interests in the siting of energy facilities. Then, primarily because of the 1973 oil embargo and its subsequent energy shortages, the 1976 CZM amendments enunciated the national security aspect of energy policy more clearly: the intent of the amendments were

to encourage new or expanded oil and natural gas production in an orderly manner from the Nation's Outer Continental Shelf by providing for financial assistance to meet state and local needs resulting from specified new or expanded energy activity in or affecting the coastal zone.⁷

Many national priority energy development activities inevitably lead to some environmental degradation. For example, the continuing importation of foreign oil creates heavy pressure for modifications of ports and waterways. Only deepwater ports can handle large (100,000-500,000 deadweight ton) supertankers, yet no such facility exists on the East coast, and only three exist on the west coast (Puget Sound, Long Beach, and Los Angeles). The deepest Gulf Coast port is 40 feet.

Two options exist in such cases. One is business as usual, where large tankers may proceed to port when their drafts are sufficiently reduced to navigate shallow spillages. A second option is to dredge a deeper channel, install single-point mooring (SPM), and allow the supertanker to discharge its cargo to a pipeline connected to a refinery. The average oil spill rate at deepwater SPM terminals has been less than one barrel for every one million barrels handled.⁸ This option requires dredging, laying and covering a submerged pipeline, building onshore facilities of considerable acreage (marine terminals for oil storage required approximately 30 acres; pipelines and landfills require a 50 to 100 foot right-of-way, 40 acres for pumping stations, and 60 acres for terminals), and accepting some air and water pollution (e.g., exhaust emissions, chronic low-level leakages of petroleum, and biochemical oxygen demand suspended solids.)^{9,10}

⁷CZM Act Amendments of 1976, P.L. 94-307, 90 Stat 1013, 16 U.S.C. 1451.

⁸Office of Technology Assessment, "Coastal Effects of Offshore Energy Systems," (November 1976), Volumes 1 and 2.

⁹The Conservation Foundation Source Book: "Onshore Impacts of OCS Oil and Gas Development," May 1977.

¹⁰N.E. River Basin Commission, "Factbook: Onshore Facilities Related to Offshore Oil and Gas Development," Nov. 1976.

OCS activities mentioned in the 1976 CZMA Amendments represent another energy program of national importance. Significant damage to coastal waters may accrue because of increased surface traffic, increased subsurface hazard, and loss of fish habitat.

Consider an example of the last item. Annual fish landings from New England's Georges Bank total about \$158 million, with an estimated net economic benefit exceeding \$1 billion. Estimates of sustained annual landings under improved fish management practices approach \$229 million. This contrasts with a net value of at least \$558 million in oil and reserves under Georges Bank (based on reserve estimates of 123-530 million barrels of oil and 870-3500 billion cubic feet of natural gas). This amount of oil would satisfy about one week to one month of our needs at current national levels of consumption.¹¹ Oil production and commercial fishing at Georges Bank (or elsewhere) are not mutually exclusive, but impacts on coastal waters are unavoidable to some extent. Furthermore, OCS drilling requires extensive land-based supports: service bases (15-75 acres), steel and concrete platform fabrication yards (200-1000 acres), pipe coating yards (100-150 acres), etc. These land operations also involve air pollution (sand, metals, dust, cement, hydrocarbons), and water pollution (chemicals, heavy metals, and petroleum).

National Interest Energy Programs

Both the original CZM Act and its amendments mention "national interests." The amendments clearly state "the national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone." (Sec. 302(i)). Table 7 indicates "major energy facilities" that have been so designated by the CZMA and DOE as in the national

¹¹The American Petroleum Institute (30 September, 1981, Bulletin) states that the amount of oil and gas on Georges Bank may be large enough to supply New England's needs for 30 to 40 years.

interest. In a broad interpretation, one might consider any energy-related facility that is consistent with the self-sufficiency policy and of a larger-than-local scale as meeting the national interest criterion. Note that a "larger-than-local" scale does not necessarily imply a facility requiring land in more than one county or state. For example, a refinery for OCS oil located at a small Massachusetts coastal site might supply large areas of the Northeast with fuel oil and thereby be considered a larger-than-local interest.

Table 7. Major energy facilities (for classification purposes under the CZMA).

- Electric generating plants, including those involving fossil or fuel biomass fuels, nuclear power, direct solar energy, ocean thermal energy conservation, tidal or wave power, or geothermal energy;
 - Petroleum refineries and associated facilities;
 - Gasification plants;
 - Facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas;
 - Uranium enrichment or nuclear fuel processing facilities;
 - Facilities to separate oil, water, or gas;
 - Drilling rigs, platforms, subsea completions, and subsea production systems;
 - Construction yards for platforms and exploration rigs, pipe coating yards, bases supporting platforms, and pipeline installation, and crew supply bases;
 - Oil and gas storage facilities, including salt domes (such as those used in DOE's Strategic Petroleum Reserve program);
 - Marine pipeline systems, including pressure sources, gathering lines, pipeline, intermediate pressure boosting facilities, and landfall sites;
 - Oil and gas processing facilities;
 - Transportation systems for tankers or helicopters, heliports, and tug-boats, crew boats, supply boats, production utility boats, ocean and seismic vessels, barges, "spread" vessels, workover rigs, driving tenders, and drilling tenders;
 - Facilities, including deepwater ports, for the transfer of petroleum;
 - Terminals associated with any of the foregoing.
-

The CZMA currently allows states to determine whether federal activities in the coastal zone (including licenses and permits) are consistent with federally approved state CZM programs. Administration-backed proposed amendments to Title III would allow the Secretary of Commerce to override a state's negative consistency determination if it is in the national interest to do so. The law currently allows a override only if it is consistent with the CZMA or in the interest of national security. Specifically, Section 308(d) states that "federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary [of Commerce] that such a project is consistent with the purposes of this title or necessary in the interest of national security."

The term "necessary in the interest of national security" describes federal assistance activity which, although inconsistent with a state's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether an objected-to activity directly supports national defense or other essential national security objectives."¹²

The Conflict with States' Rights

Interior Secretary James Watt, testifying before a subcommittee of the House of Government Operations Committee (April 28, 1981) said, "The controversy over offshore leasing is the classic problem of public interest versus local interest. All Americans have a positive stake in this national program. However, among the parties to individual sale

¹²DOE Compliance with the Floodplain/Wetlands Environmental Review Requirements, Federal Register 37159, Vol. 44;123, June 25, 1979.

decisions, local and state concerns do not always reflect the overriding national need or perspective."

At the same hearing, Toby Moffett (D-Conn), chairman of the Subcommittee on Environment, Energy, and National Resources, said the Outer Continental Shelf Lands Act, as amended in 1978, requires the Interior Secretary to follow a state's recommendations unless they do not reasonably reflect the national interest, and that the Secretary "is not permitted to give full rein to his deeply held convictions" on development of offshore resources.

In reply, Watt rejected any decision-making role for states, saying their role is only advisory under the Act. The test is national interest versus state interest.¹³

These exchanges raise legal and political questions about energy development generally, and DOE policies and actions in particular. As emphasized by Rep. Moffett, Watt's statement conflicts with the strong state's rights position held by President Reagan and Secretary Watt himself.¹⁴

The Administration places national interest and national security emphasis upon its stewardship of natural resources, particularly those related to energy. Watt testified that the [Reagan Administration defines stewardship as] "an appropriate effort for multiple use of open lands and waters. We must thus inventory our lands."^{*}

The OCS lease sale No. 53 off central and northern California is viewed as a "classic example of the broad public interests versus narrower local interests, and, as is often the case, local concerns do not always reflect national or even regional needs or perspectives" (Secretary Watt, June 2, 1981). In the Administration's view, this statement is not meant to minimize fears about the environmental effects of

¹³ Environmental Reporter, page 6, May 1, 1981.

¹⁴ Ibid.

^{*}Testimony of Watt on June 2, 1981 before a subcommittee of the House Merchant Marine and Fisheries Committee.

offshore oil and gas drilling. The Interior Secretary has stated that the real danger to the environment comes from tankers importing crude oil into the U.S.: the danger not only of oil spills, but more importantly, of reliance on foreign energy. The "Pfaelzer decision [upholding California's objections to drilling on Sale No. 53 leases] raises very important questions about who is in charge of the OCS, the states or the federal government," Watt has said. [The ruling] has major ramifications from a philosophical point of view...as to how we manage the OCS program, as to whether states have veto power over us [i.e., the federal government]."¹⁵

Industrial support for the Administrations view is typified by testimony such as the following: "[California] was simply stating that weighing the national interest in protecting the small population of the threatened southern sea otter against the petroleum resource potential of 31 tracts...comes out in favor of the threatened sea otter...[and that] if a state CZMA agency can focus upon such a speculative future effect on an OCS project, all states can override federal leasing decision."¹⁶

Opposing views were offered on behalf of the state of Maine and the Coastal States Organization, favoring involvement, "in all states of decisionmaking actions," and by "authority under CZMA to review comprehensively planning decisions for all major federal projects such as OCS oil and lease sales will be eliminated."¹⁷

OCS oil and gas exploration and drilling represent, in microcosm, the general issue of national interest versus states' rights. Perhaps the most difficult problem is confusion over the legislative history of the CZMA itself.

¹⁵ Coastal Zone Management Newsletter, 12: 31, page 3, August 12, 1981.

¹⁶ Coastal Zone Management Newsletter, 12: page 3, August 12, 1981.

¹⁷ Coastal Zone Management Newsletter, 12: page 3, September 16, 1981.

It is clear that national interests and national security considerations permeate energy development policies generally, and those affecting coastal resources in particular. It is also clear that the nation has placed highest priority on decreased reliance on foreign energy imports, with the Reagan Administration among those advocating expanded OCS exploration and drilling, as well as other coastal energy projects. Resolution of these issues may well require further intervention by the courts. (Such intervention has begun with the Pfaelzer decision.)

The "Consistency" Provision

The CZMA as enacted in 1972 contained the so-called "consistency provision":

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

Thus, states with a coastal zone management plan approved by the Secretary of Commerce may demand compliance with it by federal officials operating under the OCS Lands Act Amendments of 1978, unless the Secretary of Commerce makes a finding of national security. The CZMA therefore does not give states outright veto power over federal OCS leasing, but it does give them considerable leverage.

The Law does not say who decides what is consistent, or who decides what "directly affecting" means, i.e., the federal or state governments. A final resolution of the consistency issue may have far-reaching implications for energy development and for federal versus state control of coastal development decision-making.

In addition to the CZMA, the 1976 OCS Lands Act Amendments also strengthened state participation in federal OCS leasing decisions. The 1988 Amendments focused on balancing OCS oil and gas development with other important objectives, particularly protection of the environment and state control over coastal development.

In general, states want to be guaranteed an opportunity to participate in federal energy development decisions. Coastal states want to be assured that their concerns will be addressed, and, in particular, that their statutory right to meaningfully influence federal OCS decision-making will be observed. They can argue that if Congress had not intended for the states to play a meaningful role, it would not have provided so many opportunities for their involvement. The present administration, however has raised a new issue: Can a policy made by Congress to include the states in federal decision-making to overturned by administrative action? The controversy over this question is reviewed below.

The California OCS Controversy

The most controversial CZM legal battle has been over offshore leasing along the California coast. It has been surrounded by years of hearings, mediation efforts, lawsuits, and reversals of federal policy. The issue is whether a federal decision opening a state's offshore areas to oil leasing must be subject to the state's review for consistency with its own coastal management laws.

The latest and potentially pace-setting controversy that addressed the consistency issue is federal OCS lease sale No. 53 offshore central and northern California, which was scheduled for late May 1981. As originally scheduled by then Secretary of the Interior Cecil Andrus, OCS Sale No. 53 was to include five basins: four northern and central basins (Eel River, Point Arena, Bodega, Santa Cruz) and one southern basin (Santa Maria). California recommended the deletion of the four northern and central basins because of their environmental sensitivity and relatively low oil and gas potential. The state's position was that inclusion of the basins in Sale No. 53 would violate both the letter and the spirit of the 1978 amendments. The Governor of California also opposed offering 34 of the 115 Santa Maria (southern basin) tracts, since they encompassed sea otter breeding grounds. The state filed a suit asking that the sale be enjoined. Eventually, the four central and northern basins were voluntarily withdrawn from leasing under OCS Sale No. 53 by Secretary Andrus in October 1980, leaving available for sale the 115

tracts in the Santa Maria Basin.

In January 1981 newly appointed Secretary of the Interior James Watt quickly changed the tone of federal OCS leasing. First, he revived the possibility of leasing in the four basins deleted from Sale No. 53. Second, he included for sale in the Santa Maria Basin many tracts whose lease was opposed by the State of California.

On May 27, 1981, pursuant to the suit by the State of California, Federal District Court Judge Mariana Pfaelzer enjoined the sale of nearly one-third of the tracts in the Santa Maria Basin. A day later, the Department of the Interior held the lease sale on the Santa Maria Basin as scheduled. The sale produced bids totaling \$2.28 billion, with \$220.6 million in bids submitted on the 29 tracts in question.

Two months later, on July 27, Judge Pfaelzer upheld the state's claim that it has veto power over federal offshore projects that directly affect its shoreline. By permanent injunction, she blocked the leasing of 29 tracts in the Santa Maria Basin on the grounds that the Interior Department had violated the Coastal Zone Management Act, particularly the consistency provision. The Department, she ruled, had, in designating offshore waters for development over the opposition of the State of California, violated the CZM Act of 1972. If left standing upon appeal, her decision appears to grant all coastal states veto power over whether the Department of the Interior may even designate for exploration an area that "directly affects" a state's CZM plan.

The "Directly Affecting" Controversy

The situation upon which the California litigation was based is complicated by recent actions of the federal government. In the leasing process, the most important pre-leasing steps are selection of the tracts to be offered for lease and issuance of the final notice-of-sale, which contains binding lease stipulations. Post-lease activities, such as approval of development and production plans, must be "consistent" with state coastal zone management plans. The Interior Department and the oil/gas industry have maintained that the phrase "directly affecting the coastal zone" in the consistency provision means altering a physical

characteristic of the land or water of the coastal zone without an intervening cause. Furthermore, the Interior Department argued that no physical effect in the coastal zone occurs until a federal permit, license, or grant has been issued for an operational activity.

In July 1981, the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) redefined the federal rules interpreting the consistency provisions under the CZMA. The NOAA interpreted "directly affecting" to mean only federal activities that produce a measurable physical alteration of the land or water of the coastal zone. This change closely followed Interior's interpretation and would have exempted the Interior Department's Outer Continental Shelf oil and gas pre-lease activities from the consistency requirements.

Reaction was prompt, and included Congressional action and lawsuits. The Congressional resolution of disapproval (HConRes166), approved by the House Merchant Marine and Fisheries Committee on Oct. 1 by a vote of 20-15, was the beginning of a two-house attempt to veto the regulations. 1980 amendments to the Coastal Zone Management Act provided for a two-house veto within 60 days of all regulations issued under the law.

Several congressmen, states, and environmental groups opposed the regulations and viewed consistency determinations as a states' rights issue, while industry and Reagan Administration officials supported the rules. The state of California recently was joined by several other states, including Alaska and Massachusetts, in a lawsuit challenging the regulations.

In October 1981, the NOAA, responding to this heavy pressure to withdraw the new rules, suspended their effective date and on January 29, 1982, it announced that it was withdrawing them entirely. The agency is now formulating another regulation defining federal activities "directly affecting" the coastal zone and subject to state consistency reviews.¹⁸

¹⁸ Environmental Reporter, February 5, 1982.

OCS Five-Year Leasing Plans

Western coastal states are particularly concerned with recent federal decisions on energy, especially those related to OCS activities. Few changes were made in the Interior Department's plans for OCS development offshore California despite the unanimity of opposing comments from state and local governments, environmental groups, California Congressional delegates, and private citizens. California believes that it already contributes to the nation's needs since it currently provides 12% of the nation's oil production. The state also points to the completion of Lease Sale No. 48 (southern California) and to rapid state permitting of production projects (Chevron and Shell) offshore California to demonstrate the state's ability to insure expedited energy development.

Alaska will be more affected than any other state under the current OCS leasing schedule. In the five-year period from 1982 to 1986, 16 lease sales out of a total of 42 are scheduled for offshore Alaska. Most are in frontier areas where no prior leasing has occurred. Alaska fears that much of its coastline is not well understood and that leasing will take place on the basis of insufficient environmental knowledge. Although not opposed to leasing per se, the state is opposed to leasing in areas that are poorly understood, environmentally sensitive, and relatively low in oil and gas potential. Governor Hammond recently wrote the Department of the Interior that his state is "firmly opposed to both the magnitude and pace of leasing" proposed by Watt.

On September 12, 1981, Secretary Watt agreed to delay two Alaska lease sales in the Bristol Bay area planned for 1983 to accommodate objections by Hammond. Governor Hammond and other Alaska leaders have urged Watt to delay the sales to prevent possible damage to the Bristol Bay salmon run, considered the largest in the world.

Both Oregon and Washington, even though they are not scheduled for offshore leasing, generally support the contentions of California and Alaska that the states' role in OCS decision-making should be exercised as fully as was intended under law. These states are concerned primarily about any Federal decision that may ultimately lead to

significant impact on their own coastal zone.

Some Eastern states, notably North Carolina, Massachusetts, New Jersey, and Maryland, may also contest Federal OCS leases. North Carolina filed a lawsuit on July 20, 1981, against the Department of the Interior to block the sale of six oil and gas drilling bases, but voluntarily dropped the suit on August 5, 1981.

It should be noted that all state objections to specific plans are subject to change. This is due to a recently completed suit challenging the five-year OCS leasing plan. Filed by California, Alaska, and environmental groups against Secretary Andrus on August 9, 1980, the suit (California v. Watt, filed as California v. Andrus, No. 80-1894) argued that there had been violations of the 1978 OCS Lands Act Amendments, the National Environmental Policy Act, and the Administrative Procedure Act.

After concluding that the Department of the Interior's current five-year offshore oil and gas leasing program violated the requirements of the Outer Continental Shelf Act, the U.S. Court of Appeals for the District of Columbia Circuit on Oct. 6, 1981, ordered the department to revise the program.

The appeals court unanimously ruled that the Interior Secretary had failed to consider environmental factors and energy needs in preparing a balanced offshore leasing program. The court determined that the Secretary had:

- Failed to consider the relative environmental sensitivity and marine productivity of offshore regions;
- Failed to consider the need to share development benefits and environmental risks equitably among the various OCS region;

- Failed to strike a proper balance which incorporated environmental and coastal zone factors and not simply administrative needs and economic factors;
- Failed to fully quantify environmental costs; and
- Failed precisely to identify where several major sales off the California coast would be held.

The Court said the Secretary could not postpone consideration of environmental impacts of offshore leasing until the lease sale or exploration and development stages, but had to address them during the development of the five-year plan. The court reasoned that by failing to consider the factors enumerated under the Act, the Secretary had not met the requirements of Section 18(a)(3) that a proper balance be obtained to the maximum extent practicable.

"In relying solely upon industry interest, resource potential, and administrative convenience, the Secretary did not fully comply with all the statutory standards," the court concluded.

Thus, the state's role in federal energy development remains a major issue that will require some resolution in the next few years. Coordination between the federal government and state and local governments is likely to be strained and perhaps end in future litigation. The Administration's conflicting desires for unregulated, or less regulated, energy development and for returning power to the states will continue to plague the nation's commitment to domestic energy resources. The role of the federal agencies in this tangled web will remain unclear for some time.

6. PLANNING AND MANAGEMENT

The coastal management process, like all other regulation-dependent systems, requires an effective scheme of planning and management to properly implement the intent to its creators. Unfortunately, the beginning of FY 1982 presented the CZM program with numerous roadblocks to sound planning and management. The lack of policy guidance from the White House leaves CZMA -- and all other related programs -- with little upon which to build. Severe budget cuts affecting NOAA and state programs also add problems at all levels.

These and other obstacles affect several broad planning and management issues:

- Tracking - Coastal zone decisions (such as permitting) must be properly tracked, to ensure that conflicts among decisions and programs do not arise. Cooperation is needed, and there must be a central agency to coordinate.
- Delay Prevention - Delays in regulatory decision-making--especially in document processing and in approvals--are widely felt to be a prime cause for the failure of both private projects and public oversight engendering dissatisfaction with regulatory systems.
- Scheduling - Even in the absence of basic Executive Branch policy, there is some priority ranking of alternative actions. Scheduling ensures the proper use of limited resources.

An example of a specific component of the planning and management scheme is special area management. "Special area management planning" is relatively new and has been fully applied in only a few coastal areas. The process seeks to improve coordination among regulatory programs by bringing all concerned parties to the negotiating table to establish development policies and standards in advance of permit applications for specific projects. The goal is to make clear to applicants, agencies, and the public the basis of permit decisions and to reduce the time and cost of the process.

Examples of attempts to apply such interagency collaborative management planning techniques to coastal policy conflicts in Grays Harbor Estuary, Washington, San Francisco Bay, California, and the Lower Willamette River, Oregon, were studied by the NOAA.

The NOAA found that special area management planning can indeed lead to its promised benefits, but also that some changes in federal regulations will be necessary.

Full use of special area planning will depend on whether federal agencies are legally authorized to make binding policy commitments to such plans in subsequent review of permit applications. If agencies are prevented from making such commitments, the influence of such plans is likely to last only as long as participating representatives maintain their "informal" coordination and cooperation. For example, federal agency representatives who participated in developing the Grays Harbor Estuary Plan may be willing to endorse the Plan and use it in their review of permits. But, they are not confident that the Plan would have any formal or legally binding influence over their actions. They cannot be sure that the Plan would stand up in a court test as an expression of agency policy or that a new administrator would not reject the commitments of previous representatives.

In addition, full use of special planning requires agency commitment to the concept of tiered or stratified regulation. Although the Council on Environmental Quality encourages federal agencies to tier their environmental impact statements to avoid repetitive discussions of the same issues and to focus on issues ripe for decision at each level of environmental review, the concept has been applied primarily in the context of project-related actions such as highways, rights of way, and major construction projects. In general, federal agencies do not currently initiate environmental impact assessments or statements until specific project applications are submitted for review. It is not clear that they have the ability to propose and implement area management plans accompanied by appropriate environmental impact statements.

Finally, special area management planning processes can also require substantial amounts of professional staff time and funds (for data collection, environmental analysis, citizen participation, planning, etc.). Some funds are available to state and local agencies for such expenses through Section 306 (program administration) and Section 315 (estuarine sanctuaries) of the Coastal Zone Management Act. But more would be available if federal agencies established special area management planning as an eligible cost in their regulations.

7. CONCLUSIONS

Many federally supported coastal management programs are facing budget cuts or termination under initiatives from the new Administration. At the same time, the Executive Branch offers no firm policy or guidance regarding the coastal zone. The revised coastal management process that will evolve over the next few years will probably cause readjustments within the federal government and the states, generally resulting in program shifts from Federal to state control.

As part of the 1980 reauthorization of the Coastal Zone Management Act (CZMA), Congress rejected recommendations that federal funding levels should be reduced during the next five years and acknowledged that the implementation phase of the program is extremely critical. The Coastal States Organization study concluded that, without federal funding, 80% of the approved state programs, representing 61% of the U.S. coastline, will be dismantled or severely curtailed. The other 20% will be greatly reduced in scope.

Energy development in the coastal zone touches a broad range of concerns, including: offshore oil and gas activities, petroleum transshipment, nuclear and fossil fuel power plants, coal exports, storage and refining of petroleum, and "new" technologies such as OTEC, marine biomass, and wave and tidal power. Through the implementation and impact funds of the CZMA and its amendments, states have, for the first time, received federal financial support to help deal with the economic, environmental, and social problems associated with such energy development activities.

Since the states are not yet in a position to assume the full financial responsibility of coastal zone management, the impacts of decreased federal spending may be critical, in three ways. First, OCS activities are a key energy and coastal zone problem. Federal support to states is decreasing at the time that the Administration has announced its intention to accelerate offshore leasing. Second, there is the possibility of less information gathering and fewer mitigation activities, especially with the termination of the Coastal Energy Impacts Program. Since most coastal states will believe that energy-related impacts will

occur, the question of responsibility for dealing with these impacts arises. Third, changes in federal support may strain the established coordination between federal, state, and local governments and cause untimely delays in energy proposals because states want to maintain their regulatory and review functions and powers.

The process inherent in the CZMA is mediation; that is, to reason and trade-off seemingly irreconcilable aspects of the national policies of energy independence and environmental protection. Trade-off analyses require reasoning and expertise, both of which depend upon funds to develop individuals and institutions capable of making decisions that will resolve particular planning issues. Without such funds, there will be only stalemate, conflict, and the establishment of rigid priorities. In terms of the national security, it seems clear that energy independence has a higher priority than environmental protection. In terms of national interest, however, accommodation must be reached between energy development and a healthful environment.

The basic objective of the CZMA is the encouragement of a process to reach an acceptable conclusion to, instead of stalemate between, the national policies of energy independence and environmental protection. There are serious doubts that this objective can be maintained without funds not only to nurture reasoning on the issues, but to allow responsible agencies to carry out their statutory obligations in a meaningful fashion. The present Administration has declared that the purpose of federal CZM funding has been met, i.e., it has enabled the states to carry forth coastal planning on their own. The states disagree, claiming that both economic and political exigencies make continued operation of state CZM offices impossible with only state funds.

Finally, issues of national policy interest, and security are intimately intertwined in all coastal energy development. It appears that DOE, to fulfill its own statutory requirements, must assume a greater interest and active role in coastal energy issues, particularly those involving conflicts between energy development and environmental protection.

This report was done with support from the Department of Energy. Any conclusions or opinions expressed in this report represent solely those of the author(s) and not necessarily those of The Regents of the University of California, the Lawrence Berkeley Laboratory or the Department of Energy.

Reference to a company or product name does not imply approval or recommendation of the product by the University of California or the U.S. Department of Energy to the exclusion of others that may be suitable.

TECHNICAL INFORMATION DEPARTMENT
LAWRENCE BERKELEY LABORATORY
UNIVERSITY OF CALIFORNIA
BERKELEY, CALIFORNIA 94720