



Coastal Law Memo

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THE COASTAL ZONE MANAGEMENT IMPROVEMENT ACT OF 1980

Coastal zone management has reached a stage of critical significance. Almost four out of five people in the United States now live within 100 miles of the ocean or the Great Lakes. By 1990, estimates are that 75 percent of the population will live within 50 miles of these shores. Rational balancing of the many competing pressures on finite coastal resources will become increasingly difficult and also increasingly important.

Recognition of the need for continued and intensified management efforts culminated in the passage of the Coastal Zone Management Improvement Act (CZMIA) of 1980. Passed in the Presidentially designated "Year of the Coast," the CZMIA reauthorizes and amends the Coastal Zone Management Act (CZMA); its enactment reaffirmed a national commitment to the wise use and protection of coastal resources. This Coastal Law Memo will examine the major features of the CZMIA and will discuss the practical problems of implementation. Of crucial concern will be Reagan administration proposals to cut federal funding for coastal management, the probable effects on state coastal programs, and the future prospects for effective management of the coastal zone.

PURPOSE OF LEGISLATION

The CZMA of 1972 expressly acknowledged a national interest in the effective management, beneficial use, protection, and development of the coastal zone. Implicit in the assertion of a national interest in better management and protection of coastal resources was the recognition of the inadequacy of then-existing state and local efforts. The CZMA has encouraged states to develop management programs to address the multiple objectives of the Act and to accommodate conflicting demands and expectations. But the CZMA has not dictated substantive resource allocation policies nor has it imposed a comprehensive management plan upon the

states. Instead, it has offered a procedural framework within which states have had considerable discretion in developing and implementing programs responsive to the particular needs of their coastal zones. Overall emphasis has been on state control and voluntary participation.

The CZMA has encouraged state participation in several ways. First, federal funds have been provided to cover up to 80 percent of the costs of developing and administering coastal management programs. Grants are awarded by the Office of Coastal Zone Management (OCZM), part of the National Oceanic and Atmospheric Administration (NOAA), according to very generalized process-oriented guidelines. Section 305 authorized grants to enable states to develop acceptable coastal programs; all eligible states and territories have received these grants, in varying amounts. Section 306 authorized administrative grants to states with approved coastal programs. Funds were also available for the acquisition of estuarine sanctuaries and beach access. Economic incentives were increased in 1976 with the addition of the Coastal Energy Impact Program (CEIP), which authorized grants and loans to states participating in the CZMA.

Second, section 307 guarantees to states with approved programs greater control over day-to-day management activities by requiring inter-governmental coordination and cooperation. Federal agency activities directly affecting the coastal zone must be, to the maximum extent practicable, consistent with approved state management programs. The resulting federal-state relationship recognizes the primary management authority of the states and encourages programs uniquely tailored to local political pressures and particular state circumstances and concerns. Currently, 25 states and territories have approved programs, accounting for over 78 percent of the nation's coastline.

The CZMIA reauthorizes the basic provisions of the CZMA and was intended by Congress as a strong signal to coastal states of continuing federal support for state management efforts. As its title indicates, the CZMIA seeks to improve coastal zone management. Specifically, it expands and clarifies the national coastal policy to give greater guidance and direction to state coastal programs. It addresses the problems inherent in balancing the frequently conflicting objectives of preserving, protecting, developing, and enhancing coastal resources. It increases participation incentives in several respects and, conversely, threatens to penalize inadequate state performances. Most significantly, it refocuses the CZMA from development and approval of state coastal programs to implementation and improvement of state management efforts.

GENERAL THRUST OF THE CZMIA

A major drawback of the CZMA was its lack of specificity in defining the national coastal policy and in designating the minimum goals to be achieved by the states. To remedy this, section 303 was amended to include nine national coastal policy objectives that states are to give full consideration to in developing, implementing, and improving their management programs. State coastal programs must at least provide for: protection of natural resources; mitigation of damages from natural hazards; siting of major facilities and priority to coastal-dependent uses; public access for recreation; preservation and restoration of urban waterfronts and ports; expedited governmental decision-making; consultation and coordination with, and consideration to, views of federal agencies; public and local government participation; and comprehensive management of living marine resources. These objectives establish a framework against which the results of particular programs can be measured.

The CZMA shifts emphasis from program development to implementation and improvement of already-approved programs. No new procedures or requirements are imposed for program approval under section 305, but funds are no longer available for program development. Section 306 was reauthorized to insure that recently developed management efforts at the state and local levels become fully accepted and established and that program improvements actually occur. To receive administrative grants, coastal states are directed to expend a minimum amount on institutionalizing their present programs and to devote an increasing proportion, up to 30 percent of the total, on activities leading to significant improvement in achieving the national policy objectives.

Section 306 was also amended to encourage states to inventory and designate coastal resources of national significance and to establish specific and enforceable standards to protect them. These resources include any beach, dune, wetland, estuary, barrier island, or fish or wildlife habitat determined by the coastal state to be of biological or natural storm protective value. Section 303(3), an addition to the national coastal policy statement, encourages the preparation of detailed, special area management plans, regional in nature, to accommodate natural resources protection and reasonable, coastal-dependent economic growth. New section 306A authorizes resource management improvement grants to assist states in preserving and restoring areas of particular state or national concern, redeveloping urban waterfronts and ports, and providing public access to coastal beaches and waters. To be eligible for these grants, a state must have an approved program, be making satisfactory progress toward achieving the national policy objectives, and, after 1984, also be making satisfactory progress in inventorying and designating coastal resources of national significance.

Other amendments further indicate the increased emphasis on improving coastal zone management. CEIP was expanded to provide for the mitigation of negative environmental impacts caused by the transportation, transfer, and storage of coal or from alternative ocean energy activities. Section 309 encourages states with contiguous coastal zones to coordinate interstate planning toward the goal of unified coastal policies. Section 315 continues to authorize grants for the acquisition of estuarine sanctuaries, but beach access, now part of section 306A, was deleted and replaced by island preservation. Section 312, which provides for review of state performance, was significantly altered to require more structured evaluation of state compliance with both the national coastal policy and the approved program. Continued funding was also more closely tied to favorable program evaluation.

FEDERAL FUNDING UNDER THE CZMIA

Like the CZMA, the CZMIA relies heavily on the promise of federal funding to accomplish its purposes. Federal grants are the key incentive to state participation and are essential to encourage program implementation and improvement. However, the CZMIA tightens funding prerequisites considerably, grants are neither automatic nor guaranteed and require a strong showing by the states of merit and need. Moreover, the Reagan Administrative proposes to cut coastal funding almost entirely, threatening to seriously undermine the existing federal-state relationship.

The Congressional authorization of appropriations represents a conscientious effort to balance budgetary concerns with reducing federal expenditures against practical requirements for improving coastal management. In a series of compromises, annual authorizations were reduced from the original House proposal of \$106 million for the basic coastal program and \$130 million for CEIP formula grants to \$86 million and \$75 million respectively, a net savings of \$75 million per year. The eight-year authorization period was also shortened by three years, terminating the federal coastal program in 1985 and substantially increasing total savings. As authorized, the entire federal program would cost \$161 million per year, a considerable reduction over current annual authorizations of \$236 million.

Unfortunately, for coastal zone management efforts, even this decreased authorization is unlikely to be appropriated, at least completely. The final proposed Administration budget essentially ends most federal funding for the CZMIA after 1981. No grants are provided for administration of state programs, resource improvement projects, interstate planning, or CEIP. OCZM is scheduled to receive only \$3.2 million in fiscal year 1982 to manage all federal coastal zone activities. Of course, the final decision on appropriations rests with Congress and will depend, in part, on how convincing advocates for continued coastal funding can be.

Only the estuarine sanctuaries program survived a complete cut in funding, and its annual authorization of \$9 million was reduced to \$3 million. An example of the success and continued necessity of federal grants is the South Slough Estuarine Sanctuary in Coos Bay, Oregon, the first sanctuary to be funded by the CZMA. It has received over \$1.6 million for the acquisition and management of 4200 acres, which represents 83 percent of the total land required. But without an additional federal grant, acquisition of the remaining 17 percent will probably not be possible. To not complete this project would be both environmentally unsound and economically wasteful.

While the South Slough Sanctuary stands a chance of completion, other coastal projects may not be so fortunate. In fact, the immediate elimination of federal funding would jeopardize the very existence of many coastal programs, especially those only recently established. Most states are simply unable to assume full financial responsibility for their programs at this time. At best, management efforts will be severely curtailed. States will certainly lack the incentive to adhere to all federal requirements and

to undertake the improvements anticipated by the CZMIA. OCZM will also lack its most effective sanction to compel adequate state performance.

EVALUATION OF STATE MANAGEMENT PROGRAMS

The emphasis on improving coastal zone management is exemplified by the integral role that evaluation of state coastal programs plays in the CZMIA. Section 312 requires a continuing review of the performance of coastal states in implementing and enforcing their approved programs, addressing the national coastal policy objectives, and adhering to the terms of any grants, loans or cooperative agreements funded by the CZMIA. The review process allows greater public participation opportunities and provides procedural safeguards for state performance evaluations.

Administrative grants under section 306 may be reduced by up to 30 percent if it is determined that a state is not making significant improvement in achieving the nine national policy objectives described in section 303. Program approval and all financial assistance may be withdrawn if a state is failing to adhere to or is unjustifiably deviating from its approved program or any grants, loans, or cooperative agreements and refuses to remedy this deviation. Technical assistance in the form of research and other information activities is authorized to assist states in rectifying program deficiencies if it promises to improve coastal zone management.

The provision for evaluating state performance in achieving the nine national policy objectives has generated much criticism from coastal states. These goals were not originally expressed by Congress or necessarily agreed to when states programs were approved. To tie evaluations too tightly to these objectives implies that even states with already approved programs might not be meeting the national interest. Evaluations based primarily on these goals could standardize program review, increase federal control, and decrease state flexibility and creativity in addressing problems unique to their coastal zones. Another concern is that a particular program review may focus almost entirely on one area of deficiency, determined to be of greatest national significance at the moment, without acknowledging the adequacy of overall performance.

In response to these criticisms, the CZMIA provides greater scope and substance to the review process precisely to determine if, in fact, states are improving management efforts and, if not, to require them to do so. Evaluations have the primary purpose of pointing out particular program defects and suggesting areas of

improvements; negative sanctions are reserved as the last recourse against inadequate state responses. But until regulations for the CZMIA are promulgated, neither OCZM nor the states will have concrete guidelines upon which to base review of state performance. The prospect of no federal funding must also be considered; in anticipation of budget cuts, OCZM has already cancelled on-site evaluations of state programs. Without federal funding, there are serious questions of whether program reviews will be continued and, if so, to what extent and with what results.

ADMINISTRATION OF THE CZMIA

Because of an inability to develop detailed provisions addressing all coastal issues and anticipating all potential problems, Congress has delegated substantial rulemaking authority to OCZM in administering the CZMIA. Balancing this broad agency discretion are new requirements for approval of regulations by NOAA and the Department of Commerce and new procedures for Congressional disapproval of regulations. Still, the effectiveness of the CZMIA will largely depend on administrative rulemaking to eliminate ambiguities in Congressional intent and language and to give amplification and specificity to general requirements of the Act. Regulations are necessary to define crucial terms such as "significant improvements" and "satisfactory progress" and to provide criteria with which to measure them. Regulations are also needed to establish guidelines for achieving the national coastal policy objectives, protecting resources of national significance, setting program priorities, evaluating state performances, withdrawing program approval and funding, and a number of other areas. OCZM has delayed publishing proposed rules until Congressional committee action on the Administration budget proposals.

One area of considerable controversy has been administrative interpretation of the consistency provisions of section 307. The CZMIA makes no changes in the requirement that federal coastal activities be as consistent as practicable with approved state coastal programs. The problem is in the interpretation of what federal activities directly affect the coastal zone. To resolve disputes with the Department of Interior over the definition of "directly affecting," OCZM had planned to promulgate regulations to clarify the term. However, a recent executive order prohibits any regulations "not essential to program operations" and requires a positive cost-benefit analysis. Instead of regulations, OCZM may simply issue "recommended guidelines" for determining when federal consistency is required. But with the prospect of no federal funding for coastal

zone management, the promise of federal consistency offers the greatest incentive for continued state participation in the CZMIA; for this reason, defining consistency precisely may be considered essential.

THE FUTURE OF COASTAL ZONE MANAGEMENT

The political events of the next four months will be crucial to the fate of coastal zone management. Opposition to complete funding cuts is increasing, ranging from the National Association of Counties and the Coastal State Organization to the House Merchant Marine Committee. The Reagan Administration apparently views the CZMIA as simply an environmental act and, thus, unnecessary and even undesirable, but this ignores the integral economic and development aspects of the Act. A complete funding cut would effectively destroy the national interest in coastal zone management as a forum for dispute resolution and balanced and predictable decision-making. Part of the rationale for the proposed cuts concerns desires to balance the federal budget by cutting back spending. But coastal funding is being cut out not cut back, and besides, on a national scale, it is not that costly. It is definitely not cost-effective to withdraw states' funding at this time; to do so would likely result in the dismantling of many existing coastal programs, wasting already invested funds. Moreover, the stifling effect on economic development could well erase any budget savings.

Emphasis on economic benefits of the CZMIA will be essential to restore funding. State programs facilitate coastal development in numerous ways, including fisheries management, port planning, technical expertise and assistance, and waterfront rehabilitation. Simplification of dredge and fill permits reduces processing time. Locating development away from natural hazards reduces redevelopment expenses after natural disasters. Technological developments are creating new coastal dependent activities, national in scope, yet requiring careful site-specific analysis. They include deep sea-bed mining, deepwater ports development, and alternative ocean energy projects such as solar, thermal, wind, and biomass energy conservation. National energy activities are increasing in the coastal zone and include outer continental shelf oil and gas exploration, liquified natural gas terminals, and steam coal export.

The prospect for future coal export through Oregon provides an excellent example of the need for continued federal funding to address and reconcile economic and environmental issues. Oregon has applied for a \$75,000 CEIP grant to study impacts from a proposed coal port in Tongue Point. Issues to be considered include dredging and filling activities, potential

loss of estuaries, national and regional interests and impacts, and marketing requirements. Further to the south, a proposed coal export facility in Coos Bay offers encouragement to the economically-depressed area but also presents serious environmental problems. While the proposed \$100 million facility would provide jobs for up to 600 people and a \$20 million payroll, it would also require from two to four trainloads, 100 cars each, to supply the 10 million tons of coal needed daily. This underscores the interplay of economic and environmental factors which must be considered and accommodated. Federal funding would allow this rational balancing through analysis of impacts on the coastal environment and inland transportation routes and better planning and oversight of development. It would also allow expansion and improvement of port facilities and coordination of federal, state, and local management efforts.

A recent survey by the Coastal States Organization indicates that most state management programs will be unable to function without continued federal funding and that management efforts of those states maintaining coastal programs will be minimal. While the CZMIA never intended to provide permanent funding, its purpose of encouraging and assisting states to establish programs is far from complete. One alternative to a total cut in funding would be a gradual phase-down over several years to provide an opportunity for states to pick up the slack. This would make a significant difference, according to responses from twenty-one states. Another alternative is to provide section 306 funding through a block grant program. But without funding the incentives for continued state participation in the CZMIA are slight. The promise of federal consistency is important but, by itself, is probably inadequate. Providing greater state control over management activities, such as dredge and fill permits, is another possible incentive for states to remain.

Even if states no longer formally participate in the CZMIA, its provisions will still be exemplary. The national coastal policy objectives will still exist. The federal presence in coastal zone management will continue, if at a greatly reduced level. What remains to be seen is the form and substance of future management efforts.

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