

## A. The Federal Coastal Zone Management Act

In response to intense pressure and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act (P.L. 92-583) (CZMA) which was signed into law on October 27, 1972.

The act authorized a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn, delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Assistant Administrator for Coastal Zone Management, who heads the Office of Coastal Zone Management (OCZM). The Coastal Zone Management Act of 1972 was substantially amended on July 26, 1976, (P.L. 94-370). The Act and its 1976 amendments affirm a national interest in the effective protection and careful development of the coastal zone, by providing assistance and encouragement to coastal states to develop and implement rational programs for managing their coastal areas.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction to states for developing coastal management programs. These guidelines and requirements for program development and approval are contained in 15 CFR Part 923, as raised and published March 28, 1979, in the Federal Register. In summary, the requirements for program approval are that a state develop a management program which:

- (1) Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the states;
- (2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive

and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed,

- (3) Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas to be subject to management should be based on resource capability and suitability analyses, socio-economic considerations and public preferences;
- (4) Identifies the inland and seaward areas subject to the management program;
- (5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and
- (6) Includes sufficient legal authorities and organizational arrangements to implement the program and to insure conformance to it.

In arriving at these substantive aspects of the management program, states are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, state, interstate and Federal agencies.

Section 305 of the CZMA authorizes a maximum of four annual grants to develop a coastal management program. After developing a management program, the state (territory) may submit it to the Secretary of Commerce (or her representative in this case, the Assistant Administrator

of NOAA for Coastal Zone Management) for approval pursuant to Section 306 of the CZMA. If approved, the state is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received approval by the time Section 305 program development grants have expired, a state may be eligible for preliminary approval and additional funding under Section 305(d).

Section 307 of the Act stipulates that Federal agency actions shall be consistent, to the maximum extent practicable, with approved management programs. Section 307 further provides for mediation by the Secretary of Commerce when a serious disagreement arises between a Federal agency and a coastal state with respect to a Federal consistency issue.

Section 308 of the CZMA contains provisions for grants and loans to coastal states to enable them to plan for and respond to onshore impacts resulting from coastal energy activities. To be eligible for assistance under Section 308, coastal states must be receiving Section 305 or 306 grants, or, in the Secretary's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the CZMA.

Section 309 allows the Secretary to make grants to states to coordinate, study, plan, and implement interstate coastal management programs.

Section 310 allows the Secretary to conduct a program of research, study, and training to support state management programs. The Secretary

may also make grants to states to carry out research studies and training required to support their programs.

Section 315 authorizes grants to states to acquire lands for access to reaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value, and for the preservation of islands, in addition to the estuarine sanctuary program to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes.

B. SUMMARY OF THE SOUTH CAROLINA COASTAL PROGRAM

The South Carolina Coastal Program is based, in large part, on the South Carolina Coastal Management Act of 1977 (SCCMA). Basically the Act accomplishes four things:

- 1) It establishes a permanent South Carolina Coastal Council (SCCC).
- 2) It provides for the development and administration of a comprehensive Coastal Management Program.
- 3) It sets up a permitting process for activities occurring in the four "critical areas" of the coastal zone (tidelands, coastal waters, beaches and primary ocean-front sand dunes).
- 4) It provides a mechanism for State and local agency consistency with the State's approved Coastal Management Program throughout the coastal zone.

COASTAL ZONE BOUNDARY:

The South Carolina coastal zone is defined in Section 3(B) of the South Carolina Coastal Management Act of 1977 as :

All coastal waters and submerged lands seaward to the State's jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown.

The critical areas are defined in Section 3(J) as: coastal waters, tidelands, beaches and primary ocean-front sand dunes.

The South Carolina Coastal Council employs a two-tier approach to management of activities having a direct and significant impact on coastal waters. The "critical areas" will receive more intensive attention through the direct permitting system, while the remainder of the coastal zone will be managed through cooperation with other State agencies and their adherence to coastal program policies.

MANAGEMENT AUTHORITIES:

All lands and waters of the coastal zone (the State's eight coastal counties) were considered in the development of the program. Two types of management authority were granted to the SCCC:

1) Direct permitting authority over the "critical areas"; 2) indirect management authority, through a SCCC certification process, of coastal resources throughout the coastal zone, which includes coastal waters and submerged lands seaward to the State's jurisdictional limits, as well as the lands and waters of the eight coastal counties.

A fundamental part of the coastal management program is the SCCC's exclusive authority to issue permits for alterations in the "critical areas". In addition, the SCCMA directs the SCCC to issue rules and regulations for the implementation of its permitting program. Through Section 8(B)(11) of the SCCMA, the SCCC is required to review and certify the compliance of permit applications administered by other State agencies with the policies of the coastal management program.

## RESOURCE POLICIES:

One of the major changes in the area of coastal resources management resulting from the development of a Coastal Program in South Carolina has been the creation of resource "policies". In review and certification of permit applications in the coastal zone, the SCCC will be guided by its identified coastal management program policies. In addition to these policies the State has outlined general considerations which will be used in permitting or certifying the compliance of activities occurring in the coastal zone. Certain of these "considerations" are important to note:

- o The possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area.
- o The extent of negative impacts on identified Geographic Areas of Particular Concern (GAPCs).  
The determination of negative impacts will be made by the SCCC in each case with reference to the priorities of use for the particular GAPC.

In critical areas of the coastal zone program policies are also guided by general considerations. Important considerations include: the extent to which activities are water-dependent and/or water-related; the extent to which the development could affect existing public access; and the extent to which the activity could cause erosion.

The policies contained in the program along with the general considerations outlined as a basis for decision-making represent a major step forward in

management of coastal resources that produces a predictable and equitable way of balancing economic and resource conservation goals.

Program policies concerning shore erosion and public access also represent significant changes for South Carolina. The SCCMA mandates the SCCC to develop a comprehensive beach erosion control policy and gives authority to the SCCC for implementation of this policy. This includes authority to remove erosion control structures which adversely affect the public interest.

The SCCC also has the authority to accept and expend Federal and State erosion control funds only in areas which provide full and complete access to the public. The South Carolina erosion control plan will also identify those coastline areas which are most severely eroding.

Barrier islands represent both a major economic resource and potential hazard for South Carolina. The Coastal Program policies provide specific guidance for the further orderly development of this resource. In addition the State has developed a new policy which does not allow for the expenditure of State or Federal funds for new bridge or causeway access to any previously undeveloped barrier islands.

NATIONAL INTEREST AND USES OF REGIONAL BENEFIT:

In addition to the legislative mandate contained in the Federal CZMA of 1972 for consideration as the national interest, the SCCMA(Section 8(B)(6)

also requires that the State provide for adequate consideration of the national interest in developing and implementing its coastal program.

The following concerns are identified to be in the national interest:

- 1) National Defense
- 2) Energy Production and Transmission
- 3) Coastal Resources

significant fish species and habitats  
threatened wildlife habitats, public  
recreational areas, drinking water  
supply, historic, cultural, and  
archeological sites  
barrier islands

When national interest considerations for facilities and for resource conservation conflict, the Coastal Management Program resolves the conflict by examining resource policies for activities subject to management as well as the permitting rules and regulations which are applicable to the specific facility or associated activity. Consultation with relevant Federal agencies occurs on a continuing basis.

Uses of regional benefit as identified by the SCCC include transportation facilities and parks. Through the use of South Carolina's Public Works Eminent Domain Law, which allows any Federal agency, State public body or authorized corporation to acquire real property necessary, a system exists which ensures that adequate sites are, or can be set aside, for different uses of regional benefit. In conclusion, the most significant changes

which will occur as a result of the development and approval of South Carolina's Coastal Program are:

- 1) The articulation of State-level policies regarding management of the State's coastal resources.
- 2) State and Federal agencies must be consistent with the State's coastal resource policies.
- 3) The State has developed a Shore Erosion Management Plan.
- 4) All State and Federal funds (i.e., public investments) for shore erosion protection will be tied to the provision and/or maintenance of shorefront access.
- 5) The State has developed specific rules and regulations for permitting of alterations in coastal "critical areas".
- 6) The State has committed itself to making certain permitting decisions based, in part, on water dependency and water relatedness.
- 7) The State has defined "no feasible alternative" to mean feasible site location, as well as, no design or construction (technical) alternative. (Further feasibility considerations are discussed in Part II of the DEIS.)
- 8) The State has determined to limit vehicular access to all undeveloped barrier islands through its public investment policies for transportation and other public services.

C. How the South Carolina Coastal Program Meets the Requirements of the Coastal Zone Management Act:

| <u>Requirements</u>  | <u>Sections of Approval Regulations</u> | <u>Location in Pro. Document (Chapter)</u> |
|--|---|--|
| Sec. 306(a) which includes the requirements of Sec. 305:                           |   |  |
| 305(b)(1): Boundaries. . . . .   | 923.31, 923.32<br>923.33, 923.34        | III(A)<br>III(C)(3)                        |
| 305(b)(2): Uses subject to management. . . . .                                     | 923.11                                  |  |
| 305(b)(3): Areas of particular concern. . . . .                                    | 923.21, 923.23                          | IV(A)                                      |
| 305(b)(4): Means of control. . . . .   | 923.41                                  | V(A)                                       |
| 305(b)(5): Guidelines on priorities of uses. . . . .                               | 923.21                                  | IV(A)                                      |
| 305(b)(6): Organizational structures. . . . .                                      | 923.46                                  | V(A)                                       |
| 305(b)(7): Shorefront planning process. . . . .                                    | 923.24                                  | IV(D)                                      |
| 305(b)(8): Energy facility planning process. . . . .                               | 923.13                                  | IV(B)                                      |
| 305(b)(9): Erosion planning process. . . . .                                       | 923.25                                  | IV(C)                                      |
| Sec. 306(c) which includes:  |   |  |
| 306(c)(1): Notice: full participation; consistent with Sec. 303. . . . .           | 923.58, 923.51<br>923.56, 923.3         | V(F)&(G)                                   |
| 306(c)(2)(A): Plan coordination. . . . .   | 923.56                                  | V(F)                                       |
| 306(c)(2)(B): Continuing consultation mechanisms. . . . .                          | 923.57                                  | V(F)&(D)                                   |
| 306(c)(3): Public hearings. . . . .  | 923.58                                  | V(F)                                       |
| 306(c)(4): Gubernatorial review and approval. . . . .                              | 923.48                                  | Gov. Letter                                |
| 306(c)(5): Designation of recipient agency. . . . .                                | 923.47                                  | Gov. Letter                                |
| 306(c)(6): Organization. . . . .   | 923.46                                  | V(A) and II                                |
| 306(c)(7): Authorities. . . . .  | 923.41, 923.47                          | V(A)                                       |
| 306(c)(8): Adequate consideration of national interests. . . . .                   | 923.52                                  | III(C)(1)                                  |
| 306(c)(9): Areas for preservation/restoration. . . . .                             | 923.22                                  | IV(A)                                      |
| Sec. 306(d) which includes:  |   |  |
| 306(d)(1): Administer regulations, control development, resolve conflicts. . . . . | 923.41                                  | V(A)(B)&(C)                                |
| 306(d)(2): Powers of acquisition, if necessary. . . . .                            | 923.41                                  | V(A)                                       |
| Sec. 306(e) which includes:  |   |  |
| 306(e)(1): Technique of control. . . . .   | 923.41-44                               | V(A)&<br>III(C)(3)                         |
| 306(e)(2): Uses of regional benefit. . . . .                                       | 923.12                                  | III(C)(2)                                  |
| Sec. 307 which includes:   |   |  |
| 307(b): Adequate consideration of Federal agency views. . . . .                    | 923.51                                  | V(F)                                       |
| 307(f): Incorporation of air and water quality requirements. . . . .               | 923.45                                  | V(E)                                       |