

# Subcommittee on Energy and Mineral Resources

Doug Lamborn, Chairman

Hearing Memorandum

July 23, 2015

To: All Natural Resource Committee Members

From: Majority Committee Staff  
Subcommittee on Energy and Mineral Resources (x5-9297)

Subject: Oversight Hearing on “*Federal Implementation of the Coastal Zone Management Act*”

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On **Tuesday, July 28, 2015, at 10:00 a.m., in Room 1334 Longworth House Office Building**, the Subcommittee on Energy and Mineral Resources will hold an oversight hearing titled “*Federal Implementation of the Coastal Zone Management Act.*”

## **Policy Overview**

- The original intent of the Coastal Zone Management Act, enacted in 1972, was to enable States to have greater equity in federal decision-making that affects their coastal zone or shoreline.
- Administered by the National Oceanic and Atmospheric Administration’s (NOAA) Office of Coastal Management, authorization for this program expired in 1999.
- While flexibility enshrined in the Act enable states to develop plans that address unique aspects of their coastal zones, it has also effectively empowered localities to have some permitting power through consistency decisions on federally-permitted activities.
- This hearing will explore the positives and challenges of the Coastal Zone Management Act as implemented by the federal government and exercised at the state and local level.

## **Witnesses Invited**

*Ms. Holly A. Bamford, Ph.D.*

Acting Assistant Secretary for Conservation and Management  
National Oceanic and Atmospheric Administration (NOAA)  
Washington, D.C.

*Mr. William Mohl*  
President  
Entergy Wholesale Commodities  
The Woodlands, TX

*Mr. John Englander*  
President  
Rising Seas Group, Inc.  
Boca Raton, FL

### **Hearing Focus**

Administered by the National Oceanic and Atmospheric Administration (NOAA), the Coastal Zone Management Act (CZMA) provides criteria for 35 eligible states and territories to voluntarily establish and implement state coastal zone management programs which are meant to help states coordinate with the federal government on activities that may affect their coastlines. A fundamental provision of the Act provides states with the ability to block (not request), through a “consistency determination,” a federally-permitted activity, even if the activity is in federal waters, if states can show that it will impact their coastal resources.

While the Act provides broad flexibility to states in determining which areas to focus on in developing their plans in order to better address local needs, this flexibility results in many different processes for moving forward with a federally-permitted activities that require state consistency determinations. This hearing will provide a broad overview of the CZMA, how the Act works at the federal, state and local levels, and the impacts that state coastal zone management plans have on federally-permitted activities.

### **Background**

The CZMA was passed into law in 1972 with the overall objective to “preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations.”<sup>1</sup> Administered by the Office of Coastal Management under NOAA at the Department of Commerce, this statute provides an overall framework through which eligible states and territories may participate with the federal government on a voluntary basis to formulate and occasionally update coastal zone management programs and work with the federal government to manage coastal resources – including the Great Lakes. The Act requires NOAA to submit a biennial report to Congress on the administration of state coastal zone management plans – however the last report submitted to Congress was in 2008-09.<sup>2</sup>

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<sup>1</sup> 16 U.S.C. § 1452 (a)

<sup>2</sup> <http://coastalmanagement.noaa.gov/czm/media/czmbiennialreport.pdf>

By statute, coastal zone management extends to state jurisdictional boundaries, which are three nautical miles offshore (or 9 nautical miles in the case of Texas and Florida’s Gulf Coast). However, once a state has established a program that has then been approved by the Secretary of Commerce, that state has the ability to make a “consistency determination” on federal activities that may “affect any land or water use or natural resource of the coastal zone”.<sup>3</sup>

#### Requirements for NOAA Approval of State Plans

One of the criteria for NOAA approval of a state plan is that a state must set a boundary for its respective coastal zone in their plan.<sup>4</sup> While the boundary is within state jurisdiction, any federal activity that may affect that coastal zone would be applicable to that state’s coastal zone management program. This includes federal activities that occur in federal waters – which extend from state boundaries out to 200 nautical miles offshore.

If a state determines that a proposed activity is not consistent with enforceable policies of a state’s coastal zone management plan, the applicant may appeal the state’s objection to the Secretary of Commerce. The Secretary can override a state’s objection if the project is determined to be consistent with the objectives of the Coastal Zone Management Act or is otherwise necessary in the interests of national security. If the state’s objection is overridden, then the activity may be permitted by the federal government and allowed to move forward. If the Secretary upholds the state’s objection, then the federal government cannot permit the proposed activity.

#### Appeals of Secretarial Decisions

According to NOAA, the Secretary has delegated CZMA appeal decision authority for substantive appeal decisions to the Under Secretary for Oceans and Atmosphere. As of February 2015, there have been **45** CZMA Secretarial Appeal Decisions; of the 19 Energy related appeals, 14 were on Outer Continental Shelf Oil and Gas plans (7 upheld; 7 overridden); 2 were for natural gas pipelines (1 upheld; 1 overridden); and 3 were for LNG terminals/pipelines.<sup>5</sup>

#### Unique Features of State Plans, Interaction with Local Governments

Coastal states and territories have a great amount of leeway in creating a coastal zone management plan in order to address each state’s unique needs. For this reason, coastal zone management plans vary greatly from state to state – not only in which topics the plan addresses (such as natural resource protection, hazard mitigation, beach access, and energy activities) but also in the level to which a state might integrate local government into the process.

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<sup>3</sup> 16 U.S.C. § 1456 (c)

<sup>4</sup> <http://coast.noaa.gov/czm/media/StateCZBoundaries.pdf>

<sup>5</sup> <http://coast.noaa.gov/czm/consistency/media/appealslist.pdf>

For instance, the State of Washington had the first federally-approved management plan in the nation, approved in 1976. Washington's program<sup>6</sup> is an example of a coastal zone management plan that involves local governments in the decision-making process. In effect, this provides a city or locality with far reaching authority over a consistency determination for any coastal activity – even if it is in federal waters. Similar requirements that incorporate state and local permitting into federally-approved CZMPs in the State of Oregon have significantly delayed the \$6.3 billion Oregon LNG project.<sup>7</sup>

### Permitting Issues

Other states, such as New York, implement the plan with primary decision making maintained at the state level; in this case, the New York Department of State serves as the lead agency. Currently, New York's coastal zone inland boundary is generally set to be 1,000 feet<sup>89</sup> from the shoreline – however, when “...electric power generating facilities abut the shoreline, the boundary extends inland to include them.”<sup>10</sup> As a result, Indian Point Energy Center, a two-reactor nuclear facility located roughly 35-miles up the Hudson River from mid-town Manhattan, falls under the state's coastal zone management plan. The relicensing of this plant has become a contentious issue<sup>11</sup> despite the fact that Indian Point generates roughly 10% of the State of New York's electricity – and 25% of the electricity needs of Manhattan and nearby West Chester County.<sup>12</sup>

CZMA state consistency determinations have also played a major role in the federal permitting process for Atlantic Geological and Geophysical activities (i.e. seismic surveying). In order to allow permitting for seismic surveying in the Mid and South Atlantic outer Continental Shelf planning areas, the Bureau of Ocean Energy Management (BOEM) along with NOAA were required to coordinate<sup>13</sup> with Atlantic states in order to determine that seismic surveying activity was consistent with each state's coastal zone management plan. The Outer Continental Shelf Lands Act (OCSLA) also prevents the Secretary of the Interior from permitting any oil and gas activity on the outer Continental Shelf if it is not determined to be consistent with an affected states coastal zone management plan.

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<sup>6</sup> <https://fortress.wa.gov/ecy/publications/documents/0006029.pdf>

<sup>7</sup> [http://www.oregonlive.com/business/index.ssf/2014/01/oregon\\_lng\\_state\\_delays\\_decisi.html](http://www.oregonlive.com/business/index.ssf/2014/01/oregon_lng_state_delays_decisi.html)

<sup>8</sup> [http://www.dos.ny.gov/opd/programs/pdfs/Article\\_42.pdf](http://www.dos.ny.gov/opd/programs/pdfs/Article_42.pdf)

<sup>9</sup> [http://appext20.dos.ny.gov/coastal\\_map\\_public/map.aspx](http://appext20.dos.ny.gov/coastal_map_public/map.aspx)

<sup>10</sup> <http://coast.noaa.gov/czm/media/StateCZBoundaries.pdf>

<sup>11</sup> <http://breakingenergy.com/2015/04/23/exclusive-interview-current-status-of-indian-point-nuclear-plant-relicensing/>

<sup>12</sup> <http://www.nei.org/CorporateSite/media/filefolder/Policy/Papers/Economic-Impacts-of-the-Indian-Point-Energy-Center.pdf?ext=.pdf>

<sup>13</sup> <http://www.boem.gov/Atlantic-Permitting-Process/>

### Funding Authorization

The CZMA provides authority to NOAA to award grants to participating states to assist in the implementation of approved programs. Of the 35 states and territories that are eligible to participate in the Coastal Zone Management programs, 34 currently participate<sup>14</sup> – Alaska withdrew from the programs on July 1, 2011<sup>15</sup>.

The CZMA authorization expired in 1999, however funding for the program has continued. In FY 2014, NOAA awarded nearly \$66 million in coastal management program grants<sup>16</sup>, with most grants to states amounting to just under \$2 million.<sup>17</sup>

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<sup>14</sup> <http://coast.noaa.gov/czm/mystate/>

<sup>15</sup> <https://www.federalregister.gov/articles/2011/07/07/2011-16987/alaska-coastal-management-program-withdrawal-from-the-national-coastal-management-program-under-the>

<sup>16</sup> <http://coast.noaa.gov/czm/media/CZM-funding-summary-FY14.pdf>

<sup>17</sup> <http://coast.noaa.gov/czm/media/fy14finalguidance.pdf>