

# Committee on Resources

## Subcommittee on Fisheries Conservation, Wildlife and Oceans

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### Staff Background Memorandum

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February 22, 1999

#### **MEMORANDUM**

**TO:** Members, Subcommittee on Fisheries Conservation, Wildlife and Oceans

**FROM:** Subcommittee Majority Staff

**SUBJECT:** Oversight hearing on Coastal Zone Management Act

The Subcommittee on Fisheries Conservation, Wildlife and Oceans is scheduled to meet on **Thursday, February 25, 1999 at 10:00 a.m., in room 1334 Longworth HOB** to hold an oversight hearing on the Coastal Zone Management Act. Those invited to testify include: The Honorable Porter J. Goss, Representative of the 14<sup>th</sup> District of Florida; Mr. Terry D. Garcia, Assistant Secretary of Commerce for Oceans and Atmosphere, Department of Commerce; Ms. Jaqueline Savitz, Executive Director, Coast Alliance; John Donaldson, Personal Watercraft Industry Association; Mr. Thomas Fote, New Jersey Coast Anglers Association; Mr. Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection; Dr. Marc J. Hershman, Director and Professor School of Marine Affairs, University of Washington; Ms. Sarah W. Cooksey, President, Coastal States Organization; and Mr. Gary D. Lytton, President, National Estuarine Research Reserve Association.

A briefing paper and witness list is attached. If you have any questions, please contact John Rayfield or Jeff Ripp at x60200.

#### **BACKGROUND**

Over sixty percent of all Americans live within 50 miles of the Atlantic and Pacific Oceans, the Gulf of Mexico, and the five Great Lakes. The population density of these areas is four times the national average, and coastal population is expected to grow by 15 percent during the next two decades. With this rise in population, there has been an increase in the competing uses of coastal resources.

In 1972, Congress enacted the Coastal Zone Management Act (CZMA). CZMA provides grants to states that develop and implement Federally approved coastal zone management plans. It also allows states with approved plans the right to review Federal actions to ensure they are consistent with those plans, and it authorizes the National Estuarine Research Reserve System.

The CZMA requires that approved state management programs include the following: (1) the boundaries of the coastal zone affected by the program; (2) an inventory and designation of areas of particular concern in the coastal zone; (3) a definition of permitted land and water uses that directly impact coastal waters; (4) an identification of how those uses will be controlled; (5) an outline of broad guidelines to determine priority of uses in coastal areas; (6) a description of the administrative structure that will operate the approved management program; (7) a definition of "beach" and a planning process for dealing with access to public coastal areas; (8) a planning process for energy facilities likely to be located in or significantly affect the coastal zone; and (9) a planning process for studying both the effects of coastal erosion and alternative ways to control it. Section 6217 of the Budget Enforcement Act of 1990 also requires states to include nonpoint source management plans as a part of their state plan. The Transportation and Infrastructure Committee has primary jurisdiction over Section 6217, and that program will not be covered as part of this hearing.

By the end of this Fiscal Year, 34 of the 35 eligible coastal states and territories will have Federally approved plans. The approved plans include more than 100,000 miles of coastline, which represent nearly all of the national total. The

Coastal Zone Management Act was last reviewed in the 104th Congress, and authorizations for appropriations expire at the end of the current fiscal year.

### **Coastal Zone Management Grants**

Each coastal state with an approved plan received Federal grants of between \$635,000 and \$2.795 million in Fiscal Year 1999. Three grant programs are authorized under CZMA. Section 306 grants are used to operate the states coastal zone management program. Coastal states making satisfactory progress implementing their plans are also eligible for Section 306A, Resource Management Improvement Grants. These grants are designed to help states preserve or restore coastal areas, redevelop urban waterfronts and ports, and provide access to public beaches and coastal waters. Both 306 and 306A grants must also be matched by the state. The amount of these grants is determined by the state's coastal population and shoreline mileage.

Participating states may also compete for Coastal Zone Enhancement Grants. These additional Federal funds can be used to strengthen the state programs in one or more of the following areas:

- wetland protection and restoration;
- increased public access to coastal areas;
- control of development impacts;
- protection from coastal hazards;
- special area management planning;
- management of ocean resources; and
- reduction of marine debris along the coast.

These grants are awarded by the National Oceanic and Atmospheric Administration (NOAA) based on a review of the state programs. No match is required for these grants.

State grants were funded at \$54.7 million in Fiscal Year 1999. Of that amount \$10 million was used for Section 309 grants. The Administration has requested \$55.7 million for state grants in Fiscal Year 2000. As part of its Land Legacy Initiative, the Administration has requested \$28 million in technical assistance to help states implement their coastal zone management plans.

### **Consistency**

CZMA gives states with approved plans the right to review Federal activities (including activities that require Federal permits) to determine whether they are consistent with the policies of the state's coastal zone management program. If the Federal action is not consistent to "the maximum extent practicable" with the state program, changes must be made before the Federal activity is permitted. For Federal agency actions, the final determination of whether a Federal action is consistent with a state plan lies with the Secretary of Commerce.

Any person who submits a plan to the Secretary of the Interior for exploration, development, or production of oil or natural gas from leased areas on the Outer Continental Shelf must certify that the plan complies with applicable state coastal zone management plans. That certification, the plan and "any other necessary data and information" must be provided to the state. The state then has 90 days to concur, or disagree with the consistency finding or seek additional time for review. Congressman Goss has introduced legislation, H.R. 720, to require that the state be provided with the Environmental Impact Statement on the plan before the state review period begins. He will testify in support of this bill at the hearing.

### **National Estuarine Research Reserve System**

Furthermore, the Coastal Zone Management Act authorizes the National Estuarine Research Reserve System (NERRS). Under the CZMA, the Secretary of Commerce can make grants, not to exceed 50 percent of the cost of the project, which enable coastal states to acquire, develop, and operate estuarine research reserves. Designation of an estuarine reserve requires a state to agree to long-term management of the site for research purposes, and to provide information for use by coastal zone managers.

Since the NERRS program began in 1972, it has grown from a single 4,400-acre site in Oregon to a 25-site system managing over one million acres in 19 states and Puerto Rico. More than half the System is made up of two reserves; Apalachicola in Florida and Kachemak Bay in Alaska. Most of the land in the system is not owned by reserves, instead the majority of the land included in research reserves is held for conservation purposes by other agencies.

Reserve operations are funded at \$4.3 million in Fiscal Year 1999, and \$7.3 million was provided for construction and land acquisition. The Administration has requested \$7 million for operations and \$12 million for construction in Fiscal Year 2000.

### **Coastal Zone Management Effectiveness**

In December, 1997, the Department of Commerce Inspector General concluded that "only anecdotal evidence" can be cited "to demonstrate the accomplishments of the CZM program" and that "states have been unable to measure or evaluate 'on the ground' outcomes of the CZM program because the data necessary to make these decisions has not been collected.". The Inspector General recommended that NOAA "develop a strategy to measure the effectiveness of the CZM program".

As a result of that recommendation, NOAA commissioned a comprehensive study of the effectiveness of the program. The complete study will be published later this spring. Its primary researcher, Dr. Marc Hershman, has provided a copy of the paper to the Subcommittee and will testify about its conclusions at the hearing.

The researchers did conclude that state CZM programs were effective in implementing limited number of CZMA objectives they reviewed. However, they reached this conclusion based primarily on assessments of policies, processes and tools rather than actual outcome data. The researchers state "there are insufficient data for systematic, outcome based performance evaluation of state CZM programs, largely because of the lack of a common set of outcome indicators that would link state management activities and decisions to national CZMA objectives.". They recommend the development of such indicators and that Congress "initiate a national outcome monitoring and performance system". Legislation is being prepared by the Subcommittee Chairman based on this recommendation. It is discussed below.

### **Personal Watercraft**

Many states and localities have begun restricting personal watercraft (PWC). PWCs are a relatively new segment of the boating community, but their use is growing. Currently, PWC sales are the fastest growing segment of the boating industry, amounting to almost 200,000 units per year. This large increase in PWC use has lead other resource user groups; including fishermen, bird watchers and boaters, to seek the regulation of PWCs in many areas. Regulations against PWCs have been implemented in several coastal states including Hawaii, Florida, Washington and California. The regulation of PWCs is not exclusively a coastal issue; in 1998 the National Park Service began working on regulations that would limit PWCs in national parks and states, such as Wisconsin, have limited their use on inland lakes.

The regulation of PWCs has three major aspects; environmental impacts, boater safety and user conflicts. Boater safety is the domain of State marine law enforcement agencies and the Coast Guard, and this aspect is not discussed here. User conflicts arise in areas where PWCs are introduced into waters traditionally used by other groups. The environmental impacts of PWCs are being studied, and regulators and user groups are concerned for a number of reasons. Although none of the impacts are exclusive to PWCs, their increasing use has either created or exacerbated problems in many locations. The environmental impacts of PWCs are often cited as the following:

- 1) **Wildlife Disturbance**: PWCs have performance capabilities (low draft, high maneuverability) not present in larger boats that allow them to enter sensitive areas not accessible to larger motorized boats. Once there, they disturb nesting birds and wildlife. Some studies indicate that when startled by PWCs, nesting birds have trampled their eggs, seals have abandoned their pups, manatees have been run over, and other marine mammals have avoided certain areas.

2) Destruction of Aquatic Vegetation: Again, because PWCs are able to enter shallow water, they have the ability to uproot aquatic plants and disturb kelp beds.

3) Increased Erosion: PWC users typically spend longer periods of time in an area than traditional boats and can generate significant wave action. Increased and continuous wave action contributes to shoreline erosion.

4) Pollution: Powered by two-stroke engines, PWCs burn oil and gas in a mixture. According to one claim, as much as one-third of the fuel is discharged into the waterway unburned, resulting in as much as 1.25 gallons per hour of use. However, the engines in PWCs are no worse than those on other recreational craft.

Despite these concerns, sales of PWCs continues to rise and more governments are beginning to take action to limit or ban their use. Efforts to regulate personal watercraft include:

- The Florida Keys National Marine Sanctuary Advisory Committee expressed concern about PWCs in the sanctuary EIS and management plan through notice-and-comment rule making. NOAA addressed the issue of PWCs by restricting a number of boating activities, but not specifically singling out jet skis. The regulations prohibit "reckless operation of all watercraft" [s. 922.163(a)(v)] and require no-wake speed in marked channels and other designated areas of concern [s. 922.163(a)(5)(iii)]. The regulations outlaw operating a vessel in such a way as to "take or injure wading, roosting or nesting birds or marine mammals". The industry agreed to self-enforcement in order to work on changing user behavior through education. NOAA reserved the right to enforce broad zones of PWC bans if the industries efforts were not successful in reducing or eliminating nuisance, safety and resource protection problems. The final rule was printed in the June 12, 1997 Federal Register. No further actions have been taken to limit PWCs in the Florida Keys.
- The State of Washington Supreme Court upheld a San Juan County ordinance banning PWCs in almost all County waters. The County enacted the ban for both safety and environmental reasons. The Court found that the law was Constitutional, was a legitimate expression of the police power, did not conflict with State laws requiring PWC owners to register their vehicles, does not violate the public trust doctrine, and finally, is not "unduly oppressive". The Court found that it is possible to distinguish between PWCs and other vessels, and that banning them was a prudent policy in light of the Board's concerns, which were enumerated in the ordinance.
- The final regulations for the Monterey Bay National Marine Sanctuary limited the operation of PWCs or "thrill craft" to four designated zones, with access routes. The US Court of Appeals in Washington, D.C. upheld those regulations.
- The National Estuarine Research Reserve program is looking at regulating PWCs in the reserves. NERRS believes that a scientific management approach should be taken towards regulation, which requires research before regulation. Plans are underway to conduct research on the effects of all types of recreation craft, including PWCs, at the Rookery Bay reserve in Florida in three stages. Stage 1 is the effect of watercraft on waterbird disturbance. Stage 2 is the effect of watercraft on submerged resources including; turbidity and detailed assessments of sea grass distribution and habitat diversity. Stage 3 is the human dimension, particularly user conflicts.

The Subcommittee is preparing legislation to encourage states to address the impacts of personal watercraft on the marine environment through state coastal zone management plans. That legislation is described below.

### **Draft Legislation**

The Subcommittee has provided the witnesses with draft reauthorization legislation on which to comment. A section-by-section explanation follows:

Section 1. Short Title. "The Coast and Ocean Act of 1999".

Section 2. Inclusion in state management programs of restrictions on certain vessel operations. Under this section, state coastal management plans would have to include policies that prohibit the operation of PWC

1) in areas 12 inches or less where submerged aquatic vegetation is located, and

2) in excess of no-wake speed in areas where normal operation would impact living marine resources or birds.

Current law does not require that state plans include the regulate PWC.

Section 3. Coastal Zone Management Fund. The coastal zone management fund contains loan repayments from the long defunct Coastal Energy Impact Assistance Loan Program. Current law allows the fund to be used for program administration and several other items. Because the balance in the fund is declining rapidly as the loans are paid, appropriations legislation has restricted the use of the fund to program administration for the last several years. This legislation adopts that policy. In Fiscal Year 2000, amounts in the fund will not be sufficient to fully pay for program administration. Therefore, additional funds are also authorized under Section 5.

Section 4. Coastal Community Conservation Grants. The Administration proposes funding technical assistance to help communities promote better coastal management. This section promotes greater community involvement in coastal management, but through a matching grant program instead of technical assistance. This program combines the existing Resource Management and Enhance grant programs into a single new Coastal Community Conservation Grant program. These grants could be used for on-ground projects, or to improve state programs. The grants must be matched, and must be carried out in conjunction with a local government, regional, or interstate entity.

Section 5. Authorization of Appropriations. The legislation authorizes \$60,000,000 for the CZM grant programs in Fiscal Year 2000, \$7.3 million over Fiscal Year 1999 appropriations. After that it provides level funding for the states basic operation grants at \$40,000,000 through Fiscal Year 2004. It provides authorizations for the Coastal Community Conservation Grant program that start at \$20,000,000 in Fiscal Year 2001 and rise to \$35, 000,000 in Fiscal Year 2004. For the National Estuarine Research Reserve program authorizations begin at \$7,000,000 in Fiscal Year 2000, the Administration request, and rise to \$11, 000,000 in Fiscal Year 2004. Program Administration is authorized at \$5,000,000 for each fiscal year through 2004.

Section 6. Technical Corrections. The section makes technical corrections.

Section 7. Coastal Zone Management Outcome Indicators. Within 2 years, the Secretary of Commerce must provide Congress with a report containing a common set of measurable outcome indicators to evaluate the effectiveness of coastal zone management programs. Within 4 years, the Secretary must submit draft legislation to authorize a national coastal zone management monitoring and performance evaluation system.

## **Issues**

1) What are the impacts of personal watercraft operation on living marine resources and birds? How can those impacts best be mitigated?

2) How effective are state coastal zone management programs in meeting the Federal coastal zone management objectives set out in the Coastal Zone Management Act? What outcomes should be measured to determine program effectiveness? What mechanisms should be used to monitor and measure those outcomes?

3) Now that the state program development stage is complete, what can be done to promote plan implementation? How can the needs of coastal communities be better addressed?

4) The National Estuarine Research Reserve System has under gone explosive growth without a concurrent growth in funding? How many additional reserves are under consideration? What percentage of current reserve management plans are being implemented? What are the reserves construction needs?

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