
COASTAL ZONE ACT REAUTHORIZATION AMENDMENTS
OF 1990

JUNE 11, 1990.—Committed to the Committee of the Whole House on the State of the Union ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 4450]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 4450) to improve management of the coastal zone and enhance environmental protection of coastal zone resources, by reauthorizing and amending the Coastal Zone Management Act of 1972, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass.

SUMMARY OF THE REPORTED BILL

H.R. 4450, the "Coastal Zone Act Reauthorization Amendments of 1990", as reported by the Committee on Merchant Marine and Fisheries, includes the following features:

1. Establishment of an "Ocean and Coastal Zone Management Service" in the National Oceanic and Atmospheric Administration (NOAA).

2. A number of minor changes to the findings, declaration of policy, definitions, administrative and resource management improvement grants, public hearings, coordination and cooperation, program evaluation, estuarine research reserve system, and report sections of the Coastal Zone Management Act of 1972 (CZMA).

3. Creation of a new "National Interest Improvements Program" under which each state will be encouraged to improve its coastal zone management program in five national interest areas which are to be established, through regulation, by NOAA.

4. Authorize the NOAA Administrator to make annual achievement awards to individuals, scientists, and local governments for outstanding accomplishments in the field of coastal zone management.

5. Authorizes appropriations for five years at increased levels: \$54.2 million (1991); \$56.6 million (1992); \$59.1 million (1993); \$61.7 million (1994); and \$64.4 million (1995).

PURPOSES OF THE BILL

The purposes of H.R. 4450 are to:

(1) establish the improvement of coastal resource protection as a priority national goal under the Coastal Zone Management Act;

(2) establish greater incentives for state and local action to achieve better coastal resource protection;

(3) improve public participation in state management programs;

(4) revitalize the federal coastal management program by establishing a mandate for federal leadership and technical and financial assistance in support of improved coastal zone management at regional, state, and local levels; and

(5) encourage voluntary participation by all eligible coastal states in the CZM program by setting a goal of 100 percent state participation by the end of 1995.

BACKGROUND AND NEED FOR LEGISLATION

THE COASTAL ZONE MANAGEMENT ACT: BRIEF HISTORY AND KEY PROVISIONS

In 1969, the Commission on Marine Science, Engineering and Resources (known as the Stratton Commission) recommended that:

... a Coastal Zone Management Act be enacted which will provide policy objectives for the coastal zone and authorize federal grants-in-aid to facilitate the establishment of State Coastal Zone Authorities empowered to manage the coastal waters and adjacent land.

Largely as a result of the work of the Stratton Commission and the growing awareness of the substantial threats to the coastal environment caused by population and development pressures in coastal areas, including offshore development in both state waters and the Outer Continental Shelf, Congress enacted the Coastal Zone Management Act (CZMA) in 1972 (P.L. 92-583).

Congress envisioned a voluntary and cooperative federal-state program to protect coastal resources, uses and values from these pressures. The states were selected as the key to effective coastal management and protection, while the federal role was to encourage states to exercise their full authority over coastal areas by developing management programs meeting minimum federal standards.

Congress provided two major incentives to encourage coastal states to develop coastal management programs: (1) financial and technical assistance in program development and implementation;

and (2) the requirement that federal activities and projects, as well as federally-permitted activities, must be consistent with approved state programs (the federal consistency provision). If a state does not choose to develop a coastal management program, the Federal Government is not authorized to develop one for the state.

The CZMA is administered by the Secretary of Commerce, with general authority delegated to the Under Secretary for Oceans and Atmosphere at the National Oceanic and Atmospheric Administration (NOAA). NOAA oversees all state grants and reviews state programs for compliance with the general federal requirements in the CZMA. Day-to-day responsibility has been assigned to the Office of Ocean and Coastal Resource Management (OCRM).

Procedurally, the CZMA established a two-stage, matching grant assistance program. The first stage provided grants (under section 305) to coastal states for development of coastal management programs meeting certain federal requirements. State programs which, in the judgment of the Secretary of Commerce, met the requirements of the federal Act, received federally-approved status and became eligible for the second stage of grants. These administrative grants (under section 306) involve ongoing federal assistance for states to implement their approved coastal programs.

Early state response to the CZMA was strong. By 1975, every coastal state had begun development of a management program under section 305. In fact, prior to passage of the CZMA, several states had already started independent efforts that could be loosely categorized as coastal management plans and they welcomed federal assistance and the national recognition of the need for such comprehensive management programs. Additionally, assurances of federal consistency provided incentives to coastal states seeking greater influence over federal agency actions affecting coastal resources.

During the development stage of CZMA implementation, the principal federal role was the provision of assistance to states, both financial and technical. During this period, the primary federal objective was to encourage state participation, and by using the incentives of financial aid and federal consistency, to weave national goals into state programs. From 1974-1979, NOAA provided roughly \$67.5 million in program development grants to the 35 eligible coastal states and territories.

The program implementation stage began in 1976 when the State of Washington submitted the first program to be approved by the Secretary of Commerce. The State of Oregon followed in 1977. The majority of state programs were approved during the period 1978-1982. Therefore, while the CZMA was enacted 18 years ago, most state programs have been operating for only about half that long.

As of this date, 29 of 35 potentially eligible coastal states and U.S. territories have received federal approval for coastal management programs. Table 1 lists each eligible coastal state and the year of approval for those with CZM programs. The State of Virginia was the most recent entrant into the program, receiving program approval in 1986. Ohio is currently preparing a program and is expected to submit it for federal approval in 1991. Considering the 29 programs for which federal approval has been attained, the national CZM network covers over 93 percent of the Nation's marine and Great Lakes coastline.

TABLE 1.—STATUS OF STATE COASTAL ZONE MANAGEMENT PROGRAMS

State	Actual or estimated Federal approved date by fiscal year (end September 30)	Comment and status September 30, 1989
Washington	1976	Approved.
Oregon	1977	Approved.
California	1978	Approved.
Massachusetts	1978	Approved. ¹
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	Approved.
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.
American Samoa	1980	Approved.
Florida	1981	Approved.
New Hampshire (ocean and harbor segment)	1982	Approved.
New York	1982	Approved.
Virginia	1986	Approved.
New Hampshire	1988	Approved.
Ohio		Pending.
Non-participating:		
Indiana		
Georgia		
Minnesota		
Illinois		
Texas		

Total federal funding, through fiscal year 1989, for the 29 participating states and territories is shown in Table 2. The actual amount of federal program implementation grants (section 306 grants), generally the largest portion of the state's federal grant, is determined by a formula that takes into account the states' coastal area and population, with a weighting of 60 percent and 40 percent, respectively. Other large funding sources are grants and loans made under section 308, the Coastal Energy Impact Program.

TABLE 2.—TOTAL FEDERAL FUNDING, BY STATE, UNDER THE COASTAL ZONE MANAGEMENT ACT, 1974-1989

(Dollars in millions)

State	Amount	State	Amount
Alabama	\$13.276	American Samoa	\$5.208
Alaska	91.530	California	50.878

TABLE 2.—TOTAL FEDERAL FUNDING, BY STATE, UNDER THE COASTAL ZONE MANAGEMENT ACT, 1974-1989—Continued

(Dollars in millions)

State	Amount	State	Amount
Connecticut	\$10.250	New Jersey	\$24.479
Delaware	10.007	New York	27.025
Florida	66.779	North Carolina	24.569
Georgia	7.289	Northern Marianas	5.132
Guam	6.069	Ohio	3.163
Hawaii	11.336	Oregon	30.806
Illinois	2.088	Pennsylvania	10.280
Indiana	1.746	Puerto Rico	15.517
Louisiana	100.622	Rhode Island	13.600
Maine	20.962	South Carolina	13.939
Maryland	24.799	Texas	39.913
Massachusetts	25.023	Virgin Islands	5.833
Michigan	23.017	Virginia	10.102
Minnesota	1.076	Washington	27.373
Mississippi	22.787	Wisconsin	13.767
New Hampshire	8.530	Miscellaneous	5.950

The nature and structure of CZM programs vary widely from state to state. This diversity was intended by Congress. Some states, like North Carolina, passed comprehensive legislation as a framework for coastal management. Other states, like Oregon, used existing land use legislation as the foundation for their programs. Finally, states like Florida and Massachusetts linked existing, single-purpose laws into a comprehensive umbrella for coastal management. The national program, therefore, is founded in the authorities and powers of the coastal states and local governments. Through the CZMA, these collective authorities are orchestrated to serve the national interest in effective management of the coastal zone.

In 1986, the CZMA was reauthorized for five years, through Fiscal Year 1990 (P.L. 99-272). The 1986 amendments also added more specific policies and objectives to the statement of purpose of the Act, and provided for an increasing state match for federal program administration grants. Previous amendments, in 1980, directed the Secretary of Commerce to ensure that an increasing proportion of federal grant funds (up to 30 percent) was spent on "significant improvements" in meeting the statutory objectives.

The following is a synopsis of the major CZMA provisions:

Section 306: Program approval and administration grants

The majority of state programs were approved in the late 1970's. To be eligible for federal approval, states had to demonstrate that they had the authority within the coastal zone to administer land and water use regulations, control development to ensure compliance with their management programs, and resolve conflicts among competing uses.

The coastal zone extends in the Great Lakes to the U.S.-Canada international boundary, and in other areas, extends seaward to the outer limit of the U.S. territorial sea. The zone extends inland only

to the extent necessary to control the uses of adjacent lands which have a direct and significant impact on coastal waters.

How a state chooses to implement its CZM authority—whether through direct state control, or state standards with local implementation—is for the individual state to decide. Early in the program, the oil and gas industry challenged the Secretary's approval of the major state programs, including California and Massachusetts, on the grounds that they failed to meet federal approval standards and lacked specific policies to guide users of the coastal zone. These challenges were unsuccessful. *API v. Knecht*, 456 F. Supp. 889 (C.D. Cal. 1978), *aff'd*, 609 F.2d 1306 (9th Cir. 1979).

Once its management program is approved, the state becomes eligible for section 306 program administration grants. The Reagan Administration had proposed, in eight consecutive budgets, that no money be appropriated for 306 grants, preferring to leave further implementation to the states. But, each year Congress restored funding for the CZM grants. The FY 1990 appropriation for section 306 grants is \$34 million. These grants are allocated to the states based on the weighted formula described above.

The section 306 funds are used by the states to implement their approved management programs. The largest percentage of the money is spent on personnel costs to implement state and local permitting authorities. States can pass federal funds to local governments provided the local land use plans are part of the approved state program.

A percentage of the section 306 funds, at NOAA's discretion, can be spent by the states on certain projects stipulated in section 306A. These are primarily low-cost construction or land acquisition projects for the purpose of increasing beach access and rehabilitating deteriorating waterfronts.

Section 307: Federal consistency

After a state program receives federal approval, federal agencies generally must conduct their activities in or affecting the coastal zone consistent with the legally-enforcement policies contained in those programs. The consistency provisions of the CZMA can be a powerful management tool for the states to make certain that federal activities are coordinated with their coastal management programs.

The federal consistency provision is divided into four separate requirements: (1) federal activities and development projects in or directly affecting the coastal zone must be conducted, to the maximum extent practicable, consistently with state programs; (2) private activities affecting the land or water uses in the coastal zone for which federal licenses and permits are required must be consistent with state programs; (3) activities covered by exploration and production plans for oil and gas development from an area leased under the Outer Continental Shelf (OCS) Lands Act and affecting any land or water use in the coastal zone must be consistent with state programs; and (4) federal financial assistance for activities affecting the coastal zone must be consistent with state programs.

In the case of federal licenses and permits, including those for the OCS, and federal financial assistance, the Secretary of Com-

merce can allow the activity to proceed, notwithstanding its inconsistency with the state's program, if the Secretary finds that the activity is otherwise consistent with the objectives of the CZMA or is necessary in the interest of national security.

Section 312: Review of State performance

The Secretary is required to conduct a continuing review of the performance of state programs following their approval. As part of the review or reevaluation process, the Secretary must determine whether a state is continuing to adhere to its approved program and the terms of its grants. This evaluation generally takes place on a biennial basis.

If the Secretary finds that a state is not adhering to its federally-approved program or the terms of its grants, and the deviation is unjustified, the Secretary has the authority to withdraw program approval and terminate federal financial assistance. Prior to program disapproval, the Secretary must provide the state notice and an opportunity for a public hearing, as well as a statement of actions it may take to remedy the deviation.

The Secretary has not withdrawn program approval from any state, although in 1988, the Secretary made preliminary findings to support "decertification" of California's program. California challenged the decision in court and was successful in obtaining a preliminary injunction. In *California v. Mack*, 693 F. Supp. 821 (N.D. Cal. 1988) the district court ruled that NOAA, under the section 312 evaluation process, does not have authority to revisit the approvability of a state CZM program. Subsequent to the injunction, the case was settled and the notice of intent to decertify was withdrawn.

In addition to withdrawing program approval, the Secretary is authorized to reduce the state's grant, but not below 70 percent, if the state is failing to make significant improvements in achieving the management objectives of the CZMA.

Section 315: National estuaries reserve research system

Section 315 of the CZMA establishes a national estuarine reserve research system. The Secretary is authorized to designate as national estuarine reserves those estuaries which are suitable for long-term research and are biogeographically representative. Once designated, the coastal states within which the reserves are located are eligible to receive federal grants for acquisition of key lands within the reserves and for their long-term management. This section authorizes the Secretary to 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. In 1985, Congress substantially revised section 315 to place more emphasis on the research objective of this program. The FY 1990 appropriation for section 315 is \$3.49 million.

The first estuarine sanctuary, South Slough, was designated in Oregon in 1974. Currently, 18 sites compose the national system, with a complete system of 25-30 sites ultimately envisioned. Designation of a research reserve signifies that a state has agreed to advance estuarine science through long-term management, and provide information for use by coastal zone managers. In addition, the

research reserves allow access by the general public to normally inaccessible natural areas, where, through interpretive programs, they can learn to appreciate coastal and estuarine ecology in an out-of-doors setting.

THE NEED FOR H.R. 4450: THE MODERNIZATION OF THE CZMA FOR THE 1990's

In very general terms, there are two reasons why H.R. 4450 needs to be enacted. First, the authorization for the Coastal Zone Management Act expires in Fiscal Year 1990. Therefore, if the program is to continue, it should be reauthorized this year.

Second, the Act needs to be modernized. It has not been thoroughly reviewed or updated since 1980. In the last decade, a number of existing provisions have become antiquated, and there has been a growing awareness that the Nation's stewardship of the coast has not kept pace with the myriad problems now constraining the "effective management, beneficial use, protection, and development of the coastal zone" [section 302(a), CZMA].

Ever since the original law was first reauthorized in 1974, all subsequent reauthorization bills have manifested the types of coastal issues of the time. H.R. 4450 is in keeping with this tradition of amending the CZMA. Through a multi-year, expanded reauthorization of financial aid, administrative elevation of coastal zone issues within NOAA, establishment of a new National Interest Improvements Program, and authorization for awards to reward achievement in the field of coastal management, this legislation builds upon existing law by updating it to account for the new and emerging coastal issues of the 1990s.

Coastal environmental protection.—During the decade of the 1980s, the continued decline of coastal environments has become increasingly evident. Medical wastes, domestic sewage, and plastics have resulted in the closure of public beaches. Productive fishing and shellfishing areas continue to be closed. Pollution of coastal waters is increasing. The filling and alteration of coastal wetlands is further reducing the habitat for fish and wildlife populations. These obvious inadequacies in our current management of the coastal zone are compounded by the certainty that coastal populations will continue to grow at an ever increasing rate. In addition, coastal managers are confronted with new and complex issues like the potential for sea level rise in response to global warming.

The Administration recognizes the growing pressures on the coastal zone. As noted in NOAA's "Biennial Report to Congress on Coastal Zone Management" (April, 1990), increasing coastal populations are creating new pressures for coastal amenities and taxing the productive but fragile coastal environment. By the year 2010, coastal population will have grown from 80 million to more than 127 million, an increase of almost 60 percent nationwide. Excluding Alaska, this coastal area encompasses only 11 percent of the Nation's land area.

In view of continued growth in coastal population and the accompanying environmental problems, the Committee has, in H.R. 4450, proposed a number of amendments to provide a greater emphasis on environmental protection values in the administration of the

CZMA. This is not to say that the Committee has abandoned the fundamental balancing character of the CZMA. The statute continues to recognize the need for economic growth in coastal areas. However, H.R. 4450 shifts the balance to emphasize more strongly a priority for maintaining the function of natural systems in the coastal zone.

The CZMA was last reauthorized, in 1986, under the threat of a Presidential veto. However, with a new President in the White House—a President who stood on the coastal zone of Lake Erie (ironically in a state without a coastal zone management program) and declared himself an environmentalist—the Administration has requested funding for state administration grants under the CZMA and has proposed its own bill to reauthorize the Act. Although the Committee has determined that the Administration's bill is lacking in a number of critical areas, including inadequate authorization levels, it does acknowledge that the very existence of an Administration reauthorization bill is in sharp contrast to the Reagan White House. In this political climate, support to refocus the CZMA on coastal environmental issues has blossomed.

Coastal pollution.—In 1987, the Office of Technology Assessment (OTA) issued a report entitled "Wastes in the Marine Environment". OTA found that, as a result of numerous pollution activities, the overall health of coastal waters is declining or threatened. The report concluded:

In the absence of additional measures, new or continued degradation will occur in many estuaries and some coastal waters around the country during the next few decades (even in some areas that exhibited improvements in the past.)

Degradation of coastal water quality can result in loss of submerged aquatic plants, effects on fish and shellfish productivity, beach and shellfish bed closures, and sediment contamination.

The OTA report was a catalyst for some 13 hearings on the general issue of coastal pollution conducted by the Committee's Subcommittees on Fisheries and Wildlife Conservation and the Environment, and Oceanography and Great Lakes during the 100th and 101st Congresses. An oversight report on the hearings was published by the Committee last year (House Document 101-38). Entitled "Coastal Waters in Jeopardy: Reversing the Decline and Protecting America's Coastal Resources", the report concludes that many coastal areas are in poor condition and risk further decline unless current trends are reversed.

"Coastal Waters in Jeopardy" also analyzed the possible interrelationships between coastal zone management and coastal pollution, primarily focusing on nonpoint source pollution. This type of pollution is not discharged from pipes or other discrete sources, but insidiously runs into coastal waters as water drains from land areas, carrying various pollutants. Nonpoint pollution is estimated to contribute over half of the phosphorus, chromium, copper, lead, and zinc in our coastal waters and, in the Great Lakes alone, deposits more than 100 million tons of sediment. Because the source of nonpoint pollutants is often difficult to determine, involves large land areas, but can be remedied through construction techniques or

the erection of barriers, it is particularly susceptible to control through land use measures.

In 1972, Congress envisioned that a primary purpose of the CZMA was to control land use activities which have a direct and significant impact on the coastal waters. During Senate debate on S. 3507, which was enacted as the CZMA of 1972, the bill's sponsor (Senator Hollings) made the following statement:

The bill I proposed today is aimed at saving the *waters* of our coasts and the land whose use had a direct, significant, and adverse impact upon that *water*. We all know that the *coastal water* and our delicate estuaries are the breeding grounds of life in the sea. Yet we use the land of the coastal zone with little or no concern for how its use will affect the water . . . The *waters of this zone*, again, are our primary target of concern. (Emphasis added.)

Through extensive oversight, the Committee has concluded that this basic underlying purpose of the CZMA has not been effectively implemented. The Committee hopes this legislation will result in increased funding and improved federal leadership that is necessary to better manage land uses which affect coastal water quality.

Wetlands management and protection.—In recent years, the broad values of wetlands environments have been increasingly recognized. These values include food control; barriers to waves and erosion; sedimentation control; habitat for fish, shellfish, and wildlife; recreation; filtration of water pollutants; and food and timber production. Concurrently, the rapid rate of loss and conversion of wetlands has also been documented.

Although there is disagreement over an exact figure, the U.S. is losing between 400,000 and 500,000 acres of wetlands per year. The U.S. Fish and Wildlife Service (USFWS) estimates that 482,000 acres of saltwater wetlands were lost during the period from the mid-1950's to the mid-1970's. Wetlands loss, some occurring naturally, is attributed to several factors including erosion, flooding, draining, filling, excavation, diversion of water or sediment, clearing, and pollution. The USFWS has identified 6 million acres of coastal zone wetlands as facing significant threats from destruction, along with 10 million acres of the Florida Everglades, 7 million acres of the Mississippi Delta, and 2 million acres of marshes in coastal Louisiana. In fact, in coastal Louisiana, scientists have estimated 50 square miles of wetlands are lost each year due to a combination of natural and human factors.

The 1972 Congress foresaw the need to manage and protect coastal wetlands through effective coastal zone management. During debate in the House on H.R. 14146, a predecessor bill to the CZMA, the bill's sponsor (Congressman Lennon) implored the House:

I rise at this time to urge the support of this Committee for H.R. 14146, the coastal zone management bill, because I am convinced that it is imperative to implement such a program now before this Nation witnesses the tragic and wanton destruction of an irreplaceable natural resource, our estuaries, *our wetlands*, and our shorelines. (Emphasis added.)

Since enactment, the CZMA has been a harbinger of coastal wetlands protection at the state and local level. All federally-approved state CZM programs currently address the protection of wetlands by requiring state or local approval for direct and significant alteration of wetlands. Most states also require some form of mitigation for wetlands loss. The State of New Jersey, for example, used a wetlands mitigation agreement with a major utility to obtain funds to acquire critical wetlands habitat along the Delaware Bay, which serves as a landing place for over 1,000,000 migrating shorebirds each spring.

The Conservation Foundation issued a seminal report on wetlands conservation in November, 1988, entitled "Protecting America's Wetlands: An Action Agenda". This report, the product of the National Wetlands Policy Forum, concluded that the United States needs a better mechanism for protecting and managing its wetlands, coastal and inland. The Forum recommended a national wetlands protection policy to achieve an interim goal of "no overall net loss of the nation's remaining wetlands base" with a long-term view to "increase the quantity and quality of the nation's wetlands resource base." President Bush has stated his support for a no net loss of wetlands goal, although the specific mechanism to implement this goal is yet to be developed. Reauthorization of the CZMA—the principal federal statute dealing with comprehensive coastal land use planning and management—provides an important opportunity to improve management and protection of coastal wetlands.

Natural hazards management.—The widespread havoc wreaked by Hurricane Hugo provided a vivid demonstration of the fragility of coastal development. While a storm as virile as Hugo would threaten even the most well-planned coastal development, it is clear that the protection of natural buffers and the employment of sound construction techniques make excellent economic sense.

The CZMA has assisted state and local efforts to manage and deter development in hazard-prone areas. One such method is to prevent inappropriate shoreline development through the adoption of "setback" requirements. Currently, 13 states have some form of setback requirement for coastal development. Many other states have laws to protect natural protective features, such as sand dunes, which are the first line of defense against storm surges.

The State of North Carolina, through its coastal program, has adopted a strong program to protect lives and property from coastal hazards. The state has developed an approach which augments and extends the National Flood Insurance Program standards to protect coastal development. Setback lines have been established in designated ocean hazard areas to provide protection from coastal storms and insure at least 60 years of protection from coastal erosion. Infrastructure development that would serve ocean-hazard areas, such as roads, bridges, water and sewer lines, and erosion-control structures, is allowed only if it will be reasonably safe from coastal hazards and will not promote additional development in hazardous areas. Finally, the state provides hazard notices to all permit applicants, which gives the erosion rate in the area, notes that bulkheads and seawalls are not allowed, and notes that the area is hazardous and that the property owner is at risk.

Despite strong progress in the area of hazards management, the certainty of population growth in coastal areas requires stronger state and local policies to manage the increasing risk to life and property. States should be further encouraged to curtail development and redevelopment in coastal high hazard areas. Comprehensive hazard mitigation programs are needed in every coastal state, including evacuation planning, enhanced building code standards and enforcement, and protection of physical features which provide protection to coastal structures.

Effective management of hazardous coastal areas is complicated by the potential for sea level rise in response to global warming. Global climate change and its potential impacts on physical, biological and human environments have become major public policy issues. If surface temperatures increase, a number of changes could occur in the environment, one of the most catastrophic being accelerated sea level rise. Numerous studies have predicted that global sea levels could rise anywhere from 50 to 368 centimeters by the year 2100, and a rise of one meter over the next century is often used as the "median" of sea level rise scenarios for planning purposes. Obviously, a rise of sea levels within the predicted ranges would have substantial negative impacts on many coastal communities.

Predictions of rising sea levels are fraught with troubling uncertainties which the Committee must acknowledge. However, it presents a management issue of such proportion and complexity that the Nation's coastal managers should take notice. Moreover, some coastal areas are already experiencing a relative rise in sea level due to subsidence, reduced sedimentation, and chronic erosion and are actively pursuing policies to ameliorate its effects. The issue of sea level rise, whether caused by global warming or by the less dramatic but more probable sinking of coastal lands, is an issue that bears directly on the management of natural hazards and is properly addressed through the reauthorization of the CZMA.

While the Great Lakes are generally insulated from sea level rise by the natural barrier provided by Niagara Falls, the lakes experience their own water level problems. Unpredictably, Great Lakes levels rise dramatically because of increased precipitation and decreased evaporation. Higher Lake levels exacerbate erosion and flooding, particularly waves are driven by severe winter storms characteristic of the Midwest.

Coastal zone programs can be equally effective in planning for and preventing damage caused by Lake level rise. The State of Michigan has taken the lead in this area, using CZMA funds to help identify vulnerable shorelines and instituting setbacks and other shoreline building requirements.

In many states, the lack of technical baseline information and the resources to apply it, remains an impediment to policy development, planning, and enforcement. Many states face legal challenges from the owners of property where restrictions are applied or contemplated. State CZM programs are the one institution capable of addressing the issue of natural hazards management, including sea and Lake level rise, in a comprehensive and systematic way.

Public access.—Of the 21,724 shoreline miles of the 28 coastal states, only 1,790 are publicly owned. Coupled with growing coastal population and heightened interest in water-related recreation, demand for public access to the shores for recreation is increasing at the same time available acreage is decreasing. Land values along the coast have skyrocketed, pollution is closing many otherwise accessible areas, and land is slowly being lost to the sea and Great Lakes through erosion, flooding, and economic development.

Resolving conflicts among various uses of the coastal zone is the primary purpose of the CZMA. These conflicts include development and preservation of the coast; oddly, both courses of action can be seen as obstructing public access depending on the activity for which the access is desired. Passive recreational activities, such as swimming, fishing, and birdwatching go more in hand with conservation of a coastal area in its natural state. Conversely, marinas, dune buggy races, and large-scale recreational complexes require some development of the shore.

In general, housing, industry, and transportation all can pose impediments to recreational uses of the coastal zone. When housing is constructed along shorelines, it physically blocks access to the sea, and coastal wetlands are often dredged and filled. Housing also entails greater population stresses, leading to coastal pollution problems and saltwater intrusion as freshwater is siphoned for drinking. Transportation requirements—roads, parking space, airports, harbors, and shipping channels—ironically can increase access to the coasts, while robbing valuable land area for recreation and wildlife. When direct ingress and parking is not provided, vehicles can be driven onto fragile dunes or beaches, resulting in resource damage. Finally, industry dependent on close proximity to the sea and Great Lakes for large amounts of water, access to ocean resources, or for waste disposal can limit public opportunities for ocean and Great Lakes recreation.

The public is already guaranteed some limited access to the coast through a rule of common law known as the public trust doctrine. Under this principle, dating back to Roman times, the area between the high and low water tidal marks has traditionally been available to the public for certain specified uses, including navigation, mooring of boats, and fishing. Attempts to expand this doctrine to areas beyond the "wet-sand strip" or for recreational uses such as swimming have not been wholly successful. Moreover, getting to the wet sand can be a problem if the beaches are surrounded by private land. Even when entree is available, other types of barriers can be erected such as high beach access fees, limited parking facilities, and prohibition on food and beverages or children.

* State public access requirements were recently challenged in the Supreme Court. In *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the court found that the Commission's public access condition for a coastal building permit amounted to an unconstitutional taking without just compensation under the Fifth Amendment to the Constitution. As a condition for a permit to substantially expand their beachfront home, the California Coastal Commission required the Nollans to allow citizens to traverse the dry beach in front of the seawall fronting their home to reach a public

beach. The Supreme Court found the condition amounted to a "permanent physical invasion" of the Nollan property, and that it did not advance the legitimate public interest expressed in the development permit law—visual access to the coast.

The holding in the *Nollan* decision means that states must not only demonstrate that public easements over private coastal property have a legitimate public purpose, but that the easement must have a specific nexus to the public purpose. As California had relied on its building code permit conditions to require public access to beach areas for over 25 years, additional challenges to this authority can be expected. The decision may also have a chilling effect on other coastal states' use of permit conditions as a means of enhancing public access to the shore.

Purchasing private beachfront lands to allow public use is a popular but expensive way to guarantee increased recreational access to our shores. For example, 1.2 acres of waterfront property in Falmouth, Massachusetts, sold for \$475,000 in mid-1986; its price jumped to \$750,000 six months later. In Cape Cod, Massachusetts, land prices are rising by 5 percent a month.

When first enacted, the CZMA had no statutory recognition of the need to provide increased public access to the coastal zone. This was changed in 1976, when the Act was amended to require "a planning process" for increasing public access to the shores as part of an approvable state coastal zone management program [section 305(b)(7)]. However, no goals for increased access were mandated nor were specific methods prescribed.

In 1980, the CZMA was again amended to authorize low-cost construction projects in the coastal zone through section 306A, based on a successful program begun in the State of Michigan. States have used the funds available under this section to construct boardwalks and other physical access means, post public easements, acquire coastal lands, and disseminate public information on access points. CZMA monies can also be used to develop a regulatory or permit process that can be used to acquire access rights for the public.

This program has been very successful. New Jersey has used 306A funds to initiate a shuttle bus service to one of its state oceanfront parks. The State also purchased movable platforms to place on shifting beach sands to allow handicapped citizens greater access to the beach. North Carolina has spent \$149,000 in CZMA dollars to purchase oceanfront land to provide public access in Carteret County. Maine purchased a half-acre parcel in Blue Hill for parking space to expand the use of an existing access site.

Federal consistency under the CZMA can also be used to enhance public access. Disposal of surplus federal coastal land by the General Service Administration (GSA) can trigger consistency review by state coastal zone agencies, which can encourage sale or donation of the property for public access needs or inform interested state or private groups of the availability of the property for acquisition for public access. The application of federal consistency to General Services Administration (GSA) can trigger consistency district court decision in *Ono v. Harper*, 592 Fed. Supp. 698 (D. Ha. 1983). There the court held that a GSA property transfer of two missile sites in the Hawaii state coastal zone was merely a "paper

transaction" which had no direct effects on the land or water uses of the coastal zone.

On June 29, 1987, the Subcommittee on Oversight and Investigations held a hearing in Warwick, Rhode Island, on the public's right to the visual and physical aspect of the shorelines of lakes and oceans. The witnesses at the hearing reiterated a greater need for public access to the oceans and Great Lakes, and stated that greater federal assistance is needed to accomplish this. Many witnesses pointed to the CZMA as an excellent tool for assisting states and local governments in increasing access to the shores.

In H.R. 4450, the trend toward greater recognition for increased public access to the oceans and Great Lakes is continued by increasing funding for low-cost construction projects under section 306A and section 315 (Estuarine Research Reserve System).

Cumulative and secondary impacts.—The Nation's coasts, and their estuaries and wetlands, are being lost in a piecemeal war of attrition: a road here; a condominium there; a putting green today; an 18-hole golf course tomorrow. A boat-ramp is followed by a marina, and a gas station, and a convenience store, and a bait and tackle shop, and a restaurant, and a motel, and on and on.

Cumulative effects are the changes attributable to the collective effect of numerous activities which may or may not be related to one another. Although the impact of a particular land or water use may constitute a minor change in itself, the combined effect of numerous such piecemeal changes can result in a major change in coastal ecosystems. This is the most insidious and intractable management issue facing today's coastal managers. It is an area where great improvements can be made in coastal zone management.

Secondary effects are effects that are associated with a land or water use activity, but do not result directly from the activity itself. Some examples of secondary effects might include fluctuating downstream water levels associated with the operation of a dam, or septic tank leaching and surface runoff from residential or commercial developments.

Effectively assessing, considering and controlling cumulative and secondary effects of coastal land and water use is a priority area for improvement in coastal zone management. If better approaches are not forthcoming, then there is little hope of stemming the nationwide decline in coastal environmental quality.

Coastal energy development.—The CZMA has always recognized the need to develop as well as protect coastal zone resources, including offshore minerals and fossil fuels. This is apparent in the findings of section 302 (c), (f), and especially (j), and section 303(2)(C) of the existing CZMA. The need to consider the national interest in the siting of coastal energy facilities is not diminished by H.R. 4450.

Today, we find that crude oil imports are at a higher level than just before the 1973-74 Arab oil embargo, with imports during January 1990, meeting 54 percent of U.S. oil needs, an all-time monthly high. The decline in domestic oil production is expected to continue. These trends are significant for coastal areas for two major reasons: first, oil is imported by tanker which means greater traffic through the coastal zone; and second, declining domestic produc-

tion will eventually lead to pressure for increased development of offshore resources that will adversely affect coastal zone resources.

There is a national interest in the siting of necessary coastal energy facilities and this interest will continue and likely grow in the future. Therefore, state CZM programs must continue to consider these national interests and improve procedures for the siting of required facilities.

Federal consistency with State CZM programs.—The requirement that federal agencies act in a manner which is consistent with federally approved state CZM programs is at the heart of the voluntary program envisioned by the CZMA. To induce state participation in the program and compliance with the substantive and procedural requirements of the law, the Federal Government promises that its actions will not be inconsistent with the enforceable provisions of a state management program. As CZM programs have matured, and competition for coastal resources has increased, the federal consistency requirements have grown in significance as a management tool.

In the majority of instances, the federal consistency provisions are exercised without controversy and result in improved coordination of state and federal management programs. For example, during 1983, the coastal states concurred with 93 percent of the approximately 400 federal agency activities reviewed, including numerous OCS lease sales; states concurred with about 82 percent of the approximately 5,500 federally licensed or permitted activities reviewed; states concurred with about 99 percent of the nearly 435 plans for OCS exploration, development and production; and states concurred with over 99.9 percent of the nearly 2,000 federal assistance proposals. There are, however, problem areas where the implementation of the federal consistency provisions must be improved.

A. Geographic Scope.—In 1984, the U.S. Supreme Court, in *Secretary of the Interior v. California* (464 U.S. 312), ruled that oil and gas lease sales are not activities that directly affect the coastal zone and, therefore, are not subject to the consistency review under CZMA section 307(c)(1). Since the ruling, other federal agencies have broadly interpreted the case in a manner that would exclude their activities from undergoing a federal consistency review. For example, the Department of Justice has filed amicus briefs in several lawsuits arguing that federal consistency is restricted geographically to activities inside the coastal zone. In addition, the Corps of Engineers, in proposing amendments to regulations governing its operation and maintenance dredging activities, proposed to limit the scope of consistency review to activities within the coastal zone:

Section 307 of the Coastal Zone Management Act (CZMA) requires that any activity that a Federal agency conducts or supports within a state's coastal zone or in a Federal enclave within the geographic area of a state's coastal zone be consistent with the Federal approved state management program to the maximum extent practicable. (Federal Register, April 26, 1988.)

Further complicating this matter, the Corps has stated that despite its interpretation that the CZMA is geographically limited in scope, it will comply with the consistency requirements "as a matter of comity".

This interpretation by the Corps of Engineers is directly contradictory with the long-standing NOAA regulations implementing this provision (15 CFR 930.35). In a letter of December 15, 1989, NOAA expressed its strong disagreement with the Corps' position. In particular, NOAA argues that the Supreme Court decision in *Secretary of the Interior v. California* addressed the question of OCS lease sales only and that the broader issue of the CZMA's geographic scope was not an issue decided by this case.

Additionally, the Environmental Protection Agency (EPA) has suggested that the designation of ocean dumpsites outside the coastal zone may not be subject to consistency review by the states. However, EPA has determined that it will comply with the federal consistency provisions "as a matter of policy" in designating ocean dumping sites, while asserting that the legal requirements of the Ocean Dumping Act and the CZMA are "subject to debate".

B. Preemption.—Another federal consistency issue is also raised by the Corps' operation and maintenance regulations. Under the Ocean Dumping Act, the Corps designates sites for the disposal of dredged materials and issues permits for these activities. However, the Ocean Dumping Act contains language which prohibits states from adopting or enforcing "any rule or regulation relating to any activity regulated" by the Act. The Corps has interpreted this provision to also preempt states from exercising their consistency authority under the CZMA.

In response, the coastal states assert that they are granted authority, through the federal Coastal Zone Management Act, to implement coastal management requirements and that these requirements are binding on all federal agencies. NOAA has supported the position of the coastal states, arguing that the use of the federal consistency provisions is implementation of a federal statute and not state regulation. Therefore, unless another federal law supersedes the CZMA, compliance with section 307 is mandated. The Corps has indicated that it will "voluntarily apply" for a federal consistency determination, but that it reserves its legal rights in cases where states make a negative consistency determination.

C. Directly affecting.—In *Secretary of the Interior v. California*, the Supreme Court ruled that OCS lease sales had no "direct effect" in the coastal zone, and other courts and federal agencies have expanded the categories of activities which have no direct effects. For example, as noted above, a federal court in Hawaii held that transfer of General Services Administration surplus property is only a "paper transaction," without effects in the coastal zone. EPA has also attempted to use this argument with regard to designation of ocean dumping sites under the Ocean Dumping Act.

COMMITTEE ACTION

SUBCOMMITTEE HEARING: JULY 19, 1989

The Subcommittee on Oceanography and Great Lakes convened July 19, 1989, for the first hearing on the reauthorization of the

Coastal Zone Management Act (CZMA) in the 101st Congress. Witnesses at this hearing included David Owens, University of North Carolina at Chapel Hill; Bill Brah, Center for Great Lakes; James Murley, 1000 Friends of Florida; Beth Millemann, Coast Alliance; Chris Shafer, State of Michigan; George Stafford, State of New York; Steven Whitey, State of New Jersey; Edward Bruce, American Petroleum Institute; Francis Mancini, National Committee on Property Insurance; Rebecca Hanmer, Environmental Protection Agency (EPA); and John Carey, National Oceanic and Atmospheric Administration (NOAA).

At this hearing, several witnesses marked a lack of federal commitment and leadership in the coastal management field; one witness called the federal program "a shambles". Coastal states and environmental groups noted several issues for particular attention in the reauthorization of the CZMA: need for increased technology transfer and technical assistance; overhaul of the section 312 review process; competitive grants; coastal water quality; natural hazards; land acquisition; landward impacts on the coastal zone; greater coordination between Federal and state programs and between intrastate agencies; greater public participation; sea level rise; changes in federal consistency; protection of sensitive areas; public access; significant funding increases; and emphasis on water dependent uses.

Industry witnesses called for a reaffirmation of the balance between coastal protection and development, especially development relating to oil and gas production on the outer Continental Shelf; clarification of the federal consistency process; a need for specific, predictable state coastal zone management programs; a simplified Secretarial appeal process; and improved land use measures which recognize the normal process of erosion.

The Administration was represented by EPA and NOAA. Describing the decline in coastal water quality and in wetland acreage, EPA suggested that the CZMA could be an important tool in solving these problems. EPA stated that the CZMA and the Clean Water Act can be mutually supportive but that greater coordination between state coastal zone and water quality agencies is required. NOAA emphasized the formation of its new management team for coastal management and indicated that it was reviewing the reauthorization issue. Pending its review, NOAA concluded that five topics were emerging as CZMA issues: coastal pollution, wetlands protection, coastal hazards, public access, and clarification of the federal consistency provisions. NOAA also suggested changes to the National Estuarine Reserve Research System in section 315 of the CZMA.

SUBCOMMITTEE HEARING: SEPTEMBER 27, 1989

Several of the suggestions made by the witnesses in the July hearing were echoed on September 27, 1989, when the Oceanography and Great Lakes Subcommittee heard testimony from Dr. John Knauss, Under Secretary for Oceans and Atmosphere of the Department of Commerce. This was Dr. Knauss' first opportunity to address the Subcommittee since his confirmation as head of NOAA.

Dr. Knauss reiterated that the CZMA should place special emphasis on major problems facing the coast, such as wetlands protection, natural hazards, coastal water quality, public access, and waste minimization. He also indicated that clarification of the federal consistency provisions might be needed. The Under Secretary stressed the federal leadership required for effective coastal management, including greater guidance in resolving conflicting objectives in managing the coastal zone. The need to retain the CZMA program in NOAA was another theme in his remarks, as well as the increased coordination between NOAA and EPA.

SUBCOMMITTEE HEARING: MARCH 22, 1990

Following these hearings, Chairman Jones introduced H.R. 4030, a predecessor bill to H.R. 4450, on February 21, 1990. He was joined by 17 cosponsors, including Oceanography and Great Lakes Subcommittee Chairman Hertel, Subcommittee on Fisheries and Wildlife Conservation and the Environment Chairman Studds, and Ranking Minority Member Davis. The final hearing on CZMA reauthorization, which focused on H.R. 4030, was held on March 22, 1990, by the Oceanography and Great Lakes Subcommittee.

INTRODUCTION OF H.R. 4450 AND OTHER BILLS

Following the March 22nd hearing, Oceanography and Great Lakes Subcommittee Ranking Minority Member Shumway introduced, by request, the Administration's CZMA reauthorization bill, H.R. 4438, on March 29, 1990, with nine cosponsors.

Five days later, Subcommittee Chairmen Hertel and Studds, and Ranking Minority Member Davis introduced H.R. 4450. H.R. 4450 is a modified version of H.R. 4030, deleting material which may arguably lead to jurisdictional intrusions by other Committees into "coastal zone management", a policy area that has been exclusively within the jurisdiction of the Merchant Marine and Fisheries Committee for over 18 years.

SUBCOMMITTEE MARKUP: APRIL 3, 1990

The Subcommittee on Oceanography and Great Lakes convened to mark up H.R. 4450, the Coastal Zone Reauthorization Amendments of 1990, on April 3, 1990. No amendments were offered to H.R. 4450. The bill was reported favorably to the full Merchant Marine and Fisheries Committee by voice vote.

FULL COMMITTEE MARKUP: APRIL 18, 1990, AND MAY 23, 1990.

The Committee on Merchant Marine and Fisheries met on April 18, 1990, to mark up a number of bills, including two that reauthorize and make other changes to the Coastal Zone Management Act: H.R. 4030 and H.R. 4450. When H.R. 4030 was called up for consideration, Chairman Jones expressed his determination to protect the Committee from possible referrals of the bill to other committees. He noted that the Merchant Marine and Fisheries Committee had authored the original 1972 CZMA, that the Rules of the House specifically referred to "coastal zone management" as one of the Committee's areas of jurisdiction, that the Committee had been the only House committee to nurture the CZM program through

diligent oversight and the enactment of strengthening amendments, and that the Committee could be proud of its record in keeping CZM constantly updated and responsive to emerging coastal problems. Mr. Jones concluded his opening remarks by reiterating his judgment that the 18-year record of accomplishment of the Committee with respect to the CZMA should not be broken by the referral of the bill to other committees.

After the Committee had ordered reported H.R. 4030, as amended, it subsequently took up consideration of H.R. 4450. Chairman Jones indicated that, if necessary, he planned to take H.R. 4450 to the Floor and offer the text of H.R. 4030 as an amendment in the nature of a substitute to avoid possible jurisdictional encroachments in the area of coastal zone management. Subcommittee Ranking Minority Member Norman Shumway offered an amendment in the nature of a substitute to H.R. 4450, which would delete the text of the bill and insert the text of H.R. 4030, as reported by the Committee. Mr. Shumway explained that his amendment was intended to slow the process for considering the implications of the changes proposed in the Coastal Zone Management Act, and that there was no need to rush a bill to the Floor. After a discussion in which Members were assured that the identical text of H.R. 4030 as amended would indeed be offered as an amendment in the nature of a substitute to H.R. 4450, the Shumway amendment was defeated by voice vote.

Mr. Shumway then raised a point of order against the bill, noting a lack of quorum. Following a call of the roll, in which it was determined that only 19 of the required 23 Members were present, Mr. Shumway's point of order was sustained and further action on H.R. 4450 was suspended.

The Full Committee met again on May 23, 1990, to consider H.R. 4450. Chairman Jones repeated his intention to bring H.R. 4450 to the Floor and offer H.R. 4030 as an amendment in the nature of a substitute. Chairman Jones also pledged his support to seek an open rule to ensue that all Members who desired to offer amendments would have that opportunity on the Floor. No amendments were offered to H.R. 4450 during the Committee markup, and it was favorably reported to the House of Representatives by voice vote.

SECTION-BY-SECTION ANALYSIS

TITLE I: GENERAL PROVISIONS

Section 101. Short title

"Coastal Zone Act Reauthorization Amendments of 1990."

Section 102. Findings and Purposes

Subsection (a) enumerates the findings which underlie H.R. 4450, which emphasize the ever increasing pressures on coastal zone resources.

TITLE II: ESTABLISHMENT OF THE OCEAN AND COASTAL ZONE
MANAGEMENT SERVICE

Section 201. Ocean and Coastal Zone Management Service

This section creates an Ocean and Coastal Zone Management Service within NOAA. This service is to succeed the Office of Ocean and Coastal Resource Management which currently administers the CZMA.

Section 202. Head of Service

The Service will be headed by an Assistant Administrator for Ocean and Coastal Zone Management, appointed by the Under Secretary of Commerce for Oceans and Atmosphere. The salary of the Assistant Administrator is set at level V of the executive pay rates.

This provision reaffirms section 2(e) of Reorganization Plan No. 4 of 1970, which provided for five Assistant Administrators (AA) within NOAA, one being the AA for Coastal Zone Management. Under the current NOAA management structure, the duties of the AA for Coastal Zone Management have been subsumed by the AA for Ocean Services and Coastal Zone Management. The Committee believes that the importance of coastal zone management to the Nation's well-being requires that the subject should be elevated within the Agency and that segregation from unrelated ocean operations (such as charting and geodesy) would provide fewer distractions in the oversight of coastal zone programs. Because the current Reorganization Plan provides only for five AAs, and NOAA has filled all five spots, the Plan should be amended, as the Committee does not intend that this new requirement be circumvented merely by retitling one of the present AAs.

The Committee is also aware that the existing NOAA AAs have been appointed by the Secretary of Commerce. Because of the special relationship that coastal zone management has to NOAA, and the resistance to coastal zone initiatives evinced by the Department of Commerce in the past, the Committee believes this position should be filled by the Administrator of NOAA.

Section 203. Qualifications of Assistant Administrator

The new Assistant Administrator must be qualified on the basis of education and professional experience in coastal zone management. This provision echoes the requirements for this position found in Reorganization Plan No. 4 of 1970, which created NOAA.

Section 204. Responsibilities of the Service

The Ocean and Coastal Zone Management Service is charged generally with the administration of coastal zone management, as those duties are defined under Title III of H.R. 4450, as well as any other relevant law, such as the Coastal Zone Management Act, as those duties are currently vested in the Department of Commerce or NOAA. In addition, other duties may be assigned to the Service by the Under Secretary or through legislation.

TITLE III: COASTAL ZONE MANAGEMENT ACT AMENDMENTS

Section 301. Short title

The short title of the CZMA is amended to drop the reference to the original year of enactment.

Section 302. Findings

The existing findings are modified to place greater emphasis on environmental protection. For instance, the amended section 302(a) provides—

It is in the national interest of the United States to manage, protect, and develop with proper environmental safeguards, the coastal zone.

This finding reflects the Committee's position that the CZMA should continue to be a balancing statute which recognizes alternative uses of coastal zone resources, but at the same time, clarifies that all uses should be sensitive to the priority for maintaining natural systems in the coastal zone as reflected in section 302(h), as amended by H.R. 4450.

Section 303. Declaration of policy

The policy statements are modified to reflect increasing emphasis on environmental protection, and mitigating the effects of potential sea-level rise.

Section 304. Definitions

Section 304(a) amends the definition of the term "coastal zone" to provide greater encouragement for states to expand their inland coastal zone boundaries and to expressly limit the seaward coastal zone boundary to the extent of state ownership and title (in most cases, three nautical miles). The latter portion of this amendment is necessary to clarify uncertainties raised by Presidential Proclamation 5928 (December 27, 1988).

Section 304(b) adds definition of the new term "sea level rise". The definition defines sea level rise in a way that is most relevant to coastal management: an increase in the level of the sea relative to the level of adjacent land. It matters not whether the sea is rising or the land is subsiding or both, because similar management problems arise in each case.

Section 305. Administrative grants

A new paragraph (10) is added in section 306(c) of the CZMA. Each state management program is required to provide for direct and continuing public participation in the permitting processes, consistency determinations, and similar decisions which are made in the implementation of the program. This new requirement must be fulfilled within two years of enactment.

Section 306. Resource management improvement grants

This section amends section 306A of the CZMA, which provides matching grant assistance for improvement of coastal zone resources. This section was added in 1980 and has supported a diverse array of improvement projects from wetlands restoration to

waterfront revitalization. Existing law is changed in only one regard.

Section 306A(a)(1)(B) is amended to provide that a state may not expend funds for activities under this section unless it is making continual and satisfactory progress in improving its management program under section 310—the National Interest Improvement Program. This provision is intended to provide an additional incentive for states to negotiate and implement a program of improvement pursuant to section 310 of the CZMA, as amended by section 308 of this Act.

Section 307. Coordination and cooperation

This section amends the “federal consistency” provisions of the CZMA. Subsection (h) is amended to explicitly authorize the Under Secretary to mediate a disagreement between two or more coastal states regarding the implementation of the CZMA. This includes the authority to mediate between a participating state and a non-participating state.

The Committee is aware of recent controversial cases involving interstate applications of the federal consistency provisions. Clearly, if a federal agency action within one state will affect any natural resource, land use, or water use within another state, the requirements of section 307 properly apply. This has been NOAA’s long-standing interpretation, and is clearly reflected in agency regulations. However, the Committee is concerned that the consistency provisions are neither used nor perceived as a method for one state to squash or delay legitimate economic development within another state. The expended mediation authority is evidence of the Committee’s concern in this regard, and the Under Secretary is encouraged to explore specific mechanisms to resolve interstate conflicts promptly.

Section 308. National interest improvements

Subsection (a) establishes a program, beginning in fiscal year 1991, to encourage continual improvements in state management programs in five national interest areas. The five areas are to be established by the Secretary after consultation with federal agencies, coastal states, and interested public and private parties. The Committee encourages the Secretary to give priority consideration to the following national interest areas:

A. Coastal wetlands management and protection.—The coastal states should be encouraged to improve management and protection of coastal wetlands, including development of new enforceable policies and a comprehensive wetlands restoration program. Improvements in management and protection should be consistent with a goal of achieving no overall net loss of the Nation’s remaining wetlands base.

In November 1988, the National Wetlands Policy Forum issued a report entitled “Protecting America’s Wetlands: An Action Agenda.” Among many recommendations, the report recommended establishment of a clear national goal to guide government programs affecting wetlands. Specifically, the Forum recommended the following interim goal: “To achieve no overall net loss of the nation’s remaining wetlands base”.

The National Wetlands Policy Forum recognized that the goal of no overall net loss of wetlands may be difficult to achieve in some areas:

[T]he goal may have to be implemented at different rates in various regions of the country to reflect regional wetlands needs, conditions, and types. For example, continuous arctic or high latitude wetlands underlain by permafrost pose unique scientific challenges to successful restoration and creation. It may also be more difficult to achieve the goal along the Louisiana Coast, where loss rates are exceptionally high, than in other parts of the country.

Therefore, if the Secretary selects this as one of the five areas for improvement of state programs, it should be implemented in recognition of these unique factors and difficulties.

B. Natural hazards management.—Development and redevelopment in hazardous areas is a chronic problem in coastal areas. These threats are compounded by the potential for sea level rise in response to global warming and land subsidence. The Great Lakes also experience unpredictable fluctuating water levels which exacerbate shoreline erosion and flooding. The coastal states should be encouraged to improve their programs to manage development more effectively in such areas.

C. Public access.—The provision of public access to coastal areas is frequently viewed as a matter of predominantly state and local interest. The Committee rejects this view and encourages the Secretary to consider public access as a priority area for improvement.

D. Cumulative and secondary impacts.—Cumulative effects are the impacts on the coastal zone which result from the incremental effects of an activity when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Secondary effects are impacts that are associated with, but do not result directly from, an activity. Secondary effects can include growth inducing effects and other effects related to induced changes in the pattern of land use.

The cumulative and secondary effects of development in the coastal zone are perhaps the most intractable management issues faced by states and local governments. Coastal wetlands are often altered or destroyed by piecemeal development, and coastal water quality is slowly eroded as land uses spread to the water's edge with the twofold effect of contributing pollutants and eliminating the filtering effect of natural vegetation and wetlands.

Subsection (b) outlines generally the manner in which the Secretary is to implement the National Interest Improvements Program. First, the Secretary is required, for each coastal state, to assess the priority needs for improvement in each of the special national interest areas. Second, based on the identified priorities, the Secretary must seek to negotiate with each state a National Interest Improvements Program covering no less than a three year period. The program is to include specific, measurable goals and milestones for improving the management program.

The Committee intends that state participation in the program established under this section be voluntary. No state is required to participate or to make improvements in any of the special national interest areas. However, if a state does not participate, it is ineligible for grant assistance under this section and under section 306A. The Committee anticipates that some states will choose not to participate.

If a state chooses to participate, then it must negotiate an improvements program based on the priority needs assessment performed by the Secretary. The Committee intends that both parties negotiate in good faith to design an aggressive but realistic schedule for improvement of the management program which takes into account the expected level of financial assistance that will be available under this section. However, because this is a program of national interest improvements, the Committee has authorized a lead role for the Secretary in establishing priorities.

Subsection (c) mandates consultation by the coastal State with interested private and public parties in developing a program under subsection (b).

Subsection (d) authorizes the Secretary to stagger the implementation of the program so that no less than one-third of the participating states are negotiating an improvements program in any single year.

Subsection (e) requires yearly evaluation of each state program negotiated under this section. The Secretary must find that the state is making continual and satisfactory progress in implementing each component of the negotiated improvements program. If the Secretary cannot make this finding, then the Secretary must notify the state and the public and identify steps which are required to ensure satisfactory progress. If the state does not take the actions required by the Secretary, further eligibility for funding under this section must be suspended for at least one year. The requirements of this section may be waived in certain circumstances, with prior notification to the Congress and the public.

Subsection (f) requires the Secretary to set aside 20 percent of funds appropriated under sections 306 and 306A, up to a maximum of \$10 million annually, to be used to implement this section. Funds to administer this section are to be set aside en bloc, prior to allocation of state awards pursuant to section 306(c).

Subsection (g) specifies that no state matching funds are required for national interest improvements grants.

Subsection (h) requires that 50 percent of funds under this section be distributed among states that have negotiated National Interest Improvement Programs, based on the formula allotment process established pursuant to subsection 306(c). The remaining 50 percent is to be awarded competitively. The Committee intends that the competitive awards be distributed at the discretion of the Secretary based on individual state needs and taking into consideration the likelihood that the funding will result in substantial improvements.

Section 309. Public hearings

Notice of at least 45 days is required for all public hearings under the CZMA.

Section 310. Review of performance

Section 312 of the CZMA is amended to provide new authority for the Secretary to place a state program on "probation" for not more than three years and to withdraw up to 25 percent of the CZM funds available to that state. The Committee understands that disapproval of a management program under section 312 is an extraordinary step and has not been a useful tool for NOAA in correcting mild or moderate problems in state program administration.

If a coastal state is placed on probation under this subsection, the Secretary is required to withdraw a portion of that state's federal funding under the CZMA, but not more than 25 percent in any year. If the coastal state agrees to take the corrective actions specified by the Secretary, then the amounts withdrawn must be made available to the state for that purpose. If the coastal state does not agree to take the corrective actions, then the amounts withdrawn shall be added to amounts appropriated for CZMA sections 306 and 306A for other states.

Section 311. Promoting excellence in coastal zone management

This section adds a new section 314 to the CZMA, which requires the Secretary to identify and appropriately acknowledge accomplishment in the field of coastal zone management by individuals, local governments, and graduate students. The Committee considers this an important mechanism for the Federal Government to provide leadership in coastal zone management. Individual and local efforts are the backbone of effective coastal zone management. Recognition of a job well done, including financial reward wherever appropriate, can be an effective way of recognizing and encouraging leadership and innovation. Through H.R. 4450, the Committee is attempting to reverse a nearly 10-year hiatus in federal leadership and expects the Secretary to take full advantage of this new authority.

Section 312. National estuarine research reserve system

This section makes very minor changes in section 315 of the CZMA. Only one substantive policy change is made. Authority is added for the Secretary to establish cooperative agreements with non-profit organizations and to accept private donations to enhance management of estuarine reserves.

Section 313. Coastal zone management report

The existing biennial reporting requirement in CZMA section 316 is maintained. Requirements for the Secretary to include "a coordinated national strategy," "recommendations for additional legislation," and "a systematic review of Federal programs" are deleted. The Committee deleted these sections because they have apparently been the principal cause of delay in submitting past biennial reports. The Committee expects that these changes will promote prompt reporting.

Nonetheless, the Secretary is strongly encouraged to take every opportunity to make recommendations to the Congress regarding a

national strategy for coastal zone management, including necessary legislative changes.

A new requirement is added that the report include summary views and recommendations from each coastal state. This latter requirement will provide the coastal states an opportunity to critique the federal program and recommend necessary changes. State comments submitted pursuant to this section should be specifically identified in the report and shall not be subject to change by any federal agency or office.

Section 314. Authorization of appropriations

Appropriations are authorized for fiscal years 1991-1995 for sections 306 and 306A, 309, 315, and for the costs of administering the CZMA.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 4450 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate by the Committee of the costs which would be incurred in carrying out H.R. 4450. However, clause 7(d) provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. The Subcommittee on Oceanography and Great Lakes held two hearings during the first session of the 101st Congress on the reauthorization of the Coastal Zone Management Act. These hearings, held on July 19 and September 27, 1989, were conducted prior to the introduction of H.R. 4450 but were on the subject matter of the legislation. The Subcommittee also held a hearing on an alternative bill reauthorizing the Coastal Zone Management Act on March 22, 1990.

2. With respect to the requirement of clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 4450 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. With respect to the requirement of clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Operations on the subject of H.R. 4450.

4. With respect to the requirement of clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the

following cost estimate for H.R. 4450 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 31, 1990.

Hon. WALTER B. JONES,
*Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 4450, the Coastal Zone Act Reauthorization Amendments of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 4450.
2. Bill title: The Coastal Zone Act Reauthorization Amendments of 1990.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, May 23, 1990.
4. Bill purpose: H.R. 4450 would reauthorize grant programs administered by the National Oceanic and Atmospheric Administration (NOAA) under the Coastal Zone Management Act of 1972. The total authorizations provided by the bill would be \$54 million for 1991, \$57 million for 1992, \$59 million for 1993, \$62 million for 1994, and \$64 million for 1995.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorization level.....	54	57	59	62	64
Estimated outlays.....	37	52	57	61	63

The costs of this bill would be in budget function 300.

Basis of estimate: This estimate assumes that the full amounts authorized would be appropriated for each fiscal year. The estimated outlays are based on historical spending patterns for NOAA.

6. Estimated cost to State and local governments: The grants authorized by this bill would be provided to coastal states for coastal zone management programs. For most of these grants, the state would be required to match the federal contribution.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts.

10. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

DEPARTMENTAL REPORTS

The Committee has received no departmental reports on H.R. 4450.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE COASTAL ZONE MANAGEMENT ACT OF 1972

TITLE III—MANAGEMENT OF THE COASTAL ZONE

[SHORT TITLE]

[SEC. 301. This title may be cited as the "Coastal Zone Management Act of 1972".]

SHORT TITLE

SEC. 301. *This title may be cited as the "Coastal Zone Management Act".*

16 U.S.C. 1451-1464

§ 1451. Congressional findings

The Congress finds that—

[(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone.]

(a) *It is the national interest to manage, protect, and develop with proper environmental safeguards, the coastal zone.*

* * * * *

(h) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(h) *In view of competing demands and the urgent need to protect and give priority to maintaining natural systems in the coastal zone, present state and local capabilities to plan for and regulate land and water uses in these areas are inadequate.*

§ 1452. Congressional declaration of policy

The Congress finds and declares that it is the national policy—

[(1) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations;]

(1) *to preserve, protect, develop with proper environmental safeguards, and where possible, to restore or enhance, the re-*

sources of the Nation's coastal zone for this and succeeding generations;

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, which programs should at least provide for—

(A) the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone,

[(B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of subsidence and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands.]

(B) Management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geologically hazardous, and erosion-prone areas and in areas likely to be affected by sea level rise, land subsidence and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands;

* * * * *

(H) the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking, [and]

* * * * *

(J) Where the Under Secretary deems appropriate, the study, development and implementation of management plans to address the adverse impacts of sea level rise on the coastal zone; and

* * * * *

§ 1453. Definitions

For the purposes of this chapter—

[(1) The term “coastal zone” means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal

waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.]

(1) *The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of state title and ownership under the Submerged Lands Act (43 U.S.C. 1301-1315). The zone shall extend inland from the shorelines to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.*

* * * * *

(16) *The term "sea level rise" means an increase in the level of the sea relative to the level of the adjacent land.*

[(16)](17) *The term "Secretary" means the Secretary of Commerce.*

[(17)](18) *The term "special area management plan" means a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies; standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone.*

[(18)](19) *The term "water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 1456(f) of this title.*

* * * * *

§ 1455. Administrative grants

(a) AUTHORIZATION.—

* * * * *

(c) **PROGRAM REQUIREMENTS.**—Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

* * * * *

(10) *The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions. The management program must demon-*

strate compliance with this public participation provision no later than two years from the date of enactment of the Coastal Zone Act Reauthorization Amendments of 1990.

* * * * *

§ 1455a. Coastal resource improvement program

(a) DEFINITIONS.—For purposes of this section—

(1) The term “eligible coastal state” means a coastal state that for any fiscal year for which a grant is applied for under this section—

(A) has a management program approved under section 1455 of this title; and

[(B) in the judgment of the Secretary, is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 1455(2)(A) through (I) of this title.]

(B) in the judgment of the Under Secretary, is making continual and satisfactory progress in improving its approved coastal zone management program in compliance with section 1456c.

* * * * *

§ 1456. Coordination and cooperation

(a) FEDERAL AGENCIES.—

* * * * *

(h) MEDIATION OF DISAGREEMENTS.—[In case of serious disagreement between any Federal agency and a coastal state—] *In case of serious disagreement between any Federal agency and a coastal state or between two or more coastal states—*

* * * * *

§ 1456c. [Research and technical assistance for coastal zone management

[(a) PROGRAMS SUPPORTING DEVELOPMENT AND IMPLEMENTATION CONDUCTED BY SECRETARY; ASSISTANCE OF EXECUTIVE BRANCH; CONTRACTS OR OTHER ARRANGEMENTS.—The Secretary may conduct a program of research, study, and training to support the development and implementation of management programs. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including, but not limited to, the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and training which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

[(b) GRANTS; LIMITS.—The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management. The amount of any grant made under this subsection shall not exceed 80 per centum of the cost of such research, studies, and training.]

[(c) COORDINATION WITH OTHER ACTIVITIES; AVAILABILITY OF RESULTS.—(1) The Secretary shall provide for the coordination of research, studies and training activities under this section with any other such activities that are conducted by, or subject to the authority of, the Secretary.]

[(2) The Secretary shall make the results of research conducted pursuant to this section available to any interested person.]

NATIONAL INTEREST IMPROVEMENTS

(a) Beginning in Fiscal Year 1991, the Secretary shall implement an ongoing program to encourage each coastal state to make continual improvements in its management program in specified national interest areas. This program shall require and monitor improvements in one or more of five special national interest areas which are to be established by the Secretary after consultation with other federal agencies, coastal states, and interested public and private parties.

(b) To implement the program required in subsection (a) the Secretary shall assess, for each state, the priority needs for improvement in each of the special national interest areas, and based on that assessment, shall negotiate a National Interest Improvements Program (hereinafter referred to as a "program") for each coastal state with an approved management program. Each program shall cover a period of at least three years and shall include specific, measurable goals and milestones to facilitate effective oversight by the Secretary pursuant to subsection (e).

(c) In negotiating each program, the state shall notify and consult with appropriate federal agencies, state agencies, local governments, regional organizations, port authorities, and the public, and where appropriate shall establish a citizens advisory group to assist in development and implementation of the program.

(d) If necessary for effective administration, the Secretary may stagger implementation of the program required under subsection (a) such that no less than one-third of the coastal states are required to negotiate a program within any single year.

(e)(1) The Secretary shall continually monitor progress in implementing each program negotiated under this section and shall provide each state with an annual evaluation of progress. Unless the Secretary finds, for each one year period, that the coastal state is making continual and satisfactory progress in implementing each component of the program, then the Secretary shall notify the coastal state and the public and shall specify additional actions required to ensure satisfactory implementation.

(2) Six months after notification under paragraph (1), the Secretary shall reassess the state's progress. Unless the Secretary finds that the state is making satisfactory progress in undertaking the actions required under paragraph (1), then the Secretary shall suspend

that state's eligibility for further funding under this section for at least one year.

(3) The Secretary may waive the requirements of this section only by finding that the lack of satisfactory progress is due to factors which are beyond the control of the coastal state and which were unforeseen at the time the program was negotiated. The Secretary shall notify the Congress and the public prior to granting any waiver under this subsection.

(f) Beginning in Fiscal Year 1991, 20 percent of the amounts appropriated to implement sections 1455 and 1455a of this title shall be retained by the Secretary and shall be used to implement this section, up to a maximum of \$10 million annually.

(g) No state match shall be required for activities funded under this section.

(h) Funds available to implement this section shall be distributed among eligible states as follows:

(1) Fifty percent according to regulations promulgated pursuant to section 1455(c); and

(2) Fifty percent for competitive awards according to guidelines or regulations issued by the Under Secretary pursuant to section 1463.

§ 1457. Public hearings

All public hearings required under this chapter must be announced at least [thirty] forty-five days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

§ 1458. Review of performance

(a) EVALUATION OF ADHERENCE WITH TERMS OF GRANTS.—

* * * * *

[(c) FAILURE TO MAKE SIGNIFICANT IMPROVEMENT; REDUCTION OF FINANCIAL ASSISTANCE.—The Secretary shall reduce any financial assistance extended to any coastal state under section 1455 of this title (but not below 70 per centum of the amount that would otherwise be available to the coastal state under such section for any year), and withdraw any unexpended portion of such reduction, if the Secretary determines that the coastal state—

[(1) is failing to make significant improvement in achieving the coastal management objectives specified in section 1452(2)(A) through (1) of this title; or

[(2) is failing to make satisfactory progress in providing in its management program for the matters referred to in section 1455(i)(A) and (B) of this title.]

(c) The Secretary may place a coastal state on probation for up to three years if the Secretary, on the basis of an evaluation which has been completed pursuant to subsection (b), finds substantial evidence that the state is failing to adequately implement or enforce important components of its approved program but that such evidence or failure constitutes insufficient grounds for action pursuant

to subsection (d). If the Secretary makes the finding authorized in this subsection—

- (1) The Secretary shall notify the coastal state of—
 - (A) the effective date of the probation;
 - (B) the portion or portions of the program to which the probation is effective; and
 - (C) written recommendations for corrective actions; and
- (2) The Secretary shall withdraw up to 25 percent of the funds available to that state pursuant to this title which may be used in assisting the state in implementing the recommendations under paragraph (1)(C). Funds withdrawn but not used to implement recommendations under paragraph (1)(C) shall be added to amounts appropriated under section 1464(a)(1).

* * * * *

§ 1460. [Coastal Zone Management Advisory Committee

[(a) ESTABLISHMENT; COMPOSITION; QUALIFICATIONS OF MEMBERS.—The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

[(b) COMPENSATION; TRAVEL EXPENSES.—Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including travel-time, may receive compensation at rates not exceeding \$100 per diem; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5 for individuals in Government service employed intermittently.]

PROMOTING EXCELLENCE IN COASTAL ZONE MANAGEMENT

(a) The Secretary shall implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishment in the field.

(b) Annually, the Secretary shall select—

- (1) one individual whose contribution to the field of coastal zone management has been the most significant;
- (2) five local governments which have made the most progress in developing and implementing the coast zone management principles embodied in this title; and
- (3) up to ten graduate students whose academic study promises to contribute materially to development of new or improved approaches to coastal zone management.

(c) In making the selections required in subsection (b)(2) the Secretary shall solicit nominations from the coastal states, and shall consult with experts in local governments planning and land use.

(d) In making the selection required in subsection (b)(3) the Secretary shall solicit nominations from coastal states and the National Sea Grant College Program.

(e) Using sums appropriated pursuant to section 318(a)(4), the Under Secretary shall establish and execute appropriate awards, including:

- (1) awards, including where appropriate, cash awards not to exceed \$5,000;
- (2) research grants; and
- (3) public ceremonies to acknowledge the award.

§ 1461. **[National Estuarine Reserve Research System] National Estuarine Research Reserve System**

(a) **ESTABLISHMENT.**—There is established the **[National Estuarine Reserve Research System] National Estuarine Research Reserve System** (hereinafter referred to in this section as the "System") that consists of—

- (1) each estuary sanctuary designated under this section as in effect before April 7, 1986; and
- (2) each estuarine area designated as a **[national estuarine reserve] national estuarine research reserve** under subsection (b) of this section.

Each estuarine sanctuary referred to in paragraph (1) is hereby designated as a **[national estuarine reserve] national estuarine research reserve**.

(b) **DESIGNATION OF NATIONAL ESTUARINE RESEARCH RESERVES.**—After April 7, 1986, the Secretary may designate an estuarine area as a **[national estuarine reserve] national estuarine research reserve** if—

* * * * *

(e) **FINANCIAL ASSISTANCE.**—(1) The Secretary may, in accordance with such rules and regulations as the Secretary shall promulgate, make grants—

(A) to a coastal State—

(i) for purposes of acquiring such lands and waters, and any property interests therein, as are necessary to ensure the appropriate long-term management of an area as a **[national estuarine reserve] national estuarine research reserve**,

(ii) for purposes of managing a **[national estuarine reserve] national estuarine research reserve** and constructing appropriate reserve facilities, or

(iii) for purposes of conducting educational or interpretive activities; and

(B) to any coastal State or public or private person for purposes of supporting research and monitoring within a **[national estuarine reserve] national estuarine research reserve** that are consistent with the research guidelines developed under subsection (c) of this section.

(2) Financial assistance provided under paragraph (1) shall be subject to such terms and conditions as the Secretary considers necessary or appropriate to protect the interests of the United States, including requiring coastal States to execute suitable title

documents setting forth the property interest or interests of the United States in any lands and waters acquired in whole or part with such financial assistance.

(3)(A) The amount of the financial assistance provided under paragraph (a)(A)(i) of subsection (e) of this section with respect to the acquisition of lands and waters, or interests therein, for any one [national estuarine reserve] *national estuarine research reserve* may not exceed an amount equal to 50 per centum of the costs of the lands, waters, and interests therein or \$4,000,000, whichever amount is less.

(B) The amount of the financial assistance provided under paragraph (1)(A) (ii) and (iii) and paragraph (1)(B) of subsection (e) of this section may not exceed 50 per centum of the costs incurred to achieve the purpose described in those paragraphs with respect to a reserve.

(f) **EVALUATION OF SYSTEM PERFORMANCE.**—(1) The Secretary shall periodically evaluate the operation and management of each [national estuarine reserve] *national estuarine research reserve*, including education and interpretive activities, and the research being conducted within the reserve.

(2) If evaluation under paragraph (1) reveals that the operation and management of the reserve is deficient, or that the research being conducted within the reserve is not consistent with the research guidelines developed under subsection (c) of this section, the Secretary may suspend the eligibility of that reserve for financial assistance under subsection (e) of this section until the deficiency or inconsistency is remedied.

(3) The Secretary may withdraw the designation of an estuarine area as a [national estuarine reserve] *national estuarine research reserve* if evaluation under paragraph (1) reveals that—

(A) the basis for any one or more of the findings made under subsection (b)(2) of this section regarding that area no longer exists; or

(B) a substantial portion of the research conducted within the area, over a period of years, has not been consistent with the research guidelines developed under subsection (c) of this section.

(g) **REPORT.**—The Secretary shall include in the report required under section 1462 of this title information regarding—

(1) new designation of [national estuarine reserve] *national estuarine research reserve* ;

(2) any expansion of existing [national estuarine reserve] *national estuarine research reserve*;

(3) the status of the research program being conducted within the System; and

(4) a summary of the evaluations made under subsection (f) of this section.

(h) **COOPERATIVE AGREEMENTS AND DONATIONS.**—(1) *The Secretary may enter into cooperative agreements with any nonprofit organization—*

(A) *to aid and promote interpretive, historical, scientific, and educational activities within any national estuarine research reserve; and*

(B) for the solicitation of private donations for the support of such activities.

(2) The Secretary may accept donations of funds, property, and services for use in designating and administering national estuarine research reserves under this section. Such donations shall be considered as a gift or bequest to or for the use of the United States.

§ 1462. [Coastal zone management reports

[(a) BIENNIAL REPORTS.—The Secretary shall consult with the Congress on a regular basis concerning the administration of this chapter and shall prepare and submit to the President for transmittal to the Congress a report summarizing the administration of this chapter during each period of two consecutive fiscal years. Each report, which shall be transmitted to the Congress not later than April 1 of the year following the close of the biennial period to which it pertains, shall include, but not be restricted to (1) an identification of the state programs approved pursuant to this chapter during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this chapter and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved, and a statement of the reasons for such action; (5) a summary of evaluation findings prepared in accordance with subsection (a) of section 1458 of this title, and a description of any sanctions imposed under subsections (c) and (d) of this section; (6) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 1456 of this title, are not consistent with an applicable approved state management program; (7) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (8) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (9) a summary of outstanding problems arising in the administration of this chapter in order of priority; (10) a description of the economic, environmental, and social consequences of energy activity affecting the coastal zone and an evaluation of the effectiveness of financial assistance under section 1456a of this title in dealing with such consequences; (11) a description and evaluation of applicable interstate and regional planning and coordination mechanisms developed by the coastal states; (12) a summary and evaluation of the research, studies, and training conducted in support of coastal zone management; and (13) such other information as may be appropriate.

[(b) RECOMMENDATIONS FOR LEGISLATION.—The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this chapter and enhance its effective operation.

[(c) REVIEW OF OTHER FEDERAL PROGRAMS; REPORT TO CONGRESS.—(1) The Secretary shall conduct a systematic review of Fed-

eral programs, other than this chapter, that affect coastal resources for purposes of identifying conflicts between the objectives and administration of such programs and the purposes and policies of this chapter. Not later than 1 year after October 17, 1980, the Secretary shall notify each Federal agency having appropriate jurisdiction of any conflict between its program and the purposes and policies of this chapter identified as a result of such review.

[(2) The Secretary shall promptly submit a report to the Congress consisting of the information required under paragraph (1) of this subsection. Such report shall include recommendations for changes necessary to resolve existing conflicts among Federal laws and programs that affect the uses of coastal resources.]

COASTAL ZONE MANAGEMENT REPORT

(a) The Secretary shall transmit to the Congress a report summarizing the administration of this title during each period of two consecutive fiscal years. Each report, which shall be transmitted to the Congress not later than April 1 of the year following the close of the biennial period to which it pertains, shall include:

(1) An identification of the state programs approved pursuant to this title during the preceding fiscal year and a description of those programs;

(2) A list of the states participating under this title and a description of the status of each state's program and its accomplishments during the preceding fiscal year;

(3) A list of the states not participating this title, a description of efforts by the Secretary to encourage their participation, and additional action or incentives needed to secure participation;

(4) An itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas in which these funds were expended;

(5) An identification of any state programs which have been reviewed and placed on probation or disapproved and a statement of the reasons for that action;

(6) A summary of evaluation findings prepared in accordance with 312(a);

(7) A list of all activities and projects by state which, pursuant to the provisions of section 1456 (c), (d), or (e), are not consistent with an applicable approved state management program;

(8) A summary of the regulations issued by the Secretary during the biennial period covered by the report;

(9) A summary of outstanding problems arising in the administration of this title in order of priority;

(10) Any other information as may foster effective oversight by the Congress; and

(11) Summary views and recommendations from each coastal state, including recommendations for additional legislation, necessary to achieve the objectives of this title and enhance its effective operation.

(b) *GUIDELINES.*—For the purposes of paragraph (11), the Secretary shall issue guidelines to the coastal states which outline the format for submitting summary views and recommendations.

§ 1464. [Authorization of appropriations

[(a) **SUMS APPROPRIATED TO SECRETARY.**—There are authorized to be appropriated to the Secretary—

[(1) such sums, not to exceed \$35,000,000 for the fiscal year ending September 30, 1986, not to exceed \$36,600,000 for the fiscal year ending September 30, 1987, \$37,900,000 for the fiscal year ending September 30, 1988, \$38,800,000 for the fiscal year ending September 30, 1989, and \$40,600,000 for the fiscal year ending September 30, 1990, as may be necessary for grants under sections 1455 and 1455a of this title; to remain available until expended;

[(2) such sums, not to exceed \$75,000,000 for each of the fiscal years occurring during the period beginning October 1, 1980, and ending September 30, 1988, as may be necessary for grants under section 1456a(b) of this title;

[(3) such sums, not to exceed \$1,000,000 for the fiscal year ending September 30, 1986, and not to exceed \$1,500,000 for each of the fiscal years occurring during the period beginning October 1, 1986, and ending September 30, 1990, as may be necessary for grants under section 1456b of this title, to remain available until expended;

[(4) such sums, not to exceed \$2,500,000 for the fiscal year ending September 30, 1986, not to exceed \$3,800,000 for the fiscal year ending September 30, 1987, \$4,500,000 for the fiscal year ending September 30, 1988, \$5,000,000 for the fiscal year ending September 30, 1989, and \$5,500,000 for the fiscal year ending September 30, 1990, as may be necessary for grants under section 1461 of this title, to remain available until expended; and

[(5) such sums, not to exceed \$3,300,000 for the fiscal year ending September 30, 1986, not to exceed \$3,300,000 for the fiscal year ending September 30, 1987, \$3,300,000 for the fiscal year ending September 30, 1988, \$4,000,000 for the fiscal year ending September 30, 1989, and \$4,000,000 for the fiscal year ending September 30, 1990, as may be necessary for administrative expenses incident to the administration of this chapter.

[(b) **SUMS APPROPRIATED TO FUND.**—There are authorized to be appropriated until October 1, 1986, to the Fund, such sums, not to exceed \$800,000,000, for the purposes of carrying out the provisions of section 1456a of this title, other than subsection (b), of which not to exceed \$150,000,000 shall be for purposes of subsection (c)(1), (c)(2) and (c)(3) of such section.

[(c) **LIMITATIONS.**—Federal funds received from other sources shall not be used to pay a coastal state's share of costs under section 1455 or 1456b of this title.

[(d) **REVERSION TO SECRETARY OF UNOBLIGATED STATE FUNDS; AVAILABILITY OF FUNDS.**—The amount of any grant, or portion of a grant, made to a State under any section of this chapter which is

not obligated by such State during the fiscal year, or during the second fiscal year after the fiscal year, for which it was first authorized to be obligated by such State shall revert to the Secretary. The Secretary shall add such reverted amount to those funds available for grants under the section for such reverted amount was originally made available.】

AUTHORIZATION OF APPROPRIATIONS

(a) *There are authorized to be appropriated to the Secretary—*

(1) *such sums, not to exceed \$42,427,000 for fiscal year 1991, \$44,336,215 for fiscal year 1992, \$46,331,344 for fiscal year 1993, \$48,416,254 for fiscal year 1994, and \$50,594,985 for fiscal year 1995, for grants under sections 1455 and 1455a, to remain available until expended;*

(2) *such sums, not to exceed \$1,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995 as may be necessary for grants under section 309, to remain available until expended;*

(3) *such sums, not to exceed \$5,747,500 for fiscal year 1991, \$6,006,138 for fiscal year 1992, \$6,276,413 for fiscal year 1993, \$6,558,852 for fiscal year 1994, and \$6,854,000 for fiscal year 1995, for grants under section 1461, to remain available until expended; and*

(4) *such sums, not to exceed \$5,000,000 for fiscal year 1991, \$5,225,000 for fiscal year 1992, \$5,460,125 for fiscal year 1993, \$5,705,830 for fiscal year 1994, and \$5,962,593 for fiscal year 1995, for expenses incident to the administration of this title, to remain available until expended.*

(b) *Federal funds received from other sources shall not be used to pay a coastal state's share of costs under section 1455.*

(c) *The amount of any grant, or portion of a grant, made to a state under any section of this Act which is not obligated by the state during the fiscal year, or during the fiscal year after the fiscal year, for which it was first authorized to be obligated by the state shall revert to the Secretary. The Secretary shall add the reverted amount to those funds available for grants under the section for which the reverted amount was originally made available.*

(d) *With the approval of the Secretary, a coastal state may allocate to a local government, an area-wide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of any grant made under this title. An allocation of grant funds shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in conformance with applicable grant terms and conditions and to further the state's approved management program.*