

FEDERAL CONSISTENCY STUDY

DRAFT SUMMARY

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Office of Ocean and Coastal Resource Management

National Ocean and Atmospheric Administration

SUMMARY

THE CZMA AND FEDERAL CONSISTENCY

The Coastal Zone Management Act of 1972 (the CZMA, Pub. Law 92-583, as amended) establishes a national program to promote the wise use and protection of coastal land and water resources. The CZMA encourages and assists states and territories in dealing with the increasing demands for the use of the Nation's coastal areas by providing technical and financial assistance and policy guidance to state and territorial governments to develop and implement coastal zone management programs. The CZMA is administered through the National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management (NOAA/OCRM).

The Federal consistency provisions of the CZMA require that Federal agency activities impacting the coastal zone be conducted in a manner consistent with the federally approved coastal zone management programs. Section 307 of the CZMA establishes standards and procedures for state consistency review of four basic types of activities: direct Federal agency activities, including development projects (Section 307(c)(1) and (2)); federally licensed and permitted activities (Section 307(c)(3)(A)); Outer Continental Shelf (OCS) exploration, development and production plans (Section 307(c)(3)(B)); and Federal assistance to state and local governments (Section 307(d)). The Federal consistency regulations at 15 CFR 930 describe the procedures and responsibilities of Federal and state agencies and for private parties seeking Federal approval for proposed projects.

The legislative history shows that Congress created the Federal consistency process in an effort to advance the national interest in the effective management, beneficial use, protection and development of the

coastal zone while acknowledging that the key to effective coastal zone management is to encourage the states to exercise their full authority over land and waters in the coastal zone through effective consultation and coordination.

THE FEDERAL CONSISTENCY STUDY

During the Spring of 1984, the NOAA Administrator initiated a comprehensive study of the experiences gained to date in applying the Federal consistency provisions of the CZMA. The Federal Consistency Study was designed to provide information useful for evaluating the Federal consistency process and considering whether new approaches are needed to increase the efficiency and effectiveness of coastal zone management and the Federal consistency process.

The objectives of this Study are:

1. To document the experiences of state and Federal agencies, as well as affected parties, with the implementation of the Federal consistency provisions of Section 307 of the CZMA, and
2. To identify any issues surrounding the implementation of the Federal consistency process and to document any areas of conflict.

NOAA provided for full public awareness and participation in the Study. NOAA published a notice announcing the Study in the Federal Register (49 FR 35541, September 10, 1984) and mailed announcements to state coastal management agencies and affected Federal agencies; to all individuals who attended hearings or provided testimony on the proposed Federal consistency rulemaking; to individuals, agencies and organizations known to be interested in coastal zone management issues; and to over 300 major business, industries and trade organizations. In addition, NOAA held follow-up interviews and meetings with interested and affected parties.

NOAA compiled statistical and descriptive information from agency files, from state coastal management agency performance reports, from specific follow-up questions and interviews with state and Federal agencies, from the public comments received in response to NOAA's Advance Notice of Proposed Rulemaking on Federal consistency (49 FR 22825, June 1, 1984), from testimony presented to the Congress during the Spring of 1984 on proposed legislation to amend the CZMA, from existing studies and articles on the consistency process, and from the legislative, regulatory and litigation history of the Federal consistency provisions.

The Study presents and examines statistical information and case studies on how the Federal consistency process has affected several key types of activities; describes the laws, regulations and policies which guide the Federal consistency process from the early stages of interpreting the language of the CZMA and identifying Federal actions subject to Federal consistency review, through informal negotiations to reach agreements and, finally, the formal mechanisms available to resolve disputes; reports on the comments and concerns about the Federal consistency which have been expressed to NOAA by interested parties; and provides a number of case examples which illustrate both the problems and the successes encountered in the Federal consistency process.

The Federal Consistency Statistical Data Base combines statistical information provided by state coastal zone management agencies and by affected Federal agencies for activities conducted during the Federal Fiscal Year 1983 (FY 83 includes October 1, 1982, through September 30, 1983). NOAA concluded that compiling information for FY 83 would yield a representative sample based on the most recently available data, would provide an adequate sample

size, would allow inclusion of states whose coastal management programs were approved in 1982, and would impose the least burden on participating state and Federal agencies. However, FY 83 is unique in one regard. In August, 1982, the Ninth Circuit Court of Appeals required consistency review for Outer Continental Shelf (OCS) lease sales under Section 307(c)(1). In January, 1984, the Supreme Court reversed this decision. During FY 83, while the case was on appeal to the Supreme Court, the Department of the Interior prepared consistency determinations for the lease sales scheduled during that time.

In order to assure a broad review of the implementation of the Federal consistency process, NOAA examined specific cases and examples from the entire history of the CZMA. For example, because the total number of cases involving the Secretarial mediation and appeals processes under the CZMA is relatively small, NOAA documented all cases.

The statistics collected include the numbers of concurrences and non-concurrences on consistency determinations and certifications. The statistics are organized by state and Federal agency and by the appropriate Section 307 category for types of Federal actions. Where available, the statistical information includes time periods for review, location of the activity (i.e., in the coastal zone, landward or seaward of the coastal zone, or on federally excluded lands within the coastal zone) and notes on cases in which initial state objections were resolved as a result of further negotiations, litigation and/or project modifications. In the statistical summaries, there was no weighting of the statistics for project costs, size or impact.

The statistical information in the Study does not allow for objective mathematical analysis of the implementation of the Federal consistency process, nor does it provide the basis for a cumulative evaluation of the

experiences of states, Federal agencies or other interested parties. As a result, the raw statistical data offers little insight into how the process could be improved to increase efficiency and effectiveness. The diverse and unique character of each state coastal zone management program made the gathering and comparison of information difficult. The information provided to NOAA from states, Federal agencies, and private individuals was unweighted and often incomplete or incompatible. Therefore, subjective analysis is required to interpret the available information.

The economic information available provided little insight into the costs and benefits of the Federal consistency process. NOAA specifically requested information on the economic impacts of the Federal consistency requirements. Specific information was provided only by a few oil companies. Thus, the available information on the economic impact of Federal consistency is either case-specific information provided by industry or generic information inferred from research efforts attempting to analyze the costs of compliance with various environmental laws and regulations. The benefits of the Federal consistency, which also are unquantified, derive from increased intergovernmental coordination and consultation and from wise management of coastal resources.

REVIEW OF GENERAL STATISTICAL INFORMATION

The Federal consistency requirements of the CZMA affect the activities of the 28 coastal states and territories with federally approved coastal zone management programs, a wide variety of Federal agencies, and a broad spectrum of activities.

The Federal agencies most often involved in consistency reviews (approximately 100 or more actions) during FY 83, in order of descending

involvement, were the U.S. Army Corps of Engineers (Corps); the Department of Housing and Urban Development (HUD); the Department of the Interior, Minerals Management Service (DOI/MMS); the Department of Transportation, Federal Highways Administration (DOT/FHA); the Environmental Protection Agency (EPA); and the Department of Transportation, U.S. Coast Guard (DOT/USCG). For FY 83, the types of activities in which 10 or more states had experiences included: Corps Section 10/404 permits (all coastal states); HUD urban and community development grants (all coastal states); OCS lease sales and fishery management plans (18 states each); OCS Plans of Exploration (POEs) and Development and Production Plans (DPPs) (11 states); harbor maintenance dredging projects involving the Corps (11 states); permits issued by the Coast Guard (11 states); and construction projects undertaken by the USCG (10 states). (See Tables II-1 and II-2).

For FY 83, Alaska reported the highest number of consistency reviews of direct Federal actions under Section 307(c)(1) and (2) with 152 total actions. The states which reported the most Federal licenses and permit cases reviewed for consistency under Section 307(c)(3)(A) were Louisiana (1,094), Mississippi (835), South Carolina (572), and Washington (516). The states reporting the largest number of OCS exploration, development and production plans reviewed for consistency under Section 307(c)(3)(B) were Louisiana (104), Mississippi (24) and California (23). (See Table II-3)

The statistical data from Federal agencies (see Table 1) show that for FY 83:

- Under Sections 307(c)(1) and (2), the states concurred in about 93% of the approximately 400 direct Federal activities reviewed (including OCS lease sales which were reviewed during FY 83 only);

- Under Section 307(c)(3)(A), the states concurred in about 82% of the approximately 5500 Federally licenses and permitted activities reviewed (nearly 5000 of which were Corps of Engineers dredge and fill permits);
- Under Section 307(c)(3)(B), the states concurred in about 99% of the nearly 435 plans for OCS exploration (POEs), and development and production (DPPs) reviewed; and
- Under Section 307(d), the states concurred in over 99.9% of the nearly 2000 Federal assistance proposals reviewed.

The statistical data provided by the states differs somewhat from that provided by the Federal agencies, however, the basic relationships between the number of concurrences and non-concurrences remain the same. The compiled state agency data (see Table 3) show that for FY 83:

- States concurred in about 96% of the over 750 direct Federal activities reviewed (including OCS lease sales);
- States concurred in about 98% of the approximately 5000 Federal licenses and permits reviewed;
- States concurred in about 97% of the over 200 OCS plans reviewed; and
- States concurred in about 99% of the over 1200 Federal assistance activities reviewed.

A major reason for the differences between state and Federal agency statistics on federally licensed and permitted activities is the different manner in which state and Federal agencies regard concurrences which are conditioned upon the acceptance of certain stipulations or mitigating measures. For example, in Louisiana the Corps reported about 800 permit objections which were later resolved by adding conditions to the permits to make them consistent. The State of Louisiana reported these actions as conditional concurrences. Additional discrepancies between state and Federal agency data result from differences in record keeping and information retrieval systems.

Table 1. FEDERAL AGENCIES INVOLVED WITH CONSISTENCY REVIEWS - FY 83
(Source: Information provided to NOAA/OCRM by affected Federal agencies.)

FEDERAL AGENCY	CZMA 307 SECTION			
	(c)(1) and (2): Direct Federal Activities	(c)(3)(A): Permits and Licenses	(c)(3)(B): OCS Exploration and Development Plans	(d): Federal Assistance to State and Local Governments
	** Actions/ Objections	Actions/ Objections	Actions/ Objections	Actions/ Objections
DOA/NFS	19/0			
DOC/NOAA/NMFS	49/4[0]			
DOD/USAF	4/0			
DOD/COE	130/4[1]	4891/948[55]***		
DOD/USN	59/0			
HUD				1416/0
DOI/BLM	5/2[0]			
DOI/MMS	1(withdrawn) 29/9[0] (OCS lease sales only)	40/0	432*/4[1]	
DOI/NPS	18/1[0]			14/0
DOT/FAA				1(withdrawn)
DOT/FHA	6/0	53/3[2]		234/2[1]
DOT/FRA	1/1[0]			
DOT/USCG	55/3[1]	30/0		
EPA	3/1[1]	251/0		18/0
GSA	2/1[0]			
ICC		1/1[0]		
TOTALS	381/30[3]	5266/952*[57]	432*/4[1]	1683/2/[1]
	If OCS lease sales are subtracted from totals, 352/21[3]	*COE permits conditioned or modified ***primarily individual Section 404/10 permits	*Full, partial and conditional state concurrences are included in this total.	

**x/y[z] =

x=Total number of consistency reviews (a single project may be reviewed by more than one State).

y=Total number of objections (including conditional concurrences if considered as objection by Federal agency); and

z=Total number of unresolved objections.

Table 2. TYPES OF ACTIVITIES REVIEWED BY STATES FOR CONSISTENCY - FY 83
(Source: Information provided to NOAA/OCRM by affected Federal agencies).

Type of Activity	Federal Agency	Number of Projects	Involved States	Total Actions/Objections**
Federal Construction Projects, including Military Operations	DOA/NFS	19	AK, OR	19/0
	DOI/BuRec	1	CA	Withdrawn
	DOI/NPS	12	AK, CA, FL, LA	12/1[0]
	DOT/FAA	1	LA	Withdrawn
	DOT/FHA	6	AK, CA, OR	6/0
	DOT/FRA	1	CT	1/1[0]
	DOT/USCG	43	AK, CA, FL, HA, LA, ME, MI, NY, PR, WI	43/0
	DOD/USAF	4	CA, SC	4/0
Harbor Widening &/or Deepening Projects, plus Maintenance Dredging	DOD/DON	59	CA, CT, FL, HA, MA, NC, NY, PR, SC	59/0
	DOD/COE	130	CA, FL, MA, ME, MI, MS, NC, NH, NJ, PA, SC	130/4[1]
	DOT/USCG	1	MD	1/1[0]
	EPA	3	OR, FL, WA	3/1[1]
Navigational &/or Anchorage Designation Activities	DOT/USCG	9	DE, FL, LA, ME, NJ, PA	9/2[1]
Land Acquisitions & Disposals	DOI/BLM	2	AK, CA	2/1[0]
	DOT/USCG	2	HA	2/0
	GSA	2	NY, WA	2/1[0]
Fishery Management Plans	DOC/NOAA/NMFS	13	AK, AL, FL, HA, CA, LA, MA, MS, NC, NH, NJ, NY, OR, PA, PR, SC, VI, WA	49/4[0]
Timber Management Plans	DOI/BLM	3	OR	3/1[0]
Other Management Plans	DOI/NPS	6	AK, FL, NC	6/0

**x/y[z]

x=Total number of consistency reviews (a single project may be reviewed by more than one state)

y=Total number of objections (including conditional concurrences if considered as objections by Federal agency)

z=Total number of unresolved objections.

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TABLE 2. Continued

(Source: Information provided to NOAA/OCRM by affected Federal agencies.)

Type of Activity	Federal Agency	Number of Projects	Involved States	Total Actions/Objections**
OCS Lease Sales	DOI/MMS	9	AK, AL, CA, CT, DE, FL, LA, MA, MD, ME, MS, NC, NH, NJ, NY, PA, RI, SC	29/9[0]
General NPDES Permits	EPA	10	AK, CA, LA, MA, ME	10/0
Corps of Engineers §10/404 Permits	DOD/COE	4891	AK, AL, CA, DE, GU, LA, MA, MD, MI, MS, NC, NH, NJ, NY, OR, PA, PR, RI, SC, WA, WS	4891/948[49]
Other Agency Permits, Licenses/Authorizations	DOI/MMS	40	Gulf and Other States	40/0
	DOT/FHA	53	Several States	53/3[2]
	DOT/USCG	30	CT, DE, FL, HA, MA, NH, NJ, NY, PA, RI, SC	30/0
	EPA	241	AK	241/0
	ICC	1	CA	1/1[0]
OCS POE's and DPP's	DOI/MMS	432	AK, CA, DE, LA, MD, MS, NH, NJ, NY, PA, RI	432/4[1]
Federal Assistance to State and Local Governments	HUD	1416	All Coastal States	1416/0
	DOI/NPS	14	AK, CA, HA	14/0
	DOT/FHA	234	DE, LA, ME, MI, MS, NJ, NY, PA, SC	234/2[1]
	EPA	18	MI, WI	18/0

**x/y[z]

x= Total number of consistency reviews (a single project may be reviewed by more than one State)

y= Total number of objections (including conditional concurrences if considered as objection by Federal agency)

z= Total number of unresolved objections.

Table II-3. STATE AGENCY DATA ON FEDERAL CONSISTENCY REVIEWS DURING FY 83
(Source: Information provided to NOAA/OCRM by state coastal zone management agencies)

COASTAL STATE	CZMA 307 SECTION			
	(c)(1) and (2): Direct Federal Activities	(c)(3)(A) Permits and Licenses	(c)(3)(B): OCS Exploration and Development Plans	(d): Federal Assistance to State and Local Governments
	** Actions/ Objections	Actions/ Objections	Actions/ Objections	Actions/ Objections
AL*	2/0	111/3 [3]	4/0	10/1 [1]
AK	152/3 [3]	291/8 [8]	8/0	32/0
CA & BCDC	47/7 [1]	64/2 [2]	23/5* [1]	5/0
CT*	18/1 [1]	233/0	1/0	19/0
DE	6/0	30-40/0	3/0	320/0
FL*	307/9 [5]	- no data available -		139/4 [0]
GU	1/0	4/0		8/0
HA	14/0	30/0		3/0
LA	4/0	1094/ca.13 [13]	104/0	22/0
ME	46/0	250/1 [1]		40/0
MD	1/1 [1]	254/0	6/2 [2]	200/0
MA	6/0	13/3 [3]		1/0
MI	21/?	835/35 [35]		3/0
MS	9/1 [1]	34/3 [3]	24/0	13/0
NH	17/0	12/1 [1]	1/0	1/0
NJ	20/5 [5]	7/2 [2]	4/0	9/0
NY	23/2 [2]	297/3 [3]	3/0	80/1 [1]
NC	40/1 [0]	100/11 [11]		57/2 [2]
NM	- - - - - no data available - - - - -			
OR	4/0	184/9 [9]		
PA	12/0	18/0	1/0	25/0
PR	2/0	12/5 [5]		5/2 [2]
RI	6/0	20/2 [2]	21/0	27/2 [2]
SC	5/0	572/0		215/0
VI	1/0	1/0		1/0
WA	5/0	516/0		6/0
WS		59/0		
TOTAL	769/30 [19]	5041*/101 [101]	203/7 [3]	1241/12 [8]
*Information received too late for detailed review.	If OCS Lease Sales are subtracted from totals, 433/12 [5]	*includes conditional concurrences	*partial objections	

**x/y[z]

x=Total number of consistency reviews (a single project may be reviewed by more than one State).

y=Total number of objections (including conditional concurrences only if considered as objection by the state); and

z=Total number of unresolved objections.

For all types of activities reviewed for consistency, most of the state objections were resolved and the projects allowed to proceed after further negotiations. (See Tables 4 and 5). In only a few cases were objections resolved (upheld, overturned or alternate solutions developed) either by litigation, Secretarial appeal under the CZMA, or Congressional intervention. Table 4 shows that for the unresolved objections, no Federal agency was involved in more than two activity categories, nor was any state listed in more than two activity categories with unresolved objections. The activity category involving Corps Section 10/404 permits had the most states (9) with unresolved objections. (The states reported that most of these objections were due to permit applicants not providing sufficient data to the states.) Table 5 identifies activities which were conditioned or modified as a necessary precedent to state concurrence, resolved by litigation, and withdrawn from consideration.

Less than ten states provided data on the length of time required for consistency reviews during FY 83. For direct Federal activities reviewed under Sections 307(c)(1) and (2), the regulations require that a state respond to a consistency determination within 45 days, unless the state requests a day extension of 15 days or less. Further extensions may be granted if the Federal agency agrees. The regulations also state that final Federal action may not be taken sooner than 90 days after the consistency determination is issued to the state, unless the state and Federal agency agree to an alternate schedule. The available data indicate that, for direct Federal activities, states often request a 15 day extension of the initial 45-day review period. In a number of cases, the consistency review lasted more than 60 days. However, in nearly all cases examined in which the consistency review lasted

Table 4. FY 83 UNRESOLVED FEDERAL CONSISTENCY OBJECTIONS
(Source: Information provided to NOAA/OCRM by affected Federal agencies)

Section 307(c)(1) and (2) - Direct Federal Actions		
FEDERAL AGENCY	STATE(s) INVOLVED	ACTIVITY
DOD/COE	Florida	Tampa Harbor, Alafia River, Big Bend Channel-new project. State objected until two condition are met. Issues remain unresolved.
DOT/USCG	Delaware	Delaware Bay, Big Stone Anchorage re-designation to allow coal transshipment. In litigation, USCG is not a party in the suit.
EPA	Florida	Ocean disposal site for dredged material, near Pensacola, adjacent to aquatic preserve and designated Outstanding Florida Waters (within coastal zone). Objection based on lack of data in DEIS. State wanted dredged materials to be used as part of COE 25-year beach nourishment plan. Disposal site in use under interim designation.

Section 307(c)(3)(A) - Federally Licensed and Permitted Activities		
FEDERAL AGENCY	STATE(s) INVOLVED	ACTIVITY
DOT/FHA	New Jersey (1) New Hampshire	Specific data not provided by DOT/FHA
DOD/COE	Alabama (12) Alaska (6) California (6) Mississippi (2) New Jersey (10) North Carolina (3) Oregon (2) South Carolina (6) Washington (8)	Section 404/10 permits. Specific data not provided by DOD/ACOE.

Section 307(d) - Federal Assistance		
FEDERAL AGENCY	STATE	ACTIVITY
DOT/FHA	New Jersey	Specific data not provided by DOT/FHA

Table 5. STATE NON-CONCURRENCES - FY 83 - WHICH WERE LATER CONDITIONED, LITIGATED, APPEALED TO THE SECRETARY UNDER THE CZMA, OR WITHDRAWN

(Source: Information provided to NOAA/OCRM by affected Federal agencies)

Section 307(c)(1) and (2) - Direct Federal Actions		
FEDERAL AGENCY	STATE	ACTIVITY
DOA/NFS	Alaska	14 projects involving timber sales and associated road building. Concurrences reached after some negotiations.
DOC NOAA/NMFS	Florida	Mackerel Fishery Management Plan (FMP). Objection due to gear use conflicts. Litigation, settled.
	Florida	Reef Fish FMP. Objection due to gear use conflicts. Litigation, settled.
	Florida	Snapper-Grouper FMP. Objection due to gear use conflict. Litigation, settled.
	Florida	Coral and Coral Reef FMP. Objection. Settled.
	Puerto Rico	Caribbean Spiny Lobster FMP. Concurrence after informal negotiations.
	Virgin Islands	Caribbean Spiny Lobster FMP. Concurrence after informal negotiations.

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Table 5. Continued

Section 307(c)(1) and (2) - Direct Federal Actions		
FEDERAL AGENCY	STATE	ACTIVITY
DOD/USAF	California	Vandenberg Air Force Base-space shuttle launching. Concurrence after changes made for water conservation program and public beach access.
	California	Large family housing project (300 units) at Fort McArthur, San Pedro. Concurrence after beach access and harbor over-view conditions agreed to.
DOD/ACOE	Mississippi	Port Bienville Harbor (Pearl River) dredged material disposal. Objection resolved by informal negotiations which identified alternate disposal site.
	Mississippi	Pascagoula Harbor dredging and dredged material disposal. Objection resolved after certain proposed disposal sites eliminated.
	South Carolina	Savannah Harbor dredged material disposal in undiked areas. Objection resolved after dike lines established for disposal sites.
DOI/BLM	Alaska	Project involved an 18-acre lease of land in the National Petroleum Reserve. State objection resolved through a negotiated settlement.
	Oregon	South Coast - Curry Timber Management Plan. State objected due to possible impacts on endangered owl species. Concurrence reached after lengthy negotiations.

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Table 5. Continued

Section 307(c)(1) and (2) - Direct Federal Actions		
FEDERAL AGENCY	STATE	ACTIVITY
DOI/MMS* *Supreme Court decision resolved all of OCS lease sale cases by determining that lease sales were not subject to consistency requirements.	Alaska	OCS Lease Sale 57 - Norton Basin. Objection. Resolved by MOU prior to sale.
	Alaska	OCS Lease Sale 70 - St. George Basin. Objection. Resolved by MOU prior to sale.
	New York	OCS Lease Sale 76 - Mid Atlantic. Objection. Resolved by negotiations.
	Maryland	OCS Lease Sale 76 - Mid Atlantic. Objection followed by litigation which was dismissed as moot. No bids received on disputed tracts.
	New Jersey	OCS Lease Sale 76 - Mid Atlantic. Objection. Resolved by MOU.
	North Carolina	OCS Lease Sale 78 - South Atlantic. Objection. Resolved by MOU.
	Florida	OCS Lease Sale 78 - South Atlantic. Objection. Resolved by MOU.
	New York	OCS Lease Sale 52 - North Atlantic. Objection. Litigation. Issues moot upon sale cancellation.
	Massachusetts	OCS Lease Sale 52 - North Atlantic. Objection. Issues moot upon sale cancellation.
	California	OCS Lease Sale 73 - Central California. Objection followed by litigation which was dismissed after Supreme Court decision.
DOI/NPS	Alaska	Erosion control project. Objection. Resolved after negotiations.
DOI/FRA	Connecticut	Niantic Bay railroad crossing, bridge rehabilitation project. Objection. Resolved after negotiations.

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Table 5. Continued

Section 307(c)(1) and (2) - Direct Federal Actions		
FEDERAL AGENCY	STATE	ACTIVITY
DOT/USCG	Florida	Anchorage designation in Pensacola Bay - undefined purpose. Objection. Project cancelled when USCG determined it was no longer needed.
	Maryland	Dredging of small boat basin and disposal of dredged material. Objection resolved when a alternative disposal site was selected.
	Hawaii	Waterfront improvement project at Honolulu CG base. Conditional concurrence
	California	Radio communications link at Point Reyes. Concurrence after lengthy negotiations on public access and visual resources issues.
GSA	New York	Sale of Montauk Air Force Base, Long Island. Objection and litigation resolved by "land-swap" facilitated by Congressional involvement.
Section 307(c)(3)(A) - Federally Licensed & Permitted Actions		
FEDERAL AGENCY	STATE	ACTIVITY
DOD/ACOE	Alaska (43) Louisiana (800) Massachusetts (1) Michigan (3) Washington (8)	Section 404/10 permits modified or conditioned to resolve state objections. Specific data not provided by DOD/ACOE.
	Alabama (15) Massachusetts (1) Michigan (5) Mississippi (15)	Permits cancelled or withdrawn. Specific information not provided by DOD/ACOE.
DOT/FHA	Louisiana	Objection to permit resolved after a larger culvert used.

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Table 5. Continued

Section 307(1)(3)(A) - Federally Licensed & Permitted Actions		
FEDERAL AGENCY	STATE	ACTIVITY
ICC	California	Certification of Abandonment for a Santa Fe railroad line passing through Manhattan Beach, Hermosa Beach and Redondo Beach. Objection based on disposition of right-of-way and interests of local governments in purchasing right-of-way for mass transit proposal. ICC granted abandonment over California objection. Local governments sued ICC. Court found case to be moot.

Section 307(c)(3)(B) - OCS POEs and DPPs		
FEDERAL AGENCY	STATE	ACTIVITY
DOI/MMS	California	Exxon Santa Ynez DPP - Option A for offshore processing and transport. Santa Barbara Channel. Objection. Exxon appeal to Secretary. Appeal stayed on request of the parties pending implementation of a settlement agreement.
	California	Union POE for OCS P-203 in Channel Islands Marine Sanctuary. Objection. Union appealed. After informal negotiation, Union withdrew appeal and resubmitted POE consistency certification. California objected again based on possible impacts on sensitive biological habitats. Union appealed again. Secretary sustained appeal.
	California	Sun POE for OCS P-231, Santa Rosa Unit in Santa Barbara Channel. Objection resolved when Sun agreed to drilling conditions.

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Table 5. Continued

Section 307(c)(3)(B) - UCS POE's and DPP's		
FEDERAL AGENCY	STATE	ACTIVITY
DOI/MMS	California	Exxon Plan of Exploration on OCS P-467 - Santa Rosa Unit, Santa Barbara Channel. State objected due to interference with commercial fishing. Exxon appealed. After informal negotiations, California agreed to allow Exxon to drill one well and Exxon withdrew appeal. POE consistency certification resubmitted on remaining wells. California objected again. Exxon appealed again. Secretary of Commerce upheld state objection.

Section 307(d) - Federal Assistance		
FEDERAL AGENCY	STATE	ACTIVITY
DOT/FAA	Louisiana	New airport proposed at Port Sulphur. Objection based on siting of proposal on COE marsh mitigation site. State wanted airport on alternative site identified in EA on fastland. Project never funded due to Federal budget constraints.
DOT/FHA	Louisiana	Objection resolved after informal negotiations. Specific data not provided by DOT/FHA.

more than 60 days, the state and Federal agencies were able ultimately to reach an agreement. The CZMA establishes a six month review period for federally licensed and permitted activities. In those states which provided data on the length of review, most federally licensed and permitted activities were reviewed within 90 days (90-100%). NOAA also compared the time required to review OCS plans by Louisiana and California -- two states with significant, but different experiences with OCS oil and gas development. In both states, the relatively less complicated POEs took less time to review than DPPs. The average review period for POEs was 25 days in Louisiana and 31 days in California. The average review period for DPPs was 45 days in Louisiana and 116 in California.

Consistency Reviews of OCS Activities During FY 83

The Department of the Interior prepared consistency determinations on nine OCS Lease Sales scheduled during the 17 months between the Ninth Circuit Court's decision on August 12, 1982, that lease sales were subject to the requirements of Section 307(c)(1), and the Supreme Court's decision on January 11, 1984, reversing that opinion. MMS prepared 28 consistency determinations for these lease sales and two negative declarations, involving 18 states (See Table 6). The nine lease sales involved and their locations are as follows: No. 52 - Georges Bank, North Atlantic; No. 57 - Norton Basin, Alaska; No. 69 - Eastern Gulf of Mexico; No. 70 - St. George Basin, Alaska; No. 72 - Central Gulf of Mexico; No. 74 Western Gulf of Mexico; No. 76 - Mid Atlantic; No. 78 - South Atlantic; and No. 73 - Santa Maria Basin, Central California. The states involved in each lease sale and their responses to consistency determinations are shown in Table 6. The affected states concurred with 18 of 28 consistency determinations prepared by MMS. Of the

TABLE 6. SUMMARY OF CONSISTENCY DETERMINATIONS FOR OCS LEASE SALES

LEASE SALE	DATE of CD	STATES RECEIVING		CONCURRENCES/ OBJECTION	RESULT
		WMS CONSISTENCY DETERMINATION			
52-North Atlantic	Nov. 1982	Maine	Concurred	Sale cancelled	
		Rhode Island	Concurred		
		New Hampshire	Concurred		
		Connecticut	Concurred		
		New York	Objected		
57-Norton Basin	Nov. 1982	Massachusetts	Objected	Resolved by negotiations. Suit filed, injunction granted. Resolved by MOU.	
		Alaska	Objected		
69-E. Gulf of Mexico	Nov. 1982	Mississippi	Concurred	Sale held as scheduled.	
		Alabama	Concurred		
		Louisiana	Concurred		
		Florida	Concurred		
70-St. George Basin	Dec. 1982	Alaska	Objected	Resolved by MOU. 2 month delay in issuance of the lease due to litigation unrelated to the CZMA.	
72-Gulf of Mexico	Feb. 1983	Louisiana	Concurred	Sale held as scheduled.	
		Mississippi	Concurred		
		Alabama	Concurred		
74-Western Gulf of Mexico	Apr. 1983	Louisiana	Concurred	Sale held as scheduled.	
76-Mid-Atlantic	Dec. 1982	Rhode Island	Concurred	Sale held as scheduled.	
		Pennsylvania	Concurred		
		Delaware	Concurred		
		Connecticut	Concurred		
		Massachusetts	Concurred		
78-South Atlantic	Mar. 1983	New York	Objected	Suit filed, then dismissed. Suit filed, then dismissed. Resolved by MOU.	
		Maryland	Objected		
		New Jersey	Objected		
		North Carolina	Objected		
		South Carolina	Concurred		
73-Central California	June 1983	Florida	Objected	Sale held as scheduled. Resolved by MOU, sale held	
		California	Objected		
			Objected		Suit filed, then dismissed. Sale delayed by one month.

10 objections, four were resolved through Memoranda of Understanding (MOUs). MOUs were negotiated between the Governors of the affected states and the Secretary of the Interior pursuant to the consultation procedures of Section 19 of the OCSLA.

The MMS reported that a total of 432 POEs and DPPs were submitted for OCS oil and gas exploration, development, and production in FY 1983. (See Table 7).

Table 7. STATE CONSISTENCY REVIEW OF OCS POEs AND DPPs - FY 83

	Number Submitted	Full state Concurrence	Partial State Concurrence	Conditional State Concur	State Objection	Appealed under CZMA
POEs	355	319	3	33	4	2
DPPs	77	74	1	2	1	1
Total	432	393	4	35	5	3

(Source: Information provided by MMS to OCRM.)

Table 7 shows that the states objected to approximately one percent of the plans submitted by applicants during FY 83. However, in those few cases when a state did object, the applicants appealed to the Secretary of Commerce to override the state's objection in three of the five plans.

Although the states concurred in approximately 99% of the POEs and DPPs reviewed during FY 83, a number of these concurrences were conditioned upon the adoption of state-specified mitigation measures (conditional concurrences) or applied only to certain portions of the proposal plan (partial concurrences). State conditionally concured in approximately 10% POEs submitted to them, whereas they conditionally concurred in approximately 3% DPPs submitted to them. Alaska and California have required that certain conditions be adopted in order to make an OCS plan consistent with their state coastal programs, whereas only California has used the partial concurrence mechanism.

Table 8 presents concurrences and objections on a state by state basis using the data supplied by the states for FY 83. There are discrepancies between the numbers reported by MMS and those reported by states on the total number of consistency determinations, concurrences, and objections. Reasons for these discrepancies include lack of some state reporting and different methods of counting.

Table 8. Summary of Consistency Determinations Issued by States Under
Section 307(c)(3)(B) - FY 83

Coastal State	Federal Agency	Number and Type of Plan	Initial State Response
Alaska	DOI/MMS	6 POEs	4 Concurrences 2 Conditional Concurrences 0 Objections
California*	DOI/MMS	2 DPPs 22 POEs	1 Partial Concurrence 1 Concurrence 2 Objections 3 Partial Concurrences 17 Concurrences
Delaware	DOI/MMS	3 POEs 0 DPPs	3 Concurrences
Louisiana	DOI/MMS	3 DPPs 104 POEs	3 Concurrences 104 Concurrences
Mississippi	DOI/MMS	27 POEs 10 DPPs	27 Concurrences 10 Concurrences
Maryland	DOI/MMS	6 POEs 0 DPPs	4 Concurrences 2 Objections
New Hampshire	DOI/MMS	1 POE	1 Concurrence
New Jersey	DOI/MMS	3 POEs	2 Concurrences 1 Conditional Concurrence
New York	DOI/MMS	3 POEs	3 Concurrences
Pennsylvania	DOI/MMS	1 POE	1 Concurrence
Rhode Island	DOI/MMS	21 POEs	21 Concurrences

Source: Information provided to UCRM by states.

* California data is reported for calendar year 1983.

Consistency Reviews of Military Activities During FY 83

The Army, Navy, Air Force, and Coast Guard submitted consistency determinations during FY 83 to coastal states for a wide variety of activities. Military activities reviewed for Federal consistency included functional operations, such as missile and space shuttle launches and training exercises, as well as general construction, repair and maintenance of facilities, such as piers, bulkheads, barracks, and other support facilities. The great majority of activities for which consistency determinations have been issued fall into the second category. (For the purposes of the Study, several Coast Guard bridge construction and repair activities which require consistency review under Section 307(c)(3)(A) were included in the examination of consistency reviews of military activities). For most activities in which the military prepared a consistency determination and in which national security was an issue, the concerns of the affected states were met through informal consultation, negotiation, and mitigation.

The number of objections is small, representing less than 2% of the total number of consistency determinations issued by the military. Table 9 summarizes the state concurrences and objections.

Table 9. CONSISTENCY REVIEWS OF MILITARY ACTIVITIES

Federal Agency	Concur	Concur with Conditions	Object	Within CZ	Federal Enclave Within CZ	Landward of CZ	Seaward of CZ
DOA	4	-	-	-	3	-	-
DON	67	1	-	-	59	-	-
USAF	4	2	-	-	3	2	-
USCG	77	3	3	12	35	-	-
Total	152	6	3	12	102	2	0

Source: Information provided to OCRM by states and Federal agencies.

Consistency Reviews of Corps Permitting Actions During FY 83

Consistency information furnished by the states identify Corps of Engineers Section 10/404 permits (primarily wetlands dredge and fill permits) to be of major interest due to the large number of Corps actions and the potential for the permitted activities, individually and cumulatively, to impact in a state's coastal zone.

The Corps reported that during FY 83 the states objected to 984 of the 4891 individual permits reviewed for consistency. Of these 984 objections, 855 were later resolved after the applications were modified or the permits conditioned, 36 were withdrawn or cancelled and 56 remained unresolved. The compiled data from the 25 states and territories reporting information on Corps permit reviews for FY 83 indicates that of the 4591 individual permits reviewed, the states objected to 98 actions. Of these 98 actions, states reports that approximately 90 were able to be resolved through further negotiations. Some of the discrepancies between the Corps' data and the states' data may be accounted for by the differences in reporting and counting of conditional concurrences and of activities authorized by the Corps under general permits, and by errors in reporting.

On July 1, 1983, the Corps issued consistency certifications to the states on 29 nationwide permits for a broad range of activities varying from navigational aids and temporary buoys to seismic exploration and OCS structures. Seventeen coastal states responded to the Corps' consistency certifications. All of the seventeen states objected to two or more of the nationwide permits. The states and the Corps District offices negotiated for nearly one year in an effort to develop regional conditions which could be added to individual nationwide permits in order to make them acceptable to

Table 10. STATUS OF STATE REVIEWS OF CORPS CONSISTENCY DETERMINATIONS
FOR THE NATIONWIDE PERMITS - 33CFR 330.5(a)

State	Nationwide Permit at Number 33 CFR 330.5(a)																									
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26
AL	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
AK	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CA	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
CT	C	Z	Z	Z	C	Z	Z	Z	Z	C	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	C	Z	*X	W	Z	X
DE	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W
FL	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
HA	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
LA	C	Z	Z	C	C	C	Z	C	C	C	C	Z	Z	Z	C	C	Z	C	Z	C	Z	Z	Z	C	Z	Z
ME	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
MD	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
MA	C	N	N	C	C	C	C	N	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
MI	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
MS	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
NH	C	X	X	C	X	C	X	X	C	C	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
NJ	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W
NY	C	Z	Z	C	C	Z	Z	Z	C	C	C	Z	Z	Z	C	Z	C	C	C	C	C	C	Z	Z	C	Z
NC	W	W	W	W	W	W	C	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W
OR	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
PA	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
RI	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
SC	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
WA	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
WI	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z	Z
GU	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W
AS	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W
NMI	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W	W

C = concur N = non-concur W = waive X = concurred after regionally conditioned
Z = negotiations ongoing with states to develop regional conditions
* applies to state transportation projects funded by FHWA or UMTA only

Source: Corps data collected March 15, 1985.

state coastal management programs. On April 9, 1984, the Corps sent another consistency certification to the states for the (now) 26 nationwide permits which included any regional conditions which had been applied. A number of states again objected to specific nationwide permits. Negotiations have continued and, of March, 1985, agreements have been reached with nearly all states. (See Table 10).

Consistency Reviews of Fishery Management Plans During FY 83

Since the passage of the Magnuson Fishery Conservation and Management Act in 1976, 26 fishery management plans (FMPs) have been approved by the Secretary of Commerce, of which 23 are now in effect. Two states raised consistency issues on six of the 26 FMPs. Florida raised coastal management concerns during consistency reviews of the following FMPs: the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (Mackerel), the Snapper-Grouper Fishery of the South Atlantic Region, the Coral and Coral Reefs of the Gulf of Mexico and South Atlantic, and the Reef Fish Resources of the Gulf of Mexico. Hawaii raised consistency concerns regarding the Spiny Lobster Fishery of the Western Pacific Region and the Precious Corals Fishery of the Western Pacific Region. Of three lawsuits that have been filed challenging FMPs since 1977, two cases (the Mackerel FMP and Snapper Grouper FMP) have involved coastal zone issues. In January, 1985, settlement agreements were reached in these two cases and the suits were dismissed.

During FY 83, the National Marine Fisheries Service (NMFS) submitted 47 consistency determinations on FMPs and FMP amendments to the states. The only objections were from Florida on four separate plans. (See Table 11).

Table 11. FEDERAL CONSISTENCY REVIEWS OF FISHERY MANAGEMENT PLANS - FY 83

NOAA/National Marine Fisheries Service	Number of Consistency Determinations for FMP's (and amendments) Submitted for State Review	Number of Objections
Northeast Region	0	0
Southeast Region	25 (6 plans)	4*
Southwest Region	3 (3 plans)	0
	(including one also covered by the Northwest Region - Ocean Salmon FMP)	
Northwest Region	12 (3 plans)	0
Alaska Region	9 (9 plans)	0
Total	47 determinations - 20 FMPs/amendments	4*
*Florida objected to the following FMP's: Coastal Migratory Pelagic Resources Fishery of the Gulf of Mexico and South Atlantic, Snapper-Grouper Fishery of the Gulf of Mexico and South Atlantic, Coral and Coral Reefs of the Gulf of Mexico and South Atlantic, and the Reef Fish Resources of the Gulf of Mexico.		

Consistency Review of Activities on Excluded Federal Lands During FY 83

The CZMA specifically excludes from the coastal zone for the purposes of state coastal management program development and implementation "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" (Section 304(1)). Although Federal lands are clearly excluded from the coastal zone for the purposes of state planning and management, the legislative history of the CZMA states that the Federal consistency provisions apply to activities conducted on excluded Federal lands, if the activities affect a state's coastal zone. Therefore, Federal agencies must conduct or regulate activities on federally excluded lands consistently with approved state coastal programs whenever the proposed Federal actions have "spillover impacts" on coastal resources or on land or water uses in the coastal zone.

Federal agencies reported that 127 activities on federally excluded lands were reviewed by states for consistency during FY 83. The Federal

agencies involved were the Air Force, Navy, Coast Guard, Bureau of Land Management (Interior), National Park Service (Interior), and General Services Administration. Of the 127 projects reviewed, the states concurred on 123 consistency determinations. Three states objected to a Federal agency's consistency determination but were later able to resolve their differences, thus allowing the project to proceed. The projects which were objected to and later resolved included: a land lease on National Petroleum Reserve in Alaska; a Bureau of Land Management timber management plan in Oregon; and a National Park Service erosion control project in Alaska. In the fourth case, the State of New York did not concur with a General Services Administration (GSA) proposal to dispose of surplus Federal property at Montauk Air Force Base for private development. New York and GSA were not able to reach an agreement. Litigation followed. The case was resolved through Congressional action which resulted in a "land swap" between the State and GSA.

Consistency Reviews of Activities Landward and Seaward of the Coastal Zone During FY 83

Three Federal agencies reported that consistency reviews were conducted of activities located seaward of the coastal zone in FY 1983: the Department of Interior, Minerals Management Service (DOI/MMS), NOAA's National Marine Fisheries Service (NMFS) and the Environmental Protection Agency (EPA). MMS reported consistency reviews of offshore oil and gas lease sales and OCS exploration, development and production plans. NMFS reported consistency reviews to fishery management plans and amendments. EPA submitted two consistency determinations for the designation of ocean dump sites for dredged material to be located off Florida and Washington/Oregon. EPA also

reported several consistency certifications for general NPDES permits for offshore oil and gas activities and ocean dumping permits offshore Louisiana, California and Alaska. Although not a formal consistency review, the State of Oregon submitted comments in April 1983, on the Navy's DEIS on Disposal of Decommissioned Defueled Naval Submarine Reactor Plants. Oregon disagreed with the Navy's assertions that disposal of the submarines at the study site, approximately 200 miles west of Cape Mendocino in northern California, would not "directly or indirectly affect land or water use in the coastal zone of any state". Oregon specifically requested that the final EIS contain a consistency determination. (The Navy has since terminated consideration of ocean disposal of decommissioned defueled nuclear submarines).

SECRETARIAL MEDIATION

Secretarial mediation under the CZMA has been requested by states in six cases during the history of the CZMA.

The only case which was mediated by the Secretary of Commerce was unsuccessful. In 1979, the California Coastal Commission (CCC) requested the Secretary to mediate a disagreement between the CCC and the Department of the Interior (DOI) concerning whether DOI's pre-lease activities and Outer Continental Shelf (OCS) Lease Sale 48 "directly affected" the California coastal zone under the consistency provisions of section 307(c)(1) of the CZMA. Representatives of DOI and CCC who participated in the mediation efforts were not able to resolve the basic differences involved in this dispute. (The U.S. Supreme Court in Secretary of the Interior v. California resolved this issue in favor of DOI's position).

In five cases the affected Federal agency declined to participate in

Secretarial mediation under the CZMA. In two cases the State of Florida requested that the Secretary of Commerce mediate disagreements between the State and NOAA's National Marine Fisheries Service (NMFS). The disagreements focused on whether the Coastal Migratory Pelagic Resources Fishery Management Plan (Mackerel FMP) Snapper-Grouper FMP were consistent to the maximum extent practicable with the Florida Coastal Management Program (CMP). In both cases, NOAA concluded that, although informal discussion between Florida and NOAA resulted in the resolution of several issues, the basic disagreements could not be resolved through Secretarial mediation under the CZMA. NOAA found that the national standards for FMPs established by the Magnuson Fishery Conservation and Management Act prevented NOAA from making the changes necessary to be consistency with Florida's CMP and that every possible effort had been made informally to find a solution acceptable to all parties. These two disputes were litigated and a settlement agreement resulted.

In a third case, the California Coastal Commission (CCC) requested Secretarial mediation in a dispute which had arisen between the CCC and the Interstate Commerce Commission (ICC) regarding an application by the Atchison, Topeka and Santa Fe Railroad Company to abandon a railroad line in the coastal zone of Los Angeles County. The ICC declined to enter into mediation. The ICC stated that, although "the applicability of Federal consistency to abandonment proceedings is not free from doubt", the ICC had considered the State's position and had concluded the conditions proposed by the State were inconsistent with the statutory requirements governing railroad abandonments. The ICC noted that its decision to grant the abandonment application was administratively final and, therefore, nothing remained to be mediated.

In the last two cases, the Department of the Interior declined to participate in Secretarial mediation requested by New Jersey regarding OCS Lease Sale 76 and by California regarding OCS Lease Sale 73. The Department of Interior's position was that consultation under Section 19 of the Outer Continental Shelf Lands Act Amendments (OCSLA) provided "a more effective and expeditious means to resolve differences between the State and the Department of the Interior than would mediation." Interior further stated "we do not believe that the Department of Commerce has special expertise in the specific areas of concern--that is, lease terms and conditions--raised by the State that would contribute significantly to resolution of the issues in question." In the Lease Sale 76 case, New Jersey and Interior negotiated a Memorandum of Understanding (MOU) under the provisions of Section 19 of the OCSLA, which avoided litigation by the State. In the Lease Sale 73, DOI entered into consultations with the California Governor's Office under Section 19 of the OCSLA. Although these negotiations did not include the CCC, they did result in an agreement resolving the concerns of the Governor's Office and the California Secretary of Environmental Affairs. The CCC secured a preliminary injunction stopping DOI from holding Lease Sale 73. However, the Sale was held as scheduled after an emergency appeal from DOI to Supreme Court Justice Rehnquist. Soon thereafter, the U.S. Supreme Court determined consistency review is not required for preleasing activities and OCS lease Sales.

SECRETARIAL APPEALS

As of March, 1985, the Secretary of Commerce has received and processed twelve appeals under Section 307 and has decided four of them, one partially. The activities appealed included: eight federally permitted activities under

Section 307(c)(3)(A); three OCS exploration or development plans under Section 307(c)(3)(B); and one application for financial assistance under Section 307(d). The Secretary has sustained one appeal, denied two appeals and partially sustained one appeal. The average time the Secretary took to process the decided appeals was eight months. The appeals cases are listed below:

- Exxon U.S.A./California: Proposed OCS oil and gas activities in the Santa Barbara Channel which would expand the use of a permanently anchored vessel to store and treat produced oil and to transfer oil to tankers for shipment to refineries. (Santa Ynez Unit DPP, Option A.) Appeal stayed on the request of the parties pending implementation of a settlement agreement.
- Union Oil Company of California/California: Proposed exploratory drilling on the OCS partially within the boundaries of the Channel Islands Marine Sanctuary. Appeal sustained on the grounds that the proposal met one or more of the objectives of the CZMA, would not result in adverse effects on the natural resources of the coastal zone substantial enough to outweigh the contribution to the national interest, and would not violate either the Clean Air Act, and that there were no reasonable alternatives available which would allow the project to be conducted in a manner consistent with the California Coastal Management Program.
- Exxon U.S.A./California: Proposed exploratory drilling in the Santa Barbara Channel (Santa Rosa Unit POE). Appeal denied. The Secretary found that there was a reasonable alternative available to the applicant which would permit the project to be carried out without any adverse effects on the resources of the coastal zone and in a manner consistent with the California Coastal Management Program. The Secretary also found that national defense or security interests would not be significantly impaired if the drilling could not go forward as proposed.
- Ford S. Worthy Jr./North Carolina: Proposal to construct a commercial marina on Bath Creek. Appeal denied. The Secretary determined that, although development of the marina would further one or more of the competing national objectives or purposes contained in the CZMA, the project's contribution to the national interest did not outweigh its adverse effects on the natural resources of the North Carolina coastal zone.

- Tulalip Tribe/Washington: Proposal to construct a marine. Appeal dismissed, after informal negotiations.
- Northwestern Pacific Railroad Company/California: Proposal to abandon 165 miles of rail line in Northern California (Eel River Line). Appeal stayed pending completion of an EIS.
- Acme Fill Corporation/California (Bay Conservation and Development Commission: Proposal to expand an existing sanitary landfill in Contra Costa County. Appeal stayed at request of applicant.
- J.T. Taylor/North Carolina: Proposal to obtain after-the-fact permits for wetlands fills. Appeal dismissed due to failure of appellant to submit supporting information.
- City of Hudson/New York: Proposal to construct an octane petroleum recovery and finishing facility on an industrial site adjacent to an historical district along the Hudson River. Appeal pending. Informal negotiations ongoing.
- Southern Pacific Transportation Company/California: Proposal to reconstruct and partially relocate a railroad bridge over the Santa Ynez River. Appeal pending.
- Florida East Coast Railway Company/Florida: Proposal to fill 300 acres of wetlands for an access road to proposed industrial park. Appeal withdrawn after informal negotiations.
- Northwestern Pacific Acquiring Corporation and Eureka Southern Railroad Company, Inc./California: Request for exemption from certain regulations regarding the operation, maintenance and possible future abandonment of the Eel River Rail Line. Appeal dismissed without prejudice pending litigation.