

chapter V  
management authorities  
& governmental/public involvement

## **A. LEGAL AUTHORITIES AND NETWORKING**

### **Purpose of South Carolina's Coastal Management Act**

The chief purpose of South Carolina's Coastal Management Act (§48-39-10 et seq. of the 1976 S.C. Code) is the proper management of the natural, recreational, commercial and industrial resources of the State's coastal zone — resources of present and potential value to all citizens of the State. The Act acknowledges the growth of the human population and the resulting demands on the lands and waters of the coast for residential, recreational and economic developments as well as services such as transportation and waste disposal. A specific State policy contained in the Act is that of promoting the economic and social improvement of the State's citizens while protecting and, where possible, restoring or enhancing the rich variety of coastal resources.

### **S.C. Coastal Council — Coastal Management Program**

To effectively achieve these goals for protection and development of coastal resources, the Act establishes the S.C. Coastal Council and directs it to develop and implement a comprehensive management program to achieve wise use of coastal resources. A part of this management program consists of the permitting authority of the Council over the "critical areas."

### **Critical Areas**

Four areas of the coastal zone are very fragile and easily damaged or destroyed by man-made alterations. Those areas, designated "critical areas" by the Act, are the coastal waters, tidelands, beaches, and primary ocean front sand dunes. In order to protect them from inappropriate uses, the Council has been given the responsibility of permitting alterations of these resources (Section 13).

### **Permitting Authority**

As stated in Section 21 of the Act, the Council is "the only state agency with authority to permit or deny any alteration or utilization within the critical area." The Act further states "no person shall utilize a critical area for a use other than the use the critical area was devoted to on such effective date (of the Act) unless he has first obtained a permit from the Council." (Section 13) Finally, Section 8(A) mandates the Coastal Council to develop a regulatory system to provide for "the orderly and beneficial use of the critical areas." This regulatory or permitting system, contained in the Rules and Regulations pursuant to the Coastal Management Act, is enforceable through the authority of the courts. (Section 5(E), (I))

Section 13 (D) of the Act lists activities which are exempted from the Council's permit process — activities such as hunting, fishing, erecting duckblinds, the discharging of treated effluent as permitted by law, and normal maintenance and repair of certain facilities. Also exempted are the accomplishment of emergency orders of any official of a state or local government, if the Council is notified of the emergency and the actions ordered. Management input from the coastal program in decisions on these activities is still ensured, however, through coordinated efforts with other state agencies and the authority of the Coastal Council to review, comment on, and certify the permits and actions of the other agencies in the critical areas. Section 7(A) of the Act provides that all other state and local agencies shall administer their authority in accordance with the Coastal Management Act and the policies and rules and regulations which are developed under the Act. In the event the coordination breaks down and resultant conflicts cannot be resolved, judicial relief may be sought.

### **Authority Outside Critical Areas**

The scope of authority of the S.C. Coastal Council in the remaining portions of the coastal zone, i.e. those areas other than critical areas within the eight coastal counties, is established in Section 20 of the Act which states: "Notwithstanding any other provisions of this act, the Council shall have no direct regulatory authority over any area outside the critical areas in the coastal zone." However, through several provisions contained in the Act, the Council is clearly given authority of an indirect nature, which extends to the full coastal zone.

Section 8 directs the Council to develop a comprehensive coastal management program and provides that "the Council shall consider all lands and waters in the coastal zone for planning purposes." The significance of and authority for this coastal management program are emphasized through the language of

Section 9 (D), which reads: "Upon review and approval of the proposed management plan by the Governor and the General Assembly, the proposed plan shall become the final management plan for the State's coastal zone."

Section 7 (A) provides one measure of enforcement for the management objectives of the Coastal Council.

All other state and local agencies and commissions shall cooperate with the Council in the administration or enforcement of this Act. All agencies currently exercising regulatory authority in the coastal zone shall administer such authority in accordance with the provisions of this act and rules and regulations promulgated thereunder. (Section 7 (A))

The OMB Circular A-95 Review Process is a significant addition to the State's coastal management effort as outlined by the Act. Applications, comments and other material circulated in the A-95 process may be coordinated with specific policies through review and comment by State and Federal agencies involved in the process. Coastal management efforts will better encompass other applicable policies as other agency efforts are incorporated with coastal management policies through the A-95 Review Process.

### **Networking**

The burden of implementing the South Carolina Coastal Management Program rests not only with the Coastal Council, but also with all other State and local agencies and commissions. (§7(A)) Even though such agencies are statutorily mandated to carry out their own policies, the effect of networking is to tie the implementation of these individual authorities into a comprehensive framework that addresses more than the individual responsibilities of each agency and that makes these authorities part of an overall, unified strategy for managing coastal resources. The Section 7 (A) mandate to the other state and local agencies broadens the scope of their legal responsibilities to include the implementation of the policies and rules and regulations of the Coastal Management Program. Section 7 (A), along with 9(D), 8 (B)(11) and other general provisions of the Act, binds all relevant agencies and commissions to the Coastal Management Program. Two methods of cooperation are needed between the Council and other State and local agencies in giving effect to the Act: 1) a cooperative process of permit review and certification; and 2) memoranda of agreement confirming the statutory duties of the respective agencies.

### **Certification**

Seventeen (17) State agencies exercise authority over: (1) the use of coastal resources, (2) specific areas in the coastal zone, or (3) activities in the coastal zone. This authority is granted by the statutes of South Carolina, most of them enacted prior to the Coastal Management Act.

Some of the authority granted by these statutes is implemented through permit or license procedures. Through Section 8 (B) (11) of the Coastal Management Act, the Council is required to review and certify the compliance of these permit applications with the policies of the coastal management program. This section states that the Council shall "develop a system whereby the Council shall have the authority to review all state and federal permit applications in the coastal zone and to certify that these do not contravene the management plan."

### **Memoranda of Agreement**

Memoranda of agreement are used to effectively coordinate all State agency activities with the Coastal Management Program. The specific authorities and activities of the agencies that are networked by Section 7 (A) are outlined in the memoranda along with the cooperative efforts of the agencies in implementing the program. Besides the general mandate of Section 7 (A), the Act specifically requires coordination with other State agencies in regard to: (1) beach and shoreline erosion, (2) oil spill monitoring and removal, (3) energy facility siting, (4) determination of water quality standards and (5) determination of port and navigational needs and standards. The memoranda between the Council and other agencies are based on the mandate of §7(A) and on §5(N) which grants the Council the duty "to encourage and promote the cooperation and assistance of state agencies, coastal regional councils of government, local governments, federal agencies and

other interested parties.” Memoranda of agreement provide a convenient means for establishing the cooperative process necessary to fulfill the purposes of the Coastal Management Act.

There is no case law or statutory language in South Carolina concerning the enforceability of memoranda of agreement between units of government. However, in the case of these memoranda, the question of such enforceability *per se* does not arise, since the memoranda merely confirm statutory responsibilities and do not seek to expand these duties.

## **B. PROJECT EVALUATION PROCEDURE**

### **Introduction**

Within the eight-county coastal zone, the South Carolina Coastal Council is the State agency with responsibility for development **and** implementation of the resource policies and other provisions of the State’s coastal management program. The legal basis for this authority, mandated by Act 123 of the 1977 South Carolina General Assembly (S.C. Coastal Management Act) is explained in detail in the preceding segment of the program document (“Legal Authorities and Networking,” Chapter V(A)).

As part of its implementation, the Council must provide a system under which it reviews permit applications made to other State and Federal agencies to certify that issuance of these permits will not contravene the management program. The Council’s review procedure for these projects is explained in the following section. (Federal permit reviews follow the procedures for Federal consistency determinations, as will be discussed in Chapter V (F)(3) of the program document.) This review system is the mechanism for Council management of activities throughout the coastal zone.

In addition, the Council has direct authority for the issuance of the State-level permit for any activity in certain “critical areas” of the coasts, as defined by the 1977 Act. The review process for Council permits is explained in detail in the Rules and Regulations for Permitting in the Critical Areas, Chapter 30, R.30-1 — 30-11, Code of Laws of South Carolina, 1976, as amended (which appears as Appendix K).

The following section outlines not only the steps for the review and certification procedure, but also the general guidelines or criteria which are used in initial review of project applications throughout the coastal zone. The resource policies for specific areas or types of activities, which are found in Chapter III above, are also applied by the Council in project reviews.

### **In-House Staff Review**

For both the Review and Certification and Critical Area permit procedures outlined below ((B)(1) and (2)), as well as the Federal consistency procedures discussed in V (F)(3), the staff of the Coastal Council has a regular, established process for project review. Each staff member with review responsibility has an evaluation sheet which is filled out for each permit application and becomes part of the permit file. These evaluations are made by biological, planning, engineering, cartographic and legal staff. The evaluation sheets require that information be supplied and issues addressed which develop a comprehensive review of each project, including project description, environmental assessment of the site, applicable program policies or rules and regulations and possible impacts of the proposal. An on-site inspection is made by a staff biologist of all critical area project sites and those certification sites which are especially major or controversial projects, and photographs are taken which become a part of the file. Additional site visits are made by other staff members and Council members as needed.

At weekly staff permitting meetings, all permit applications at or near the end of their review period are again reviewed and discussed individually before permit or certification decisions are made or recommendations to the Council are formulated. In the case of critical area permits, the entire file, including all comments received from other State, Federal and local agencies, adjacent property owners and interested parties, is reviewed by each staff member at this meeting. The Coastal Council has delegated a portion of its critical area permit decision-making authority to the staff. (Council Resolution, September 21, 1977). For the majority of applications, the initial decision is rendered by the staff (the appeals process guarantees the applicant or other affected parties an opportunity to be heard before the full Council if desired in these instances). Based on the staff’s judgement, major, significant or controversial permit applications may be brought before the Permit Committee of the Council, where either a decision or a recommendation to the full Council is made. The staff

is always present at Committee and Council meetings to supply explanations and information on specific projects, and is prepared to make professional/technical recommendations.

At the request of one Council member, any permit application will be brought before the Council for discussion and decision. All permit applications on which public hearings are held are also brought to the full Council.

The procedure for staff decisions versus Committee and Council consideration of applications for other State agency permits—review and certification—and for Federal consistency determinations is outlined under (B)(1) below.

## **1) Procedure for Review and Certification**

### **Notification**

Coastal Council review and certification of permits of other State agencies is mandated by Section 8(B)(11) of the South Carolina Coastal Management Act, and the cooperative efforts of these agencies in implementing the program is mandated by Section 7(A). There are two primary means by which the Council coordinates with these agencies and receives permit notifications. The first is direct communication between the Council and other State agencies, as outlined in the Memorandum of Agreement (MOA) with each agency. Upon approval and implementation of the management program, the process whereby the Council receives a copy of each permit application from an agency and responds with its comments and certification or non-certification within a specified time period will be officially established.

The second source of project notifications is the South Carolina Project Notification and Review System, a State-wide clearinghouse for comments, administered by the Division of Administration in accordance with Federal Office of Management and Budget Circular A-95. (This is the key mechanism for project notification of Federal activities, the procedure for which is detailed in the Federal consistency segment of the full program document, Chapter V, (F)(3)). At present, the Council staff informally reviews and comments on all A-95 notices in the coastal zone. This project review also will be formalized in the following procedure.

Table 1, on the following page, indicates the State permits which will be subject to review and certification by the Coastal Council.

The Environmental Impact Statement, as required for major Federal or Federally-funded projects under the National Environmental Policy Act of 1970, will be another source of notification to the Council for major new activities in the coastal zone.

### **Procedure**

The Coastal Council will review and certify permit applications made to other State agencies (for projects outside the critical areas) on their individual merits for compliance with the Coastal Management Program. Upon receipt of notice of a permit application from another State agency, Council staff will enter the notice in a file or log system and circulate copies for review and evaluation by staff members, including planning, biological, engineering and legal personnel. Review and certification by the Coastal Council must in each instance be completed and returned to the respective agency within the specified time period. (This time limit will vary by agency and type of permit. In the case of A-95 review, the comment period is 30 days.)

At the discretion of the Council staff, specifically, the Executive Director or the Permit Administrator, permit notification will be forwarded to the Management Committee of the Council for discussion, input, or recommendations. In instances where there may be major policy issues or decisions involved in review and certification of a permit application, these notices may be brought before the full Coastal Council for its consideration.

On each permit application, the Council will submit a letter to the respective State agency, stating either certification (approval) or non-certification (objection). Letters of objection must include a statement of the basis for objection, citing applicable policies of the coastal management program.

Section 7(A) requires that each agency implement these resource policies through its respective permit processes. This implementation is accomplished through Council's certification or non-certification of the individual permit applications of each agency. Through Section 8(B)(11), however, the Council is designated as the final authority for determining compliance with the Coastal Program, of which the resource policies are of

**Table 1**

**State Agency Permits Subject to  
Council Review and Certification**

1. Aeronautics Commission	—Certificates of approval for airports and other air traffic facilities.
2. Budget and Control Board	—Permits for activities below the ordinary high water mark which are within the coastal zone but out of the critical areas.
3. Department of Health and Environmental Control	—State permits to construct wastewater treatment systems or septic tanks handling either more than 1500 gallons per day or other than domestic waste.  —National Pollutant Discharge Elimination System (NPDES) permits (delegated by EPA).  —Section 401 of the Federal Water Pollution Control Act certification.  —Construction permits for air emissions.  —Water supply permits.  —Sanitary Landfill Design, Construction and Operation permits.  —Oil and Gas facilities registration certificates.
4. Land Resources Conservation Commission	—Mining operations permits.
5. Public Service Commission	—Certificates for major utility facilities.
6. Water Resources Commission	—Oil and gas facilities permits.  —Groundwater capacity use area permits.

prime importance. If the Council issues a certification determination, the permitting agency is not precluded from denying the permit application based on its own independent statutory or regulatory criteria.

If Council non-certification would be the sole basis for the agency denying a permit application, the agency is urged to put the applicant in contact with the Council. The Council will then approach the applicant and the agency to discuss possible modifications to the proposed project. When the proposed activity cannot be modified to comply with the program, the permitting agency is bound by Section 7(A) to either deny the permit application or to seek a resolution of the conflict through the methods described in this chapter (Section C).

If the application is ultimately denied solely on the Council's non-certification, the Council will provide the applicant an opportunity to appeal the non-certification determination if the permitting agency consents to reopening the application. The Council would conduct the appeal in accord with R.30-6 of the Council's permitting rules and regulations.

## **2) Procedure for Coastal Council Permits in the Critical Areas.**

The following procedure is taken from the Final Rules and Regulations for Permitting in Critical Areas of the Coastal Zone, Sections 30-2 through 30-4.

### **30-2 Applying for a Permit**

A. Preliminary review: The Council encourages the submission of development plans for preliminary review. If a permit is necessary, the Council will make every effort to assist the applicant in expediting the filing of an application.

B. Permit application: Except for those exemptions as specified in Section 13(D) of the Act (see R.30-5 below), any person wishing to alter a critical area must receive a permit from the Coastal Council. Section 14(b) of the Act directs that certain information be included in the permit application submitted to the Council. The following minimum information shall be required:

- (1) Name and address of the applicant;
- (2) A plan or drawing showing the applicant's proposal and the manner or method by which the proposal shall be accomplished;
- (3) A plat or a copy of a plat of the area in which the proposed work will take place;
- (4) A certified copy of the deed, lease or other instrument under which the applicant claims title, possession or permission from the owner of the property to carry out the proposal;
- (5) A list of all adjoining landowners and their addresses or a sworn affidavit that with due diligence such information is not ascertainable;
- (6) A brief description of the proposed alteration, its purpose and intended use, including a drawing of the type of structure, a description of the method of construction, and identification of materials and equipment to be used;
- (7) A copy of the newspaper public notice.
  - a) Minor developments (see R.30-2(G)): In the case of applications for minor development permits, the applicant shall publish notice at least once in a newspaper of local circulation in the county of the proposed activity. The newspaper notice should be published within 15 days of the date of Public Notice (see R.30-2(C)). No permit shall be issued by the Council until at least 10 days following the date of newspaper publication. The following form shall be used for newspaper publication:

#### **PUBLIC NOTICE SOUTH CAROLINA COASTAL COUNCIL**

(Name of applicant) will apply (has applied) to the South Carolina Coastal Council for a permit to (description of work) for (public/private) use, at/in (location and name of waterway). Comments will be received by the South Carolina Coastal Council, Suite 802, 19 Hagood Avenue, Charleston, South Carolina 29403 until (insert date, 10 days after date of this newspaper notice).

b) Other activities: In the case of applications for other than minor development permits, the applicant shall publish notice at least once in both a newspaper of general statewide circulation (**The State, News and Courier**, or **The Greenville News**) and a newspaper of local circulation in the county of the proposed activity. The newspaper notices should be published within 15 days of the date of Public Notice (see R.30-2(C)). No permit shall be issued by the Council until at least 15 days following the date of the last-published newspaper publication. The following form shall be used for newspaper publication:

**PUBLIC NOTICE  
SOUTH CAROLINA COASTAL COUNCIL**

(Name of applicant) will apply (has applied) to the South Carolina Coastal Council for a permit to (description of work) for (public/private) use, at/in (location and name of waterway). Comments will be received by the South Carolina Coastal Council, Suite 802, 19 Hagood Avenue, Charleston, South Carolina 29403 until (insert date, 15 days after date of this newspaper notice).

(8) When considered appropriate by the Council or its staff, additional information may be required, such as impoundment management plans, and maintenance dredging schedules.\*

C. Notification: The Council is directed in Section 14(C) of the Act and shall within thirty days of receiving either a Joint Public Notice or South Carolina Coastal Council permit application, notify, in writing, interested agencies, all adjoining landowners, local government units in which the land is located and other interested persons. This notice shall indicate the nature and extent of the applicant's proposal.

D. Permit processing: Permit processing shall commence immediately upon receipt of either a Joint Public Notice or a South Carolina Coastal Council permit application and shall proceed concurrently but separately from any Federal authorization.

E. Comments on application: Section 14(C) of the Act allows all interested Federal and State agencies, all adjoining landowners, local government units and other interested persons to have thirty days after the receipt of Public Notice of permit application from the Council to file written comments pertaining to the application. Only those comments received within the thirty day period must be considered in the Council's decision on a permit application. Any persons wishing to receive notice of the initial decision on a permit application shall notify the Council within this comment period. Exception: Comments on permit applications for minor development activities, as defined in Section 3 (N) of the Act, must be received within fifteen days after receipt of Public Notice of permit application.

F. Public information: The complete file on each permit application, including all comments received, will be available for inspection by any member of the general public during regular business hours at the principal Council offices.

G. Minor development activities: In determining whether a particular project is a minor development, as defined in Section 3(N) of the Act, a private pier shall be defined as a non-commercial, strictly private recreational facility that is not used for, or in support of, any industry or commercial operation. Any charge to members of the public or any person for use of the facility is prohibited for a structure qualifying as a minor development.

Minor dock or pier developments shall have the same specifications as furnished under the general permitting provisions with the Army Corps of Engineers. Erosion control structures means, in the case of minor developments, those structures commonly known as bulkheads which follow the existing shoreline, not fronting on the Atlantic Ocean, and the construction of which involves no direct effects on wetlands.

\*By resolution of the South Carolina Coastal Council, additional information will be required as follows:

When the Council staff finds that there is reasonable question or doubt over private claim to ownership of tidelands below the mean high water line on major permit applications, the applicant will be required to provide a statement from the South Carolina Attorney General as to whether or not there is a dispute with the State regarding ownership of said tidelands before the full Council will consider the permit application complete. If the Attorney General fails to make a response within sixty (60) days of the date of proof of notification, the permit application will be processed.

H. State comment: Issuance or denial of the permit by the Coastal Council shall be the State comment on the corresponding Federal permit application.

I. Water quality certificate: If a water quality certificate, as required under §401 of P.L. 92-500, is not required by a Federal permitting agency, the Coastal Council may require a statement of water quality certification from the South Carolina Department of Health and Environmental Control.

### 30-3 Public Hearings

Section 14(C) of the Act directs the Council to hold public hearings on permit applications if it is deemed necessary. Section 15 (B) of the Act requires the Council to convene a public hearing before acting on an application if twenty or more citizens or residents of the affected county or counties request such a hearing. Each request must be in writing and on a separate sheet of paper and be received within thirty days after receipt of a Public Notice of the permit application. In all cases, the public hearing shall be held in the county where the land is located and if in more than one county, the Council shall determine in which county to hold the hearing or may hold hearings in more than one county. These hearings will be open to all citizens of the State. When applicable and practical, joint public hearings will be held with the U.S. Army Corps of Engineers and other agencies.

### 30-4 Decisions on a Permit

A. Permit approval: The Council is allowed, under section 15(B) of the Act, to issue a conditional permit approval. Under this provision, the Council may direct the applicant to amend his proposal to take specific measures necessary to protect the public interest. If the Council has approved an application, Section 15 (B) of the Act also allows the Council, at its discretion, to support the applicant in a Federal permitting process.

B. Permit denial: A Permit denial shall cite facts upon which the denial was based and the criteria or reasons for which the denial was issued.

C. Action upon a permit: The Council, according to Section 15(C) of the Act, shall act upon an application for a permit within ninety days. This ninety day period shall begin when the application is complete and filed in approved form. Exceptions to the 90 day deadline are applications for minor developments on which action must be taken in thirty days.

D. Licensing of equipment: Upon issuance of a permit, if the alteration authorized requires the use of a dragline, dredge, bulldozer or similar equipment, the permit holder shall be required to register the equipment, and the identification number assigned by the Council shall be prominently displayed. Equipment in use within critical areas for activities not requiring a Council permit must also be registered. The persons responsible for this equipment must register it with the Council before use.

E. Completion of work: Section 15(F) of the Act requires a permit holder to complete work within three years from the date of permit issuance. The Council may extend this three-year period upon a showing of good cause indicating that due diligence toward completion of the work has been made, evidenced by significant work progress. Work shall be continuous and expeditious whenever possible.

F. Property rights not affected, no state liability, other permit requirements: No permit shall convey, nor be interpreted to convey, a property right in the land or water in which the permitted activity is located. No permit shall be construed as alienating public property for private use or as alienating private property for public use. In no way shall the State be liable for any damage as a result of the erection of permitted works. A South Carolina Coastal Council permit in no way relieves the holder from responsibility for compliance with other applicable Federal, State or local permit requirements.

G. Legally commenced a use: Section 13(C) of the Act reads as follows:

Ninety days after the effective date of this act no person shall fill, remove, dredge, drain or erect any structure on or in any way alter any critical area without first obtaining a permit from the Council. **Provided**, however, that a person who has legally commenced a use such as those evidenced by a state permit, as issued by the Budget and Control Board, or a project loan approved by the rural electrification administration or a local building permit or has received a United States Corps of Engineers or Coast Guard permit, where applicable, may continue such use without obtaining a permit. Any person may request the Council to review any project or activity to determine if he is exempt under this section from the provisions of the act. The Council shall make such determinations within forty-

five days from the receipt of any such request.

### **C. RESOLUTION OF CONFLICTS**

If either method of coordination fails and a conflict between the Coastal Council and another agency occurs over the issuance of a permit (by the other agency) or adequacy of conformance with the Coastal Management Program, the Council may take several actions to resolve the conflict. The Council could (1) attempt to set a meeting of executive directors or other staff members of both agencies at a convenient location to discuss, outline and attempt to resolve the conflict; (2) attempt to set a meeting between the Council and the governing body of the other agency to solve the conflict through their direct negotiation; or (3) petition for an injunction and declaratory judgement under §15-53-10 *et seq.* (Declaratory Judgement Act) of the 1976 S.C. Code. Section 5 (I) of the Coastal Management Act and §15-53-30 of the Declaratory Judgement Act allow the Council to seek resolution of the conflict in court. Section 5(O) allows the Council to attempt the other actions of direct mediation and grants the Council the power to exercise all incidental powers necessary to carry out the provisions of the act. If the Council ultimately sought a court resolution of a conflict, the court's judgement would be binding on all of the parties. This analysis of the Council's ability to resolve conflicts applies to all of the networked agencies discussed in Appendix C.

### **D. EVALUATION AND AMENDMENT PROCEDURE**

Because of the changing nature of the coastal zone, both politically and physically speaking, even a very flexible management program will require periodic updating. In order to have a basis for revision, some means of evaluating the effects of current management policies must be devised. Therefore, evaluation procedures will be employed whenever possible, in order to facilitate periodic policy analysis and review, and, where necessary, revision.

In a broader sense, evaluation procedures are necessary in order to assure the citizens of South Carolina that the Coastal Council is carrying out those functions for which it was created. Gerald Swanson, writing about the San Francisco Bay Conservation and Development Commission, has rather forcefully expressed the reasoning underlying evaluation procedures:

In the private sector, organizational effectiveness is measured by the ability to market products successfully in a competitive environment. In the public sector, however, there is no single measure of success. All too often a logrolling budgetary process substitutes for critical scrutiny of organizational performance. We have passed the point in public administration where we can just throw money at a problem and assume it has gone away. Serious attempts at critical assessment must now be made to assure that a solution has really been delivered and not just paid for. If coastal management is to succeed in the long run, we must sharpen the tools of administrative analysis so that we can really assess organizational effectiveness. Effectiveness measures will assure that solutions as well as programs are a reality.<sup>1</sup>

#### **Approach**

In keeping with the performance standard approach utilized throughout the management program, evaluation effects will focus on the outcomes and impacts of activities, rather than on procedures and processes. Initially, only several of the most significant areas of possible impact will be monitored. These will include beach access, beach erosion control, tidelands protection and marine and estuarine pollution. For each of these areas, a body of baseline data will be assembled, reflecting, insofar as is possible, conditions before the permitting process was instituted. A number of indicators of change will be identified for each of the areas of concern, and methods will be devised whereby these indicators can be periodically monitored. Such monitoring

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<sup>1</sup>Swanson, Gerald C., *Coastal Zone Management from an Administrative Perspective: A case study of the San Francisco Bay Conservation and Development Commission*, *Coastal Zone Management Journal* 2(2): 81-102, 1975.

may take place monthly, semi-annually or annually, depending upon the nature of the data being examined.

During the initial implementation stages, some attempt will be made to set forth criteria for "adequacy" — in other words, how much improvement is enough, or how much deterioration can be tolerated. However, recognizing both the lack of basic scientific knowledge and the infancy of the program, efforts will be concentrated on determining the desired direction of change, rather than the absolute level of desirable change.

Examples of possible sources of baseline data and indicators of change for each of the four areas to be evaluated follow:

Beach access baseline data will include a map and list of present public access points along the South Carolina coast, a list of recreational access facilities (parks, boat ramps, marinas, etc.), and an assessment of current parking facilities near access points. Indicators of change may include new public access points as provided by permitted activities or developments related to erosion control funding. (Conditions under which a permit is granted or erosion control funds are released may specify that certain types of public access be provided.) Other indicators of change are the number of new parking facilities built, increases in the availability of public transportation (i.e., bus or ferry service) and increases in the number of boat ramps, marinas, etc. available to the public. Some attention should also be paid to qualitative aspects of public access, although this is an admittedly arbitrary procedure. Criteria to be employed might include the presence or absence of such amenities as dressing rooms and showers available for public use.

Beach erosion control baseline data will be provided primarily by several studies currently underway under the direction of outside consultants. In addition, erosion control funding will be monitored in order to ascertain spending patterns. Indicators of change will be the change in the rate of erosion and deposition, the longevity of improvements brought about by beach renourishment projects, and the frequency with which funds are spent on projects in the same locations as earlier expenditures. The success of management program policies may also be measured by the number of municipalities passing erosion control ordinances and by the percentage of new developments incorporating mandatory set-backs or other erosion control mechanisms.

Tidelands protection and marine and estuarine pollution control will both rely on the same data base with regards to water quality. Sources of data will include the Department of Health and Environmental Control, Water Quality Control Annual Assessment, readings from monitoring stations in the coastal zone, data from shellfish area monitoring stations, reports from the South Carolina Wildlife & Marine Resources monitoring stations and Audubon Christmas bird count data for marsh and estuarine species. Each of these data sources will be monitored in order to determine the degree to which environmental conditions have improved or deteriorated within the coastal zone. An additional measure of the effectiveness of tidelands protection policies will be the annual rate of fill of the wetlands, based on long-term analysis of acreage filled by permit each year.

Evaluation procedures may reveal that certain management policies, rules or regulations require some alteration in order to be more effective. In addition, changes in public priorities, expectations, or issues of concern will necessitate changes in the original plan. These changes may take the form of modifications or refinements depending upon the extent of the proposed alteration. Amendments of either type are dealt with in Subsection 306 (g) of the Federal Coastal Zone Management Act, which states that "Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary ..."

Proposals for a change in the management program may originate within the Coastal Council or its staff, within a Federal, State or local government unit, or with members of the general public. In the last instance — that is, changes proposed by members of the general public — a suggestion will be acted upon by the Council if twenty or more people so request in writing. In all cases, the Council will consider the proposal for a period of at least 30 days, before determining whether modification procedures should be initiated.

If taken, Council action must begin with a determination of the nature and extent of the proposed change. Procedures to be followed will vary depending upon whether the change is classified as an amendment or as a refinement.

Section 923.81 (**Federal Register** Vol. 44, No. 61, March 28, 1979) states that amendments or modifications to an approved management program will represent one of the following cases:

- (1) Changes in basic program goals, objectives or policies;

- (2) Changes in techniques (for achieving goals, objectives or policies) that result in an environmental impact significantly different from previously approved techniques; or
- (3) Changes in techniques (for achieving goals, objectives or policies) that result in significantly altered intergovernmental relationships not reviewed by and concurred with by affected agencies or units of government at the time of the proposed modification.

South Carolina's Coastal Management Act of 1977 (Act 123), Section 9, states that "any change in or amendment to the final management plan shall be implemented by following the procedures established in Subsections (A), (B), (C) and (D) of this section and upon the review and approval of the Governor and the General Assembly." Accordingly, the same notice, public hearing, and review and comment procedures employed during initial approval of the management program shall be followed in the case of amendments thereto.

Once the amendment has been approved by the Governor and General Assembly, a formal request for its adoption shall be made to the Assistant Administrator by the Chairman of the Coastal Council. The request shall include a description of and justification for the change, evidence of adequate public notice and the degree and nature of public interest, and an environmental impact assessment (unless it has been determined that there will be no significant departure from the impacts of the previously approved management program).

The Assistant Administrator will evaluate the proposed change according to the requirements of Subsection 306(g) of the Federal Coastal Zone Management Act, and will determine the need for an Environmental Impact Statement. If the Environmental Impact Statement is deemed necessary, normal review/approval procedures (See Section 923.72, **Federal Register** Vol. 44, No. 61, March 28, 1979) will be followed. If an EIS is not necessary, the proposal will be forwarded to relevant Federal agencies for review and comment. Notice of the Assistant Administrator's decision will be published in the **Federal Register**. In the case of amendment disapproval, the State will be advised in writing of the reasons for the decision.

In addition to amendments, a number of minor adjustments may have to be made during the implementation of the management program. It is assumed that these changes will not require formal amendment proceedings but can be made after consultation with and approval by the Assistant Administrator.

Refinements are defined in Section 923.82 (b) (**Federal Register** Vol. 44, No. 61, March 28, 1979) as "changes relating to programs or techniques for attaining particular goals or objectives or for implementing particular policies (but not changes in these goals, objectives or policies themselves)." In addition, refinements cannot alter the environmental impact of the previously approved plan, nor can they alter intergovernmental relations.

Proposals for refinements to the management program may originate in any of the ways noted above. Depending upon the scope and effect of the changes, the Coastal Council may at its discretion hold public hearings on the proposed refinement, or may simply circulate copies of the proposal to all relevant agencies and interested parties after proper public notice. The Council will consider all comments and proceed if sufficient public support for the change is evident.

After consultation with the Assistant Administrator to determine that the proposed change is, indeed, a refinement and not an amendment, the Chairman of the Coastal Council shall submit a written request for the refinement. The request shall include a description of and justification for the change, an indication that the public has been informed of the proposal, a discussion of their reactions, and a determination that there will be no significant alteration of previously approved environmental impacts or intergovernmental relations. The Assistant Administrator will evaluate the materials submitted, consult with relevant Federal Agencies and interested parties as appropriate, and publish the decision in the **Federal Register**.

## E. WATER AND AIR QUALITY STANDARDS

Section 307(f) of the Federal Coastal Zone Management Act requires States to incorporate all requirements established pursuant to the Federal Clean Water Act and the Clean Air Act into their management programs. The South Carolina Coastal Council has worked closely with the State Department of Health and Environmental Control (DHEC), where responsibility for implementing these two Acts is lodged. (See South Carolina's Pollution Control Act, Title 48, Chapter 1, 1976 Code of Laws.) DHEC has been delegated a portion of the Federal permit authority under the Clean Air Act and the Clean Water Act. Pursuant to Sections 7(A) and 8 (B)(11) of the S.C. Coastal Management Act of 1977, the Coastal Council will review and certify

the permit applications made to DHEC for both air emissions and waste water construction and discharge projects. DHEC is bound in its decision-making to the minimum air and water quality standards established by the US Environmental Protection Agency. The Council then reviews the project proposals for compliance with other policies of the Coastal Management Program. (See Chapter V(A) for a further discussion of the legal authorities and “networking” approach used in program implementation.)

South Carolina’s management program incorporates the minimum air quality standards applicable to the coastal zone. Since the Department of Health and Environmental Control is charged with promulgating and enforcing such standards, close cooperation has been necessary between DHEC and the Coastal Council. A Memorandum of Agreement between the two agencies was signed soon after the Council was created. (See Appendix D.) Among the points contained therein were clauses governing the designation of official liaisons between the two agencies, review of Coastal Council (critical area) permits by DHEC personnel and review of DHEC permits by the Coastal Council. DHEC’s permitting authority is broad:

Any person...desiring to make any new outlet or source, or to increase the quantity of discharge from existing outlets or sources, for the discharges of sewage, industrial wastes or other wastes, or the effluent therefrom, or oil contaminants, into the waters or ambient air of the State, shall first make an application to the Department for a permit to construct and a permit to discharge from such outlet or source. (Section 48-1-100, 1976 South Carolina Code of Laws.)

The minimum water pollution control requirements applicable to the coastal zone are met by the South Carolina management program. These standards include the minimum established by the EPA for effluent limitations, new source performance standards, pre-treatment standards and toxic pollutant discharge standards, as well as the regulations established by DHEC, including water quality management plans developed by the COGs under Section 208 of the Federal Clean Water Act and approved by DHEC. The State Non-Point Source Pollution Plan is another useful tool for controlling water pollution in tidelands.

The same permitting procedures and review provisions applicable to air quality standards apply to water quality regulation. In addition, South Carolina’s Coastal Management Act (Act 123 of 1977) requires that the Coastal Council:

Consider, in conjunction with the Department of Health and Environmental Control the planning and review of existing water quality standards and classifications in the coastal zone. (Section 8(D))

This requirement has been addressed in the Memorandum of Agreement between the two agencies.

In addition to enforcing water quality standards, the two departments are working together to coordinate the prevention, control, removal, monitoring and reimbursement for oil spills in the coastal zone. Other agencies involved in this effort are the EPA and U.S. Coast Guard as well as a number of local commercial and industrial interests.

## **F. INTERGOVERNMENTAL COORDINATION**

### **1. FEDERAL COORDINATION**

Section 306(c)(1) of the Federal Coastal Zone Management Act requires States to develop their management programs “with the opportunity of full participation by relevant Federal agencies...” South Carolina’s coastal zone legislation reiterates the need for State/Federal coordination in Section 8(B)(8) and Section 8(C). Without active participation by Federal agencies, coordination between the State’s coastal zone management program and existing Federal programs and legislation would be impossible. The diversity of interests - many of which are conflicting - in the coastal zone makes coordination of Federal, State, and, of course, local programs an imperative if rational decisions regarding resource use and allocation are to be made. South Carolina’s Coastal Council has endeavored to establish close ties with relevant Federal agencies in order to facilitate a mutual understanding of each others programs, goals, and procedures, and to develop workable arrangements which will accommodate the needs of all concerned.

## **Relevant Federal Agencies**

The first step toward achieving Federal coordination is the identification of those agencies which are affected by, or have an influence on, coastal zone management in South Carolina. The following agencies have been identified as having an interest in South Carolina's coastal zone. With one exception (the Marine Mammal Commission), they are the agencies named in the Rules and Regulations pursuant to the Federal Coastal Zone Management Act of 1972.

1. Coastal Plains Regional Commission
2. Department of Agriculture
3. Department of the Army
4. Department of the Air Force
5. Department of Commerce
6. Department of Energy  
- FERC
7. Department of Health, Education and Welfare
8. Department of Housing and Urban Development
9. Department of the Interior
10. Department of Justice
11. Department of the Navy
12. Department of Transportation
13. Environmental Protection Agency
14. General Services Administration
15. Marine Mammal Commission
16. Nuclear Regulatory Commission
17. Veterans Administration

## **Information Dissemination**

Section 923.51(d)(2) of the Rules and Regulations governing the Federal Coastal Zone Management Act states that "timely opportunities for relevant Federal agency participation and input" must be provided in order for the states to be in compliance with subsection 306(c)(1) of the Act. One of the most important aspects of "relevant participation" is knowledge of Coastal Council objectives and activities, for without an awareness of developments in coastal zone management, Federal agencies will be unable to define and evaluate their own role in coastal planning.

In order to ensure that Federal agencies with an interest in South Carolina's coastal zone are kept abreast of new developments, a contact has been designated within each agency. These Federal agency contacts have been added to the Coastal Council's mailing list, and thus receive notification of all council meetings, public meetings and public hearings, as well as minutes and summaries thereof. They also have received copies of all new segments of the management program, permitting rules and regulations, and other pertinent items as they have been completed. Contact names and addresses are listed in Appendix G, pp. 1-3.

Federal agency awareness of Coastal Council activities is further enhanced by **Carolina Currents**, a monthly newsletter designed to acquaint Federal agency contacts and other interested parties with relevant Council decisions and activities. Each issue contains minutes of the previous month's Council meeting, as well as brief discussions of recent developments of interest. Articles have included the results of the March 28, 1978, Outer Continental Shelf Lease Sale #43, which encompassed submerged lands off the South Carolina coast, a history and "state of the art" discussion of coastal impoundments, an explanation of the 1977 Clean Air Amendments, and developments in the public involvement program sponsored by the Council.

## **Interaction**

In addition to listing and making initial contacts with relevant Federal agencies, states must "provide timely opportunities for relevant Federal agency participation and input" (Section 923.51(d)(2)) and advise "those agencies of public hearings on the management program" (Section 923.51(d)(3)).

Federal agency contacts are advised of all public hearings and public meetings. They are invited to make presentations at these events and to express their views during the review and comment period preceding

adoption of any segment of the management program or Rules and Regulations. Once a final draft has been accepted, a copy is sent to each agency, along with a letter responding to the agency's comments on the document.

In an attempt to ascertain what Federal agencies perceive to be their own, as well as the national interest in the coastal zone, the Coastal Council sent Federal agency contacts a questionnaire. Contacts were asked to list activities and projects as well as their primary functions and responsibilities in the coastal zone. Responses were used to further the Council's understanding of national interest considerations as well as coordination needs.

By far the most important aspect of South Carolina's Federal coordination procedure is that of personal contact between the Council staff and Federal agency contacts. Direct interaction between the Coastal Council and various Federal agencies leads to informal resolution of conflicts as well as to a greater understanding of each other's needs, goals, and problems. A meeting of all Federal Regional Representatives and Coastal Council staff was held during the fall of 1978, in order to deal with questions arising from the management program discussion draft. Frequent communication by letter and phone augments the personal contact schedule.

Several special purpose coordination mechanisms are planned. Such a mechanism has been developed with the U.S. Army Corps of Engineers in order to simplify the permitting process for certain classes of piers and docks. As a result of this dialogue, one general permit may be obtained in many cases instead of the multiple permits required prior to April, 1978.

### **Special Needs**

The South Carolina Coastal Council has identified several agencies or areas requiring special attention for one reason or another. These include, but are not limited to, the following:

1. The U.S. Air Force has been a significant contributor due to the location and operation of major air facilities in Charleston and Myrtle Beach.
2. The U.S. Army Corps of Engineers worked in close coordination with the Council as the permitting section of the management program was developed.
3. The U.S. Coast Guard and the Department of the Navy were closely involved due to the large volume of navigation along our coast and the location of Coast Guard and Navy bases.
4. U.S. Fish & Wildlife Service and National Marine Fisheries Service input was significant because of their interest in environmental protection.
5. The Fisheries Management Council was closely involved during their development of a fisheries management policy.
6. The Bureau of Land Management and other Federal agencies were able to contribute considerably due to expanded OCS activities.
7. Both the Soil Conservation Service and the Forest Service were important contributors due to the importance of forestry and agricultural practices in South Carolina's coastal zone.

### **Documentation**

Section 923.51(b)(3) of the Federal Rules and Regulations pursuant to the Coastal Zone Management Act states that Coastal Zone Management offices must "summarize the nature, frequency, and timing of contacts with relevant Federal agencies, including attempts to resolve differences, if any." To that end, all Federal agency contacts have been logged and classified according to date, personnel involved, nature of the communication, and content. In addition, complete records of all correspondence with Federal agency contacts are maintained. Record keeping is facilitated by the use of contact sheets distributed to all staff members. The staff is asked to record the date, method of contact, name of the agency and person contacted, summary and/or purpose of the communication and any pertinent remarks.

## 2. FEDERALLY EXCLUDED LANDS

Subsection 923.33 of the Section 306 regulations regarding requirements for approval of a state's coastal management program, states the following:

States must exclude from their coastal management zone those lands owned, leased, held in trust or whose use is otherwise by law subject solely to the discretion of the Federal Government, its officers or agents.

The regulations further state:

The exclusion of Federal lands does not remove Federal agencies from the obligation of complying with the consistency provisions of Section 307 of the Act when Federal actions on these excluded lands have spillover impacts that significantly affect coastal zone areas, uses or resources within the purview of a state's management program.

Appendix M consists of a list of property within South Carolina's coastal zone which conforms to current Federal Regulations defining Federally excluded lands. Maps of these lands appear in Appendix N.

## 3. FEDERAL CONSISTENCY

### Introduction

Federal agencies play a significant role in the coastal zone through such actions or activities as the following:

- 1) the issuance of licenses and permits for activities such as dredging and the siting of nuclear power plants,
- 2) the issuance of licenses and permits associated with exploration and development of the Outer Continental Shelf,
- 3) the provision of financial assistance such as grants for watershed protection and flood prevention, and
- 4) the undertaking of their own activities and development projects such as highway construction or the operation and management of national parks.

Subsections 307(c) and (d) of the Federal Coastal Zone Management Act of 1972, as amended, contain what is referred to as the "Federal Consistency" requirements of the law. Through these subsections and their accompanying rules and regulations, certain Federal actions are required to be consistent, to the maximum extent practicable, with approved state management programs.

Four types of actions have been identified in the Federal rules and regulations as requiring a Federal consistency determination:

- (1) Direct Federal Activities/Development Projects,
- (2) Federal Licenses and Permits,
- (3) Outer Continental Shelf (OCS) Exploration, Development and Production Activities, and
- (4) Federal Assistance.

Through the Federal consistency process, the relevant State agency (in South Carolina, the S.C. Coastal Council) is afforded an opportunity to review certain activities under these four categories based on the policies of its coastal management program. Except for Direct Federal Activities/Development Projects, the action cannot receive Federal approval unless first determined by the state to be consistent to the maximum extent practicable.

Federal consistency is intended to benefit both the coastal states and Federal agencies by maximizing communication and coordination on coastal land and water use decisions between the two levels of government. It serves a very important dual purpose in the overall national coastal zone management program. Under this requirement, national interests must be taken into consideration by coastal states, and in return for this concession, the states are allowed a greater say in the future of their coastal zones.

The following pages, which contain a Federal consistency matrix diagram and brief explanations of the four types of Federal actions with accompanying operational guidelines, serve to explain the way in which the consistency provisions of the Federal Coastal Zone Management Act will be accommodated in South Carolina's coastal management program. This information is to be used as an action guide by Federal agencies, applicants for Federal licenses and permits, persons submitting OCS plans and the State A-95 clearinghouse which receives State and local government applications for Federal assistance.

These comprehensive guidelines do not attempt to take the place of the Federal consistency regulations promulgated pursuant to the Federal Coastal Zone Management Act of 1972, as amended, and are intended to be used in conjunction with those regulations (Section 930, **Federal Register**, Vol. 44, No. 123, June 25, 1979).

## **I. DIRECT FEDERAL ACTIVITIES/DEVELOPMENT PROJECTS**

Subsections 307(c) (1) and (2) of the Federal Coastal Zone Management Act address the subject of Federal Activities and Federal Development Projects in the coastal zone. Although these subjects are treated as a single class of Federal actions, "development projects" have been defined as being a subset of "activities."

Federal agencies are required to determine which of their activities directly affect the coastal zone of States with approved management programs. Once a Federal agency determines that an activity has a direct effect on the coastal zone, it is required to determine whether or not the activity is consistent to the maximum extent practicable with the State's management program and to give notice to the State of the proposed or ongoing activity along with the accompanying consistency determination.

The State agency is then required to inform the Federal agency of its agreement or disagreement with the consistency determination at the earliest practicable time. Should the State agency disagree with the Federal agency's determination, it must accompany its response with the reasons for disagreement as well as supporting information on which its decision is based. If the disagreement cannot be settled, the Federal agency should delay the implementation of its proposed activity until the disagreement is resolved, as specified on page V-22 (Conflict Resolution).

(NOTE: The operational guidelines below, which pertain to Federal Activities/Development Projects, explain the procedure by which Federal consistency requirements will be met.)

### **Operational Guidelines**

#### **(Direct Federal Activities/Development Projects)**

##### **I. Definitions**

**A. Federal Activity** — A Federal activity is any function performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. Federal activities include Federal actions which are neither Federal development projects nor activities pertaining to Federal licenses, permits and Federal assistance.

**B. Development Project** — A Federal development project is a Federal activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and the acquisition, utilization, or disposal of land or water resources.

**C. Consistent to the Maximum Extent Practicable** - The term "consistent to the maximum extent practicable" describes the requirement for Federal activities including development projects directly affecting the coastal zone of States with approved management programs to be fully consistent with such programs unless compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations.

**D. Coastal Zone** - The "coastal zone" means all coastal waters and submerged lands seaward to the State's jurisdictional limits and all lands and waters in the following counties: Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown. (All lands which lie within this geographic area and which are owned, leased, held in trust or whose use is otherwise by law subject to the discretion of the Federal Government, its officers or agents are excluded from the coastal zone.)

## II. Federal Activities/Development Projects Determined by the South Carolina Coastal Council as Likely to Have a Direct Effect on the Coastal Zone of South Carolina.

The South Carolina Coastal Council has determined that the following Federal activities directly affect the South Carolina coastal zone. The Coastal Council reserves the right to make additions or deletions to this list after consultation with the pertinent Federal agency(ies).

The South Carolina Coastal Council also reserves the right to review for consistency Federal activities/development projects proposed for or occurring in areas outside the coastal zone which may have "spill-over" effects and thus would directly affect the State's coastal zone.

### NOTE:

"Federal agencies shall consider all development projects within the coastal zone to be activities directly affecting the coastal zone. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they directly affect the coastal zone." (Section 930.33(b), **Federal Register**, Vol. 44, No. 123, June 25, 1979.)

"Federal activities outside of the coastal zone (e.g., on excluded Federal lands, on the Outer Continental Shelf, or landward of the coastal zone) are subject to Federal agency review to determine whether they directly affect the coastal zone." (Section 930.33(c), **Federal Register**, Vol. 44, No. 123, June 25, 1979.)

Federal agencies may apply the four criteria below to the following list of activities/development projects to assist them, where needed, in more narrowly defining or identifying their activities which are of concern to South Carolina's coastal management program.

The S.C. Coastal Council considers an activity to have a direct effect on the coastal zone and therefore is subject to the consistency requirements if it meets one or more of the following criteria:

1. is located in one or more of the four critical areas (coastal waters, wetlands, beaches and primary ocean-front sand dunes);
2. has a detrimental environmental impact upon a critical area (for example, water pollution upstream from an inland source which would then reach and result in degradation of the estuarine system);
3. has adverse effects on the quality or quantity of coastal resources - natural, economic, social or historical;
4. disrupts access to a public coastal resource.

### DEPARTMENT OF DEFENSE (Army Corps of Engineers, Air Force, Army and Navy)

1. Navigation projects (including all ongoing maintenance and ancillary activities that are reviewed on a one-time basis as part of the project as a whole.)
2. Maintenance dredging (including all ongoing maintenance and ancillary activities that are reviewed on a one-time basis as part of the project as a whole.)
3. Shoreline protection projects.
4. Beach nourishment.
5. Other public works projects with the potential to impact coastal lands and waters.
6. Construction of docks, piers, bulkheads, mooring dolphins, etc.
7. Construction or maintenance of sewage or drainage ditches or canals located in coastal waters or wetlands.
8. Location, acquisition and design of new or enlarged defense installations.
9. Actions conducted on Federal lands with potential impact on coastal lands and waters.

## DEPARTMENT OF THE INTERIOR

### **U.S. Fish & Wildlife Service**

1. Construction and/or maintenance of waterfowl impoundments.
2. Construction and/or maintenance of docking facilities and navigation approaches.
3. Construction and/or maintenance of shoreline protection projects.
4. All other activities which are proposed on refuge lands that normally (i.e. within the coastal zone) would require a State or Federal permit or which would result in any direct impact on coastal waters.
5. Proposed acquisition of wildlife refuges.

### **National Park Service**

1. Proposed acquisition of national parks and seashores and national park and seashore management activities which normally (i.e. within the coastal zone) would require a State or Federal permit or which would result in any direct impact on coastal waters.
2. Preservation of historic and cultural sites.

### **Bureau of Land Management**

1. OCS Pre-lease sale activities (e.g. tract selection, stipulations) (The S.C. Coastal Council reserves the right to review proposed OCS Lease Sales when the question of whether lease sales are eligible for consistency has been resolved.)

## DEPARTMENT OF TRANSPORTATION

### **Federal Highway Administration**

1. Construction of roads, bridges or rights-of-way in the coastal zone. (Because of their limited scope and absence of a direct effect on the coastal zone, the following activities are exempted from the Federal consistency requirements of this section.)

Category 1: Modernization of an existing highway section including (but not limited to) such improvements as:

- a) resurfacing, restoring and rehabilitation.
- b) widening by less than a single lane width, unless in a wetland area.
- c) adding shoulders and/or sidewalks, unless in a wetland area.
- d) adding auxiliary lanes for localized purposes to provide weaving, speed changes and turn storage.
- e) making intersection improvements that do not change existing traffic patterns.
- f) improving railroad grade crossings, unless in a wetland area.

Category 2: Installation of lighting, signing, pavement marking, signalization, freeway surveillance and control systems, and railroad protective devices.

Category 3: Safety improvement projects such as pavement grooving, glare screens, safety barriers, energy attenuators, etc.

Category 4: Unless a wetland is impacted, improvement to existing crossroad or

railroad separations and stream crossings such as replacement of bridge decks and parapets, and closing open medians between dual bridges; grade-separated crossings of highways by railroads or by highways which do not require extensive approach relocations.

Category 5: Unless a wetland area is impacted, highway landscaping, safety rest areas, scenic overlooks, truck weigh stations, bus shelters and bays and fencing.

Category 6: Alterations to existing buildings to provide for noise attenuation and installation of noise barriers, berms, or any combination of devices.

Category 7: Temporary emergency replacement of a highway facility which is commenced immediately after the occurrence of a natural disaster or catastrophic failure. This work is usually required to restore the highway for the health, welfare, and safety of the public and does not involve work of the nature and extent which causes it to come under the purview of NEPA.

Category 8: Unless a wetland area is impacted, utility installations along or across a highway.

### **U.S. Coast Guard**

1. Construction of docking facilities and navigation approaches with the exception of Coast Guard maintained or authorized aids to navigation.
2. Construction of Coast Guard bases, facilities and installations.
3. Any activity related to oil spill or other clean-up operations which involves permanent alteration of a critical area.

## **DEPARTMENT OF AGRICULTURE**

### **Forest Service**

1. Construction or silvicultural activities which normally (i.e. within the coastal zone) would require a State or Federal permit or which would result in any direct impact on coastal waters.

### **Soil Conservation Service**

1. Planning and management activities that require either a State or Federal permit or which would result in any direct impact on coastal waters.

## **GENERAL SERVICES ADMINISTRATION**

1. Location and design of proposed Federal government property acquisition and building construction.
2. Disposal of surplus Federal lands.

## **DEPARTMENT OF ENERGY**

1. Demonstration projects for the production of energy.
2. The underwriting of the conversion of existing dams to small-scale hydroelectric projects.

### **III. Consistency Determination**

**A. Decision Making Agency** — The Federal agency makes the consistency determination.

**B. Responsibilities of Federal Agency**

1. Determine consistency of activity/development project.
2. Notify South Carolina Coastal Council of determination. (Suggested method of notification is utilization of the OMB Circular A-95 process.) Federal regulations require that the consistency determination be provided to State agencies at least 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

NOTE: This determination may be a negative one in which the Federal agency decides that a certain activity does not require a consistency determination. (See Section 930.35(d) **Federal Register**, Volume 44, Number 123, June 25, 1979.) Negative determination procedures are provided to assure State agencies an opportunity to review borderline cases. The South Carolina Coastal Council must be notified of all Federal agency negative determinations.

3. Respond to South Carolina Coastal Council requests for additional information.

### C. Notification Procedures and Content of Consistency Determination

The **method of notification** is determined by the Federal agency. However, the South Carolina Coastal Council recommends that either the OMB Circular A-95 review process or appropriate environmental reviews, impact reports, Environmental Impact Statements, negative declarations, or related in-house agency reports as required by the National Environmental Policy Act of 1969, be adopted as the method of notification. The decision on method of notification will be made in each instance through agreement with each individual Federal agency and the South Carolina Coastal Council.

#### Content of Consistency Determination

1. The consistency determination made by the Federal agency should include **one of the following** statements:
  - (a) "This activity (or development project) is not subject to the consistency requirements of Section 307 of the Coastal Zone Management Act of 1972, as amended."
  - (b) "This activity (or development project) is consistent with the South Carolina Coastal Management Program."
  - (c) "This activity (or development project) is not consistent in all respects with the South Carolina Coastal Management Program, but it is consistent to the maximum extent practicable. Please refer to the supplementary information below."
  - (d) "This activity (or development project) is not consistent with the South Carolina Coastal Management Program, but no practicable alternative exists to carry out the legal purpose for which the activity (or development project) is designed."
  - (e) "This activity (or development project) is not consistent with the South Carolina Coastal Management Program, but no practicable alternative exists to meet the national security need filled by this activity."
2. **Date** by which Federal agency plans to make a final decision on whether or not to proceed with the activity/development project.
3. **Detailed description** of activity/development project, its associated facilities, and their coastal zone effects (including primary, secondary and cumulative coastal zone effects).
4. **Comprehensive data and information** sufficient to support consistency statement.

NOTE: Federal agencies are urged to obtain the views and assistance of the South Carolina Coastal Council regarding provisions of the South Carolina Coastal Management Program which are related to the proposed activity/development project and the information necessary to make a consistency determination. The activity/development project, its primary effects, its associated facilities and the primary effects of the associated facilities must all be consistent to the maximum extent practicable with the management program.

#### **D. Determinations for Proposed Activities/Development Projects**

##### **1. Federal Activities**

In determining whether or not proposed Federal activities which directly affect the coastal zone are consistent with the South Carolina Coastal Management Program, Federal agencies are urged to consult with the South Carolina Coastal Council.

A general consistency determination may be issued in cases where Federal agencies will be performing a repeated activity other than a development project (e.g., ongoing maintenance, waste disposal, etc.) which cumulatively has a substantial effect on the coastal zone. This general consistency determination may be used only in situations where the incremental actions are repetitive or periodic, substantially similar in nature, and cause only insignificant coastal zone effects when performed separately. Periodic (at least once every three months unless both the Federal agency and the S.C. Coastal Council agree to an alternative consultation schedule) consultation with the South Carolina Coastal Council is required to discuss the manner in which the incremental actions are being undertaken.

##### **2. Development Projects**

When a Federal agency has sufficient information to determine the consistency of a proposed development project from planning to completion, only one consistency determination is required. However, in cases where decisions involving planning, siting and design of a proposed development project will be made in phases, a consistency determination is required for each major decision.

#### **E. Determinations for Activities/Development Projects Initiated Prior to Management Program Approval**

##### **1. Federal Activities**

In instances in which ongoing Federal activities (e.g., waste disposal practices) initiated prior to management program approval and for which the Federal agency retains the discretion to reassess and modify the activity, a consistency determination is required. This determination must be made by the Federal agency at the earliest practicable time following the approval of South Carolina's management program.

For all ongoing Federal activities which the South Carolina Coastal Council identifies, through monitoring, as subject to consistency, Federal agencies must provide the Council with a consistency determination no later than 120 days after approval of South Carolina's coastal management program.

##### **2. Development Projects**

A consistency determination is required for major, phased Federal project decisions referred to in (D)(2) above which are made following management program approval and are related to development projects initiated prior to approval of South Carolina's coastal zone management program.

#### **F. Multiple Federal Agency Participation**

One consistency determination may be made whenever more than one Federal agency is involved in conducting or supporting a Federal activity/development project or its associated facilities directly affecting the coastal zone, or is involved in a group of Federal activities/development projects related to each other because of their geographic proximity.

The consistency determination must be sent to the South Carolina Coastal Council at least 90 days before final decisions are taken by any of the participating agencies. Each of the proposed activities must be addressed.

## IV. South Carolina Coastal Council Response

### A. Review

1. The South Carolina Coastal Council will review the activity/development project and the consistency determination and will seek the views of other State agencies, local governments and other appropriate sources. If the South Carolina Coastal Council has not developed and issued a final response within 45 days from receipt of the Federal agency notification, the Council will at that time inform the Federal agency of the status of the matter. The Federal agency shall approve one request for an extension period of 15 days. Should the S. C. Coastal Council fail to provide a response within 45 days from receipt of the Federal agency notification, the Federal agency may presume S. C. Coastal Council agreement.
2. **Affirmative Response** — If the Council agrees with the consistency determination, then the matter is resolved.
3. **Negative Response** — If the Council does not agree with the consistency determination, written notice, including the reasons for disagreement and supporting information, will be sent to the Federal agency.

### V. Conflict Resolution

One or more of the following methods may be used for the mediation of conflicts arising between a Federal agency and the South Carolina Coastal Council regarding a Federal consistency determination.

1. **Informal discussion** among all parties involved.
2. **Mediation** by the Secretary of Commerce. Either the Federal agency or the South Carolina Coastal Council may request Secretarial Mediation.
3. **Judicial Review.** Either party may seek judicial review. Judicial review may be sought without first having exhausted the mediation process.

NOTE: Informal discussions and/or mediation are strongly encouraged.

## II. FEDERAL LICENSES AND PERMITS

Subsection 307(c)(3)(A) of the Federal Coastal Zone Management Act addresses the subject of Federal licenses and permits for activities affecting land or water uses in the coastal zone. The subsection states:

After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program.

In accordance with the Section 307 regulations, a coastal zone state must identify and develop a list of Federal license and permit activities which are likely to affect its coastal zone. (See Operational Guidelines, page 23, for South Carolina's list.) All such proposed license and permit activities will be reviewed by the state to determine whether or not they are consistent with the state's management program.

Upon approval of the management program, the state's list of Federal license and permit activities is forwarded to all relevant Federal agencies which must, in turn, make this information available to applicants. The applicant for a Federal license or permit is required to certify to the Federal agency that the proposed activity complies with the state's coastal management program and that it will be conducted in a manner consistent with the program. If the state determines that the activity is not consistent, the Federal permitting agency may not issue the license or permit until all disagreements have been resolved.

(NOTE: The operational guidelines below, which pertain to Federal Licenses and Permits, explain the procedure by which Federal consistency requirements will be met.)

## **Operational Guidelines (Federal Licenses and Permits)**

### **I. Definitions**

**A. Federal Licenses and Permits** — A Federal license or permit includes any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant. All Federal leases except those issued pursuant to the Outer Continental Shelf Lands Act are included within this definition as are renewals and major amendments which cause coastal zone effects. (See Section 930.51, **Federal Register**, Vol. 44, No. 123, June 25, 1979.)

**B. Applicant** — An applicant includes any individual, public or private corporation, partnership, association or other entity organized or existing under the laws of any state, or any state, regional, or local government, who, following management program approval, files an application for a Federal license or permit to conduct an activity affecting the coastal zone of South Carolina. The term “applicant” does not include Federal agencies applying for Federal licenses or permits. Federal agency “activities” requiring Federal licenses or permits are subject to the consistency requirements of the section on Direct Federal Activities/Development Projects, beginnings on page V-16.

### **II. Federal License and Permit Activities Likely to Affect South Carolina’s Coastal Zone**

The following is a list of Federal license and permit activities which are likely to affect the coastal zone of South Carolina. The S.C. Coastal Council reserves the right to make additions or deletions to this list after consultation with the pertinent Federal agency(ies). All such license or permit activities must be reviewed by the S.C. Coastal Council for consistency with the State’s coastal management program.

When application is made for one of the permits or licenses listed below, the Federal agency will direct the applicant to consult with the S. C. Coastal Council in determining the consistency of the application. No Federal license or permit described in this list shall be issued until the requirements of this section (Federal Licenses and Permits) have been satisfied.

The South Carolina Coastal Council also reserves the right to review for consistency Federal license and permit activities proposed for areas outside the coastal zone which may have “spill-over” effects and thus would affect the State’s coastal zone.

#### **DEPARTMENT OF DEFENSE**

**Army Corps of Engineers** — permits and/or licenses for:

1. Discharge of dredged or fill material in navigable waters pursuant to Section 404 of the Federal Clean Water Act as amended;
2. Obstructions or alterations in navigable waters pursuant to Sections 9, 10, 11 and 14 of the Rivers and Harbors Act of 1899.
3. Transportation of dredged material in navigable water pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

#### **DEPARTMENT OF ENERGY** — certificates, permits and licenses for:

1. Siting and operation of nuclear and fossil fuel power plants and transmission lines;
2. Construction and operation of facilities needed to import or export natural gas;
3. Construction and operation of facilities used in interstate gas transportation;
4. Construction and operation of interstate gas pipelines, both onshore and offshore;
5. Construction and operation of LNG import/export marine terminals pursuant to the Natural Gas Act;

6. Construction and operation of natural gas pipelines, transportation and storage facilities pursuant to the Natural Gas Act;
7. Construction and operation of non-federal hydroelectric power projects.

**Federal Energy Regulatory Commission** - certificates, permits and licenses for:

1. Non-Federal hydroelectric projects and associated transmission lines under Sections 4(e) and 15 of the Federal Power Act (16 U.S.C. 797(e) and 808).
2. Interconnection of electric transmission facilities under Section 202(b) of the Federal Power Act (16 U.S.C. 824 a (b)).
3. Construction and operation of natural gas pipeline facilities, defined to include both interstate pipeline and terminal facilities under Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).
4. Abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

**DEPARTMENT OF TRANSPORTATION**

**U.S. Coast Guard** — permits for:

1. Construction and operation of deepwater ports under the Deepwater Port Act of 1972 (PL 93-627);
2. Construction of bridges under USC 401, 491-507 and 525-534.

**Federal Aviation Administration** — permits and/or licenses for:

1. Construction or alteration of airports.

**Materials Transportation Bureau (Office of Pipeline Safety Operations)** — permits for:

1. Transportation of liquids (other than petroleum products) by pipeline (Section 195.6 of the regulations for transportation of liquids by pipeline).

**ENVIRONMENTAL PROTECTION AGENCY** — permits for:

1. Dumping material other than dredged material in navigable waters pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972.

**NUCLEAR REGULATORY COMMISSION** — permits and licenses for:

1. Construction and operation of nuclear facilities and the possession and use of byproduct, source and special nuclear material pursuant to the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.

**THE FOLLOWING PERMITS ASSOCIATED WITH OCS ACTIVITIES**

1. Permits related to geological and geophysical exploration;
2. Permits related to the siting, design and construction of common carrier pipelines required respectively by the Bureau of Land Management in the Department of Interior and the Materials Transportation Bureau in the Department of Transportation;
3. Permits related to drilling and the siting, design and construction of flow and gathering

- lines required by the Geological Survey in the Department of the Interior (involve activities described in detail within OCS plans);
4. Permits related to discharges of pollutants from fixed platforms and structures and/or dumping of nondredged material required by the Environmental Protection Agency;
  5. Permits related to the installation of platforms, pipelines, artificial islands, fixed structures, navigation and free floating structures required by the Corps of Engineers;
  6. Permits related to the transportation and disposal of dredged or fill material required by the Corps of Engineers.

### **III. Unlisted Federal License and Permit Activities**

The S. C. Coastal Council shall monitor unlisted license and permit activities through the use of OMB Circular A-95 review, review of NEPA environmental impact statements or negative declarations, Memoranda of Agreement, etc. Federal agencies shall cooperate with and assist the Council in its monitoring of these unlisted activities.

The S. C. Coastal Council will, within 30 days from notice of the license or permit application, notify Federal agencies, applicants and the Assistant Administrator of unlisted activities judged by it to affect the coastal zone of South Carolina. No Federal license or permit may be issued until the requirements of this section have been satisfied unless the Assistant Administrator disapproves the Council's decision to review the activity.

Whenever any disagreement occurs between a Federal agency and the S.C. Coastal Council regarding whether a listed or unlisted Federal license or permit activity is subject to consistency review, either party may request Secretarial mediation as provided in the **Federal Register**, Vol. 44, No. 123, Subpart G, p. 37158, June 25, 1979.

### **IV. Consistency Certifications**

#### **A. Responsibilities of Federal Agency**

- 1 . Inform applicants of their responsibilities to the S. C. Coastal Council in the determination of the consistency of their applications.

#### **B. Responsibilities of S. C. Coastal Council**

- 1 . Make copies of the management program document available for public inspection.
- 2 . Assist applicants in development of means for ensuring that the proposed activity complies with and will be conducted in a manner which is consistent with South Carolina's management program.
- 3 . Assist applicants in developing the assessment and findings required in D below.
- 4 . Where applicable, provide applicants with a "one-stop" multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

#### **C. Responsibilities of Applicant**

- 1 . Meet with S. C. Coastal Council to discuss the Federal license and permit application(s) and to obtain assistance from the Coastal Council regarding the means for ensuring that the proposed activity will be conducted in a manner which is consistent with South Carolina's management program.
- 2 . Furnish the S.C. Coastal Council with the information required by Section 930.58 of the **Federal Register**, Vol. 44, No. 123, p. 37152, June 25, 1979, as well as any additional information requested by the Council. (See Necessary Data & Information below)
- 3 . Consolidate, where applicable, related Federal license and permit activities affecting the coastal zone for Coastal Council review.

#### **D. Necessary Data and Information (To be furnished by applicant to S.C. Coastal Council)**

The applicant shall furnish the S.C. Coastal Council with the following data and information along with the consistency certification:

- 1 . Detailed description of the proposed activity and its associated facilities. The description should contain sufficient detail to permit an assessment of the probable coastal zone effects of the activity and its associated facilities. ("Coastal zone effects" means primary, secondary and cumulative effects, and includes nonassociated facilities. However, the applicant is not responsible for assessing the consistency of any nonassociated facilities.)  
When necessary for an adequate description and understanding of the activity and its associated facilities, maps, diagrams, technical data and other relevant material must be submitted.
- 2 . A brief assessment relating the probable coastal zone effects of the proposal and its associated facilities to the relevant elements of the management program.
- 3 . A brief set of findings, derived from the assessment, indicating that the proposed activity (e.g., project siting and construction), its associated facilities (e.g., access road, support buildings), and their effects (e.g., air, water, waste discharges, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program.  
Appropriate weight must be given to the various types of provisions within the management program.
- 4 . All relevant State and/or local government permits which are required in addition to the Federal license or permit.

#### **E. The Certification Statement**

The applicant, upon determining that the proposed activity meets the Federal consistency requirements, shall include with the application a certification statement. This statement will read as follows: "The proposed activity complies with South Carolina's approved coastal management program and will be conducted in a manner consistent with such program."

#### **V. S.C. Coastal Council Review**

The S. C. Coastal Council will begin review of an applicant's consistency certification after receipt of the consistency statement and all data and information required in Section D above.

##### **A. Public Notice**

Within ten days after receipt of the consistency certification (consistency statement, required data and information) the S.C. Coastal Council will publish notice of the proposed activity in a newspaper of statewide circulation as well as in a newspaper circulated in the area which is likely to be affected by the proposed activity. Where one newspaper meets both criteria, publication of the public notice in the single newspaper shall be sufficient. The public notice shall include a summary of the proposed activity, an announcement that information on the activity is available for public inspection at the Coastal Council office, and a request that comments be submitted to the Coastal Council by a specified date.

The Federal agency and the S.C. Coastal Council should issue a joint public notice when applicable to avoid duplication of effort and unnecessary delays.

##### **B. Public Hearings**

At its discretion, the S.C. Coastal Council may hold a public hearing on the proposed activity. Announcement of the hearing may be included in the public notice discussed in (A) above. A public hearing may not be held until at least 30 days after publication of the hearing announcement. Federal agencies and the S.C. Coastal Council should publish joint public hearing announcements and should hold joint public hearings when both agencies determine that a hearing is necessary. All interested parties will be given a sufficient amount of time after the date of the hearing in which to submit comments to the Coastal Council.

### **C. S.C. Coastal Council Review**

Upon receipt of comments from other State agencies, Federal agencies and other interested parties, the S.C. Coastal Council shall make a decision to either concur or not concur with the applicant's consistency certification. Whenever possible, the Coastal Council will make its determination within three months following commencement of its review. (Federal regulations allow a period of six months for State agency review and comment. State agency concurrence is presumed in the absence of an objection within six months following commencement of State review.) If unable to issue a determination at the end of three months after commencement of its review, the S.C. Coastal Council will notify the applicant and the Federal agency of the status of the matter.

#### **1 . S.C. Coastal Council Concurrence**

When the S.C. Coastal Council concurs with an applicant's consistency certification, it shall notify the applicant and the Federal agency in writing at the earliest practicable time. Upon receipt of Coastal Council concurrence or when concurrence is presumed (in the absence of an objection at 6 months from commencement of Coastal Council review), the Federal agency may approve the license or permit application.

**NOTE:** Should the Federal agency determine that an application will not receive its (Federal) approval, it shall immediately notify the applicant and the S. C. Coastal Council. This notification will preclude the need for further State agency review.

#### **2 . S.C. Coastal Council Objection**

In the event of an objection, the S.C. Coastal Council will notify in writing the applicant, the Federal agency and the Assistant Administrator. The objection must describe how the proposed activity is inconsistent with the management program as well as suggest alternative measures (if they exist) which would permit the activity to be consistent. A statement informing the applicant of a right of appeal to the Secretary of Commerce will be included in the objection.

Following receipt of a S.C. Coastal Council objection to a consistency certification, the Federal agency shall not issue the license or permit except as provided in **Conflict Resolution** below.

### **VI. Conflict Resolution**

Several avenues exist for the resolution of conflicts.

#### **A. Informal Discussion**

The S.C. Coastal Council, the applicant, and the Federal agency should meet informally in an attempt to resolve the matter rather than appealing the issue to the Secretary of Commerce.

#### **B. Appeals to the Secretary**

If informal discussion fails to resolve the matter, the applicant may, within 30 days of receipt of the Coastal Council's objection, file a notice of appeal with the Secretary of Commerce. The notice must be accompanied by supporting information, and copies of the notice and supporting information must be sent to the Federal agency and the S.C. Coastal Council.

Following public notice by the Secretary of Commerce, receipt of comments and, in some cases, a hearing, the Secretary shall determine whether the proposed activity is consistent with the objectives or purposes of the Federal Coastal Zone Management Act or is necessary in the interest of national security.

If the Secretary finds that the proposal meets either of these two criteria, the Federal agency may approve the activity and issue the license or permit. (For complete details as

to Secretarial Review, see the **Federal Register**, Vol. 44, No. 123, June 25, 1979, pp. 37158-37160.)

### **III. OUTER CONTINENTAL SHELF (OCS) ACTIVITIES**

Subsection 307(c)(3)(B) of the Federal Coastal Zone Management Act addresses the subject of Outer Continental Shelf exploration, development and production activities. This subsection and its accompanying rules and regulations require that after the management program of any coastal state has been approved, any person submitting to the Interior Department any OCS plan for the exploration or development of, or production from any area which has been leased under the Outer Continental Shelf Lands Act must provide Interior with a consistency certification, attached to the OCS plan, and must furnish the State agency with the same information. The consistency certification must state that the activities comply with and will be conducted in a manner consistent with the State's management program.

At the earliest practicable time, the State agency must notify the person as to whether it concurs with or objects to the consistency certification. Should the State agency object to the certification, it must accompany its objection with reasons and supporting information. Following receipt of a State agency objection, Federal agencies may not issue any of the licenses or permits for activities until all conflicts have been resolved.

(NOTE: The operational guidelines below, which pertain to OCS Activities, explain the procedure by which Federal consistency requirements will be met.)

## **OPERATIONAL GUIDELINES**

### **OUTER CONTINENTAL SHELF ACTIVITIES**

#### **I. Definitions**

##### **A. Federal License or Permit Activity Described in Detail**

This term means any activity requiring a Federal license or permit which the Secretary of the Interior determines must be described in detail within an OCS plan. (See No. 3 under "The Following Permits Associated with OCS Activities," p. V-24.)

##### **B. Person**

The term "person" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any state, the Federal government, any State, regional or local government, or any entity of such Federal, State, regional or local government, who submits to the Secretary of the Interior, following management program approval, an OCS plan which describes in detail Federal license or permit activities.

##### **C. OCS Plan**

The term "OCS plan" means any plan for the exploration or development of, or production from any area which has been leased under the Outer Continental Shelf Lands Act and the regulations under that Act, which is submitted to the Secretary of the Interior following management program approval and which describes in detail Federal license or permit activities.

#### **II. Federal License or Permit Activities Described in Detail Within an OCS Plan**

(See "The Following Permits Associated with OCS Activities," No. 3, page V-24.)

### III. Consistency Certifications

#### A. Responsibilities of S.C. Coastal Council

- 1 . Make copies of the management program document available for public inspection.
- 2 . Assist persons regarding the means for ensuring that the proposed activities will be conducted in a manner which is consistent with South Carolina's management program.

#### B. Responsibilities of Person

- 1 . Meet with S.C. Coastal Council to discuss the OCS plan and activities and to obtain assistance from the Coastal Council regarding the means for ensuring that the proposed activities will be conducted in a manner which is consistent with South Carolina's management program.
- 2 . Furnish the S.C. Coastal Council with the information required by Section 930.58 of the **Federal Register**, Vol. 44, No. 123, p. 37152, June 25, 1979, as well as any additional information requested by the Council. (See Necessary Data & Information below)
- 3 . Consolidate related Federal license and permit activities affecting the coastal zone for Coastal Council review.

#### C. Necessary Data and Information (To be furnished by person to the S.C. Coastal Council)

The person shall furnish the S.C. Coastal Council with the following data and information along with consistency certifications:

- 1 . Detailed description of the proposed activities and their associated facilities. The description should contain sufficient detail to permit an assessment of the probable coastal zone effects of the activities and their associated facilities. ("Coastal zone effects" means primary, secondary and cumulative effects and includes nonassociated facilities. However, the person is not responsible for assessing the consistency of any nonassociated facilities.)  
When necessary for an adequate description and understanding of the activities and their associated facilities, maps, diagrams, technical data and other relevant material must be submitted.
- 2 . A brief assessment relating the probable coastal zone effects of the activities and their associated facilities to the relevant elements of the management program.
- 3 . A brief set of findings, derived from the assessment, indicating that each of the proposed activities (e.g., drilling, platform placement) and their associated facilities (e.g., onshore support structures, offshore pipelines), and their effects (e.g., air, water, waste discharge, erosion, wetlands, beach access impacts) are all consistent with the provisions of the management program. Appropriate weight must be given to the various types of provisions within the management program.
- 4 . All relevant State and/or local government permits which are required in addition to the Federal license or permit.

#### D. The Certification Statement

The person, upon determining that the proposed activities meet the Federal consistency requirements, shall include with the OCS plan a certification statement. This statement shall read as follows: "The proposed activities described in detail in this plan comply with South Carolina's approved coastal management program and will be conducted in a manner consistent with such program."

### IV. S.C. Coastal Council Review

The S.C. Coastal Council will begin review of a person's consistency certification after receipt of the consistency certification statement and all data and information required in Section III(C) above.

#### **A. Public Notice**

Within 10 days after receipt of the consistency certification (consistency statement, required data and information) the S.C. Coastal Council will publish public notice of the proposed activity in a newspaper of statewide circulation as well as in a newspaper circulated in the area which is likely to be affected by the proposed activity. Where one newspaper meets both criteria, publication of the public notice in the single newspaper shall be sufficient. The public notice shall include a summary of the proposed activities, an announcement that information on the activities is available for public inspection at the Coastal Council office, and a request that comments be submitted to the Coastal Council by a specified date.

#### **B. Public Hearings**

At its discretion, the S.C. Coastal Council may hold a public hearing on the proposed activities. Announcement of the hearing may be included in the public notice discussed in (A) above. A public hearing may not be held until at least 30 days after publication of the hearing announcement. All interested parties will be given a sufficient amount of time from the date of the hearing in which to submit comments to the Coastal Council.

#### **C. Council Review**

Upon receipt of comments from other State agencies, Federal agencies and other interested parties, the S.C. Coastal Council shall make a decision to either concur or not concur with the person's consistency certification. Whenever possible, the Coastal Council will make its determination within three months following commencement of its review. (Federal regulations allow a period of six months for State agency review and comment. State agency concurrence is presumed in the absence of an objection within six months following commencement of State review.) If unable to issue a determination at the end of three months after commencement of its review, the S.C. Coastal Council will notify the person and the Department of the Interior of the status of the matter.

##### **1. S.C. Coastal Council Concurrence**

When the S.C. Coastal Council concurs with a person's consistency certification, it shall notify the person and the Department of the Interior in writing at the earliest practicable time. Upon receipt of Coastal Council concurrence or when concurrence is presumed (in the absence of an objection at 6 months from commencement of Coastal Council review), the Department of the Interior may approve the OCS plan.

##### **2. S.C. Coastal Council Objections**

In the event of an objection, the S.C. Coastal Council will notify in writing the person, the Department of the Interior, and the Assistant Administrator. The objection must describe how the proposed activities are inconsistent with the management program as well as suggest alternative measures (if they exist) which would permit the activities to be consistent. A statement informing the person of a right of appeal to the Secretary of Commerce will be included in the objection.

Following receipt of a S.C. Coastal Council objection to a consistency certification, the Federal agency shall not issue any relevant licenses or permits except as provided in **Conflict Resolution** below.

#### **V. Conflict Resolution**

Several avenues exist for the resolution of conflicts.

##### **A. Informal Discussion**

The S.C. Coastal Council, the person, and representatives of the Department of the In-

terior should meet informally in an attempt to resolve the matter rather than appealing the issue to the Secretary of Commerce.

#### **B . Appeals to the Secretary**

If informal discussion fails to resolve the matter, the person may, within 30 days of receipt of the Coastal Council's objection, file a notice of appeal with the Secretary of Commerce. The notice must be accompanied by supporting information, and copies of the notice and supporting information must be sent to the Department of the Interior and the S.C. Coastal Council.

Following public notice by the Secretary of Commerce, receipt of comments and, in some cases, a hearing, the Secretary shall determine whether each of the objected to OCS activities is consistent with the objectives or purposes of the Federal Coastal Zone Management Act or is necessary in the interest of national security.

If the Secretary finds that all of the objected to OCS activities meet either of these two criteria, the Department of the Interior may approve the OCS plan and issue permits. If the Secretary does not make either of these two findings, the Department of the Interior may not approve the OCS plan and the person must submit an amended or new OCS plan to the Department of the Interior and to the S.C. Coastal Council, along with a new consistency certification and supporting information. State review will begin again. The applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

## **VI. FEDERAL ASSISTANCE (TO STATE AND LOCAL GOVERNMENTS)**

Section 307(d) of the Federal Coastal Zone Management Act addresses the subject of Federal assistance to state and local governments under other Federal programs affecting the coastal zone. The subsection states:

Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security.

The State agency is notified of Federal assistance applications by means of the Office of Management and Budget (OMB) A-95 process, which provides for the evaluation, review and coordination of Federally assisted programs. In the event the State agency objects to the applicant agency's proposal, it must accompany its objections with reasons and supporting information and must describe alternative measures (if they exist) which would permit the proposed project to be conducted in a manner consistent with the management program. Following receipt of a State agency objection, the Federal agency may not grant the Federal assistance until all disagreements have been resolved.

(NOTE: The operational guidelines below, which pertain to Federal Assistance, explain the procedure by which Federal consistency requirements will be met.)

### **OPERATIONAL GUIDELINES**

#### **Federal Assistance (to State and Local Governments)**

##### **I. Definitions**

###### **A. Federal Assistance**

The term "Federal Assistance" means assistance provided under a Federal program to an

applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

**B. Applicant Agency**

The term “applicant agency” means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for Federal assistance.

**II. Types of Federal Assistance Programs Subject to Consistency Review**

The S.C. Coastal Council has identified the following as being subject to consistency review within the coastal zone of South Carolina. The South Carolina Coastal Council reserves the right to make additions or deletions to this list after consultation with the pertinent Federal agency(ies). The Coastal Council also reserves the right to review for consistency Federal assistance activities proposed for areas outside the coastal zone which may have “spill-over” effects and thus would affect the State’s coastal zone.

**Federal Assistance for the Construction of:**

- 1 . Power generating plants;
- 2 . Desalination plants;
- 3 . Chemical processing, transfer or storage facilities;
- 4 . Petroleum processing, transfer or storage facilities;
- 5 . Mineral extraction facilities;
- 6 . Sewage treatment and disposal facilities;
- 7 . Solid waste disposal facilities;
- 8 . Water control structures or waterway easements serving agricultural lands;
- 9 . Federal financing of public or subsidized housing units, or private residential developments;
- 10 . Transportation facilities (including airports, highways and railroads).

In addition, the S. C. Coastal Council will monitor Federal assistance applications affecting the coastal zone, including but not limited to the following programs.

**DEPARTMENT OF AGRICULTURE**

**Soil Conservation Service** — Watershed protection and flood protection.

**DEPARTMENT OF COMMERCE**

**Economic Development Administration** — Economic Development Planning Grants; Economic Development Grants for Public Works and Development Facilities.

**DEPARTMENT OF ENERGY** — State Energy Conservation Program.

**DEPARTMENT OF HOUSING & URBAN DEVELOPMENT/FHA** — Housing Assistance, Mortgage Insurance, Community Development Block Grants, and Section 701 Planning Assistance Grants.

**DEPARTMENT OF THE INTERIOR**

**Heritage Conservation and Recreation Service** — Land and Water Conservation Fund.

**Fish & Wildlife Service** — Endangered Species Act of 1973.

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration** — Airport Development Aid Program.

**Federal Highway Administration** — Federal Aid Highway Program. (Exemptions p. V-17 apply here.)

**Urban Mass Transportation Administration** — Urban Mass Transportation Grants.

**ENVIRONMENTAL PROTECTION AGENCY** — Air Pollution Control Program Grants, Construction

Grants for Wastewater Treatment Works, and State and Interstate Program Grants for Water Pollution Control.

### III. Consistency Determination

#### A. Decision Making Agency

The S. C. Coastal Council makes the consistency determination.

#### B. Notification Procedure

When applying for Federal assistance for an activity located in the coastal zone, the applicant agency shall, pursuant to the OMB A-95 process, notify the appropriate State clearinghouse of its intentions. When applicable in order to ensure timely and complete notification to the S.C. Coastal Council, applicant agencies may submit to the Council, in addition to the A-95 process, appropriate environmental reviews, impact reports, Environmental Impact Statements, or related in-house agency reports as required by the National Environmental Policy Act of 1969 as the method of notification to the Council. (The applicant agency shall utilize the OMB A-95 process and any other applicable notification processes for every major funding phase of the Federal assistance activity which entails the consideration of new information not previously reviewed or which results in substantial modifications to previously reviewed phases.)

The State clearinghouse shall notify the S.C. Coastal Council of the application for Federal assistance by means of the OMB A-95 process.

#### C. S. C. Coastal Council Review

##### 1. Approval

If the S.C. Coastal Council does not object to the proposed activity, the Federal agency may grant assistance to the applicant agency.

##### 2. Objection

If the S.C. Coastal Council objects to the proposed project, it shall notify the State clearinghouse of its objection. The State clearinghouse shall in turn notify the applicant agency, the Federal agency and the Assistant Administrator of the objection.

The objection must: (1) describe how the proposed project is inconsistent with South Carolina's Management Program and (2) suggest alternative measures (if they exist) which would permit the proposed project to be conducted in a manner consistent with the management program.

The objection shall include a statement informing the applicant agency of its right of appeal to the Secretary of Commerce on the grounds described in Subpart H of the **Federal Register**, Vol. 44, No. 123, June 25, 1979, pp. 37158-37160.

### IV. Responsibility of Federal Assisting Agency

When notified of a S.C. Coastal Council objection to a proposed project, the Federal agency shall not approve assistance for the project except as provided in Subpart H of the **Federal Register**, Vol. 44, No. 123, June 25, 1979, pp. 37158-37160.

### V. Conflict Resolution

Several avenues exist for the resolution of conflicts.

#### 1. Informal Discussion

The S.C. Coastal Council, the applicant agency, and the Federal assisting agency should

meet informally in an attempt to resolve the matter rather than seeking Secretarial mediation.

2. **Mediation by the Secretary of Commerce**

Either the Federal assisting agency or the S.C. Coastal Council may request secretarial mediation.

3. **Judicial Review**

Either the S.C. Coastal Council or the Federal assisting agency may seek judicial review. Judicial review may be sought without first having exhausted the mediation process.

NOTE: Informal discussions and/or mediation are strongly encouraged.

4. **Secretarial Review**

The applicant agency may within 30 days of receipt of the S.C. Coastal Council's objection, file a notice of appeal with the Secretary of Commerce. The notice must be accompanied by supporting information, and copies of the notice and supporting information must be sent to the Federal agency and the S.C. Coastal Council.

Following public notice by the Secretary of Commerce, receipt of comments, and, in some cases, a hearing, the secretary shall determine whether the proposed activity is consistent with the objectives or purposes of the Federal Coastal Zone Management Act or is necessary in the interest of National security.

If the Secretary finds that the proposal meets either of these two criteria, the Federal agency may approve the activity. If the Secretary does not make either of the two findings, the Federal agency may not approve the activity. (For complete details as to Secretarial Review, see the **Federal Register**, Vol. 44, No. 123, June 25, 1979, pp. 37158-37160.)

## FEDERAL CONSISTENCY MATRIX DIAGRAM

CZMA Section	307(c)(1) & (2) (Subpart C)	307(c)(3)(A) (Subpart D)	307(c)(3)(B) (Subpart E)	307(d) (Subpart F)
Federal Action	Direct Federal activities including development projects	Federally licensed and permitted activities	Federally licensed and permitted activities described in detail in OCS plans	Federal assistance to State and local governments
Coastal Zone Impact	Directly affecting the coastal zone	Affecting the coastal zone	Affecting the coastal zone	Affecting the coastal zone
Responsibility to notify State agency	Federal agency proposing the action	Applicant for Federal license or permit	Person submitting OCS plan	A-95 Clearinghouse receiving State or local government application for Federal assistance
Notification procedure	Alternatives chosen by Federal agency (subject to NOAA regulations)	Consistency certification	Consistency certification	OMB Circular A-95 notification procedure
Consistency requirement	Consistent to the maximum extent practicable with CZM Program	Consistent with the CZM Program	Consistent with the CZM Program	Consistent with the CZM Program
Consistency determination	Made by Federal agency (Review by State agency)	Made by State agency	Made by State agency	Made by State agency
Federal agency responsibility following a disagreement	Federal agency not required to disapprove action following State agency disagreement (unless judicially impelled to do so)	Federal agency may not approve license or permit following State agency objection	Federal agency may not approve Federal licenses or permits described in detail in the OCS Plan following State agency objection	Federal agency may not grant assistance following State agency objection
Administrative Conflict resolution	Mediation by the Secretary	Appeal to the Secretary by applicant or independent Secretarial review	Appeal to the Secretary by person or independent Secretarial review	Appeal to the Secretary by applicant agency or independent Secretarial review
	(Subpart G)	(Subpart H)	(Subpart H)	(Subpart H)

## 4. STATE COORDINATION

### Legislative Requirements

Subsection 306(c)(1) of the Federal Coastal Zone Management Act of 1972, as amended, mandates the development and adoption of each state's management program with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties. Section 923.55 of the development and approval regulations (**Federal Register**, Vol. 44, No. 61, March 28, 1979) further outlines the requirements for coordination with state agencies.

To meet this requirement with respect to governmental entities (other than Federal) and other public or private parties, States shall:

- (1) Develop and make available general information regarding the program design; its content and its status throughout program development;
- (2) Provide a listing as comprehensive as possible, of all governmental agencies, regional organizations, port authorities and public and private organizations likely to be affected by or have a direct interest in the development and implementation of the management program.
- (3) Indicate the nature of major comments received from interested or affected parties as identified in (2) above, and the nature of the State's response...
- (4) Establish a mechanism to provide for continuing coordination with affected parties after program approval...

These processes have provided valuable information to the South Carolina Coastal Council in the development of its management program, further assuring that the coastal management program can be implemented effectively within the existing governmental framework of the State. In addition, they are serving as a mechanism of communication for State agencies to learn about the coastal management program.

The South Carolina General Assembly also affirmed in the South Carolina Coastal Management Act of 1977 (Act 123) the importance of the development and coordination of the coastal management program with State agencies. In Section 2(B)(5) of the Act one of the policies to be implemented is "to encourage and assist state agencies...to exercise their responsibilities and powers in the coastal zone through the development and implementation of comprehensive programs to achieve wise use of coastal resources..." In Section 5(N) of the Act the Coastal Council is given the statutory power and duty "to encourage and promote the cooperation and assistance of state agencies, coastal regional councils of government, local governments, federal agencies and other interested parties." The Act gives the Coastal Council specific authority to become a party to certification proceedings of the South Carolina Public Service Commission for utility facilities within the coastal zone and coordinate particular activities with the South Carolina Department of Wildlife and Marine Resources and the Department of Health and Environmental Control.

The key to state coordination efforts is in Sections 7(A) and 8(B)(11) of the Act, which state that all State agencies with regulatory authority will administer their authority in accordance with the South Carolina Coastal Management Act and develop a system of coordination and review of all State permit applications in the coastal zone. Detailed explanations of these sections are found in the Legal Analysis (Appendix C).

### Participation in Program Development

Since the inception of the South Carolina Coastal Council in July, 1977, and in the preparation for implementation of the Council's permitting authority which began September 28, 1977, one of the Council's highest priorities has been state coordination. From a legal point of view, the coordination with state agencies with which the Council will network its authority is of basic importance. From a practical point of view, close communication and coordination with state agencies has been tremendously helpful and productive in the development of the coastal management program. The following list summarizes the various state coordination efforts which are detailed in the specified Appendices.

- (1) Appendix H, Table 1 shows the complete mailing list of State agencies which receive notices of Council meetings and copies of all management program information, including draft copies of program document segments for review and comment. All Council meetings are open and attended by representatives of numerous State agencies. State agency comments have been and will continue to be given careful attention and are incorporated into the management program wherever feasible.
- (2) The Coastal Council staff has held coordination meetings with State agencies both on an individual basis and with groups of agencies on various topics relevant to elements of the management program. Appendix H, Table 2 lists the dates, locations and agency(ies) involved in the coordination meetings.
- (3) The first draft of the Legal Analysis section was distributed for comment to all State agencies and rewritten to incorporate agency comments and concerns. This legal analysis section was the basis for the development of Memoranda of Agreement (MOAs) with all State agencies with which the Coastal Council has overlapping or complementary authority. In each case MOAs have been developed through close communication with the State agency involved. Copies of the MOAs are found in Appendix D.
- (4) Many State agency representatives serve on Technical Advisory Committees for Beach Access, Erosion Control, and Energy Planning. The lists of these participants are in Appendix J, pp.8-12.
- (5) During the period of 305 program funding, several State agency grants were made to assist in inventory, mapping and research efforts contributing to the development of the management program. Appendix H, Table 3 lists these activities.
- (6) Contacts with State agencies have been documented insofar as is possible, using log sheets.
- (7) Personal contact is also an important aspect of State agency coordination. Several members of the Coastal Council Staff interact regularly with State agency personnel. In addition, copies of promotional materials and the draft management program were delivered to each State agency on the mailing list.

### **Program Implementation**

South Carolina's coastal management program will be implemented and enforced following the guidelines of Section 923.42(d) (**Federal Register**, Vol. 44, No. 61, March 28, 1979) for Technique B — Direct State Control. This Federal program option has been selected because it parallels the basis of the South Carolina Coastal Management Act.

Technique B — State Control is the method of implementation and enforcement of coastal management programs which establishes the networking concept. Following this approach, the Coastal Council will network its authority with every State agency which exercises relevant statutory authority within the coastal zone. (The concept is explained in detail in the Legal Authorities chapter.) Therefore, the implementation and enforcement of the management program in South Carolina is based upon extensive state coordination. The mechanisms which were used for state coordination during the development stage, such as mailing lists, review and comment, meetings with State agencies, MOAs, and Technical Advisory Committees, will continue to serve the Coastal Council during implementation of the coastal management program.

In addition, State agencies will be able to suggest modifications or amendments to the management program through the same mechanisms available to Federal, regional and local governments and to the general public. The amendment procedure is outlined in Chapter V(C).

Special projects of interest to State agencies may be undertaken during the implementation phase of coastal zone management. Such projects may include studies of marine recreation, oil spill clean-up procedures, marine pollution, and acceptable sites for dredge spoil disposal. In addition, some attempt will be made to coordinate State agency data banks and research efforts with those of the Coastal Council.

## 5. LOCAL GOVERNMENT COORDINATION

### Legislative Requirements

Subsection 306(c)(2)(A) of the Federal Coastal Zone Management Act of 1972, as amended, mandates the coordination of each state's management program with local, areawide or interstate plans applicable to the area. Section 923.56 of the development and approval regulations (**Federal Register**, Vol. 44, No. 61, March 28, 1979) further outlines the requirements for coordination with local governments in the coastal zone.

Evidence of coordination shall be documented in the management program by:

- (1) Identifying local governments, areawide agencies designated pursuant to regulations established under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies or interstate agencies which have plans affecting the coastal zone in effect on January 1 of the year in which management program is submitted;
- (2) Listing or providing a general summary of substantive contacts with these entities to coordinate the management program with their plans; and
- (3) Identifying conflicts with those plans of a regulatory nature that are unresolved at the time of program submission and the means that will be used to resolve these conflicts.

These processes are intended to not only eliminate conflicts and duplication of efforts, but also to gain maximum benefit from the expertise and awareness of local governments and their agency personnel. These entities have a greater awareness of local issues and needs that should be addressed within the state coastal program.

The South Carolina General Assembly also recognized the need for and the value of extensive local government coordination in development and implementation of the State's coastal management program. Section 10 of the South Carolina Coastal Management Act of 1977 (Act 123) addresses the local government role in the following manner:

- (A) The management program specified in Section 8 shall be developed in complete cooperation with affected local governments in the coastal zone. This cooperation shall include, but not be limited to:
  - (1) Involvement of local governments or their designees in the management program.
  - (2) Provision of technical assistance and grants to aid local governments in carrying out their responsibilities under this act.
  - (3) Dissemination of improved informational data on coastal resources to local and regional governmental units.
  - (4) Recommendations to local and regional governmental units as to needed modifications or alterations in local ordinances that become apparent as a result of the generation of improved and more comprehensive information.

Subsection (B) provides the mechanism for cities or counties in the coastal zone to submit their existing or proposed zoning ordinances, subdivision regulations and/or building codes (especially those affecting the critical areas) to the Coastal Council for review and a determination of whether or not they meet the provisions of the State's Coastal Management Act. Upon such determination and approval by the Council, these local ordinances and regulations are to be considered by the Council in its decisions on permit applications in the critical areas, and integrated into the coastal management program.

### Participation in Program Development

The Coastal Council has been active with local government cooperation and coordination efforts since its inception in July, 1977. As early as 1973 (prior to the establishment of the Coastal Council), the coastal zone planning program and its two gubernatorially-appointed commissions also worked closely with local governments in initiation of the program, and in establishment and passage of State legislation.

The South Carolina Coastal Council has among its members one representative from each of the eight

coastal counties. The Council member, selected by the local governing body in that county, insures a first level of direct participation by local interests in development of the coastal management program.

In addition, soliciting direct input from and disseminating information to local elected officials and government agencies has been on-going throughout preparation of the program document. A number of mechanisms have been employed to carry out this effort, including the assignment of one Coastal Council staff person, full time, to serve as the Local Government Liaison. The following list summarizes the local participation efforts, which are detailed, as indicated, in Appendix I.

(1) The Local Government Liaison personally visited every local government in the coastal zone, discussing the coastal management program with administrators and officials and distributing a specially prepared packet of information about the overall program and the Coastal Council's regulatory authority in the critical areas. Appendix I, pp. 1-2 lists those individuals and/or local governments with whom the liaison made contact.

(2) Three introductory conferences with local governments were co-sponsored by the Coastal Council and the coastal regional planning agencies — Waccamaw Regional Planning and Development Council, Berkeley-Charleston-Dorchester Regional Planning Council, and Lowcountry Regional Planning Council (in conjunction with the League of Women Voters). These informational sessions concentrated on the Coastal Energy Impact Program, the overall coastal management program and the critical area permitting process. Appendix I details the dates and participants in these meetings.

(3) Appendix I, pp. 1-2 shows the complete local and regional government mailing lists, which identify those agencies and individuals who receive meeting notices and general management program information, including draft copies of program document segments for review and comment.

(4) Several local government officials or representatives serve on County Citizen Working Groups. (See Appendix J, pp. 3-8 for membership lists.)

(5) Several regional and local government representatives serve on the Technical Advisory Committees for Beach Access, Erosion Control and Energy Planning. (Membership lists appear in Appendix J.)

(6) During the period of 305 program development funding, a number of regional and local government grants were made for assistance to the State in inventory, mapping and research efforts. This directly involved local planning agencies in development of the coastal program. Appendix I, p. 7 lists these activities.

### **Program Implementation**

South Carolina's coastal management program will be implemented and enforced following the guidelines of Section 923.42 (d) (**Federal Register**, Vol. 44, No. 61, March 28, 1979) for Technique B — Direct State Control. This Federal program option has been selected because it parallels the basis of the South Carolina Coastal Management Act. The chapter on legal authorities details this aspect of the program, which mandates coordination and cooperation with local and regional units of government.

Affected regional and local governments are notified of each permit application to the Coastal Council for a proposed alteration to the critical areas within their jurisdiction. Conflict with local regulatory authority is not an issue since local permit requirements are considered separately from State requirements. Nothing in the issuance of a Coastal Council permit relieves the applicant from the obligation to obtain other necessary Federal, State, or local permits. However, the Council actively solicits local comments on permit applications and considers these in rendering a permit decision. (Section 15 (B), South Carolina Coastal Management Act)

Local governments are expected to play a significant role in achieving the goals, objectives and policies of the coastal management program for the coastal zone as a whole, as well as for the critical areas. By conducting local planning, permitting, and administrative functions in a manner which supports and enhances mutual goals, protection and development of coastal resources will be furthered. The Council suggests that many of the recommended policies for Activities Subject to Management be adopted and implemented at the local level. As noted in Section 10 of the South Carolina Coastal Management Act, staff assistance will be available as needed to draw up local ordinances and plans.

Beginning on p. 7, Appendix I lists the local governments in the coastal zone and indicates those with current regulatory authority and/or existing land use plans. The Coastal Council encourages the development of local capabilities for managing growth and development. Pursuant to Section 10 of the Coastal Management Act, Council review and comment on local regulations and plans will be available, as will technical assistance

in their development. This will be an on-going process in the implementation (or 306) stage of the management program. Pass-through funding to local county governments to assist in the costs of project proposals to address specific local coastal needs or problems will be provided on a limited basis, as available, by the Coastal Council.

Local governments are insured an opportunity to participate in any future amendments or modifications to the management program through the same mechanism for coordination provided to Federal and State agencies and interested citizens. This process for update and modification is set forth in Chapter V(C).

Once the implementation phase of coastal zone management begins, a number of special projects will be undertaken by the Coastal Council staff in cooperation with regional and local governments. Possible projects might include an analysis of alternate means of controlling parking lot and pavement runoff onto the beaches, suggested ways of improving the aesthetics of coastal development and a study of appropriate ways to incorporate coastal safety principles into local and regional ordinances. (For example, building and zoning codes should be instituted or updated so as to minimize dangers from hurricanes.)

The Coastal Council library will be available as a source of technical references as well as a general information source for local and regional government personnel. A reference bibliography is currently being completed to aid local governments in dealing with energy facility location problems. Other special-purpose bibliographies may be developed as the need arises.

## G. PUBLIC PARTICIPATION

Coastal zone management cannot be effective without the cooperation and support of Federal, State and local government entities as well as that of the general public. Interaction with private citizens is of particular importance, as this is the best means of incorporating widely held values into management policy development. The Coastal Council relies heavily on input from interested citizens who are most familiar with individual locales or specific local problems. In addition, the Council realizes that without public participation at every stage of the planning and implementation processes, the coastal management program will not accurately reflect the needs and concerns of all citizens of the state. Although made up of individuals with diverse interests, the Coastal Council cannot represent all possible points of view. Therefore, every effort has been made to encourage public involvement in coastal zone management, beginning even before South Carolina had a coastal zone management Act.

### **Early Public Involvement**

South Carolina's official response to passage of the Federal Coastal Zone Management Act began in 1973 with the creation of the South Carolina Coastal Zone Planning and Management Council, established by an executive order of then Governor John West. One of the most important tasks of the newly-formed Council was to establish a public involvement program, in keeping with the specifications of Section 923.55 of the Rules and Regulations pertaining to the Federal Coastal Zone Management Act. According to Section 923.55(a)(1), States shall "develop and make available general information regarding the program design, its content and its status throughout program development."

The aims of the public information program were, first and foremost, to acquaint the public with the concept of coastal zone management. In addition, the Council hoped to obtain necessary support for the pending South Carolina Tidelands legislation and to generate suggestions and information essential to the creation of a sound management plan.

A brochure, entitled **Coastal Zone Management in South Carolina**, was widely distributed in an attempt to familiarize the people of the state with the basic premises of coastal zone management. The brochure was also intended to dispel a number of popular misconceptions regarding the proposed legislation. The need for public input was outlined and additional sources of information were identified.

These sources included a slide presentation and an Information Center which citizens could call (collect) to express opinions, request specific information, make suggestions, or schedule the slide presentation. All interested groups and organizations were encouraged to make use of the presentation, which outlined the major problems and issues involved in coastal zone management in South Carolina and described the efforts underway to deal with them. Staff members attended the presentations and were available to answer questions and distribute printed materials. A variety of interested groups took advantage of this opportunity, including civic, service and environmental organizations, business associations and local governing bodies.

Other public involvement activities included a 90 minute debate regarding the merits of coastal zone management televised on South Carolina ETV in an open-circuit format (in which viewers could all in with questions or comments), several workshops sponsored by the S. C. League of Women Voters in various areas of the state, and a number of news releases and radio interviews by Council staff members. A small booklet was prepared which described the new Federal Coastal Zone Management law and the proposed South Carolina legislation in some detail.

After South Carolina's Coastal Zone Management Act was signed into law by Governor James Edwards in May of 1977, the public involvement program was intensified. The newly-formed Coastal Council worked toward gaining an increased understanding of public opinion regarding coastal zone planning and acquainting the public with the goals and objectives of the Council itself. Activities leading to a mutual understanding among all concerned parties have facilitated the creation of a sound management program based upon compromise and accommodation of widely shared values.

## Communication

At the most basic level, certain means of communicating with the public are mandated by the Federal Coastal Zone Management Act (Section 923.55 of the **Federal Register**, Vol. 44, No. 61, March 28, 1979) as well as by South Carolina's legislation. These include public notice of meetings and hearings (see Section 14(c) of South Carolina's Act) as well as public hearings themselves. Section 9 (a) of South Carolina's Coastal Zone Management Act states that:

The Council, on thirty days' notice, shall hold statewide public hearings on the proposed coastal zone management plan to obtain the views of all interested parties...

Public hearings were held in various areas of the State on both the discussion draft of the management program and the draft environmental impact statement. Public hearings were also held before the Permitting Rules and Regulations received final approval. Section 15(B) of the South Carolina Act states that "at the request of twenty citizens or residents of the county or counties affected, the Council shall hold a public hearing on any application which has an effect on a critical area, prior to issuing a permit." Proceedings of public hearings are available, as mandated in 923.55(b)(3) of the **Federal Register**, Vol. 44, No. 61, March 28, 1979. (Dates and locations of public hearings are listed in Appendix J, p.1.)

Section 923.55(b)(2) of the **Federal Register** directs states to:

provide a listing, as comprehensive as possible, of all governmental regional organizations, port authorities and public and private organizations likely to be affected by or have a direct interest in the development and implementation of the management program.

Therefore, in addition to formal public notices, the Coastal Council maintains a sophisticated system for direct mail communication with the interested public as well as affected governmental and private entities. Notification of upcoming Coastal Council meetings and public hearings, minutes and agendas of meetings, and completed segments of the management program are mailed to approximately 250 groups or individuals. Separate files are maintained for each of the following categories: Colleges and Universities, Federal Agency Contacts, Other Federal Agencies, Interested Citizens, Local governments, National Interest Groups, Regional Governments, S. C. Legislators, S. C. Special Interest Groups, Special Purpose Districts, S. C. State Government, State Government — other states, and the U. S. Congressional Delegation. Of these, the "Interested Citizen" and "S. C. Special Interest" categories are the largest. In addition, this information is sent to 120 libraries across the State and to approximately 50 radio stations, T. V. stations, daily and weekly newspapers. An additional 90 individuals or groups receive only permitting information.

## Special Projects

Public notification and mailing list procedures are effective in dealing with those citizens who are already aware of South Carolina's coastal zone management program and are able to contribute to the development of a management program. However, the Coastal Council and staff realize that special efforts must be made to reach those people who are not yet cognizant of the program. With this in mind, the following activities have been undertaken:

**1. General Information Packet:** This selection of written material and maps is designed to clarify various facets of the management program and permitting procedures. It addresses specific local government concerns, and has been distributed to all municipal and county government officials.

**2. South Carolina Coastal Council Informational Package:** Unlike the "General Information Packet" described above, the Coastal Council Informational Package is designed for distribution to a wide audience. It consists of a large folder containing information on the South Carolina coast and the need for wise management. Three small inserts, dealing with the Council itself, the permitting process, and the management program can be added as needed, as can any additional information deemed appropriate for the specific audience. Such flexibility in design increases the usefulness of the packet and reduces its cost. The packet is

sent to all mailing list entries and to the general public upon request. It has also been personally distributed to a number of State and local government offices.

3. **Slide Presentation** — With a grant from the S. C. Committee for the Humanities, the Coastal Council staff prepared a fifteen minute slide presentation entitled **The South Carolina Coast: A Sense of Place**. The presentation has been shown to adult, out-of-school community groups throughout the State, with the intent of stimulating objective discussions of coastal problems and issues among individuals with little or no prior knowledge of the situation. The opinions voiced in these meetings were relayed to the Coastal Council and staff and incorporated into the planning process. A brochure was designed to serve as pre-program publicity for the slide presentation. In addition, availability of the presentation was publicized by appropriate media releases.

4. **Educational Television** — The grant from the S.C. Committee for the Humanities also enabled the Coastal Council to arrange for open-program ETV coverage in early December, 1978. The open-program format allows viewers throughout the State to phone in questions or comments which may be answered on the air. News releases and coverage in the ETV Guide provide pre-program publicity.

5. **Coastal Council Poster** — A color poster was printed and made available to any individual or group upon request. The poster serves to call attention to the Coastal Council and to the fact that South Carolina has beautiful coastal areas deserving of wise management.

6. **Public Display** — A three-dimensional graphic display is available for use in public-access buildings, such as libraries, hotel lobbies, government buildings, etc. (See Appendix J, p. 2.) In conjunction with handouts available at the same location, the display focuses attention on coastal zone management and initiates contact between the public and the Coastal Council staff. A number of requests for staff appearances at group meetings have been made as a result of the display.

7. **Newsletter** — **Carolina Currents**, a monthly newsletter, is distributed to Federal agency contacts and other interested parties upon request. The newsletter contains a synopsis of the previous month's Coastal Council meeting, updates on current Council activities and special-interest articles pertaining to South Carolina's coast as well as the national coastal zone management program.

8. **Radio Coverage** — Radio stations across the state receive a 30 second spot announcing all public meetings and public hearings held by the Coastal Council. Listeners are urged to attend the hearings and make their opinions known to the Council. A number of radio interviews have been held with members of the Coastal Council and staff. (See Appendix J, p. 1.) Frequent "spot" interviews and brief announcements complete the program's radio contact schedule.

9. **TV Talk Shows** — TV stations throughout the coastal zone have sponsored talk shows with various members of the Coastal Council and staff. (Dates and stations are listed in Appendix J, p. 1). In addition, brief interviews, quotes and spot coverage segments are provided by numerous local stations.

10. **Press Releases** — Press releases precede and follow each Coastal Council meeting, and are made as needed when new developments occur in the program.

11. **Public meetings** — A number of public meetings and workshops were held, including a meeting to discuss permitting procedures arranged in Myrtle Beach for realtors and developers. (See Appendix J.) Workshops sponsored jointly with the three regional Councils of Government (Waccamaw, Berkeley-Charleston-Dorchester, and Lowcountry) in the coastal zone were held on the topics of permitting, the management program, and Outer Continental Shelf developments. (See Appendix I, pp. 3-6 for dates and participants.)

12. **Speakers Pool** — Members of the Coastal Council and staff are available to speak to interested groups on a variety of subjects. Dates and locations of some of these presentations are listed in Appendix J, p. 2. The public is urged to contact the Coastal Council offices to arrange for a speaker whenever a suitable occasion arises.

### **County Citizens Working Groups**

In order to assure sufficient local input for the development of the management program as well as to provide a review process of the management program as mandated by Section 8(c) of the South Carolina Coastal Zone Management Act, Citizens Working Groups were established in each of the eight coastal counties.

Although the groups are small, consisting of from twenty to twenty-five people, every effort has been made to involve people with varied backgrounds. Representatives of such interests as the Chamber of Commerce, municipal and county government, local development boards, environmental and civic groups, associations of sportsmen, realtor/developer groups, industrialists, manufacturers, and special districts were invited to serve on the Working Groups. In addition, private citizens who expressed an interest in participating were asked to do so. Two staff members were assigned to each County Working Group and were assisted by the Coastal Council member from their assigned county. Complete membership lists are included in Appendix J.

Each County Working Group met once a month while the management program was being drafted. At their first meeting, the Working Groups learned of the history of Coastal Zone Management legislation and received an explanation of the management program. Copies of relevant materials (such as permitting rules and regulations and maps), were distributed, along with draft segments of the management program. At subsequent meetings members of the Working Groups reviewed and commented on segments of the management program as they were completed, while staff members made note of the recommended additions, deletions or alterations.

All County Citizens Working Group meetings are open to the public and are announced in advance through various media. Because segments of the management program were distributed to any interested party upon request, review and comment by the public as well as by official members of the working group was possible — and all outside comments were welcomed by the staff. Adequate press coverage served to make the activities of the County Working Groups known to a wider audience than might otherwise be the case, and may have helped to interest more of the general public in the process. Exact dates and locations of past Working Group Meetings are listed in Appendix J.

The structure employed by the County Working Groups has served several purposes. First and foremost, of course, is the contribution to the planning process which only local citizens can provide. Because members of Working Groups are familiar with local needs and concerns, they are well equipped to evaluate the impacts and ramifications of the management program for their county. Their familiarity with the area also enables members of Working Groups to anticipate problems which might arise and to locate areas of concern which are not adequately addressed by the management program. The diverse membership of each Working Group helps to guarantee that all important local needs and values are taken into account during the planning process.

In many ways, the County Working Groups complement public hearings. The Working Groups are designed to represent diverse interests, while representation at public hearings may be much greater for some interests than for others. It may be easier for some individuals to attend Working Group meetings than it is for them to attend public hearings, as the former are held in each county during the evening. Thus travel time is reduced and attendance is easier for those who are unable to leave their jobs during the day. Finally, the format of Working Group meetings is much less formal than that of public hearings, facilitating comment by citizens who may be uncomfortable making a presentation at a public hearing.

After approval of the management program, County Working Groups will continue to meet. They are expected to advise the staff regarding any necessary amendments, identify and offer solutions to problems which may arise as a result of implementing the management program in their particular areas, and assist in maintaining the Council's sensitivity to changing local values and concerns relating to old and new developments.

### **Advisory Committees**

A very different contribution to the management program is provided by the technical Advisory Committees, formed to address the problems of beach erosion, public access to beaches and energy facility siting. Thus, the organization of the committees is substantive rather than geographic in nature. In forming the committees, an attempt was made to involve those who possess both familiarity with the problem and a degree of expertise applicable to its solution, rather than a diverse range of interests. Members include State, local and regional government officials, members of civic organizations such as the League of Women Voters, technical experts from industry and the academic community, and officials of relevant State agencies. Membership lists for each Advisory Committee are found in Appendix J. Because members are from all parts of the State rather than from a single county, committee meetings are generally held in Columbia, the State Capitol. The dates and locations of each Advisory Committee meeting are listed in Appendix J, p. 16.

At the initial meeting of each Committee, the goals and objectives of the Coastal Council were discussed, and the overall format of the management program was presented. The specific problem area was then discussed, and facets of the topic meriting particular consideration were called to the attention of the Coastal Council staff.

As each draft segment of the program was completed, it was forwarded to the appropriate Advisory Committee for review and comment. Subsequently, each Committee met to discuss the draft and make criticisms and suggestions for its improvement.