THE FLORIDA COASTAL MANAGEMENT PROGRAM

FINAL ENVIRONMENTAL IMPACT STATEMENT

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
OFFICE OF COASTAL ZONE MANAGEMENT

AND

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL REGULATION
OFFICE OF COASTAL MANAGEMENT

AUGUST 1981

UNITED STATES

DEPARTMENT OF COMMERCE

FINAL ENVIRONMENTAL IMPACT STATEMENT

OF THE

PROPOSED

COASTAL MANAGEMENT PROGRAM

FOR

THE STATE OF FLORIDA

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DESIGNATION: Final Environmental Impact Statement

TITLE: Proposed Federal Approval of the Florida Coastal Management Program (FCMP)

ABSTRACT: The State of Florida has submitted its Coastal Management Program to the Office of Coastal Zone Management for approval. Approval would allow program administrative grants to be awarded to the state, and would require that Federal actions be consistent with the Program. This document includes a copy of the Program (Part II) which is a comprehensive management program for coastal land and water use activities. The FCMP consists of numerous policies on diverse management issues which are administered under various state laws, and is the culmination of several years of program development.

Approval and implementation of the Program will enhance governance of the state's coastal land and water areas and uses according to the coastal policies and standards contained in existing statutes, authorities and rules. The effect of these is to condition, restrict or prohibit various uses in parts of the coastal zone, while encouraging development and other uses in other parts. This Program will improve decisionmaking processes for determining appropriate coastal land and water uses in light of resources considerations and will increase public awareness of coastal resources. The Program will result in some short-term economic impacts on coastal users but will lead to increased long-term protection of the state's coastal resources and improve the responsiveness of state programs.

Federal alternatives include delaying or denying approval if certain requirements of the Coastal Zone Management Act have not been met. The state could modify parts of the Program or withdraw its application for Federal approval if either of the above Federal alternatives result from circulation of this document.

APPLICANT: State of Florida, Department of Environmental Regulation

LEAD AGENCY: U.S. DEPARTMENT OF COMMERCE
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GUIDE TO THE READER

The National Environmental Policy Act of 1969 (NEPA) requires that an environmental impact statement be prepared as part of the review and approval process of major actions by Federal agencies which significantly affect the quality of the human environment. The action contemplated here is approval of the Florida Coastal Management Program (FCMP) under Section 306 of the Federal Coastal Zone Management Act of 1972, as amended (CZMA).

Approval qualifies Florida for Federal matching funds for use in implementing and administering the coastal management program. In addition, the Coastal Zone Management Act stipulates that Federal activities affecting the coastal zone shall be consistent, to the maximum extent practicable, with the approved coastal management program.

It is the general policy of the Office of Coastal Zone Management (OCZM) to issue combined Environmental Impact Statement (EIS) and coastal management program documents. A DEIS composed of appropriate revisions to the FCMP Hearing Draft distributed in August, 1980, an assessment of the impact of the Coastal Management Program, and a description of findings regarding this program by OCZM was distributed in February, 1981. The comment period for the DEIS ended on April 13, 1981. Responses to comments received on the DEIS are included in Part VI of this FEIS. This document is organized as follows:

Summary/Part I of this FEIS was prepared by OCZM. Included here is a discussion of the Florida coastal management legislation, current programs, goals, objectives and initiatives and expected impacts from gaining Federal approval. Additionally, there is a summary of Federal concerns and a description of how this program meets the requirements of the Federal Coastal Zone Management Act.

Part II of this FEIS is a detailed description of the Florida Coastal Management Program and was prepared by the Florida Department of Environmental Regulation/Office of Coastal Management (OCM) as were the attachments and appendix. This part of the FEIS also fulfills the NEPA requirement for a description of the proposed action. Part II is divided into two sections as follows:

Section One as an introduction, outlines the background of the Florida Coastal Management Program describing coastal management efforts in Florida from their inception to present direction; and describes the Florida coastal zone and the benefits, problems, and issues associated with it.

Section Two discusses the scope of the Florida management program including a description of the proposed coastal boundary, a detailed discussion of the state laws and regulations which will guide the state program, "areas of special management", "issues of special focus", and how the program will be implemented and coordinated by the state, including a discussion on program funding. Additionally, there is a discussion in some detail on the Federal regulations governing approval of State CZM programs and how the State meets them.

Part III of the FEIS was prepared by OCZM and fulfills the NEPA requirement for a discussion of alternatives to the proposed action.

Parts IV and V were prepared by DER/OCM with assistance by OCZM and describe the affected environment and the environmental consequences of Federal program approval.

Part VI contains a summary of written and oral comments received and responses on the FCMP/DEIS. This section was prepared by OCZM with the assistance of DER/OCM.

The Addendum contains various final joint resolutions, memoranda of understanding, rules, and other materials related to coordination and implementation of the state's program.

For purposes of reviewing the proposed action, the important Federal concerns are:

- whether the Florida Coastal Management Program is consistent with the objectives and policies of the CZMA;
- whether the award of Federal funds under Section 306 of the CZMA will help Florida meet those objectives;
- whether the state's management authorities are adequate to implement its coastal program; and
- whether there will be a net environmental benefit as a result of program approval and implementation.

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B. CS/HB 490, "Ports Bill".

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D. Joint Resolution on the IMC.

E. Memorandum of Understanding on the IMC.

F. Principle Coordination Memorandum of Understanding between DER, DVCA, and DNR.

G. Joint Resolution on Hazards.

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J. Final Amendments to the Wastewater Construction Grants Priority System.

K. Chapter 16Q-20, F.A.C., Final Generic Rule for Aquatic Preserves.

L. Chapter 17-4, F.A.C., Final Rule for DER Permits.

M. Chapter 17-26, F.A.C., Final Rule for Public Works.

N. Draft Wastewater Treatment Plant Siting Rules (to be finalized by August 20, 1981).

O. Draft CZM Funding Rule (to be finalized by August 26, 1981).

P. Florida Attorney General's Opinion of July 8, 1981.

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GLOSSARY

Note: The following definitions are included for both your convenience and to reflect on how these words and terms are used in this document.

ACSC: Areas of Critical State Concern (Chapter 380, F.S.).

APR: Areas for Preservation or Restoration.

AQUACULTURE: The culture of marine or aquatic species under either natural or artificial conditions.

AQUATIC PRESERVES: Submerged or tidal areas identified and designated by the Florida Legislature which have exceptional biological, aesthetic, educational, and/or scientific value, with the intent of setting them aside forever as preserves or sanctuaries for the benefit of future generations pursuant to Chapter 258, F.S.

ARTHROPOD CONTROL: The abatement or suppression of mosquitoes and other arthropods, whether disease-bearing or merely pestiferous, by biological, chemical or physical means.

BARRIER ISLANDS: Thin, elongated, naturally formed islands, usually parallel to the shoreline, formed of unconsolidated sediments (mostly sand), separated from the mainland by natural bodies of water, including estuaries and wetlands. Exceptional wave force, wind and tidal energies, and ocean flooding are the predominant factors which shape and regulate the barrier island ecosystem, creating a dynamic and ever changing system.

BEACH: Gently sloping areas of loose material (e.g. sand, gravel, and cobbles) that extend landward from the low-water line to a point where there is a definite change in the material type or land form, or to the line of vegetation.

CLASS I-V WATERS: Waters of the state classified according to the most beneficial use pursuant to Chapter 403, F.S. and implementing rules pursuant to Chapter 17-3, F.A.C.

COASTAL CONSTRUCTION SETBACK CONTROL LINE: A line established by the Florida Department of Natural Resources to prevent or reduce beach erosion and damage to coastal life and property pursuant to Chapter 161, F.S. It is designated as 50 feet inland from MHW unless otherwise established through a survey and consideration of natural beach processes.

COASTAL MANAGEMENT: The broad mix of research, data collection and analysis, technical assistance, land use planning, coordination, conflict resolution, regulatory or other governmental actions which are needed to ensure the wise utilization and protection of coastal resources.

DEVELOPMENT OF REGIONAL IMPACT (DRI): Any development which, because of its character, magnitude, or location, would have a substantia effect upon the health, safety, or welfare of citizens of more than one county pursuant to Chapter 380, F.S.

DUNE: A ridge, mound, or hill of sand which extends parallel to the shoreline along sandy coasts formed by wind and waves.

DUNE; ACTIVE: A dune that migrates, grows and diminishes from the force of wind and supply of sand. Active dunes include all open sand dunes, active hammocks, and active foredunes.

ECOSYSTEM: The living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist. All the components of an ecosystem are interrelated.

ESTUARY: A natural body of water semi-enclosed by land, connected with the open ocean, and within which sea water is measurably dilluted by fresh water derived from the land. The estuary includes: a) estuarine water; b) tidelands; c) tidal marshes; and d) submerged lands. Estuaries extend upstream as far as the waters contain a measurable quantity or percentage of sea water.

FORESTRY: The science of developing and maintaining forests and the benefits they produce, including a) the production of trees and the processing of forest products; b) open space, buffers from noise, and visual separation of conflicting uses; c) watershed protection and wildlife and fisheries habitat; d) soil protection from wind and water; 3) maintenance of clean air and water; f) outdoor recreational activities and related support services and wilderness values compatible with these uses; and g) grazing land for livestock.

GEOGRAPHICAL AREAS OF PARTICULAR CONCERN (GAPC): Geographic areas or resources which will receive special management consideration in the Florida Coastal Management Program.

LAND TRANSPORTATION FACILITIES: Those land surface modes of conveyance commonly used to move people and goods through or over land, or to support land facilities for air and water transportation (e.g. highways, roads, bridges, railroads, bicycle, pedestrian paths, mass transit and pipelines).

LOCAL GOVERNMENT: Any county or municipality or any special district or local government entity established pursuant to law which exercises regulatory authority over and grants development permits for land development pursuant to Chapter 163, F.S.

MAINTAIN: To support, keep, and continue in an existing state or condition without decline.

MARINE GRASS BEDS: Both nearshore and offshore submergent vascular plant beds which may extend to depths greater than 10 meters (33 ft.) in clear waters. The predominant marine grass species found in Florida coastal waters are Turtle-grass (Thalassia testudinum), Cuban Shoalweed (Diplanthera wrightii), and Manateegrass (Syringodium filiformus).

ONSHORE FACILITIES TO SUPPORT OFFSHORE OIL AND GAS DEVELOPMENT AND PRODUCTION: Those facilities used in the construction, maintenance, operation and support of offshore oil and gas development and production, including related transportation, storage and conversion facilities.

PRESERVE: To save from change or loss other than those caused by natural geological and evolutionary processes, and reserve for a special purpose.

PROTECT: Save or shield from loss, destruction, or injury or for future intended use.

PUBLIC INTEREST: Those conditions which actually or potentially result in benefit to the public at large. Decisions regarding public interest should be made only after full consideration of all available pertinent information, including but not limited to adopted state and local goals and objectives, demonstrated service needs, water quality, public costs and liabilities, hazards, population growth needs, economic development needs, transportation needs, energy needs, aesthetics, irretrievable commitment of natural resources, and maintenance of ecological systems.

RECREATION: Any experience voluntarily engaged in largely during leisure time from which the individual derives satisfaction.

LOW INTENSITY RECREATION: Does not require developed facilities and can be accommodated without change to the area or resource (e.g. canoeing, hunting, hiking, wildlife, photography, and beach and shore activities can be low intensity recreation).

HIGH INTENSITY RECREATION: Use specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource (e.g. campgrounds, golf courses, public beaches, and marinas).

RESOURCE: Naturally occurring or culturally produced entity which is valued for its existing or potential usefulness to man.

CULTURAL RESOURCE: A resource made, constructed or refined by man and society.

NATURAL RESOURCE: Air, land, water and living resources and the elements thereof produced by or resulting from nature. Natural resources may be renewable or non-renewable.

NON-RENEWABLE RESOURCE: Those natural resources that, once used or exhausted, cannot be replaced. Commonly used with commodity type resources such as coal, petroleum, natural gas, etc.; this term may also be used to describe biological, locational and amenity type resources susceptible to exhaustion through extinction, site occupancy or alteration of natural conditions.

RENEWABLE RESOURCE: Those resources which, if managed, used, and harvested properly, can replenish themselves at a rate equal to the rate of consumption. They are usually biological or living resources. In a broader sense, uses and benefits which can be used indefinitely without loss or decline.

RESTORE: Revitalizing, returning, or replacing original attributes and amenities, such as natural biological productivity, water quality, and aesthetic and cultural resources, which have been diminished or lost by past alterations, activities, or catastrophic events.

ACTIVE RESTORATION: Involves the use of specific positive remedial actions, such as removing fills, installing water treatment facilities, or rebuilding deteriorated urban waterfront areas.

PASSIVE RESTORATION: Restoration which occurs as a result of natural processes, sequences, and timing, or which occurs after the removal or reduction of adverse stresses without other specific positive remedial action.

SHORELINE: The immediate interface of land and water; the mean high tide line in non-vegetated areas and the landward extent of "marine species" of vegetation as listed in Chapter 17-4, F.A.C. where such "marine species" constitute the dominant plant community.

SPOIL ISLANDS: Artificial islands created with dredged material resulting from disposal of material created, resulting from, or as waste products of creating, maintaining, or deepening channels, harbors, ports, or other such projects. They provide important recreational and habitat values. Their management is also important because of the adverse impacts mismanagement can have on water quality and sedimentation. Most islands are state owned under the jurisdiction of Chapters 253 and 372, F.S.

USE HAVING DIRECT AND SIGNIFICANT IMPACT: Any land or water use or activity which will or can reasonably be expected to: 1) directly result in the significant alteration of the physical, chemical, radiological, or biological properties of coastal waters; 2) directly and significantly affect any use of coastal resources; 3) directly and significantly affect public health, safety or welfare; or 4) directly result in significant, irretrievable commitments of coastal resources. Positive as well as negative impacts are included.

USES OF REGIONAL BENEFIT: Any use which can be shown to provide substantial public benefits beyond the county in which it is located, and which has a direct and significant impact on coastal lands and waters.

VESTED RIGHT: Present fixed rights which cannot be interfered with by retrospective laws, which is proper for the state to recognize and protect, and which cannot be deprived arbitrarily without injustice.

WATER DEPENDENT: A use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for waterborne transportation, recreation, energy production, or source of water.

WATER-RELATED: Uses which are not directly dependent upon access to a water body, but which provide goods or services that are directly associated with water-dependent land or waterway use, and which, if not located adjacent to water, would result in a public loss of quality in the goods or services offered.

Distribution: This FEIS has been forwarded to all Federal agencies as well as all agencies, groups and individuals who commented on the DEIS. Additional copies of the document are available on request from the Florida Office of Coastal Management or the Federal Office of Coastal Zone Management.

Federal Agencies

Advisory Council on Historic Preservation
Department of Agriculture
Department of Commerce
Department of Defense
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Environmental Protection Agency
Federal Emergency Management Agency
Federal Energy Regulatory Commission
Marine Mammal Commission
Nuclear Regulatory Commission

State and Local Agencies

Florida Department of Commerce
Brevard County Board of Commissioners
Broward County Planning Council
Broward Soil and Water Conservation District
City of Fort Lauderdale
East Central Florida Regional Planning Council
North Central Florida Regional Planning Council
Northeast Florida Regional Planning Council
Northwest Florida Water Management District
Pasco County
Pinellas County
Southwest Florida Regional Planning Council
St. Johns River Water Management District
Tampa Bay Regional Planning Council
Volusia County
Volusia County Environmental Council
Environmental Council of Volusia County
West Florida Regional Planning Council

Interested Parties

Coastline Growers
Council of Associations of North Peninsula
Ecoshores, Inc.
Florida Audubon Society

Florida Engineering Society
Florida Institute of Technology
Florida Keys and West Coast Seafood
Florida Petroleum Council
Gulf Power Company
Hillsborough Environmental Coalition
Hopping, Boyd, Green and Sams
League of Women Voters of Florida
League of Women Voters of Hillsborough County
Martin Conservation Associates
Natural Resources Defense Council
Sierra Club-National Coastal Committee
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SUMMARY

A. THE FLORIDA COASTAL MANAGEMENT PROGRAM

The Florida Coastal Management Program (FCMP or Program) is based on existing statutes and regulations as required by the Florida Coastal Management Act of 1978 (Chapter 380, F.S., Part II). These laws and their respective rules (regulations), and existing administrative processes, form the authorities for Program implementation. These laws and statutes apply statewide and, thus, the boundary of the Florida Coastal Management Program is the entire State to the limits of the territorial sea in the Atlantic Ocean and the Gulf of Mexico.

The Program highlights specific coastal "issues of special focus" to which state agencies, through the Interagency Management Committee, will direct their individual and collective attention to resolve conflicting coastal policy. Much of the program coordination centers around the resolution of conflicting state policy, and it is the goal of the FCMP to foster the resolution of these conflicts affecting coastal land and water uses having a direct and significant impact on the coastal area.

The Program is to be implemented primarily through state agencies. Pertinent activities, administrative processes and decisionmaking will be coordinated with local governments and regional agencies. The Department of Environmental Regulation (the Divisions of Permitting and Environmental Programs) will be the lead coastal agency, with large responsibility for coordination and implementation of the laws, rules and responsibilities under the Florida Coastal Management Program, shared with the Department of Natural Resources, the Department of Veteran and Community Affairs and the Governor's Office of Planning and Budgeting.

B. CHANGES THE PROGRAM WILL MAKE

As the FCMP is based on existing State laws and regulations, implementation of the authorities of the Florida program precedes federal approval and will continue to be administered as required by state statute. Federal approval will strengthen and enhance the effectiveness of the authorities through providing funding to support better coordination and enforcement of the laws.

Coordination and cooperation among government agencies is fostered through Joint Resolutions and Memoranda of Understanding between agencies with related administrative and/or regulatory responsibilities. The program also creates the Interagency Management Committee (IMC) which brings Governor and Cabinet agencies into a forum which can effectively and efficiently resolve issues of mutual concern and make recommendations for developing consistent state policy.

The Program highlights several "issues of special focus" to be addressed prior to and subsequent to federal program approval. The first issue is hazards management. Pursuant to a Joint Resolution issued December 16, 1980 by Governor Graham and the Florida Cabinet, State agencies have embarked on policy alignment for more effective mitigation of damage from coastal storms. Efforts presently underway focus on hurricane damage mitigation as the first phase of this comprehensive program effort (see Part II, Section Two.D.).

On July 29, 1980, five primary agencies and the Governor's Office of Planning and Budgeting signed a Memorandum of Agreement (MOU) to "cooperate in the development of management alternatives designed to prevent or reduce coastal hazards posed by hurricanes". Based on this agreement, state agencies are reviewing their respective regulatory and funding programs in order to identify areas of inconsistent state policy on hazards. This effort was strengthened when Governor Graham and the Florida Cabinet, on December 16, 1980, issued the Joint Resolution related to hazards. The MOU and Joint Resolution are aimed at minimizing damage from coastal storms through preventive measures and will result in recommendations for regulatory changes and/or development of criteria to be considered in public investment for infrastructure and public works. Implementation of these recommendations will have two major effects: (1) The adoption of revised regulations pursuant to the respective statutes to require consideration of hazards in the location and permitting of development. Although no new or additional tests are anticipated for developers, project designs will have to consider hazards criteria. (2) The development and implementation of hazards criteria in public infrastructure investment would discourage the expenditure of State and/or Federal funding for sewers, roads, bridges, wastewater treatment plants, etc. in high hazard areas.

The impact of both of these initiatives would be to mitigate human and property loss from hurricanes and coastal storms due to unsound or inappropriate development in unsafe locations in the Florida coastal area. This should save lives as well as save taxpayers from considerable investment in financing unwise development in areas threatened with costly and repeated damage from coastal storms and natural hazards.

Through Federal approval, state efforts in hazards mitigation and resource protection would be enhanced and accelerated by providing funding to state agencies to implement new policies and to local and regional governments to develop regional evacuation plans. In addition, Federal approval will also ensure that federal agency actions will be consistent, to the maximum extent practicable, with the Florida Coastal Management Program.

C. AREAS OF CONTROVERSY

There have been several areas of controversy during the development of the FCMP. Among them has been the delineation of the coastal

boundary. A series of detailed program atlases were developed delineating a more narrow boundary than that presently proposed. However, a more narrow boundary was difficult to justify as most places in Florida are within 70 miles of either the Atlantic Ocean or the Gulf of Mexico and are influenced by these bodies of water. Much of the state geography consists of low land elevations, high water tables and extensive coastline with many rivers emptying into coastal waters. The resulting interrelationship between the land and coastal water makes it difficult, if not impossible, to establish a scientifically justifiable boundary which would exclude inland areas as having no significant effect on coastal waters. As the laws and regulations of the FCMP are applied statewide, the alignment of the coastal zone boundary with existing statutory jurisdiction capitalizes on years of established regulatory and administrative experience while meeting the requirements of the Florida Coastal Management Act of 1978 and lessening public confusion.

The second area of controversy concerns whether the scope of the existing Florida authorities is sufficiently comprehensive to manage the resources and uses required under Sections 302, 303, and 307(f) of the CZMA and whether the development review and management criteria for state agency decisions is specific enough to allow predictability in government decisionmaking. The Florida Coastal Management Act of 1978 limits the authority of the FCMP to that of existing rules and statutes. Florida's environmental legislation has been implemented in the state for almost ten years. However, there is considerable concern whether the laws, particularly Chapter 403, F.S., (i.e., water quality and dredge and fill) meet the requirements of the CZMA for the management of coastal uses and resources.

The FCMP outlines the implementation of State statutory and regulatory authority for each of the laws on which the program is based. There are other laws which may be relevant to coastal management which have not been included in the program. However, it appears that the core laws and associated regulations are sufficient, and the State proposes to exclude the other existing laws from the context of the FCMP while continuing their prescribed implementation.

The third area of controversy has been designation of a lead coastal agency as required by Section 306(c)(5) of the Federal Coastal Zone Management Act of 1972, as amended (CZMA). The FCMP has been located in several agencies, beginning with the Florida Coastal Coordinating Council in 1970. After the dissolution of the Council in 1975, the Program went to the Department of Natural Resources, the resource management agency of the State. From there, the Program was transferred to the Department of Environmental Regulation (DER), the environmental permitting agency, by Legislative action in 1977. Within the State, there is continued discussion about the location of the lead agency for the Program. However, the current location within DER meets program approval requirements and future redesignation by the Governor is provided for under Section 306(c)(5) of the CZMA and applicable regulation.

D. FEDERAL ALTERNATIVES

Alternative 1: The Assistant Administrator could delay or deny approval if the scope of the program authorities is not sufficient to meet the federal requirements.

Section 302 and 303 of the CZMA require management programs to provide for the management of those uses which have a direct and significant impact on coastal waters and to assure that there is appropriate protection of significant resources, such as wetlands, beaches and dunes, and barrier islands. Furthermore, the management program must provide for the management of coastal development, and the simplification of governmental processes.

The FCMP is based on existing state laws which provide broad and adequate authority to manage coastal resources and development. The proposed regulations promulgated under these laws provide the necessary specificity and predictability for approval. The FCMP also provides the necessary framework for the exercise of various management techniques (i.e., planning, regulating, funding, and coordinating) through various joint resolutions, MOU's, budget priorities and regulations.

Should the scope of the existing laws and existing or proposed regulations be insufficient to meet Federal requirements based on concerns raised as a result of the review of this document, the Assistant Administrator could deny or delay approval. In turn, the State could withdraw its application for federal approval or increase the scope of the program by adopting new laws, regulations or other legal instruments.

Alternative 2: The Administrator could delay or deny approval if the State is not adequately organized to implement the program.

Under Subsection 306(c)(5) and (6) and 15 CFR 923.48, the State must be organized to implement and administer the management program. Furthermore, there must be a state agency which is designated to receive and administer grants as well as monitor and evaluate the management of the State's coastal resources.

The FCMP describes the organizational structure that Florida will use to implement and administer the management program. A number of state agencies will be implementing their regulatory, propriatory, and financial authority over activities which are proposed in or which affect the State's coastal zone. The IMC and a number of joint resolutions and MOUs will provide the basis for coordinating state actions. Furthermore, the Governor has designated DER as the Section 306 agency. DER has the fiscal and legal capability to accept and administer grant funds, and through the IMC, has the capability to monitor and evaluate the management of coastal resources by various agencies.

Should the organizational structure prove to be inadequate as the result of the review of this document, the Assistant Administrator could deny or delay approval. In turn, the State could withdraw its application for federal approval or address the deficiencies which are identified.

Alternative 3: The Assistant Administrator could delay or deny program approval if policies, rules and regulations, MOU's and Joint Resolutions, described in the FCMP are not enforceable.

Under Section 302 and 303 and regulations promulgated thereunder, it is required that sufficient policies be of an enforceable nature to ensure the implementation of, and adherence to, the management program. Although the statutory policies and rules and regulations which exist in Florida are clearly enforceable, the policies included in proposed rules included in the DEIS were not enforceable at the time of issuance of that document. Similarly, an opinion by the Attorney General of the State of Florida, necessary to determine the enforceability of the MOUs and Joint Resolutions described in the DEIS had not been rendered.

If, for any reason, the proposed regulations have not been promulgated, or the MOUs and Joint Resolutions are found to be unenforceable, OCZM would have to re-examine the approvability of the FCMP. If OCZM found that any one or more must be enforceable to ensure the implementation of an adherence to the FCMP, the Assistant Administrator could delay or deny approval. In response, the State could withdraw its application for federal approval or meet the deficiencies identified through a different legal construct.

E. MAJOR ISSUES AND THEIR RESOLUTION

Three issues remained unresolved at the time of issuance of the DEIS. They were:

1. Revision and final adoption of rules: Final adoption of all rules identified in the DEIS has occurred with the exception of DER's CZM funding and wastewater treatment facility rules. These rules are scheduled for final adoption on August 26, 1981. If they are not adopted or there are substantial changes to their content not covered by this document, the Program will not be approved until the deficiences are rectified. Final rules will be sent to recipients of this FEIS.

2. Inclusion of a letter of designation from the Governor: When a state coastal management program is submitted to the Assistant Administrator for Coastal Zone Management for program approval, it must be accompanied by documentation in the form of a transmittal letter signed by the Governor to the effect that he: (a) has reviewed and approved, as state policy, the management program and any changes thereto; (b) has designated a single state agency to receive and administer implementation grants under CZMA Section 306; (c) attests to the fact that the state has the authorities

necessary to implement the management program; and (d) attests to the fact that the state is organized to implement the management program. Governor Bob Graham has signed such a letter which is included in this FEIS at the beginning of Section II.

3. Signing of Memoranda of Understanding and Program Enforceability: At the time of issuance of the DEIS, the memorandum of understanding between DER, DNR, and DVCA concerning agency coordination regarding the state coastal management program had not been signed and the broader issue of the enforceability of this and other MOUs and Joint Resolutions had not been resolved. The MOU in question has been signed and has been included in the Addendum of this FEIS. In addition, the Attorney General of Florida has rendered an opinion concerning the enforceability of the FCMP MOU's and Joint Resolutions. (The text of this opinion is contained in the Addendum of this document). As a result of this opinion, the member agencies of the IMC have signed an additional MOU (the "IMC MOU") to ensure the enforceability of the provisions of the Joint Resolution on the IMC. The general issue of the enforceability of the programs Joint Resolutions and MOU's, including the Attorney General's opinion, are discussed in detail in generic response number 1 found in Part VI of this document, which contains a summary of comments received and responses to the FCMP/DEIS.

Given the nature of the proposed action, which is approval of the Florida Coastal Management Program, all federal alternatives involved a decision to delay or deny approval. To delay or deny approval could be based on failure by the FCMP to meet any one of the requirements of the Federal Coastal Zone Management Act (CZMA). In approving a CZM program, affirmative findings must be made by the Assistant Administrator for Coastal Zone Management on more than twenty requirements.

As noted earlier, the development of the FCMP has been controversial, and has required the proposal of solutions to numerous complex issues. Many of the solutions could have resulted in a deficient program with respect to the requirements of the CZMA. The Assistant Administrator for Coastal Zone Management has made a preliminary determination that these deficiencies have been remedied, or will be, prior to program approval, and that Florida can meet the requirements for program approval under Section 306 of the CZMA. However, in order to elicit public and agency comment and assure that the Assistant Administrator's initial determination is correct, Part III of this document further discusses the areas in which there may be possible deficiencies, and considers the alternatives of delaying or denying approval summarized above. These issues are: does the FCMP provide a broad enough scope of authorities; is the State organized to implement the program; and are the policies described in the FCMP enforceable?

PART I

PURPOSE AND NEED

PART I

PURPOSE AND NEED

THE FEDERAL COASTAL ZONE MANAGEMENT ACT

In response to intense pressure on and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act of 1972 (CZMA) (P.L. 92-583). The Act authorizes a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's Assistant Administrator for Coastal Zone Management, who heads the Office of Coastal Zone Management (OCZM).

The CZMA evolved from a series of studies on the nation's coastal zone and its resources. Beginning with the 12-volume report, "Oceanography 1960-1970", published in 1959 by the committee on Oceanography of the National Academy of Sciences (NASCO) and culminating with the report of the Commission on Marine Science, Engineering and Resources in 1969 (popularly referred to as the "Stratton Commission Report"), which proposed a Coastal Management Act, the need to protect and wisely use the Nation's coastal resources was stressed.

The CZMA was substantively amended on July 26, 1976 (P.L. 94-370) and on October 1, 1980 (P.L. 96-464). The Act and its amendments affirm a national interest in the effective protection and careful development of the coastal zone, by providing assistance and encouragement to coastal states (and U.S. Territories) to develop and implement management programs for their coastal areas. Financial assistance grants under Sections 305 for program development and 306 for program implementation were authorized by the CZMA to provide coastal states and territories with the means for achieving these objectives.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction to participating political jurisdictions for developing their coastal zone management programs. The program development and approval provisions are contained in 15 CFR Part 923, revised and published March 28, 1979 in the Federal Register. In summary, the requirements for program approval are that a state or territory develop a management program that:

1. Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the State or Territorial government;

2. Re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

3. Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas to be subject to management should be based on resource capability and suitability analyses, socio-economic considerations and public preferences;

4. Identifies the inland and seaward areas subject to the management program;

5. Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

6. Includes sufficient legal authorities and organizational arrangements to implement the program and to ensure conformance to it.

In arriving at these substantive aspects of the management program, States or territories are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, state, interstate and Federal agencies.

Section 303 of the CZMA provides guidance or specific national objectives that warrant full consideration during the implementation of approved State coastal management programs.

Section 305 of the CZMA authorized a maximum of four annual grants to develop a coastal management program. To date, the State of Florida has received approximately $3.5 million in program development funds. After developing a management program, the State or territory is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received approval by the time Section 305 program development grants have expired, a State or territory may continue development of a Federally approvable coastal management program using entirely State funding. However, new Federal funding assistance for Program development is no longer authorized by the 1980 CZMA amendments.

Section 306 requires States to devote increasing portions (up to 30 percent) of their grants funds to activities leading to significant improvements in achieving national coastal management objectives. Section 306 (i) also authorizes the award of grants for preservation of important natural areas, public access and urban development. Section 306(A) encourages states to inventory coastal resources of national significance and develop standards to protect them.

Section 307 of the Act stipulates that Federal agency activities shall be consistent, to the maximum extent practicable, with approved management programs. Section 307 further provides for mediation by the Secretary of Commerce when a serious disagreement arises between a Federal agency and a coastal State or territory with respect to a Federal consistency issue.

Section 308 of the CZMA created the Coastal Energy Impact Program (CEIP) which provides for grants and loans to coastal States or territories to enable them to plan for and respond to onshore impacts resulting from coastal energy activities including grants to mitigate the coastal impacts of coal transportation and alternative ocean energy activities. To be eligible for assistance under Section 308, coastal States or territories must be receiving Section 305 or 306 grants, or, in the Secretary's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the CZMA.

Section 312 directs OCZM to evaluate the performance of State Coastal Management Programs on a continuing basis.

Section 315 authorizes grants to States to acquire lands for access to beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value, and for the acquisition of islands for preservation in addition to the estuarine sanctuary program to preserve a representative series of undisturbed estuarine areas for long-term sciencific and educational purposes.

HOW THE FLORIDA COASTAL MANAGEMENT PROGRAM MEETS THE REQUIREMENTS OF THE COASTAL ZONE MANAGEMENT ACT

Section of the Act		Sections of Federal Approval Regulations (15 CFR)	Location in FCMP (Page)
306(a) which includes the requirements of Section 305:			
305(a)(1):	Boundaries	923.31, 923.32, 923.33, 923.34	II-10
305(b)(2):	Uses subject to management	923.11	II-12
305(b)(3):	Areas of particular concern	923.21, 923.23	II-144
305(b)(4):	Means of Control	923.41	II-12
305(b)(5):	Guidelines on priorities of uses	923.21	II-144
305(b)(6):	Organizational structure	923.46	II-255
305(b)(7):	Shorefront planning process	923.24	II-348
305(b)(8):	Energy facility planning process	923.13	II-325
305(b)(9):	Erosion planning process	923.25	II-351
306(c) which includes:			
306(c)(1):	Notice; full participation; consistent with Section 303	923.58, 923.51	II-358
306(c)(2)(A):	Plan coordination	923.56	II-358
306(c)(2)(B):	Continuing consultation mechanisms	923.57	II-358
306(c)(3):	Public Hearings	923.58	-----
306(c)(4):	Gubernatorial review and approval	923.48	II
306(c)(5):	Designation of recipient agency	923.47	-----
306(c)(6):	Organization	923.46	II-255
306(c)(7):	Authorities	923.41	II-12
306(c)(8):	Adequate consideration of national interest	923.52	II-284
306(c)(9):	Areas for preservation/ restoration	923.22	II-169
306(d) which includes:			
306(d)(1):	Administer regulations, control development, resolve conflicts	923.41	II-12 II-255
306(d)(2):	Powers of acquisition, if necessary	923.41	II-12 II-144

Section of the Act	Sections of Federal Approval Regulations (15 CFR)	Location in FCMP (Page)
306(e) which includes:		
306(e)(1): Technique of control	923.42, 923.44	II-12 II-155
306(e)(2): Uses of regional benefit	923.12	II-281
307 which includes:		
307(b): Adequate consideration of Federal agency views	923.51	II-358
307(c): Federal consistency; activities, licenses, and permits	930	II-310
307(d): Federal consistency; assistance to state and local governments	930	II-310
307(f): Incorporation of air and water quality requirements	932.45	II-12

PART II

DESCRIPTION OF THE PROPOSED ACTION - THE FLORIDA COASTAL MANAGEMENT PROGRAM

STATE OF FLORIDA

Office of the Governor

THE CAPITOL

TALLAHASSEE 32304

BOB GRAHAM
GOVERNOR

August 3, 1981

Mr. William Matuszeski
Acting Assistant Administrator
Office of Coastal Zone Management
National Oceanic and Atmospheric
Administration
United States Department of Commerce
3300 Whitehaven Street, Northwest
Washington, D.C. 20235

Dear Mr. Matuszeski:

I am pleased to submit for your review and approval the final Environmental Impact Statement of the Florida Coastal Management Program under the joint auspices of your office and the State of Florida.

This document represents a program which meets and exceeds the requirements for State coastal programs under the Coastal Zone Management Act of 1972, as amended, and under regulations promulgated by OCZM under that Act. The Management Program is an enforceable instrument of State policy, which I will carry out.

Therefore, I request that you grant approval to the Florida Coastal Management Program under the terms of Section 306 of the Federal Coastal Zone Management Act. Pursuant to Section 380.22, Florida Statutes, the DER is the single designated agency to receive and administer the implementation grants.

We look forward to continued cooperation with OCZM during the final review process and then continuation of this relationship during the administration of the program.

Please contact Ms. Victoria J. Tschinkel, Secretary, Department of Environmental Regulation, or Mr. David R. Worley, Program Administrator, Office of Coastal Management, Department of Environmental Regulation for any assistance.

With kind regards,

Sincerely,

Bob Graham

Governor

BG/rdd

Enclosure

SECTION ONE

INTRODUCTION

A. HISTORICAL BACKGROUND AND PRESENT DIRECTION

Florida's coastal region is its most important asset. The coast is important economically and biologically, as well as aesthetically and is the choice of residence for more than 75% of the state's population. The principal transportation terminals for people and goods, most of the commercial centers, and many of the major industrial centers and military bases are in the coastal region. The coast is visited by almost all of the more than 32-million tourists who visit the state each year. It is a recreation center for both citizens and visitors. By the year 2000, if trends continue, the Florida coastal region will contain 10-million permanent residents and will serve a yearly influx of several times that many visitors.

Florida, especially its coastal counties, has experienced extremely rapid growth during the 1960's and 1970's. This growth has placed tremendous pressure on the coastline, and has threatened its attractiveness as a natural area. During the past decade, Florida's leaders began to recognize that many of the state's coastal areas were in serious trouble. Man's uncontrolled and unplanned activities were degrading coastal resources at an unprecedented rate. Flood control and land development caused water shortages and degraded water quality in the Everglades basin and in much of southeast Florida. Estuarine resources, dependent upon fresh water runoff in the proper amount, quality, and timing, were threatened. Massive fish kills occurred in Escambia Bay and other estuarine areas. Much of Boca Ciega Bay was sacrificed for houses. Many major shellfish beds were declared unsafe; some were destroyed. Popular swimming areas became unuseable because of pollution. Development caused severe erosion of once beautiful beaches to the extent, in many cases, of destroying some of the structures built on those beaches. The list was long, and was getting longer.

In 1967, the State of Florida embarked on more than a decade of special legislative attention to resource management. Attention focused first on protecting the natural resources from any continuation of the previous abuse and shortsightedness. Later attention shifted to the practical problems of implementing natural resource policies, particularly those of duplication, coordination, and delays in licensing decisions.

Legislation dealing specifically with coastal management was first passed in 1970, when the Legislature created the Coastal Coordinating Council. Council members and staff were involved in coastal planning from September, 1970 through June 30, 1975, and considerable progress was made toward the development of a coordinated coastal resource management program. The 1975 Legislature abolished the

Coastal Coordinating Council and transferred its duties and functions to the Department of Natural Resources (DNR). Legislation in 1977 transferred the program to the Department of Environmental Regulation (DER).

In 1978, the Legislature renewed its commitment to coastal management with passage of the Florida Coastal Management Act of 1978 (FCMA). While in some states, a coastal zone management program has been the impetus for establishing a new environmental regulation and planning program, the FCMA implied a legislative consensus that Florida has adequate legislation to manage the coastal zone effectively. The Act expressly neither amends existing statutes nor provides additional regulatory authority. The Legislature directed that the program be structured around existing statutes and rules with emphasis on improved coordination of state management efforts. The statute does not restrict the development of new rules by agencies under other statutory authority.

Governor Graham, in giving his committment to the Florida Coastal Management Program, observed that "The development of a coastal management program in Florida which will meet the requirements for approval under the Federal Coastal Zone Management Act is of the highest priority to me." (October, 1979). The Governor reiterated his support by designating 1980 as "The Year Of The Coast" in Florida. In order to implement the coastal management effort through existing laws, regulations, and programs, Governor Graham formed the Interagency Management Committee in October, 1979 (see Part II, Section Two). The Committee consists of the managers of several state agencies, and is directed to identify and, where possible, resolve weaknesses, conflicts, or inconsistencies in the laws and programs which are components of the coastal management program.

Consequently, the emphasis in Florida will be on refinement, not expansion, of the existing management scheme; to improve the quality of resource decisions; to improve the administration of the law; to reduce unnecessary procedures; to identify gaps in laws or regulations which inhibit prudent decision-making; to obtain increased control for the citizens of Florida over impacts on their resources through federal consistency; to provide more guidance and predictability to the private economic sector; to enhance existing state capability to manage its coastal resources through federal coastal management funding; and to better manage coastal energy impacts through the expenditure of federal coastal energy impact funds.

Through this document, the State of Florida seeks to demonstrate compliance with federal program approval requirements in two ways: it attempts to describe and analyze the existing state system to demonstrate that Florida has programs sufficient to meet federal requirements; and it attempts to demonstrate that Florida has a grasp of program areas in which improvements are needed by setting out issues of special focus and suggesting possible approaches to resolve them.

With regard to the second function, this document sets three general categories of issues: Resource protection and restoration; coastal development; and coastal hazards and protection. The problems associated with each are discussed in detail along with recommendations in the "Issues of Special Focus". In general, these issues focus on the conflicts between public goals related to the protection of coastal resources and the associated uses and activities that impact on those resources. The following overview introduces some of the broad problems and issues facing the State in the management of its coastal resources.

B. FLORIDA'S COASTAL REGIONS: BENEFITS; PROBLEMS; ISSUES

BENEFITS OF THE COASTAL REGION

In its natural state, the coastal region provides a variety of social, economic, and environmental benefits. Many are not readily apparent; they are produced by nature and accrue to the public as a whole.

Florida's wetlands serve many purposes, including their natural function as a sponge and reservoir to store water, to recharge aquifers, and to provide a hydrostatic head which protects fresh water supplies from salt water intrusion. The storage and slow, gradual release of water also helps regulate the salinity balance in Florida's productive coastal estuarine ecosystems.

Wetlands also are natural filters. They maintain water quality and reduce the adverse effects of runoff from upland sources. Wetlands efficiently absorb and filter sediments, particulates, nutrients, and organics. Moreover, wetland systems, including mangroves, marshes, and submerged grass beds, control erosion by trapping and binding sediments and preventing highly turbid water conditions.

Coastal wetlands and adjacent estuarine areas provide an extremely productive habitat, nursery ground, and food supply for a vast array of fish and wildlife. As wetlands filter nutrients, decomposition converts the material to a form usable by marine and aquatic life. Coastal waters and wetlands provide a sheltered corridor for migratory fish and wildlife. Coastal estuaries and rivers play a key role in sustaining commercial and sport fisheries. Fisheries are an important economic product of the coast, and some 80% of the value of Florida's Gulf and Atlantic fisheries is estuarine dependent. Moreover, the coastal regions, particularly the wetlands, estuaries, and nearshore waters, contain the primary remaining habitats for many endangered or threatened species found in Florida.

Coastal wetlands are buffers against storm surge and flood waters. They dissipate wave energy and store flood waters. Undeveloped barrier islands also function as natural buffers, protecting mainland areas from the full force of storms. In this sense, coastal features are natural defense mechanisms which soften the hazards of

man's use of coastal areas. Coastal bays, estuaries, and rivers provide harbors of refuge from hurricanes for boats as well as for wildlife.

The recreational values of Florida's coastal regions are another significant benefit of both economic and social importance. Tourism is the leading industry in Florida, and coastal areas are the state's major tourist attraction. In a recent state survey, beaches received the single highest response from tourists asked which recreational resources they looked forward to visiting in Florida. Florida residents spend much of their leisure time in coastal regions swimming, fishing, hunting, boating, photographing and camping.

The coastal region also has aesthetic and cultural appeal to both residents and tourists. It is rich with aesthetically pleasing scenery, fish and wildlife, and historic and archaeological sites. To the scientific, engineering, technical and educational communities, coastal areas offer a challenge, and an opportunity to study and solve a wide variety of problems. The long-term impacts of man's activities on physical, chemical, and biological interrelationships along the coast are unknown or poorly understood. Florida needs to protect and utilize coastal resources in a manner which will consider public needs and be representative of diverse social values.

The climate of the Florida peninsula, which has attracted millions of residents and tourists, and also is important to agriculture, is a result of many factors including its relationship to coastal waters, coastal vegetation, and Florida topography. Coastal waters, including the wetlands and large intertidal expanses, are largely responsible for the moderate climate, keeping winters warmer and summers cooler than in inland areas.

The coastal region is equally important because of its importance to commerce and economic development. In addition to being sites for ports and harbors, coastal waters are routes for the water-borne transportation of goods such as oil and agricultural products. In Florida particularly, coastal areas provide primary sites for large electrical generating facilities which, because of limited inland water supplies, need access to coastal waters for cooling. Coastal areas also may have minerals such as sand, shell, phosphate, and oil and gas.

If not under stress, the natural systems which provide these benefits are self-regulating and can work for society indefinitely. The benefits are free and use natural sources of energy. This is especially relevant considering the current and anticipated rise in energy prices. All of the benefits are available to present and future generations if society is willing to manage the development of these areas to avoid stressing natural systems.

PROBLEMS AND ISSUES

The rapid, often unplanned, growth that has occurred in Florida's coastal areas has led to a number of specific problems and issues

which give impetus to the development of a coastal management program. Many of the problems and issues relate to water quality and to land- and water-use conflicts. Related impacts on these problems and issues is the consideration of short-term versus long-term economic productivity. The resolution of these problems and issues depends on the development of a soundly based system of resource management and a coordinated governmental approach.

Problems along the coast may originate in one environmental system, but because of the unique topography, climate, geology, and hydrology of Florida, may affect other systems. Many are conveyed by the water regime; changes in water quality, quantity, surface area, or flow patterns probably have the greatest adverse impact on other coastal resources. Not only do some environmental problems cause other environmental problems, they also create economic burdens and affect the social attitudes of Florida's citizens and tourists.

RESOURCE PROBLEMS AND ISSUES

Increased economic activity has created pressure on the resources of Florida's coastal areas. Shorefront areas are highly desirable for development. As a result, residential, commercial, industrial, and public uses often are in direct competition for the limited shorefront space. Urban development, and activities associated with the use of coastal lands, are critical problems. Related coastal use problems include: the degradation of water quality; the shortage of fresh water supply; the loss of important, ecologically valuable natural areas; beach erosion; loss of aesthetic cultural resources, development in flood prone areas; constraints on public beach access, and deteriorating air quality problems.

Extensive development may cause marine and estuarine water quality to deteriorate. Florida's environmental legislation has slowed and, in some areas in recent years, has reversed the deterioration of water quality. Many areas, however, still are polluted or show signs of deterioration. Uses and activities which affect the quality of coastal waters include sediment runoff, dredging and filling, discharge of industrial and sewage effluents (including septic tank seepage), and disposal of solid waste materials.

Groundwater systems or other fresh water supplies are crucial to use of the coast. Without an adequate supply of drinking water, people cannot live in coastal areas. The demand for water by agriculture and industry, especially where there is competition for potable water, creates major conflicts. Shortages of potable water also are caused by saltwater intrusion from over-used aquifers and from stream and wetland channelization. Economic losses occur when potable water becomes scarce. In South Florida, where local aquifers are used heavily, groundwater quality and quantity cause many development problems.

The most attractive coastal areas for economic activities frequently are ecologically fragile and extremely vulnerable to development of any kind. Ecologically valuable mangroves, coastal marshes

and beaches have been destroyed to accommodate development of residential, industrial, resort, or marine projects. The natural function of vital estuarine areas often has been impaired by development. These losses are irrevocable in most cases, and contribute to declining marine fisheries as well as other coastal resource related problems.

Beach erosion is closely related to the loss of natural areas. Improper development too close to the water has caused erosion in many prime beach areas, destroying recreational and aesthetic value, as well as causing loss of life and property. Destruction of primary dunes has eliminated the ability of beaches to buffer the effects of storms.

One of the most important assets of Florida's coastal region is its exceptional aesthetic attractiveness. The beauty of shorelines has attracted both residents and visitors. Haphazard development, and the location and type of development along the shorefront, are major concerns. The aesthetic features which draw people to Florida are disappearing rapidly in many areas of the coast.

In many other areas, extensive urban development has occurred in the flood zone, and a disaster of major proportions could occur in the event of a sizable hurricane. Barrier islands and low-lying finger-fill canal developments are particularly susceptible. Between 1900 and 1975, hurricanes inflicted approximately $1.5 billion of damage on Florida's coastal areas. The damage from one major hurricane occurring today in an extensively developed South Florida area could approach the total figure for the entire 1900-1975 period.

Intensive commercial and residential development in beach areas has restricted public use of the beaches. Property owners are not required to provide access to the publicly-owned wet sand beach. Even where public access is available, the presence of residential or resort development often presents a psychological barrier to would-be beach users. Many existing public beaches are in heavy demand and use, causing beach litter, erosion, and other problems.

Development in coastal areas also affects air quality. With people come automobiles, the greatest single air pollution source in the coastal area. Other sources, industrial and domestic, are contributing pollutants to the coastal airshed. Coastal air pollution has not been a widespread problem up to this point, but as growth continues, air pollution will need increased attention.

ECONOMIC DEVELOPMENT PROBLEMS AND ISSUES

The resource problems discussed above are related to the issue of short-term versus long-term benefits. Experience shows that the allocation of coastal resources often results in short-term economic benefits being favored over long-term resource productivity. In the last several years the state has recognized that major development projects often have adverse effects on coastal resources and has tried

to provide mechanisms to minimize these effects. There is less ability to consider the potential cumulative adverse effects of many, small projects.

Gradual piecemeal coastal development generally is not thought of as causing an economic loss. However, small, incremental impacts pose a serious problem in terms of economic productivity. For instance, storm water runoff from one small housing project may have little, if any, discernible impact on coastal waters. But, runoff from several projects may, in time, result in the loss of these waters as recreational or shellfish resources. The aggregate effects of minor projects must be considered.

Florida's coastal resources and amenities represent important economic assets. The attractive setting and climate draws permanent residents and tourists in ever-increasing numbers. From 1970 to 1980, the state's population grew by 43.4 percent, reaching 9.7 million. Population increases in coastal counties accounted for 72.4 percent of that growth. Over the same time span, the number of tourists visiting Florida rose from 23.2 million per year to 35.9 million per year, a 54.7 percent increase.

While this influx of people has been a major factor underlying Florida's rapid growth in jobs and income, it also has resulted in economic problems for Florida coastal areas. This has particularly been the case for the southern counties on the Gulf and Atlantic coasts. These counties typically have featured rapid population growth--often derived largely from immigration of retirees--and sizable tourism industries.

The high rate of population growth can strain the ability of local governments to provide needed public services. Such growth can encourage the haphazard conversion of prime agricultural and recreational land to residential development uses. A residential construction industry, vulnerable to recessionary forces, can be fueled by this population growth. Finally, depending on the financial state of the older persons moving to an area, an influx of retirees can hold down per capita income. While most Florida coastal counties having large concentrations of retirees are relatively affluent, these same counties have some residents who are both elderly and poor. Furthermore, at least two coastal counties evidence an association between a large retiree population and low per capita income. Such an association usually is attributed to the fact that many retirees are on fixed incomes derived from Social Security or other pension plans.

While the effects of tourism on the economy of an area generally are quite positive, the jobs provided are mainly in the trade and services industries, and tend to be relatively low-paying. In addition, tourist activity usually is rather seasonal, resulting in difficulty for those members of the labor force needing year-round employment.

The economic problems of a number of Florida's rural, Gulf Coast counties are somewhat different. For the most part, these counties have lacked the economic impetus provided by rapid population growth and a large tourism industry. While this has meant avoiding many of the problems of the more developed coastal areas, these counties generally suffer from a lack of economic opportunities for their residents. The limited number of agricultural, trade and service jobs which are available often are comparatively low-paying. Per capita income in these counties tends to be among the lowest in the State. In past years, many younger residents have migrated to other areas seeking better employment. Often a single major manufacturing industry dominates the area, and dependence on that one industry can make the area subject to severe problems during various cyclic downturns. Also, there is a self-reinforcing character to the economic problems of rural coastal counties. As relatively underdeveloped areas, they often lack the skilled labor force and the industrial infrastructure (industrial sites with road or rail access and utilities) which would enable them to attract more employers.

Almost all economic problems in coastal areas are related to the absence of a diversified economic structure. State and local governments must encourage development of clean, non-polluting industry, and guide it to areas suitable for development which are economically depressed and most lacking in economic balance. The Florida Coastal Management Program will provide assistance with guiding development to areas where it is most suitable and most needed. An important consideration is economic development for water dependent uses such as ports, power plants, and marinas.

GOVERNMENTAL PROBLEMS AND ISSUES

As is evident from the previous discussions, the problems related to management of Florida's coastal resources are multi-faceted. The basic administrative problem facing coastal management in Florida is in the multiplicity of state, regional, and local management bodies. Improved inter- and intra-governmental processes for resolution of conflicts between public and private goals and interests is necessary.

At least twenty-six federal, state, regional, and local agencies may be involved in coastal management with roles ranging from direct land- and water-use regulation to limited advisory activities. There often is no clear-cut delineation of functions among the various federal, state, 35 county and more than 160 municipal, and regional government agencies involved with management of state coastal resources. Integrating these authorities into a framework which recognizes and involves the various interests and which clearly demonstrates that major coastal impacts are systematically managed is perhaps the greatest challenge facing the state program.

An approvable coastal management program must show that the state has the legal and administrative ability to carry out its policies and objectives (Part II, Section II). There must be a direct relationship

between the problems and issues, the methods of solving them, and the legal and administrative basis of the program. A central theme through the program development effort is recognition of the need to simplify administrative processes, avoid unnecessary duplication, and to build upon existing mechanisms. Thus, the major mission of the FCMP continues to be the balancing of economic and environmental considerations; increasing the efficiency and predictability of governmental actions, and coordinating planning and management efforts.

Specifically, the goals of the Florida Coastal Management Program are as follows:

1. To provide a coordinated intergovernmental approach for the management of coastal areas.

2. To implement a balanced management program for the protection and development of coastal resources by improving the administration of state programs affecting key coastal uses and areas.

3. To improve local government capabilities to address key coastal management issues.

By achieving these goals, the Florida Coastal Management Program will benefit:

- The investor and developer, by enabling each to make commitments with greater confidence;

- Local governments, by giving them the opportunity to play a more effective role in the management, protection, and use of coastal resources;

- State agencies, by improving their ability to make more effective resource management decisions, and to address the cumulative effects of individual activities; and

- The public, by increasing its role and its opportunity to participate in resource management decision-making.

SECTION TWO

SCOPE OF THE FLORIDA COASTAL MANAGEMENT PROGRAM

A. BOUNDARY

Section 305(b)(1) of the federal Coastal Zone Management Act of 1972 requires that a state management program identify the boundary of the coastal zone which is subject to the management program. There are four elements to a state's coastal boundary: the inland boundary, excluded areas, the seaward boundary, and interstate boundaries. Based upon the geography of Florida and the legal basis for the state program, the entire state is proposed to be included within the coastal zone, (except for 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). Also excluded are lands of the Seminole Indian Tribe.

Geographically, Florida has low land elevation, a generally high water table, and an extensive coastline with many rivers emptying into coastal waters. Few places in Florida are more than seventy miles from either the Atlantic Ocean or the Gulf of Mexico. The result is an interrelationship between the land and coastal waters which makes it difficult, if not impossible, to establish a scientifically supportable boundary which would exclude inland areas having no significant effect on coastal waters.

The Florida Legislature has directed that the Coastal Management Program be based upon existing laws and regulations; s. 380.21(2), F.S. No new regulatory scheme is being proposed or created by the state coastal management program. The laws and regulations upon which the state's program is based, are laws of statewide applicability. Consequently, the establishment of a coastal boundary line including less than the entire state would give the erroneous appearance that a new regulatory scheme had been created for a portion of the state and would lead to needless public confusion. Within this statewide coastal zone, however, there exist two tiers. Local governments eligible to receive coastal management funds are limited to those Gulf and Atlantic coastal cities and counties which include or are contiguous to State waters where marine species of vegetation listed in 17-4.02(17) F.A.C. constitute the dominant plant community. (See Table 15 for list of eligible cities and counties.) The same inland boundary applies to federal consistency review of federally licenced or permitted activities listed in 380.23(3)(c) F.S. The Federal licenses and permits listed are presumed to be reviewable by the State for consistency with the FCMP when they occur in or seaward of the jurisdiction of those coastal cities and counties. (See Section 2.H., Federal Consistency.) The following is a description of the seaward and interstate boundaries.

SEAWARD BOUNDARIES

GULF

The United States Supreme Court has recognized that Florida has a seaward boundary of three marine leagues, or approximately 10.35 statute miles in the Gulf (U.S. vs. States of Louisiana, Texas, Mississippi, Alabama, and Florida, 364 U.S. 502, 81 S. Ct. 258, 5 L. Ed. 2nd. 247, 1960). However, the Federal Coastal Zone Management Act defines the seaward extent of the coastal zone as the outer limit of the U.S. territorial sea, currently three nautical miles. Thus, for the purposes of the Florida Coastal Management Program only, the seaward limit of three nautical miles represents the area within which the state's management program may be authorized and financed through CZMA Section 306 funds. This seaward boundary does not in any way alter the state's claim to ownership of all land and waters to a distance of 10.35 statute miles.

ATLANTIC

The seaward boundary in the Atlantic is the same as the U.S. territorial sea definition, i.e., three nautical miles. These limits are irrespective of any other claims Florida may have by virtue of the Submerged Lands Act or any changes that may occur as a result of the operation of the Fisheries Conservation and Management Act of 1976.

INTERSTATE BOUNDARIES

The western lateral boundary of Florida's Coastal Management Program is defined by the adjudicated boundary between Florida and Alabama. The coastal zone boundary in Alabama is the 10' MSL contour in Mobile and Baldwin Counties. The northern lateral boundary of the state's coastal program is the adjudicated boundary between Florida and Alabama as well as Florida and Georgia. The coastal zone boundary in Georgia is an area averaging about 20 miles inland within portions of six coastal counties. Each state, with the development of its own coastal management program, has consulted with one another to ensure compatibility between each state's respective boundary designations.

The following section, Program Authorities and Policies, summarizes the applicable laws and regulations utilized in the state's program. Based on these existing authorities, the Florida Coastal Management Program will use several management schemes to identify certain areas of particular state interest where additional management measures are applied. See the Areas of Special Management discussion in Part C of this Section.

B. DESCRIPTION OF STATUTORY AUTHORITIES AND POLICIES

Introduction

The primary state authority for the FCMP is the Florida Coastal Management Act of 1978, Part II of Chapter 380, F.S. This statute expresses the Legislative intent toward management of the state's coastal area, and authorizes the Department to develop a coastal management program. The Legislature declared that the coast contains natural, commercial, recreational, ecological, industrial and aesthetic resources, and that it is in the state and national interest to "protect, maintain and develop these resources through coordinated management". Based upon this authority, the Department has compiled a program of policies and legal authorities codified under the Florida Statutes.

These statutes are listed in Table 1 and are discussed in this section. The statutes that constitute the FCMP are of three general types. Most establish state policy on substantive matters such as fisheries, water resources, and state lands. Other statutes combine substantive policy and procedural matters. An example of this kind of statute is the Industrial Siting Act. It should be noted that the State will utilize these first two types of authorities in its federal consistency reviews. Finally, some statutes are primarily procedural, and establish processes for developing or implementing state policy. Three statutes which fall into this category include the Administrative Procedures Act, the Public Records Act, and the Regional Planning Council Act.

These statutes were selected for the FCMP since the State must develop a balanced program for the protection and development of the coast, and also must meet a multitude of federal coastal management program approval requirements. Each statute is discussed in detail in the following section. The land and water uses and development activities managed under these authorities are the uses subject to the state's coastal management program. Copies of the laws, and their related regulations, are printed in a separate Appendix available upon request from the Office of Coastal Management. Citations to the Florida Statutes are indicated by the abbreviation "F.S.", and references to the implementing rules in the Florida Administrative Code, by "F.A.C.". The statutes serve as the basis for the enforceable policies of the program.

Since publication of the DEIS the Florida Legislature has passed two important bills relating to resource management. These bills are the "Ports Bill" (CS/HB 490) and the "Save Our Rivers Bill" (SB 620/HB 535). Summaries of these bills are included on pages II-33 and II-95, respectively, and copies of the actual bills are included in the Addendum.

In addition to program policies established in the program authorities, Florida's Governor, Bob Graham, has set a number of goals toward which the state will strive over the 1981-83 biennium. The goals, and their associated policy statements, are intended to establish the Governor's funding priorities for the state's biennial

budget, and are used as guidance by state agencies as they prepare budget requests and program plans for the Governor's consideration. The goals include, in part:

-- To diversify Florida's economy so as to better withstand adverse national economic fluctuations and to maximize opportunities associated with future national economic conditions and characteristics.

-- To develop and implement a coastal resource management program to protect coastal resources.

-- To manage water and related land resources to provide public protection, water supplies, environmental quality protection, and energy conservation.

-- To improve outdoor recreational opportunities through development and implementation of a new outdoor recreation plan.

-- To increase the emphasis on providing cultural opportunities and preserving Florida's history.

-- To provide better transportation access to jobs, services, recreational sites and other resources.

-- To provide for the economic diversification and stability of the State by delivering transportation facilities and services needed to support existing, expanding, and new businesses.

There are several policies directly related to the Coastal Resources goal. They are:

-- The state shall continue the acquisition of coastal properties, particularly beaches, access ways, and important estuary resources.

-- The state shall discourage development and other activities which adversely affect beaches, barrier islands, dunes, coastal wetlands, and other coastal resources.

-- The state shall develop a comprehensive hazard prevention and mitigation program for storms and hurricanes.

-- The state shall maintain sustained yields of marine fisheries by basing commercial and sportfishing management practices in biological analysis.

-- The state shall develop an integrated policy framework for managing coastal resources encompassing interagency and intergovernmental cooperation through the Interagency Management Committee.

Table 1

Chapter of Florida Statutes	Corresponding Legal Authorities Discussions
1. Chapter 23, F.S.	State Comprehensive Planning, Power Plant Site Plans
2. Chapter 119, F.S.	Public Records
3. Chapter 120, F.S.	Administrative Procedures
4. Chapter 160, F.S.	Regional Planning Councils
5. Chapter 161, F.S.	Coastal Construction
6. Chapter 252, F.S.	Disaster Preparedness
7. Chapter 253, F.S.	Sale, Lease, or Other Conveyance and Dredging and Filling in Submerged Lands and Wetlands
8. Chapter 258, F.S.	Outdoor Recreation and Conservation
9. Chapter 259, F.S.	Outdoor Recreation and Conservation
10. Chapter 260, F.S.	Outdoor Recreation and Conservation
11. Chapter 267, F.S.	Historic Preservation
12. Chapter 288, F.S.	Economic Development/ Industrial Siting
13. Chapter 315, F.S.	Port Facilities Financing
14. Chapter 334, F.S.	Public Transportation
15. Chapter 366, F.S.	Public Utilities
16. Chapter 370, F.S.	Living Resources (marine)
17. Chapter 372, F.S.	Living Resources (fresh-water)
18. Chapter 373, F.S.	Withdrawal, Diversion, Storage, and Consumption of Water
19. Chapter 375, F.S.	Outdoor Recreation and Conservation

Table 1 Continued

Chapter of Florida Statutes	Corresponding Legal Authorities Discussions
20. Chapter 376, F.S.	Pollutant Spill Prevention and Control
21. Chapter 377, F.S.	Oil and Gas Production
22. Chapter 380, F.S.	Developments of Regional Impact and Areas of Critical State Concern, Coastal Management
23. Chapter 388, F.S.	Arthropod Control
24. Chapter 403, F.S.	Sources of Water Pollution; Sources of Air Pollution; Power Plants; Dredging and Filling; Control of Hazardous Wastes; Resource Recovery
25. Chapter 582, F.S.	Soil and Water Conservation
26. CS/HB 490	"Ports Bill"
27. SB 620/HB 535	"Save Our Rivers Bill"

-- The state shall direct public funds, such as roads and sewers, to suitable areas where natural resources can support growth, where economic conditions are depressed, and where the potential danger to human life and property from natural hazards, such as floods and hurricanes, is minimal.

The Legislative goals contained in the description of the statutory authorities constitutes the enforceable policies of the program.

Authorities and Policies

SOURCES OF WATER POLLUTION

The Florida Air and Water Pollution Control Act (Chapter 403 F.S.) was enacted in 1967, and has been amended at several subsequent sessions of the legislature. The Act was passed in response to a growing concern about the environmental and health impacts of industrial and domestic waste discharges and emissions. It recognized that it is Florida's pleasant climate, clean air and abundance of sunshine and water resources which have attracted the majority of its citizens. Rapid growth in Florida's population served to exacerbate the problem, making the need for control essential and apparent. The Act is administered by the Florida Department of Environmental Regulation through a central office located in Tallahassee and in field offices located throughout the state. The majority of permitting and enforcement is conducted in the field offices.

LEGISLATIVE GOALS

Section 403.021(2), F.S., provides that:

> It is declared to be the public policy of this state to conserve the waters of the state and to protect, maintain, and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses, and to provide that no wastes be discharged into any waters of the state without first being given the degree of treatment necessary to protect the beneficial uses of such water.

Section 403.021(6), F.S., provides that:

> The Legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air or water resources in the state and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to insure conservation

of natural resources, to insure a continued safe environment, to insure purity of air and water, to insure domestic water supplies, to insure protection and preservation of the public health, safety, welfare, and economic well-being, to insure and provide for recreational and wildlife needs as the population increases and the economy expands, and to insure a continuing growth of the economy and industrial development.

WATER POLLUTION CONTROL

Waters

The Department has jurisdiction over natural and artificial bodies of water which include, but are not limited to "... rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface or underground. Waters owned entirely by one person other than the state are included only in regard to possible discharge on other property or water. Underground waters include, but are not limited to, all underground waters passing through pores of rock or soils or flowing through in channels, whether man-made or natural"; F.S. 403.031(3).

General Powers

The Department has the authority to develop plans, adopt standards, require permits, conduct surveillance, and initiate enforcement actions; F.S. 403.061, 403.087, 403.088, 403.091, 403.121, 403.131, 403.141, and 403.161.

STANDARDS

Water Quality Criteria

Florida's water pollution control program has been developed largely through grants from the U.S. Environmental Protection Agency and is an approved state program under Section 106 of the Federal Water Pollution Control Act, as amended. As a result of the Department's water quality planning process, a comprehensive set of water quality standards has been adopted as Chapter 17-3 of the Florida Administrative Code (F.A.C.). Approximately 175 standards address biological integrity, chemical constituents (including pesticides, herbicides, and metals), transparency, toxics, radioactive substances, odor, bacteria, nutrients, dissolved oxygen, and pH. They include general minimum water quality standards, which apply to all waters at all times, and additional water quality standards which apply to specific water classifications; ss. 17-3.051 through 17-3.151, F.A.C.

All of the waters in the state have been classified under one of seven classifications: Class I-A, Potable Water Supplies - Surface Waters; Class I-B, Potable and Agricultural Water Supplies and Storage - Groundwaters; Class II, Shellfish Propagation or Harvesting - Surface Waters; Class III, Recreation, Propagation and Management of Fish and

Wildlife - Surface Waters; Class IV, Agricultural Water Supplies - Surface Waters; Class V-A, Navigation, Utility, and Industrial use - Surface Waters; and Class V-B, Freshwater Storage and Utility and Industrial Use - Groundwaters. The specific classifications are found in Section 17-3.161, F.A.C.

The classification of a water body, or segment thereof, has been based upon a consideration of the present and future most beneficial uses of the water; s. 17-3.011(4), F.A.C. In addition, certain Outstanding Florida Waters have been designated to receive special protection in the permitting process beyond that afforded by the general and class-specific criteria; s. 17-4.242, F.A.C. Outstanding Florida Waters generally include those in national parks, wildlife refuges, and wilderness areas; state parks and wilderness areas; environmentally endangered lands acquired under F.S. 259; the Florida Scenic and Wild Rivers Program, or the National Wild and Scenic River Act, (e.g., the Suwannee River, the Loxahatchee River, the Myakka River); national seashores, marine sanctuaries, estuarine sanctuaries, and certain national monuments; Florida aquatic preserves; the Big Cypress National Preserve; and other specifically listed waters. A complete listing of Outstanding Florida Waters is found in s. 17-3.041(3), F.A.C. The basic thrust of the special protection provision applicable to Outstanding Florida Waters is to prevent any lowering of existing ambient water quality, except on a temporary basis during construction for a period not to exceed thirty days within a restricted mixing zone; s. 17-4.242(1)(a)2.b., F.A.C.

VARIANCES; EXCEPTIONS AND EXEMPTIONS

Variances

F.S. 403.201 authorizes the Department to grant variances from standards for any one of the following reasons:

(a) There is no practicable means known or available for the adequate control of the pollution involved.

(b) Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.

(c) To relieve or prevent hardship of a kind other than those provided for in paragraphs (a) and (b). Variances and renewals thereof granted under authority of this paragraph shall each be limited to a period of 24 months except that variances granted pursuant to part II may extend for the life of the permit or certification.

An evidentiary hearing must be held on each variance application. Such hearings are conducted in accordance with the provisions of section 120.57, F.S.

Exceptions

Exceptions from specific water quality criteria may be granted in situations where certain delineated portions of a water body do not meet particular standards as a result of natural or man-induced causes which cannot be controlled or abated with technology or management practices including zero discharge. A hearing must be held pursuant to public notice on each petition for an exception, and the petitioner must affirmatively demonstrate by a preponderance of competent substantial evidence ... those standards which the petitioner believes more appropriately apply to the waters for which the exception is sought, based upon relevant factors which include, but are not limited to, the designated use of the waters, the extent to which biota have adapted to the background, evidence regarding ecological stress, and adverse impacts on adjoining waters; s. 17-3.031(2) and (3), F.A.C.

Exemptions

Exemptions from specific water quality criteria may be granted to specific dischargers discharging into artificial water bodies classified for agricultural water supplies (Class IV); Class I-B groundwaters (potable and agricultural water supplies and storage); Class V-B groundwaters (freshwater storage and utility and industrial use); and Class V (navigation, utility, and industrial use); and for the experimental use of wetlands for low-energy water and wastewater recycling; for artificial systems used for urban stormwater conveyance or renovation; for existing permitted discharges comprising the principal flow. Such exemptions may be granted only after public notice and an evidentiary hearing held pursuant to section 120.57, Florida Statutes. Section 17-4.243, F.A.C., sets forth the specific demonstrations and findings which must be made for each type of exemption.

MINIMUM TREATMENT REQUIREMENTS

All discharges of sanitary or industrial wastes must provide at least secondary treatment. Advanced waste treatment is required for sanitary wastes discharged to Old Tampa Bay, Tampa Bay, Hillsborough Bay, Boca Ciega Bay, St. Joseph Sound, Clearwater Bay, Sarasota Bay, Little Sarasota Bay, Roberts Bay, Lemon Bay, Charlotte Harbor or to any bay, bayou, or sound tributary thereto unless the applicant proves it is not necessary. In addition, the Department can require advanced waste treatment for any discharge where it can show that such additional treatment is necessary; F.S. 403.085 and 403.086. Technical definitions of secondary and advanced waste treatment are found in sections 17-6.01(1) and (3), F.A.C.

Under section 17-6.01, F.A.C., the Department has expressly adopted the U.S. Environmental Protection Agency's technology based effluent limitations, guidelines, and standards published at 40 C.F.R. beginning with section 401. In addition, the Department has adopted supplemental technology based effluent limitations for concentrated animal feeding operations and for the mining and processing of phosphate bearing rock, ore, earth or any material for phosphate content; s. 17-6.01, F.A.C.

PERMITS

Sources

No source of the discharge of wastes into surface and groundwaters may be constructed, operated, maintained, expanded, or modified without a valid permit from the Department unless exempted by rule; F.S. 403.087 and 403.088. Section 17-4.04, F.A.C., specifies those activities which are exempt from permitting:

1. Septic tank drainfield systems to serve estimated sewage flows of 2,000 gallons per day or less.

2. Domestic sewage treatment plant of a design capacity of 2,000 gallons per day average daily flow or less.

3. Home heating and comfort heating equipment with a gross maximum heat output less than one million BTU per hour.

4. Comfort air conditioning or comfort ventilating systems.

5. Internal combustion engines, boats, aircraft and vehicles used for transportation of passengers or freight.

6. Incinerators constructed, installed, or used in one or two-family dwellings or in multi-occupied dwellings containing four or fewer family units, one of which is owner-occupied.

7. The following equipment:

   a. Cold storage refrigeration equipment.

   b. Vacuum pumps in laboratory operations.

   c. Equipment used for steam cleaning.

   d. Belt or drum sanders having a total sanding surface of five square feet or less, and other equipment used exclusively on wood or plastics or their products having a density of 20 pounds per cubic foot or more.

   e. Equipment used exclusively for space heating, other than boilers.

   f. Non-commercial smoke houses used exclusively for smoking food products.

   g. Bakery ovens and confection cookers where the products are edible and intended for human consumption.

   h. Laboratory equipment used exclusively for chemical or physical analyses.

i. Brazing, soldering or welding equipment.

j. Laundry drier, extractors or tumblers for fabrics cleaned with only water solutions of bleach or detergents.

8. Non-commercial and non-industrial vacuum cleaning systems used exclusively for residential housekeeping purposes.

9. Structural changes which cannot change the quality, nature of quantity of air and water contaminant emissions or discharges or which will not cause pollution.

10. Dredging and/or filling activities associated with several types of projects (see discussion of Dredging and Filling in Submerged Lands and Wetlands in this section).

11. Saltwater disposal wells used for the disposal of water or brine produced in oil or gas exploration or production activity; including such wastes as may be normally generated in the course of such activities which may contaminate the brine or waters but excluding sanitary wastes or wastes generated by or associated with any sulphur recovery plant, sweetening plant, gas plant or refinery; which are permitted by the Department of Natural Resources pursuant to Section 377.22, Florida Statutes and Section 16C-2.06, F.A.C.

12. Any article, machine equipment, contrivance, operation, process or activities which the Department shall determine does not cause the issuance of air or water contaminants in sufficient quantity, with respect to its character, quality or content, and the circumstances surrounding its location, use and operation, as to contribute significantly to the pollution problems within the State, so that the regulation thereof is not reasonably justified, and which does not in fact cause the issuance of contaminants in violation of law or of these rules and regulations. Such determination shall be made in writing and filed by the Department as a public record. Such determination may be revoked at any time. The Department shall notify the Pollution Control Board at each regularly scheduled meeting, in writing of each such determination or revocation of a previous determination, with the reasons therefore in each instance.

It should be noted, however, that exemption from the requirement to obtain a permit, does not relieve the source from compliance with applicable standards or from enforcement action by the Department to obtain compliance; s. 17-4.04, F.A.C.; F.S. 403.087(1) and 403.161 (1)(b).

An applicant has the burden of affirmatively providing the Department with reasonable assurance based on plans, test results, and other information that the activity for which a permit is sought will not violate Department standards, rules, or regulations; s. 17-4.07 (1), F.A.C., and F.S. 403.087(4). In addition, it must be shown that

an activity complies with the rules and regulations of local pollution control programs approved pursuant to s. 403.182, F.S.; s. 17-4.07(4), F.A.C. Permits for water pollution sources may be valid for no more than five years; F.S. 403.087(1).

Within 30 days of receipt of an application, the Department must notify the applicant of any deficiencies and of any additional information which is required to evaluate the application; F.S. 120.60(2), 403.088(3)(a), and s. 17-4.05(1), F.A.C. Permit proceedings are subject to the hearing procedures of section 120.57, F.S., if invoked by the applicant or third parties who meet the standing requirements of section 120.52(10) or 403.412(5), F.S.; for a further explanation of these provisions see Part II, Section IIE of this document.

Permits for water pollution sources fall within one of three categories; construction, operation, or temporary operation. F.S. 403.088(4) authorizes the issuance of a temporary operation permit for sources which cannot demonstrate compliance with applicable standards. However, notice of such application must be given to persons residing in the drainage areas of the waters receiving the waste, along with an opportunity for them to present objections. Temporary operation permits may be valid only for the period of time necessary to install the equipment or management techniques capable of bringing the discharge into compliance.

All types of permits are issued with conditions to ensure compliance with standards. Such conditions include the manner, nature, volume, and frequency of the discharge and operation by persons licensed by the Department. Additional conditions may be imposed where necessary to preserve and protect the quality of the receiving waters, including sampling of the effluent and receiving waters; F.S. 403.087(3), and 403.088(3)(d), and ss. 17-4.07(5), 17-4.14(1), 17-4.24(3)(c), F.A.C.

Sections 17-4.244 and 17-4.245, F.A.C., authorize the establishment of mixing zones for surface water discharges and zones of discharge for groundwater discharges. Section 17-610(1), F.A.C., authorizes the Department to prescribe water quality-based effluent limitations where necessary to ensure compliance with water quality standards. Such water quality-based effluent limitations represent more stringent limitations on the discharge than those imposed by the technology-based effluent limitations or minimum treatment standards.

OPERATOR CERTIFICATION

The Department is authorized to establish qualifications for, to examine, and to license operators of wastewater treatment plants; F.S. 403.101. Such a program has been implemented by the Department purusant to Chapter 17-16, F.A.C.

NPDES CERTIFICATION

While the Department has not been delegated federal national pollutant discharge elimination system (NPDES) permitting, it does

perform the certification functions set forth in section 401 of the Federal Water Pollution Control Act, as amended.

SEWAGE TREATMENT PLANT GRANT PROGRAM

The Department administers the federal sewage treatment plant grant program in Florida in cooperation with the U.S. Environmental Protection Agency. The program is administered pursuant to the federal grant requirements and a priority list system approved by the U.S. Environmental Protection Agency. The final guidelines for wastewater construction grants are included in the Addendum.

The DER administers the development of areawide waste management plans under section 208 of the Federal Water Quality Act. The 208 program in Florida is comprised of 12 designated areas, with the remainder of the state comprising a non-designated area. The plans for the designated areas are being developed primarily by regional planning councils, subject to review by DER, and the plans for the non-designated areas are being developed by DER in coordination with affected local governments.

NON-POINT SOURCE DISCHARGES

DER regulates the discharge of stormwater into waters of the state under section 17-4.248, F.A.C., which requires permits for significant discharges of stormwater. The determination of significance is made on a case-by-case basis taking into account the location, volume and frequency, and the anticipated constituents of the discharge, the probable impacts on water quality and the designated uses of the receiving waters; s. 17-4.248(5)(e), F.A.C. In imposing abatement controls, the water quality benefits must be reasonably related to the costs of the controls; s. 17-4.248(7), F.A.C. An exemption is provided for certain discharges from swales and by diffuse flow; s. 17-4.248(11), F.A.C.

REVOCATION OF PERMITS

F.S. 403.087(6) provides for the revocation of permits upon a finding by the Department that the permit holder:

(a) Has submitted false or inaccurate information in his application;

(b) Has violated law, department orders, rules, or regulations, or permit conditions;

(c) Has failed to submit operational reports or other information required by department rule or regulation; or

(d) Has refused lawful inspection under s. 403.091.

A revocation cannot be made effective until a notice and opportunity for a hearing has been accorded the permit holder; F.S. 403.087 (7) and 120.60(5) and s. 17-4.10 F.A.C. However, a permit can be suspended on an emergency basis, if the Department finds that an

immediate serious danger to the public health, safety or welfare requires such emergency suspension; F.S. 120.60(6).

COMPLIANCE DETERMINATION

Determinations of compliance with permit conditions are made by Department field personnel through periodic field inspections and review of monitoring reports.

ENFORCEMENT

Administrative and judicial enforcement remedies for violations of permits and agency regulations are provided by Chapter 403, F.S. The Department can seek damages, civil penalties, temporary and permanent injunctions, and criminal sanctions; F.S. 403.121, 403.131, 403.141, and 403.161. Primary enforcement responsibility rests with the Department's field office, with legal support from the lawyers in the Office of General Counsel, and technical support from the Division of Environmental Programs and Office of Enforcement. The progress of enforcement cases is tracked by the Office of Enforcement.

* * *

SOURCES OF AIR POLLUTION

The Florida Air and Water Pollution Control Act was enacted in 1967; s. 403.011, F.S. The Act reflected a mounting concern for the adverse impacts on Florida's air, especially from industrial activities and from incinerators operated by local governments. It recognized that clear air, in addition to beaches and clean water, is a resource which attracts many residents and tourists to Florida and plays an important role in the State's economy and health of its populace.

LEGISLATIVE GOALS

Section 403.021(3), F.S., provides that:

> It is declared to be the public policy of this state and the purpose of this act to achieve and maintain such levels of air quality as will protect human health and safety, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

Section 403.021(6), F.S., provides that:

> The Legislature finds and declares that control, regulation, and abatement of the activities which are causing or may cause pollution of the air or

water resources in the state and which are or may be detrimental to human, animal, aquatic, or plant life, or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to insure conservation of natural resources, to insure a continued safe environment, to insure purity of air and water, to insure domestic water supplies, to insure protection and preservation of the public health, safety, welfare, and economic well-being, to insure and provide for recreational and wildlife needs as the population increases and the economy expands, and to insure a continuing growth of the economy and industrial development.

GENERAL POWERS

Chapter 403, F.S. authorizes the Department of Environmental Regulation to promulgate plans, develop programs and standards, conduct surveillance, establish a permit program for sources of air pollution, and take enforcement action; ss. 403.061(1), (7), (11), (13), (14), (15), and (16), 403.087, 403.091, 403.121, 403.131, 403.141, and 403.161, F.S. The Department has developed an air implementation plan which has been, for the most part, approved by the United States Environmental Protection Agency (EPA) and is consistent with the federal Clean Air Act. Regulations on the prevention of significant deterioration and non-attainment areas are still under review by EPA.

STANDARDS

The Environmental Regulation Commission has adopted air quality standards and requirements under Chapter 17-2, F.A.C. The regulations prescribe statewide ambient air quality standards for sulfur dioxide, particulate matter, carbon monoxide, photochemical oxidents, hydrocarbons, and nitrogen dioxide; s. 17-2.06, F.A.C. To prevent significant deterioration (PSD) of the ambient air quality, all areas in the state in which ambient standards are presently being met have been classified into one of three classes. Maximum allowable increases in concentrations of sulfur dioxide and particulate matter are specified for each class; s. 17-2.04, F.A.C. In computing compliance with the maximum allowable increases in concentrations, persons may seek the exclusion from the computation of certain concentrations resulting from fuel conversions mandated by the federal Energy Supply and Environmental Coordination Act of 1974 and the Federal Power Act; s. 17-2.04(7), F.A.C.

In addition to the general ambient air quality standards and the PSD requirements, the regulations establish specific emission limiting standards for incinerators, sulfuric acid plants, phosphate processing, kraft (sulfate liquor) pulp mills, black liquor recovery furnaces, fossil fuel steam generators, portland cement plants, nitric

acid plants, sulfur recovery plants, and carbonaceous fuel burning equipment. General emission provisions are also included for visible emissions, particulate matter, fugitive particulates, odor, volatile organic compound emissions, and organic solvent emissions; s. 17-2.05, F.A.C. New sources for which no specific emission limiting standard has been established or which will cause any increase in pollutant concentrations over the baseline air quality must employ the best available control technology (BACT); ss. 17-2.03(1) and 17-2.04(6), F.A.C.

In portions of the state, violations of ambient air quality standards exist. Those areas have been designated as nonattainment areas for the pollutants causing violations of ambient standards. Emission limitations and other abatement techniques are prescribed for existing sources with regard to photochemical oxidents. Minor modifications of existing sources and new minor sources must provide best available control technology (BACT). Major modifications of existing sources and new major sources must meet lowest achievable emission rate (LAER), new source allowance, and emission offset requirements; ss. 17-2.13 through 17-2.18, F.A.C.

AIR POLLUTION EPISODES

An air pollution episode exists

> ...when meterological conditions and rates of discharge of air pollutants combine to produce pollutant levels in the atmosphere which, if sustained, can lead to a substantial threat to the health of the people; s. 17-2.07, F.A.C.

Air pollution episodes are classified into three categories of severity: alert, warning, and emergency. Each category is defined in terms of ambient concentrations of sulfur dioxide, particulates, sulfur dioxide and particulates combined, carbon monoxide, oxidents, and nitrogen dioxide; s. 17-2.07(1), F.A.C. Determinations and declarations of air pollution episodes are made by the Secretary of the Department of Environmental Regulation; s. 17-2.07(1), F.A.C. Specific emission reduction actions are specified for each category, and persons may be required to submit to the Department at any time a preplanned abatement strategy showing how the required reduction actions will be achieved for each; s. 17-2.07(2), F.A.C.

PERMITTING

Construction and operation permits for air pollution sources are processed in accordance with Chapter 17-4, F.A.C. Major air pollution sources (50 tons per year design capacity) and complex air sources are licensed by the Department's Bureau of Air Quality in the Tallahassee office. All other sources are licensed by the Department's field offices. Permit evaluations for compliance with standards are based on ambient air quality data, proposed engineering designs, and emission data. Public notice and a 30 day comment period are required prior to the issuance of any construction permit for an air pollution source; s. 17-2.091, F.A.C.

COMPLIANCE DETERMINATIONS

Determinations of compliance with standards and permit conditions are conducted by the Department's field personnel. They are based on a combination of on-site inspections and reviews of monitoring reports submitted by source operators and ambient air quality monitoring conducted by the Department or local government agencies.

ENFORCEMENT

Administrative or judicial action may be instituted for violations of standards and permit conditions. Sanctions include damages, civil penalties, injunctions, and criminal penalties; ss. 403.121, 403.131, 403.141, and 403.161, F.S.

* * *

WITHDRAWAL, DIVERSION, STORAGE, AND CONSUMPTION OF WATER

Mounting concern for the consequences of the uncoordinated management of Florida's ground and surface water resources led to the passage of the Florida Water Resources Act of 1972, codified as Chapter 373 of the Florida Statutes. The Act reflected a conclusion that there is a state interest in the sound management of Florida's waters, while acknowledging that legitimate management interests peculiar to regions of the state exist. The Act establishes a management scheme which uses a combination of state and regional control. It provides for the development of regulations, permits, enforcement, management plans, purchases of land, and financing. The Act focuses on the withdrawal, diversion, storage, and consumption of water, as opposed to the use of water for the discharge of wastes which is regulated under Chapter 403, Florida Statutes; see previous discussion on Sources of Water Pollution, page II-16. Water management under Chapter 373, Florida Statutes, and pollution control under Chapter 403, Florida Statutes, are linked together under the Florida Water Plan.

LEGISLATIVE GOALS

The legislature declared it to be the policy of the state:

1. To provide for the management of water and related land resources;

2. To promote the conservation, development, and proper utilization of surface and ground water;

3. To develop and regulate dams, impoundments, reservoirs, and other works and to provide water storage for beneficial purposes;

4. To prevent damage from floods, soil erosion, and excessive drainage;

5. To preserve natural resources, fish and wildlife;

6. To promote recreational development, protect public lands, and assist in maintaining the navigability of rivers and harbors; and

7. Otherwise to promote the health, safety and general welfare of the people of this state; s. 373.016(2), F.S.

ADMINISTRATION

Overall responsibility for the implementation of the Florida Water Resources Act of 1972 rests with the Department of Environmental Regulation (DER); s. 373.026, F.S. In large part, however, the Water Resources Act is implemented through the five water management districts into which the state has been divided, the Northwest Florida Water Management District, the Suwannee River Water Management District, the St. Johns River Water Management District, the South Florida Water Management District, and the Southwest Florida Water Management District; s. 373.069, F.S.

Each district is headed by a nine member board appointed to four year terms by the Governor, subject to confirmation by the Senate; s. 373.073, F.S. Subdistricts or basins may be designated by each water management district board. Each subdistrict or basin is headed by a board of at least three members appointed by the Governor for three year terms and subject to confirmation by the Senate; s. 373.0693, F.S.

The Governor and Cabinet sitting as the Land and Water Adjudicatory Commission has the authority to review, rescind, or modify any rule or order of a water management district, except those rules which involve only the internal management of a district. Such a review may be initiated by the Governor and Cabinet, the Secretary of the DER, the Environmental Regulation Commission, or by an interested party aggrieved by such rule or order; s. 373.114, F.S.

General Powers and Duties of the DER

While the DER has the authority to exercise any power authorized to be exercised by a water management district, its efforts focus on the coordination of policy development through the formulation and revision of the state Water Use Plan and approval of public works projects for which federal funding is sought; ss. 373.026 (7) and (9) and 373.036, F.S. The Water Use Plan, together with the state's water quality standards and classifications promulgated under Chapter 17-3, Florida Administrative Code, constitute the Florida Water Plan; s. 373.039, F.S. In formulating the Water Use Plan, DER is required to consider the following factors:

1. the attainment of maximum reasonable-beneficial use of water for such purposes as conservation of water, protection and procreation of fish and wildlife, irrigation, mining, power development and domestic, industrial and municipal uses;

2. the maximum economic development of water resources consistent with other uses;

3. the control of waters for such purposes as environmental protection, drainage, flood control, and water storage;

4. the quantity of water available for application to a reasonable-beneficial use;

5. the prevention of wasteful, uneconomical, impractical, or unreasonable uses of water resources;

6. presently exercised domestic use and permit rights;

7. the preservation and enhancement of the water quality of the state and the provisions of the state water quality plan; and

8. the state water resources policy as expressed by Chapter 373, Florida Statutes; s. 373.036(2), F.S.

The DER and the districts are developing a set of state "water policies" which will be the basis for future development of the Water Use Plan which will be developed by the DER and the Districts. When completed, it will set forth water management goals for the state. The Plan will provide a framework to guide the implementation efforts of the water management districts while taking into account the special aspects of water management in each of the districts.

The DER holds a conference on water resources development programs annually. The conference is to make the final selection of projects proposed by water management districts, local governments, and other agencies which require federal financial assistance. Selection is based upon a consideration of which projects best represent the public welfare and interest of the people of the state as required for the proper development, use, conservation, and protection of the waters of the state and land resources affected by those projects. The projects selected are then presented by the DER to the appropriate committees and agencies of the federal government for funding; s. 373.026(9), F.S.

In an effort to improve the public works program, the DER has promulgated a rule setting forth procedures and review criteria. The final rule, Chapter 17-26 F.A.C. (which is contained in the Addendum) requires the DER to consider the consistency of a proposed project with local land use plans and state and federal standards and water policy, to take into account the comments of interested persons, including federal agencies, and to consider the social, environmental, and economic benefits and costs.

General Powers and Duties of Water Management Districts

Governing boards of water management districts have the authority to adopt necessary rules, issue necessary orders, acquire lands for water management, operate water management works, undertake enforcement of rules and orders, implement permit programs, declare water shortages, issue emergency orders, levy ad valorem taxes for district water management programs, and issue bonds; ss. 373.044, 373.083, 373.086, 373.093, 373.103, 373.113, 373.119, 373.129, 373.136, 373.139, 373.191, 373.175, 373.246, 373.503, 373.539, 373.563, and 373.569, F.S. In addition, the districts are empowered to establish minimum flow rates for surface water courses. The minimum is to be that flow at which further withdrawals would be significantly harmful to the water resources or ecology of the area; s. 373.042, F.S.

WATERS REGULATED AND PERMITS REQUIRED BY CHAPTER 373, FLORIDA STATUTES

The waters regulated by Chapter 373, Florida Statutes, include all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state; s. 373.019(8), F.S. Permits are required for the following categories of activities:

1. Introduction of Water into Underground Formations

No construction on a project involving artificial recharge or the intentional introduction of water into any underground formation may be undertaken without a permit from the appropriate water management district. The only statutory exception involves oil and gas projects authorized under Chapter 377, Florida Statutes; s. 373.106, F.S. In such cases, a permit would be required by the Department of Natural Resources. By agreement between the DER and the water management districts, the permitting of discharges of wastewater to underground formations is the primary responsibility of the DER under its waste discharge permit program. Water management districts comment on applications to the DER.

2. Consumptive Uses of Water

All consumptive uses of water, other than domestic uses by individual users, may be required to be undertaken pursuant to a permit; s. 373.219, F.S. The applicant for such a permit must establish that the proposed use of water:

a. is a reasonable-beneficial use of the water;

b. will not interfere with any presently existing legal use of water; and

c. is consistent with the public interest; s. 373.223(1), F.S.

Where two or more applications compete for use of the same water and the uses conflict or there is not sufficient water for the uses, a determination is made as to which use best serves the public interest. Preference is given to renewal applications over initial applications; s. 373.233, F.S. Such permits cannot be granted for more than 20 years, except in cases where a public or quasi-public entity needs more time to retire bonds. In such exceptional cases, a permit may be granted for up to 50 years; s. 373.236, F.S. Permits may be revoked for material false statements on applications or reports, for willful violation of permit conditions, for violations of Chapter 373, Florida Statutes, or for nonuse for a period of 2 years or more; s. 373.243, F.S.

3. Construction, Repair, or Abandonment of Water Wells

Part III of Chapter 373, Florida Statutes, provides for the licensing of the construction, repair, or abandonment of water wells; s. 373.313(1), F.S. The statute expressly exempts from licensing the construction of wells 2 inches or less in diameter which are intended for use in a single family residence or for use for farming purposes and which are not intended for use by the public or for any other residence or farm; s. 373.326, F.S.

The DER or, where delegated, a water management district may require wells to be permitted in those geographical areas where it is determined to be reasonably necessary to protect the ground-water resources and where such requirement will not create an undue hardship; ss. 373.308 and 373.313 (1), F.S. Generally, permits are required throughout the state.

In addition to the licensing of wells, any person who wishes to engage in business as a water well contractor must be licensed by the DER. Excluded from this requirement are persons who perform labor or other services under the supervision of a licensed water well contractor; s. 373.323 (1) and (3), F.S. The DER has promulgated standards for the licensing of water well contractors under Chapter 17-20, Florida Administrative Code. Licenses are renewable annually; s. 373.323(5), F.S. Contractor licenses may be suspended or revoked for violations of Chapter 373, Florida Statutes, or the rules adopted pursuant to Chapter 373; s. 373.323(6), F.S.

4. Construction, Alteration, Maintenance, Operation, and Abandonment of Dams, Impoundments, Reservoirs, Appurtenant Works, and Other Works

Part IV of Chapter 373, Florida Statutes, authorizes permits for the construction, alteration, maintenance, operation, and abandonment of dams, impoundments, reservoirs, appurtenant works, and other works; ss. 373.413(1), 373.416, and 373.426, F.S. "Appurtenant works" means any artificial improvement to a dam which might affect the safety of such dam, or which might affect the holding capacity of such dam or of the reservoir or impoundment created by such dam; s. 373.403(2), F.S. "Works" means all

artificial structures, including, but not limited to, ditches, canals, conduits, channels, culverts, pipes, and other construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state; s. 373.403(5), F.S.

Exempted from the permit provisions of Part IV of Chapter 373, Florida Statutes, are the following:

a. water wells;

b. the capturing, discharging, and use of water by natural persons as authorized under the common law;

c. the alteration of the topography of land as required for the conduct of agricultural, silvicultural, floricultural, and horticultural activities, provided that such alteration is not for the sale or predominant purpose of impounding or obstructing surface waters; and

d. the construction, operation, or maintenance of any closed system; s. 373.406, F.S.

The DER and the water management districts have the authority to take emergency action with regard to dams, impoundments and other works to protect life and property in flooding situations and in those cases where a structure is so dangerous that time does not permit the ordering of corrective measures through normal administrative law procedures; s. 373.439, F.S. In non-emergency situations, the DER or the water management districts can direct the owner or operator of a structure to undertake alterations or remedial actions to prevent danger to public health and safety; ss. 373.429 and 373.436, F.S. Any dam, impoundment, reservoir, appurtenant work, or other work which is in violation of applicable standards or permit conditions is declared by statute to be a public nuisance abatable by injunction; s. 373.433, F.S.

ENFORCEMENT

Statutory provisions, rules, permits, and orders may be enforced by the initiation of administrative or judicial actions; ss. 373.119, 373.129, 373.136, 373.333, 373.433, and 373.603. Violations of statutory provisions, rules, or orders also constitute misdemeanors of the second degree; s. 373.613, F.S. Criminal actions may be initiated by the DER or the water management districts through the local law enforcement officials and state attorneys; ss. 373.603 and 373.609, F.S.

* * *

"SAVE OUR RIVERS" LEGISLATION

The 1981 Florida Legislature passed legislation to "Save Our Rivers". The new law, creating s. 373.590, F.S. and amending s. 201.15, F.S. increases the documentary stamp tax on deeds and other land transactions and deposits the increase into the Water Management Lands Trust Fund in DER.

Florida's five water management districts will use the money to purchase "the fee or other interest in lands necessary for water management, water supply, and the conservation and protection of water resources." The districts are to file five-year plans for their proposed land aquisition programs with DER. Lands acquired under the "Save Our Rivers" program also may be used for general recreational programs which are not incompatible with the primary water resource use.

* * *

LIVING RESOURCES

The coastal waters of Florida provide habitat and food for a wide variety of fish, shellfish, sponges, corals, and wildlife. By virtue of its sovereign duty to conserve fish and wildlife which it holds in trust for the people, the state has the inherent authority to regulate the taking of fish and wildlife; Harper vs. Galloway 58 Fla. 255, 51So.226 (1910), Ex parte Powell, 70 Fla. 363, 70So.392 (1916), State rel. Gray vs. Stoutamire, 131 Fla. 698, 179So.730 (1938).

The regulation of fish and wildlife in Florida is conducted by the Department of Natural Resources pursuant to Chapter 370 of the Florida Statutes and by the Game and Fresh Water Fish Commission pursuant to Article 4, Section 9 of the Florida Constitution (1968) and Chapter 372 of the Florida Statutes. Provision is made for the manner, times of the year, and places in which fish and wildlife may be taken, as well as for the number which may be taken, licenses required, and penalties for violations of regulations.

LEGISLATIVE GOALS

Section 370.02(2), F.S., charges the Department of Natural Resources to

> ...preserve, manage, and protect the marine, crustacean, shell, and anadromous fishery resources of the state in all the waters thereof...which duties and operations shall be directed to the broad objectives of managing such fisheries in the interest

> of all people of the state, to the end that they shall produce the maximum sustained yield consistent with the preservation and protection of the breeding stock.

In s. 372.0225, F.S., the Florida Game and Fresh Water Fish Commission is charged with similar responsibility to

> ...manage the promotion, marketing and quality control of all freshwater organisms...so that such organisms shall be used to produce the optimum sustained yield consistent with the protection of the breeding stock...

Particular attention is given to endangered species designated by the Commission, the Department of Natural Resources or the United States Department of the Interior in s. 372.072, F.S.

> The Legislature recognizes that the State of Florida harbors a wide diversity of fish and wildlife and that it is the policy of the state to conserve and wisely manage these resources, with particular attention to those species (which are) endangered or threatened. As Florida has more endangered or threatened species than any other continental state, it is the intent of the Legislature to provide for research and management to conserve these species as a natural resource.

Florida has been declared to be a refuge and sanctuary for the manatee (Trichehus manatus), the Florida State Mammal; ss. 370.12(2), 15.038(1), F.S.

SALTWATER LIVING RESOURCES

Living resources associated with the saltwater of the state are regulated under Chapter 370 of the Florida Statutes.

Administration

The responsibilities of Chapter 370, Florida Statutes, are administered by the Department of Natural Resources (DNR); ss. 370.013 and 370.02, F.S. The Department is headed by the Governor and Cabinet and managed on a daily basis by an executive director; s. 20.25, F.S. In addition, the interstate aspects of marine fishery management is addressed by the state through its membership on the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries

Commission; ss. 370.19 and 370.20, F.S. and through Department representation on the Gulf and South Atlantic Fishing Management Councils as established under P.L. 94.265 of the Fishing Conservation and Management Act of 1976.

DNR is authorized to adopt rules necessary for the conservation and management of marine fishery resources; s. 370.021(1), F.S. It has a Division of Law Enforcement whose officers have the powers of investigation and arrest to ensure compliance with DNR's regulations; s. 370.021(5), F.S. Property used in the illegal taking, sale, possession, or transportation of saltwater fish or other saltwater products is subject to confiscation and forfeiture; s. 370.061, F.S. A violation of the provisions of Chapter 370, Florida Statutes, constitutes a misdemeanor of the first degree; s. 370.021(2), F.S. A violation of DNR rules promulgated pursuant to Chapter 370, Florida Statutes, constitutes a misdemeanor of the second degree; s. 370.021 (1), F.S.

Regulation

The taking and selling of marine fish and other marine animals is controlled by an extensive number of statutory and rule provisions found in Chapter 370 of the Florida Statutes and in Chapters 16B and 16N of the Florida Administrative Code. The provisions address methods of taking fish and other animals, times of year, and days when they may be taken, and the selling of marine fish and other animals. The following is a list of some of the devices, fish, other animals, and sale which are regulated:

1. seafood dealers; s. 370.07, F.S., and Chapters 16B-28, 16N10, and 16N-27, F.A.C.;

2. use of sienes, nets, explosives, poisons, drugs, chemicals, hooks, and spears; ss. 370.08, 370.081, 370.0821, and 370.172, F.S., and Chapters 16N-6 and 16N-21, F.A.C.;

3. importation and possession of marine plants or animal species not indigenous to Florida; s. 370.081, F.S., and Chapter 16B-17, F.A.C.;

4. bluefish, pompano, fluke, flounder, mackerel, redfish, speckled trout, snook, striped bass, bonefish, black mullet, grouper, anadromous shad, tarpon, permits, queen conchs (strombus gigas), marine corals and seafans, marine turtles, manatees, dolphins, manta rays, stone crabs, blue crabs, spiney lobster, shrimp and prawn, oysters, and sponges; ss. 370.11(2), (3), (4) and (5), 370.111, 370.112, 370.1121, 370.1125, 370.113, 370.114, 370.12, 370.13, 370.135, 370.14, 370.142(4), 370.15, 370.151, 370.153, 370.155, 370.156, 370.157, 370.17, and 370.171, F.S.; and Chapters

16B-2, 16B-3, 16B-6, 16B-28, 16N-1, 16N-2, 16N-3, 16N-5, 16N-7, and 16N-22, F.A.C.; and

5. the taking of seaoats and seagrapes; s. 370.041, F.S.

FRESHWATER FISH AND WILD ANIMAL LIFE

All wild animal life in the state and the fish in the fresh waters of the state are regulated under Chapter 372 of the Florida Statutes.

Administration

The responsibilities of Chapter 372 of the Florida Statutes, are administered by the Game and Fresh Water Fish Commission; ss. 372.01 and 372.021, F.S. The Commission is a constitutionally established body whose members are appointed by the Governor subject to confirmation by the Senate; Article 4, Section 9, Florida Constitution (1968), and s. 372.01, F.S. The Commission is managed on a daily basis by a director; s. 370.04, F.S. Enforcement is conducted principally by the wildlife officers of the Commission who have the powers to investigate violations and to arrest violators; s. 372.07, F.S. Property used in the illegal taking and possession of freshwater fish and wild animals is subject to seizure and forfeiture; ss. 372.31 through 372.319, and s. 372.761, F.S. Violations of Commission rules and orders constitute, as a minimum, misdemeanors of the second degree; s. 372.83, F.S. The Commission is authorized to acquire lands by purchase, lease, gift or otherwise for the management of game and to adopt rules for such management; ss. 372.12 and 372.121, F.S.

Regulation

1. Licenses

Licences are required for the following activities:

a. the importation into the state, or the placing into the fresh waters of the state, of freshwater fish of any species; s. 372.26, F.S.;

b. the importation into the state, for sale or use, or the release of any species of the animal kingdom not indigenous to Florida; ss. 372.265 and 372.65, F.S., and Chapter 16E-16, F.A.C.; such animals include fish, reptiles, and mammals; Ops. Atty. Gen. 071-12 (January 29, 1971) and 073-126 (April 19, 1973);

c. the fishing, hunting, and trapping of game, freshwater fish, and fur-bearing animals; s. 372.57, F.S., Chapters 16E-4, 16E-5, 16E-6, 16E-10, F.A.C.;

d. hunting with bow and arrow or muzzle loading guns; s. 372.576, F.S.;

e. serving as a professional hunting guide; s. 372.62, F.S.;

f. the taking for sale or the selling of frogs or freshwater fish; s. 372.65, F.S., and Chapter 16E-9, F.A.C.;

g. the use of trawl seines and haul seines for fishing in freshwaters; ss. 372.65 and 372.651, F.S.;

h. dealing or buying alligator skins or green or dried furs; s. 372.66, F.S.;

i. the possession, housing, and transporting of poisonous or venemous reptiles; ss. 372.86, 372.89, and 372.90, F.S., and Chapter 16E-12, F.A.C.;

j. the exhibition of wildlife; s. 372.921, F.S., and s. 16E-5.05, F.A.C.; and

k. the possession for sale or exhibition of nutria (Myocastor coypu); s. 372.98, F.S., and Chapter 16E-11, F.A.C.

2. <u>Animals Given Special Protection</u>

a. Alligators and Crocodiles

It is unlawful to sell or offer for sale, in Florida, alligator or crocodile products, or to use the word "gator" or "alligator" in connection with the sale of any product derived or made from the skins of crocodilia; ss. 372.6645 and 372.665, F.S. The poaching of alligators and any crocodilia by killing or capturing, or the attempt to kill or capture such animals, constitutes a felony of the third degree, s. 372.663, F.S. It is also unlawful to intentionally feed, or entice with feed, any wild American alligator (Alligator mississippiensis) or American crocodile (Crocodylus acutus), except for those maintained in protected captivity pursuant to a Commission permit or which are being relocated; s. 372.667, F.S.

b. The Florida Panther

It is unlawful to kill a Florida Panther, and such killing is a felony of the third degree; s. 372.671, F.S.

c. Endangered and Threatened Species

In 1977, the Legislature enacted the Florida Endangered and Threatened Species Act of 1977; Chapter 77-375 (Laws of Florida). The Game and Fresh Water Fish Commission, in consultation with the Department of Natural Resources, has developed a plan for the management and conservation of endangered and threatened species. The plan includes criteria for research and management priorities, an educational program, statewide policies, necessary new legislation, and recommended funding. Revisions and updates of the plan are to be submitted annually to the Legislature. The Act also provides for the creation of an Endangered and Threatened Species Advisory Council to formulate and recommend rules and policies for endangered and threatened species research and management; s. 372.072, F.S. By rule, the Commission has designated 31 species as endangered and 56 species as threatened; s. 16E-3.01, F.A.C.

3. Waterfowl

The 1979 Legislature amended the hunting license law to require that persons taking or attempting to take wild ducks or geese within the state or its coastal waters must purchase a Florida waterfowl stamp for $3.00 in addition to any other license which is required by law. The purpose of the stamp is to generate revenue for the purposes of expanding waterfowl research and management and increasing waterfowl populations in the state; s. 372.57(20), F.S.

The Legislature prescribed the following formula for the expenditure by the Game and Fresh Water Fish Commission of the funds generated by the stamp: a maximum of 5% for administrative costs; a maximum of 25% for waterfowl research; and a maximum of 70% for projects to protect and propagate migratory waterfowl and to develop, restore, maintain and preserve wetlands; s. 372.57(2), F.S. To assist and consult with the Commission in the establishment and operation of waterfowl protection and propagation projects and wetlands projects, the Legislature created the Waterfowl Advisory Committee; s. 372.5745, F.S.

* * *

DREDGING AND FILLING IN SUBMERGED LANDS AND WETLANDS

INTRODUCTION

Permitting of dredging and filling is regulated by Chapter 253 and is administered by the Department of Environmental Regulation (DER). Dredge and fill also is regulated pursuant to Chapter 403, Florida Statutes by the DER. Chapter 403, addresses all water bodies in the state, and focuses on the regulation of activities which cause, or may cause, the pollution of those waters.

Chapters 253 and 403, Florida Statutes, were enacted, in part, in response to an awareness of the significant value which submerged lands and water quality have to Florida and of the serious loss or damage to those resources which past practices had imparted.

To understand the differences in areas regulated under Chapters 253 and 403, Florida Statutes, it must be noted that the "sovereignty submerged lands" regulated under Chapter 253, Florida Statutes, are encompassed as a subcategory of the larger category of "waters of the state" regulated pursuant to Chapter 403, Florida Statutes. "Sovereignty submerged lands" are lands located beneath navigable waters; generally those waters used as highways for commerce. The landward extent of those waters is denoted by mean high water survey lines in tidal waters and by ordinary high water marks in non-tidal waters. "Waters of the state" include navigable waters, as well as all other water bodies in the state irrespective of their use. Jurisdiction under Chapter 253, Florida Statutes, is based upon the sovereignty powers of the state associated with the common law public trust which is impressed upon navigable waters. The public trust doctrine is reiterated by Article 10, Section 11, of the Florida Constitution (1968). Jurisdiction under Chapter 403, Florida Statutes, is based upon the general police power of the state to regulate for the health, safety, and welfare of the public, as well as the constitutional policy set forth in Article 2, Section 7, of the Florida Constitution (1968) to conserve and protect the state's natural resources. The result is that every activity in navigable waters is also, by definition, in waters of the state. However, some activities may be in waters of the state without being in navigable waters.

CONSTITUTIONAL POLICY

Article 2, Section 7, Florida Constitution (1968)

> It shall be the policy of the state to conserve and protect its natural resources and scenic beauty. Adequate provision shall be made by law for the abatement of air and water pollution and of excessive and unnecessary noise.

Article 10, Section 10, Florida Constitution (1968)

> The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all of the people. Sale or private use of portions of such land may be authorized by law, but only when not contrary to the public interest.

LEGISLATIVE GOALS

It is the policies of Chapters 253 and 403, Florida Statutes, respectively,

> ... to prohibit the authorization of the dredging and filling of submerged lands, if such authorization would result in the destruction of resources or the interference with public usage to such an extent as to be contrary to the public interest.

> ... to prevent and abate pollution, and to conserve the waters of the state for the propagation of wildlife, fish and other aquatic life, and for domestic, agricultural, industrial, recreational, and other beneficial uses.

ADMINISTRATION

The issuance and denial of permits for dredging and filling under both Chapter 253 and Chapter 403, Florida Statutes, is by the Department of Environmental Regulation (DER). The DER is headed by a Secretary appointed by the Governor and subject to confirmation by the Senate; s. 10, Chapter 75-22, Laws of Florida; ss. 403.087, 403.088, and 20.261(1), F.S.

REGULATION OF DREDGING AND FILLING IN NAVIGABLE WATERS AND WATERS OF THE STATE

Activities Requiring A Permit

Introduction

Any dredging or filling in navigable waters or waters of the state described below may be undertaken only pursuant to permits under Chapters 403 and 253, F.S., unless exempted by section 403.813(2), Florida Statutes, or section 17-4.04(10), Florida Administrative Code.

Navigable Waters (253 F.S.)

Those portions of dredging or filling projects to be conducted in navigable waters are governed by Chapters 253 and 403, Florida Statutes, and sections 17-4.28 and 17-4.29, Florida Administrative Code.

The landward extent of dredge and fill jurisdiction under Chapter 253, F.S. is the mean high water line in tidal waters and the ordinary high water line in nontidal waters.

The following activities require a permit from the Department pursuant to Chapter 253, F.S., and s. 17-4.29 (1)(a)-(e), FAC:

1. Subject to the statutory limitations and exemptions of Sections 403.501-515 and 403.813(1) and (2), Florida Statutes, and as otherwise limited by general or special statute or department rule, the following activities at or below the line of mean high water or ordinary high water in, on, or over the navigable waters of the state require a department permit:

   a. Filling by the construction of islands, extensions of existing lands or islands bordering on or in the navigable waters including filling to create artificial reefs, groins, jetties, breakwaters, riprap or other type of sea wall, revetments and any similar type structures; and filling associated with construction; and/or installation of activities described in this rule.

   b. Dredging and/or digging by pumping sand, rock, silt, or earth of any kind by any means including dredging to connect artificial waterways or waterbodies to navigable waters; and dredging associated with construction and/or installation activities described in this rule.

   c. Marina construction, maintenance and installation and/or docks, wharfs, piers, walkways and living quarters or dwelling-type structures thereon and/or mooring pilings, dolphins and similar structures and/or boat ramps, lifts or similar launching facilities and/or ski ramps or other similar water structures.

   d. Utility installations whether subaqueous, subterranean or over navigable waters and maintenance and/or construction involving activities otherwise requiring permits.

   e. Miscellaneous activities including navigational aids, commercial signs, fences or similar obstructions, canal locks, marine railroads; bridges, walkways or similar structural crossings.

Waters Of The State (Chapter 403, F.S.)

Those portions of dredging or filling projects to be conducted in, or connected by excavations to, certain waters of the state are regulated by Chapter 403, Florida Statutes, and section 17-4.28, Florida Administrative Code. The waters of the state covered by the rule set forth in section 17-4.28(2), F.A.C. are as follows:

1. rivers and natural tributaries thereto;

2. streams and natural tributaries thereto;

3. bays, bayous, sounds, estuaries, and natural tributaries thereto;

4. natural lakes, except those owned entirely by one person; and except for lakes that become dry each year and are without standing water together with lakes of no more than ten (10) acres of water area at a maximum average depth of two (2) feet existing throughout the year;

5. Atlantic Ocean out to the seaward limit of the State's territorial boundaries;

6. Gulf of Mexico out to the seaward limit of the State's territorial boundaries;

7. natural tributaries do not include intermittant natural water courses which act as tributaries only following the occurrence of rainfall and which normally do not contain contiguous areas of standing water.

The landward extent of the water bodies regulated under Chapter 403, Florida Statutes, is defined by species of vegetation divided into two general categories, submerged and transitional species (see Tables 2 and 3); s. 403.817, F.S. and ss. 17-4.02(17).

Section 403.817, F.S., authorizes the use of a soils index, in addition to a vegetation index, to define the landward extent of waters regulated by Chapter 403, Florida Statutes. However, a soils index has not been established by the DER. In a recent case, a trial judge has ruled that a vegetation or soils index is the only method by which the DER can delineate the landward extent of the waters covered by Chapter 403, Florida Statutes. In that case, the Court rejected the use of an ordinary high water line on a non-navigable freshwater lake where the department's vegetation index inadequately defined the landward extent of the lake; Falls Chase Special Taxing District, Sunshine Development, Inc. and ELBA, Inc. vs. State of Florida, Department of Environmental Regulation, Case No. 79-2348, in the Circuit Court of the Second Judicial Circuit, Leon County, Florida (November 9, 1979). This case is currently on appeal.

The landward extent of the categories of waters listed in Section 17-4.28(2), F.A.C., is defined by the following listed vegetational species, or any combination of such species, where dominant:

Table 2

SUBMERGED SPECIES

Marine species:

Batis	Batis maritima
Big cordgrass	Spartina cynosuroides
Black mangrove	Avicennia germinans
Black rush	Juncus roemerianus
Cuban shoalweed	Diplanthera Halodule wrightii
Leather fern	Acrostichum aureum
Manatee grass	Syringodium filiformis
Red mangrove	Rhizophora mangle
Rubber vine	Rhabdadenia biflora
Smooth cordgrass	Spartina alterniflora
Turtle grass	Thalassia testudinum
Widgeon grass	Ruppia maritima
White mangrove	Laguncularia racemosa

Fresh water species:

Alligator weed	Alternanthera philoxeroides
Arrowhead	Sagittaria sp.
Arrowroot lily	Thalia geniculata
Bald cypress	Taxodium distichum
Beak rush	Rhynchospora tracyi
Bladder wort	Utricularia vulgaris
Blue green algae mats	

Fresh water species (continued):

Bullrush	Scripus americanus
	Scripus validus
Cattail	Typha latifolia
	Typha angustifolia
	Typha domingensis
Coontail	Ceratophyllum demersum
Duck weed	Lemna sp.
Florida elodea	Hydrilla verticillata
Golden club	Orontium aquaticum
Leather fern	Acrostichum danaeifolium
Maiden cane	Panicum hemitomon
Naiad	Najas sp.
Ogeeche tupelo	Nyssa ogeeche
Pickerelweed	Pontederia lanceolata
Pond apple	Annona glabra
Pond cypress	Taxodium ascendens
Pondweed	Potamogeton illinoensis
Royal fern	Osmunda regalis
Saw grass	Cladium jamaicensis
Spatter dock	Naphar sp.
Spike rush	Eleocharis cellulosa
Soft rush	Juncus effusus
Swamp lily	Crinum americanum
Swamp tupelo	Nyssa biflora
Tape grass	Villisneria neotropicalis
Water ash	Fraxinus caroliniana

Fresh water species (continued):

Water fern	Salvinia rotundifolia
Water hyssop	Bacopa caroliniana
Water lily	Nymphaea sp.
Water shield	Brasenia schreberi
Water tupelo	Nyssa aquatica
Water willow	Justicia ovata

and to that portion of a surface water body up to the waterward first fifty (50) feet or the waterward quarter (1/4) of the entire area, whichever is greater, where any of the following vegetational species are dominant:

Table 3

TRANSITIONAL SPECIES

Marine species:

Aster	Aster tenuifolius
Beach carpet	Philoxerus vermicularis
Button wood	Concarpus erecta
Glasswort (annual)	Salicornia bigelovii
Glasswort (perennial)	Salicornia virginica
Key grass	Monanthochloe littoralis
Salt grass	Distichlis spicata
Sea blite	Suaeda linearis
Sea daisy	Borrichia frutescens
	Borrichia arborescens
Sea grape	Coccoloba uvifera
Sea lavender	Limonium carolinianum
Sea purslane	Sesuvium portulacastrum

Marine species (continued):

Switch grass	Spartina patens
Railroad vine	Ipomoea pes-caprae

Freshwater species:

Button bush	Cephalanthus occidentalis
Dahoon	Ilex cassine
Giant reed	Phragmites communis
Primrose willow	Ludwigia peruviana
St. John's wort	Hypericum fasciculatum
Switch grass	Panicum virgatum
Willow	Salix caroliniana

Exemptions

Exemptions are provided for certain dredging and filling activities related to the following categories of projects:

1. the installation of overhead transmission lines, navigational aids, mooring pilings and dolphins, private docks, boat ramps, subaqueous transmission and distribution lines;

2. the construction of seawalls, swales, artificial waterways, and electrical power plants regulated pursuant to the Florida Electrical Power Plant Siting Act (Part II, Chapter 403, Florida Statutes);

3. the maintenance dredging of existing manmade canals, channels, intake and discharge structures, and dikes and irrigation and drainage ditches;

4. the replacement, repair, or restoration of docks, seawalls, and stormwater discharge pipes; and

5. the deposition of up to and including twenty-five (25) cubic yards of material in the transitional zone of a submerged land not located in Class II waters.

For a detailed description of the exemptions, see Section 17-4.04(10), Florida Administrative Code, in the Addendum, a separate document available upon request.

Comparison with U.S. Army Corps of Engineers Jurisdiction

The dredge and fill jurisdiction of the Corps of Engineers (COE) and the DER are essentially identical except as discussed below. First, the DER requires permits for work in all but intermittent streams. The COE requires permits for all work downstream of a point at which the flow of the stream is five cubic feet per second. The result of this is that the DER exercises more extensive jurisdiction than the COE in streams. Second, the COE may exert regulatory jurisdiction in isolated wetlands adjacent to waters of the U.S. The DER does not have regulatory authority in those isolated wetlands that are not contiguous to those waters specified by rule. It should be noted though, that activities in any areas which would result in violation of state Water Quality standards are prohibited by law. The DER has exerted jurisdiction over those portions of surface water bodies up to the waterward first fifty (50) feet, or the waterward quarter (1/4) of the entire area, whichever is greater, where one or a combination of the transitional species listed in Table 5 are the dominant species. The DER also regulates dredging or excavation in waters of the state under Chapters 253 an 403, F.S., where the Corps only regulates filling. In this regard the DER is a great deal more stringent than the Corps. State-wide the respective areas regulated by the DER and the Corps are about the same, with gaps in the jurisdiction of one agency covered by the authority of the other.

For a schematic description of the waters regulated pursuant to Chapters 253 and 403, Florida Statutes, see Figures 1 and 2, this subsection.

Administrative Processing Of Permit Applications

The majority of dredging and filling permits are issued or denied by the DER's field offices pursuant to their classification as short-form permits. Projects of a large magnitude are permitted or denied by the DER's Bureau of Permitting located in the department's central office in Tallahassee. A Standard Permitting Report is issued monthly by the DER. The report gives a synopsis of standard-form permit decisions and lists new standard-form applications received during the month. Both short and long-form permits utilize the same application form (discussed below) and are evaluated under the same standards.

The DER, the U.S. Army Corps of Engineers, and the DNR have established a joint permit application form pursuant to a Memorandum of Understanding dated August 19, 1976. An application can be filed with the DER for purposes of permits required by the DER and the Corps. If a permit is required from the Department of Natural Resources, a copy must be filed concurrently with the DNR; s. 17-4.31, F.A.C.

Within 30 days of receipt of a permit application, the DER must notify the applicant as to the completeness of the application, as well as request any additional information which will be necessary to evaluate the application; see s. 120.60(2), F.S. Once the application

FIGURE 1

REPRESENTATIVE STATE DREDGE AND FILL JURISDICTION

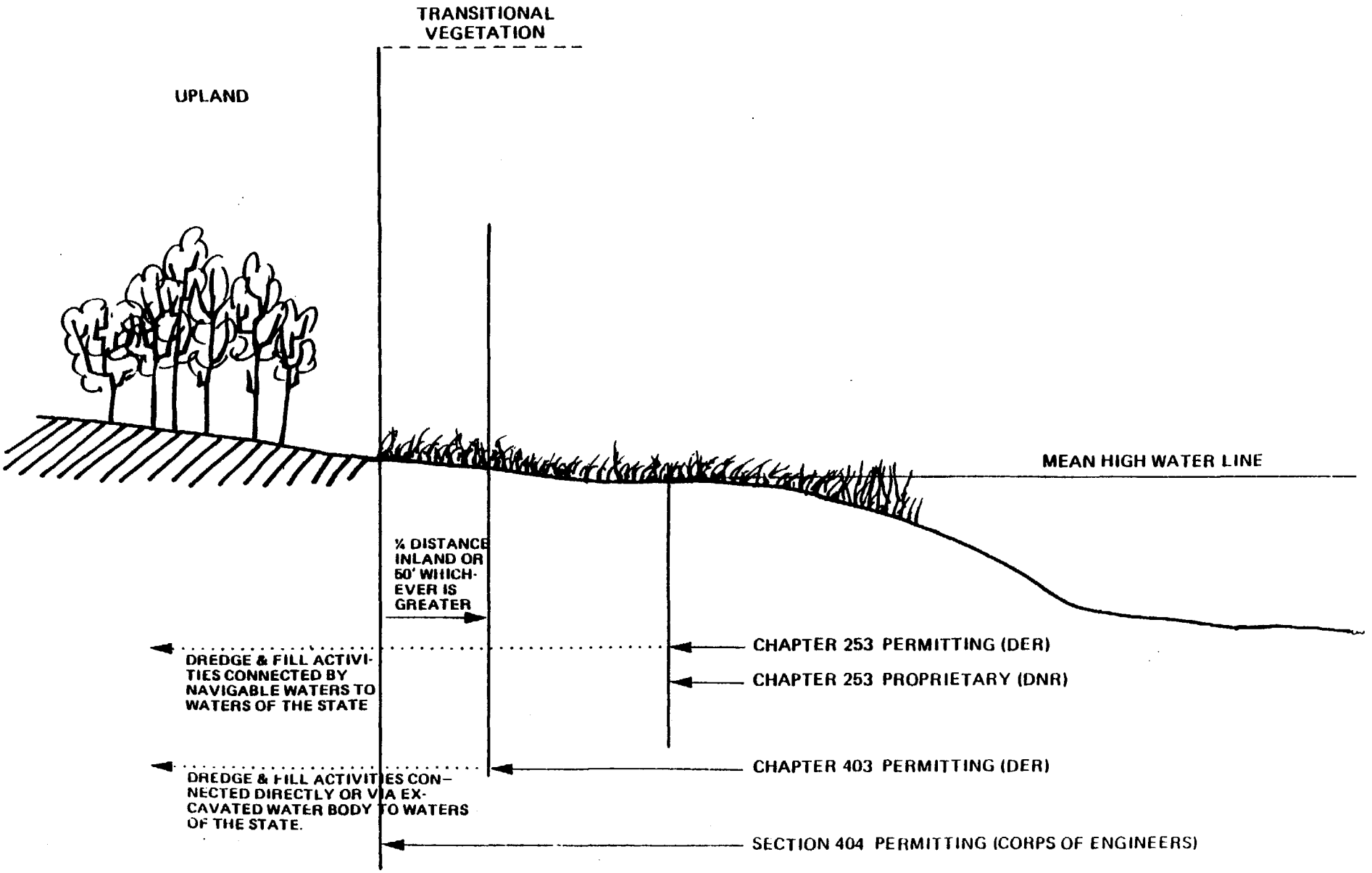
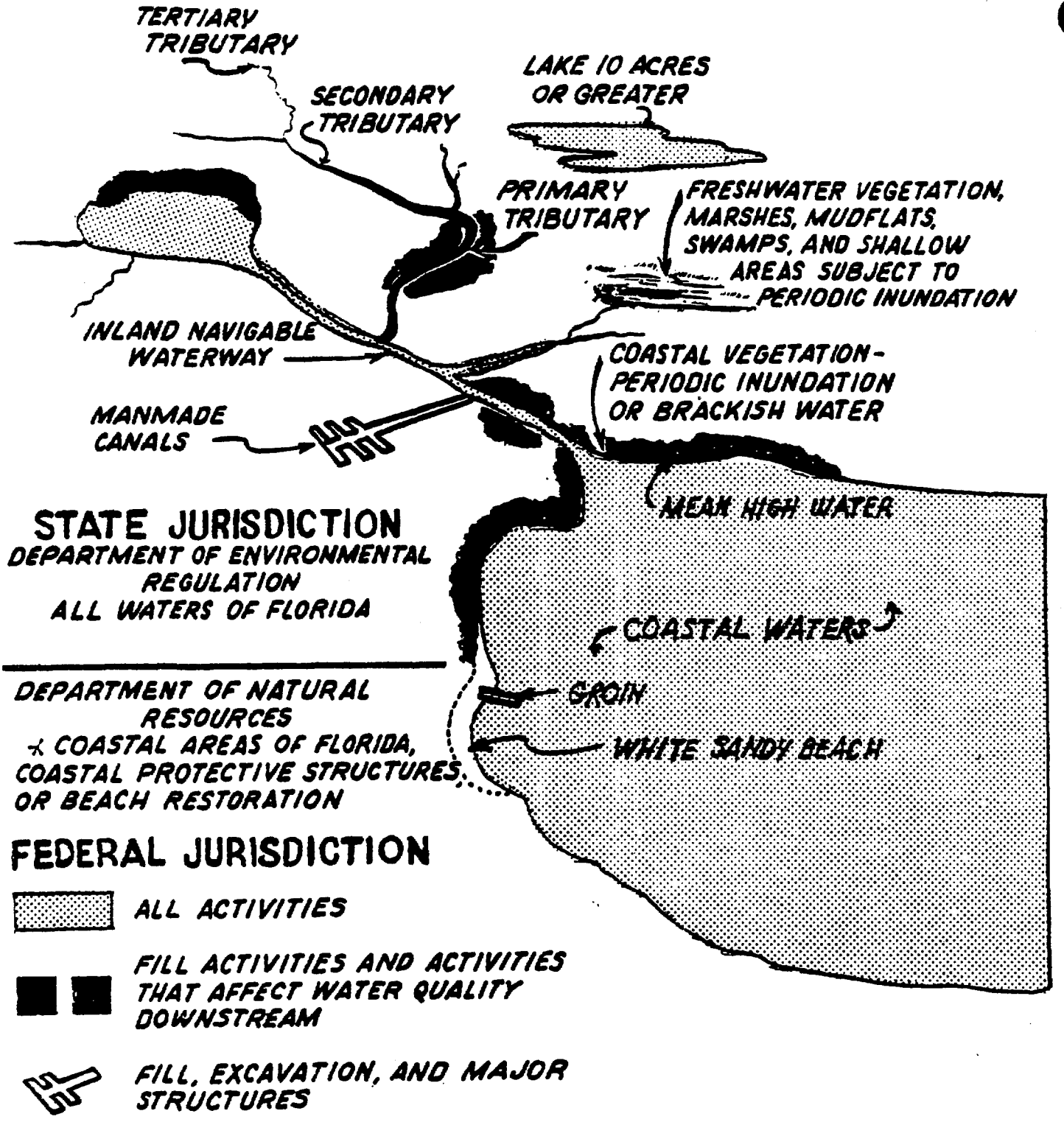


FIGURE 2


TERTIARY TRIBUTARY
SECONDARY TRIBUTARY
LAKE 10 ACRES OR GREATER
PRIMARY TRIBUTARY
FRESHWATER VEGETATION, MARSHES, MUDFLATS, SWAMPS, AND SHALLOW AREAS SUBJECT TO PERIODIC INUNDATION
INLAND NAVIGABLE WATERWAY
COASTAL VEGETATION - PERIODIC INUNDATION OR BRACKISH WATER
MANMADE CANALS
MEAN HIGH WATER
STATE JURISDICTION
DEPARTMENT OF ENVIRONMENTAL REGULATION
ALL WATERS OF FLORIDA
COASTAL WATERS
GROIN
WHITE SANDY BEACH
DEPARTMENT OF NATURAL RESOURCES
COASTAL AREAS OF FLORIDA, COASTAL PROTECTIVE STRUCTURES, OR BEACH RESTORATION
FEDERAL JURISDICTION
ALL ACTIVITIES
FILL ACTIVITIES AND ACTIVITIES THAT AFFECT WATER QUALITY DOWNSTREAM
FILL, EXCAVATION, AND MAJOR STRUCTURES

is complete and any additional requested information has been provided, the DER has 90 days to issue or deny the requested permit. Failure of the DER to act within the 90 days results in the issuance of a default permit; s. 120.60(2), F.S. However, the 90 day period may be waived by the applicant; AGO 077-41 (May 2, 1977). In addition, standard conditions, such as monitoring, may be imposed on a default permit, and the fact that a permit is issued by default does not relieve the permittee from compliance with water quality standards; AGO 078-169 (December 29, 1978). Permit applications are tracked for compliance with processing deadlines by the use of a computer program which produces daily status reports. Data is entered at terminals located in DER field offices and the central department office. Permitting decisions are subject to the administrative hearing procedures of section 120.57 and 403.412, F.S., discussed in section II, Part 2G of this document.

Administrative appeals of permitting decisions under Chapter 253, Florida Statutes, are heard by the Governor and Cabinet; s. 253.76, F.S. Administrative appeals of permitting decisions under Chapter 403, F.S. go directly to the District Courts of Appeal. Recent legislation (SB 1260) eliminated the administrative appeal to the Environmental Regulation Commission.

Permit Review Process

Applicants for a dredging or filling permit under Chapter 403, Florida Statutes, must affirmatively provide reasonable assurance that the short-term and long-term effects of the proposed activity will not result in violations of the general water quality criteria and the specific criteria of the water classification into which a subject water body has been classified; s. 17-4.28(3), F.A.C. Consideration of the long-term impacts includes evaluation of impacts on the immediate area of a project as well as impacts on the surrounding ecosystem. For a discussion of the water quality requirements and water classifications, see previous discussion on Sources of Water Pollution.

Additional restrictions apply to dredging and filling in Class II Waters (Shellfish Propagation or Harvesting). Permits may not be issued for dredging and filling in areas approved for shellfish harvesting, except for the maintenance of existing navigational channels, for the construction of coastal protection structures, and for the installation of transmission and distribution lines for the carrying of potable water, electricity or communication cables in rights-of-way previously used for such lines. Furthermore, permits shall be denied in any other class of waters where the proximity of the proposed activity to Class II Waters would be expected to have an impact on the Class II Waters, and where reasonable assurance has not been provided that the activity will not result in violations of the water quality provisions of Chapter 17-3, F.A.C., governing Class II Waters.

Section 17-4.02, F.A.C. defines the landward extent of waters of the state for submerged and transitional species of vegetative types

used to determine the landward limit of the department's jurisdiction. The concept of dominance of a plant species or any combination of species provides the framework within which the definition is applied.

The vegetation types specified in the rule are the most important types for defining the landward limits of wetlands. There are many more wetland plant species in Florida which are not included in the list. The absence of a species does not mean that the wetlands in which it is found are not regulated. Rather, it indicates that the plant type is not significant when making jurisdictional determinations based on dominance.

The occurrance of wetland vegetation not listed in the rule together with the absence of vegetation specified in the rule is a rare situation. Therefore, the areal extent and significance of wetlands not regulated because of the absence of certain vegetation types in the rule is negligable.

The special protection afforded Outstanding Florida Waters precludes new dredge or fill projects in such waters, unless they are for the enhancement of public usage or are for the maintenance of existing facilities; s. 17-4.242, F.A.C. For a discussion of Outstanding Florida Waters, see previous discussion on Sources of Water Pollution.

In addition to reviewing information and studies submitted by the applicant, the department performs an onsite evaluation of the proposed project area. Comments also are requested from the Game and Fresh Water Fish Commission. The on-site evaluation serves two purposes. First, it identifies the plants and animals which are located on or use the site and the areas adjacent to the site. Second, it evaluates the impacts on those plants and animals which would result, as well as the impacts of their destruction on water quality, if the proposed project were undertaken. The evaluation is then written in the form of a permit application appraisal. Typical features of projects which are evaluated are the adverse impact on aquatic animals and vegetation, the adverse impact on water quality of the destruction of the aquatic animals and vegetation present, the creation of debris traps, flushing rates, impacts on endangered species, associated domestic and industrial waste disposal, associated runoff, substrate contents (if toxic materials are present) erosion and scouring effects, the potential for pollutant spills, and interference with navigation and riparian rights. Where shoreline erosion control is the purpose of a proposed project, the use of gradually sloped and vegetated embankments or rip-rap is encouraged. With regard to marina construction, upland basins with good circulation and minimal dredging for navigation access are encouraged. A restriction prohibiting liveaboard vessels, or in the alternative, a requirement for sewage collection and treatment is ordinarily imposed.

In the evaluation of a proposed dredging or filling project under Chapters 253 and 403, Florida Statutes, the cumulative effect of the project on the water body, or reasonable segment thereof, is taken

into account and must be adequately addressed by the applicant. It is recognized that many small projects, perhaps insignificant by themselves, may have as great or greater adverse impact on aquatic resources as a large project; Robert Leeson, DOAH Case No. 75-2042, Conley P. Glover and W. E. Kirchoff, Jr., DOAH Case No. 76-1235. The fact that the cumulative effect of a proposed project cannot be measured with precision does not relieve an applicant from meeting his burden of providing reasonable assurance that the proposed project will not have a cumulative effect of violating applicable water quality standards; R. E. Lauthain, DOAH Case No. 76-1960, Orange County, DOAH Case No. 77-648, Robert T. Johnstone, DOAH Case No. 76-2127, Ronald E. Dowdy, DOAH Case Nos. 79-219 and 79-220. The evaluation of the potential long-term effects of a project must be based on conditions which probably will be present upon full development, such as septic tanks, fertilizer, street runoff, etc.; Kyle Brothers Land Company, DOAH Case No. 76-607.

In Cappeletti Bros. Inc., v. DER, Case No. 79-1602R (Final Order entered July 7, 1980), the Department set out how plants, animals, and aquatic life may be protected under Chapter 403, Florida Statutes.

> In addition to the statutory provisions and prohibitions, the Department in its consideration of applications for permits considers the long-range effects upon water quality of the elimination of certain plant communities which are vital to water quality of waters of the state. It considers such functions as the "kidney effect" of the vegetative fringe surrounding a water body. Scientific evidence shows and it has been found in many cases that the vegetative fringe surrounding a water body performs a crucial water quality function of intercepting and treating stormwater from the uplands, converting otherwise harmful nutrients into detrital material which can be broken down and assimilated by the food chain. Without the water treatment provided by these areas, water bodies in the state would soon be putrid and no longer useful for the beneficial uses which now make these water bodies so valuable. This function was recognized by the hearing officer with his finding that a fringe of saw-grass would be maintained by the applicant and would serve to filter out pollutants prior to discharge to the canals. It is this very function which the Department considers and seeks to protect. Without this interrelated biological function and the continued assimilation of nutrients up the food chain, the waters would be valueless and of poor quality.

In Florida Department of Environmental Regulation vs. Charlie Bruce, Case No. 80-1481, a hearing officer found Respondent liable for damages caused by destruction of 0.046 acres of mangroves. In determining the amount, he considered the productivity loss of the trees. A final order has not been entered to date on this case.

Permit Review Criteria

Introduction

The dredging and filling of submerged lands and wetlands is not expressly prohibited by statute or regulation. However, an applicant's burden of meeting the requirements of Chapters 253 and 403, F.S., and the implementing regulations is a heavy one. This is largely the result of the complex relationships which exist between vegetation, water chemistry, and the animals which inhabit water areas; and with the difficulty of developing sound scientific information which provides reasonable assurance that the statutory and rule requirements will be met.

Chapter 253, F.S.: Regulation of Dredging and Filling on Submerged Lands Below Mean or Ordinary High Water

1. Statutory Criteria

Sections 253.123 and 253.124, F.S. and Section 17-4.29, FAC, require that a biological survey, ecological study, and where deemed necessary by DER, a hydrographic survey be prepared of the subject site. No permit shall be issued unless the surveys and study together with information and studies provided by the applicant affirmatively show:

-- that such activity will not interfere with the conservation of fish, marine and wildlife or other natural resources, to such an extent as to be contrary to the public interest, and will not result in the destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of natural marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life or natural shoreline processes to such an extent as to be contrary to the "public interest"; and

-- that the proposed project will not create a navigational hazard, or a serious impediment to navigation, or substantially alter or impede the natural flow of navigable waters, so as to be contrary to the "public interest"; s. 17-4.29 (6), F.A.C.

Approval for filling navigable waters also must be received from the appropriate county or municipality; s 253.124(1), F.S.

2. Interpretation and Implementation

The application of the "public interest" test under Chapter 253, Florida Statutes, is weighted in favor of the conservation of natural resources. In general, an applicant for a conveyance or permit under Chapter 253 must show that some riparian right will be served or that a public benefit will accrue from the proposed project which outweighs the loss of the resource. Public interest factors include impacts on navigation, fishing, swimming, access to the water adjacent land uses, and aesthetics, as well as the proposed use of sovereign lands or navigable waters and the benefits which would accrue to the public. Public interest determinations are made on a case-by-case basis. No specific definition of "public interest" has been promulgated by rule or established by judicial decision, although it has been discussed in several decisions. The Governor and Cabinet have broad discretion in the sale of state lands, bounded only by the general legal principles of abuse of discretion. The DER in the issuance of permits is bound to follow its rules on qualification for permits and where the applicant owns the submerged lands, must observe the prohibition against the taking of private property without just compensation; Yonge vs. Askew, 293 So. 2d395 (Fla. 1st DCA 1974), Zabel vs. Pinellas County Water and Nav. Con. Auth., 171 So. 2d376 (Fla. 1965).

The following factors are listed in Chap. 253, F.S. as factors to be considered in the evaluation of a dredge or fill permit:

a. hydrographic survey (optional with the state)

b. interference with the conservation of fish, marine, or wildlife or other natural resources

c. destruction of oyster or clam beds

d. destruction of marine productivity including

   (1) destruction of natural marine habitats

   (2) grass flats suitable as nursery or feeding grounds for marine life

   (3) marine soils suitable for producing plant growth of a type useful as a nursery or feeding grounds for marine life

   (4) natural shoreline processes

e. Additionally, for fill projects: assurance of

   (1) no harmful alteration of the natural flow of water

   (2) no harmful or increased erosion

(3) no shoaling of channels or creation of stagnant areas of water

(4) no material injury to adjoining land.

These factors reflect the fact that these lands are regulated under the sovereignty powers of the state and that the right of the people to fish, boat, and recreate on the lands is a residual interest in these lands pursuant to the public trust doctrine, whether or not conveyed into private ownership by the state.

3. Case Illustrations

The following decisions illustrate the application of the "public interest" test under Chapter 253, Florida Statutes.

a. Application No. 16-25-1338

PROJECT: To create a dock enclosure by: constructing two 4-ft. wide, L-shaped piers 200 ft. long and 160 ft. long, respectively, each with a 100-ft. L-head; and two proposed piers will be supported by approximately two hundred 18 by 18-inch concrete pilings and will form an enclosure with a 40-ft. opening; no dredging is associated with the project.

LOCATION: Near Richmond Street and Shadowlawn Place, St. Johns River, Jacksonville, Duval County, Section 58, Township 2 South, Range 26 East, not in an aquatic preserve, Class III Waters.

STAFF ASSESSMENT: A variety of benthic and semi-benthic organisms inhabit the subject area including mollusks (3 species), amphipods, isopods, mysids, shrimp, crabs (2 species), damselfly nymphs, and gobies. Mullet also inhabit the area; bream and freshwater catfish are commonly taken by anglers in this area. Wild celery (Vallisneria) vegetates shallow bottoms about 200 feet upstream from the subject area. The piling would eliminate approximately 450 square feet of viable river substrate and benthic habitat and enclose approximately one acre of sovereignty land. (a) Under Chapters 253 and 403, Florida Statutes, and Sections 17-3.05, 17-4.05, and 17-4.28, Florida Administrative Code, it is the applicant's burden to demonstrate that the proposed project will not violate present state water quality standards and will not be contrary to the public interest. (2) Due to the excessive area of sovereign land to be preempted from public use, the applicant fails to make an adequate showing that works for which a permit is sought would not be contrary to the public interest of citizens of the State of Florida.

The proposed piling would eliminate approximately 450 square feet of viable river substrate and benthic habitat,

and the dock, by restricting access to approximately one acre of sovereign river area, would greatly reduce the value of the natural resources to the public, and restrict the use thereof, in this enclosed area.

ACTION TAKEN: A certified letter of intent to deny was issued to the applicant's agent. A hearing pursuant to Section 120.57, Florida Statutes was not requested. A final order denying the application was entered by the Secretary of DER.

b. Application No. 36-20748

PROJECT: To provide access to an authorized boat basin by: excavating approximately 195 yards of material from submerged lands of waters of the state to construct a box-cut, 250 ft. long by 15 ft. wide, by -3.0 ft., mean low water, channel.

LOCATION: Captiva Island, Pine Island Sound, Lee County, Section 26, Township 45 South, Range 21 East, Pine Island Sound Aquatic Preserve, Class II Waters, not approved for shellfish harvesting.

STAFF ASSESSMENT: The project would modify issued Department of Environmental Regulation permit 36-39-3218M by dredging an access channel to connect a boat basin to Pine Island Sound. DER Permit 36-39-3218, issued December 15, 1975, authorized the applicant to excavate an upland boat basin and access canal by expanding an existing boat basin. Conditions prohibiting fueling facilities and discharge of stormwater were part of this permit. In addition, on sheet 1 of 2, the applicant noted: "Use of the boat basin will be restricted to small fishing boats and skiffs. This restriction will prevent the need for a channel through the existing grass beds". DER permit 36-39-3218M, an after-the-fact modification, was issued on February 2, 1977, to authorize minor changes within the basin.

On May 15, 1977, the permittee applied for a second modification, designated DER file 36-39-3218MM, to construct a 400 foot long, 15 foot bottom width, -4.0 feet deep, mean sea level, access channel. Constructing this channel would have eliminated approximately 16,000 square feet of seagrass. On October 17, 1977, the Department issued a letter of intent to deny, and the applicant petitioned for an administrative hearing. On March 6, 1978, the applicant reduced the length of the channel from 400 to 250 feet and indicated that this would be maintenance of a channel which was dredged in the early 1960's. On June 12, 1978, the applicant further revised the proposal, to a depth of -3.0 feet deep, mean low water. Approximately 195 cubic yards of material would be excavated to construct this channel.

Of primary interest to the Department in this case was the issue of public interest. Was the loss of public grass beds associated with channel dredging so extensive as to be contrary to the public interest? The Department, in answering this question, had to weigh the quantifiable public losses associated with the project against the gains to be made by the same general public should the channel be constructed. The public gains included: access to marina facilities, provision of a marked channel, thus preventing haphazard destruction of grass beds by boats crossing the flats, berthing space for a Coast Guard Auxiliary vessel. The staff found that, when weighing the public losses against the public gains, the project was not contrary to the public interest.

ACTION TAKEN: The Department provided notice of intent to issue a permit authorizing excavation of approximately 195 cubic yards of material to construct a channel 250 feet by 15 feet by -3.0 feet, mean low water. The Department received a petition for an administrative hearing, pursuant to Section 120.57, Florida Statutes, from affected third parties. The hearing was held and subsequently a final order was entered by the Secretary of DER granting the permit.

c. <u>Island-in-the-Sun Condominium of Key West, Inc.</u>

PROJECT: Application for an after-the-fact permit to fill a mangrove area within the city limits of Key West. Petitioner was convicted in federal court of illegally filling in navigable waters of the United States. Prior to being required to restore the area he was permitted to apply for after-the-fact permits from the Department of Pollution Control, Trustees of the Internal Improvement Trust Fund and the Corps of Engineers.

After review of the application both the Department of Pollution Control and the staff of the Trustees of the Internal Improvement Trust Fund recommended denial of the project. Pursuant to the old Chapter 120, Florida Statutes, the applicant petitioned for a hearing. The Trustees of the Internal Improvement Trust Fund and the Department of Pollution Control appointed a joint hearing examiner to take evidence and made recommendations on whether the permit should be granted or denied.

A hearing was held in Key West, Florida. Petitioner called several witnesses and introduced into evidence all of the agency reports, which discussed the adverse results of permitting the project and which recommended denial.

STAFF ASSESSMENT: The Department of Pollution Control and the staff of the Trustees opposed the issuance of the permit

on the grounds that the project would adversely affect water quality and did not comply with the provisions of Chapter 253.124, Florida Statutes.

HEARING EXAMINER'S CONCLUSIONS: Florida Water Quality Standards for pH and dissolved oxygen might be violated should the marina be constructed. Grease and oil in the boat basin would flush out into adjacent waters. The filling or dredging of the proposed site would subtract from the present marine environment. The proposed marina area suitable for spawning fish would be destroyed by the proposed development. The proposed cumulative effect of destroying mangrove habitats, such as the applicant contemplated, could have a deleterious effect on marine productivity in the Key West area. Since the applicant did not meet its burden of proof, no testimony was taken from any state witnesses. As a result of the applicant's failure to present testimony which would sustain its burden of proof, the Trustees of the Internal Improvement Trust Fund and the Department of Pollution Control and Intervenors, the Florida Audubon Society and the Riviera Canal Homeowners, upon proper motion were granted a directed verdict at the close of applicant's case.

HEARING EXAMINER'S RECOMMENDATION: That the Motions for directed verdict made at the close of applicant's case, be granted and that the application for permit/certication be denied.

ACTION TAKEN: Final Order adopting findings of fact, conclusions of law and proposed order was issued.

Final Order of the Governor and Cabinet:

On appeal of the Department's Final Order the Governor and Cabinet, sitting as the Trustees of the Internal Improvement Trust Fund, found that there was substantial competent evidence to support the final agency order.

First District Court of Appeal:

On appeal of the final appellate order of the Governor and Cabinet, the District Court of Appeal found that there was substantial competent evidence to support the final agency order, and affirmed.

Supreme Court of Florida: Applicant, then sought review of the decision of the First District Court of Appeal by the Florida Supreme Court. After reviewing the Petition for Writ of Certiroari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), the Court denied the Petition for Writ of Certiorari and, thus, declined to take

jurisdiction of the case. The final order of the Department was affirmed on appeal by both administrative and judicial bodies.

Chapter 403, F.S.: Regulation of Dredging and Filling Through Water Pollution Control

1. Statutory Authority

The DER is charged by statute with the duty to control pollution of water. Section 403.061, Florida Statutes (1979). "Water" is defined at Section 403.031(3) as follows:

> "Waters" shall include, but not be limited to rivers, lakes, streams, springs, impoundments, and all other waters or bodies of water, including fresh, brackish, saline, tidal, surface or underground. . . .

The Legislature granted DER broad authority to determine the landward extent of "water" at Section 403.817(2), which provides in relevant part:

> . . . [T]he department is authorized to establish by rule, pursuant to Chapter 120, the method for determining the landward extent of waters of the state for regulatory purposes. Such extent shall be defined by species of plants or soils which are characteristic of those areas subject to regular and periodic inundation by the waters of the State. The application of plant indicators to any area shall be by dominant species . . . .

Newly amended Section 17-4.28(2), F.A.C. provides:

> "Pursuant to Sections 403.061, 403.087, or 403.088, F.S., those dredging or filling activities which are to be conducted in, or connected directly or via an excavated water body or series of excavated water bodies to, the following categories of waters of the state to their landward extent as defined by Section 17-4.02(17), F.A.C. require a permit from the Department prior to being undertaken:"

Under Section 403.087, Florida Statutes:

> "No stationary installation which will reasonably be expected to be a source of air or water pollution shall be operated, maintained, constructed, expanded, or modified without an appropriate and currently valid permit issued by the Department, unless exempted by Department rule." (Emphasis supplied.)

Under Section 403.031, Florida Statutes, (the definitional section of Chapter 403), "pollution" is defined as:

"...the presence in the outdoor atmosphere or waters of the State of any substances, contaminants, noise, or man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life or property or unreasonably interfere with the enjoyment of life or property, including outdoor recreation." (Emphasis supplied.)

It is apparent from the language in Section 403.031, Florida Statutes, that the Legislature intended the Department of Environmental Regulation to concern itself not only with quantifiable parameters of pollution in State waters, but also with "man-made or man-induced alteration" that is, or potentially might be, harmful or injurious to "animal or plant life or property" even though the latter may be necessarily less quantifiable at times.

The language in Section 403.021, Florida Statutes, captioned "Legislative Declaration Public Policy", clearly spells out the legislative intent of Chapter 403. In Section 403.021 (2), Florida Statutes, it is stated:

(2) "It is to be the public policy of this State to conserve the waters of the State and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and other aquatic life, ..." (Emphasis supplied.)

The inclusion of plant, animal and resource protection as a Department concern is further reiterated in Section 403.021 (6), Florida Statutes, which states:

"The Legislature finds and declares that control, regulation and abatement of the activities which are causing or may cause pollution of the air or water resources in the State and which are or may be detrimental to human, animal, aquatic, plant life or to property, or unreasonably interfere with the comfortable enjoyment of life or property be increased to insure conservation of natural resources ... to insure and provide for recreational and wildlife needs ..." (Emphasis supplied.)

Section 403.088(3)(c), Florida Statutes, states that:

"If the Department finds that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them, it may issue an operation permit if it finds that such degradation is necessary or desirable under federal standards and under circumstances which are clearly in the public interest." (Emphasis supplied.)

Section 403.021(5), Florida Statutes, clearly sets out the legislative intent that the prevention, abatement and control of the pollution of the air and waters of this state be affected with a public interest. It is for the purposes of protecting the health, peace, safety and general welfare of the people of Florida that the provisions of the Florida Air and Water Pollution Control Act have been enacted.

Section 403.061(13), Florida Statutes, provides that the Department has the power and duty to establish water quality standards for the state as a whole or for any part thereof. Pursuant to this authorization and mandate, the Department adopted Chapter 17-3, Florida Administrative Code.

Chapter 17-3, FAC classifies all waters in the state according to their highest beneficial use. All waters are classified as Class III unless otherwise classified. All natural coastal waters are Class III or better except for the Fenholloway River, which is Class V.

2. Implementation of Rules 17-3 and 17-4, FAC.

Chapters 17-3 and 17-4, Florida Administrative Code, are the applicable administrative rules adopted pursuant to the legislative mandate in Section 403.061(7), Florida Statutes. Pursuant to this mandate, the Department has enacted a number of rules that concern themselves with the effects of pollution on plant and animal resources, which include, but are not limited to:

a. Section 17-3.051(1)(e), Florida Administrative Code, which states the minimum criteria for "all waters at all times and all places", and states that waters shall be free from pollution "in concentrations which are carcinogenic, mutagenic or teratogenic to human beings or to significant, locally occurring wildlife or aquatic species."

b. Section 17-3.061(2)(o), Florida Administrative Code, which sets criteria for surface waters and states that all surface waters must not be allowed to have "substances in concentrations which injure, are chronically toxic to, or produce adverse physiological or behavioral responses in humans, animals or plants..."

c. Section 17-3.091(21), Florida Administrative Code, which sets criteria for Class IA waters, states that "In no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna."

d. Section 17-3.101(15), Florida Administrative Code, which sets criteria for Class IB waters and includes groundwaters, states that there shall be no substances "in concentrations which injure, are chronically toxic to, or produce significant adverse physiological or behavioral responses in humans, animals or plants."

e. Section 17-3.101(5), Florida Administrative Code, which sets the standard for nutrients in Class II waters, prohibits the alteration of nutrient concentrations "so as to cause an imbalance in natural populations of aquatic flora or fauna."

f. Section 17-3.121(20), Florida Administrative Code, which sets the standard for nutrients in Class III waters, prohibits the alteration of nutrient concentrations "so as to cause an imbalance in natural populations of aquatic flora or fauna."

Similar prohibitions against injury to plants and animals appear in Sections 17-3.111(17) and 17-3.121(7), Florida Administrative Code.

In Section 17-3.011, Florida Administrative Code, the intent of Chapter 17-3 is delineated:

> Subsection (1) reinforces the agency's commitment to uphold Article II, Section 7 of the Florida Constitution, which requires, among other things, "... protection of Florida's natural resources ..."
>
> Subsection (2) is a declaration that the public policy of the State is to protect waters of the State "... for the propagation of wildlife, fish and other aquatic life ..."
>
> Subsection (18) states that the revisions made to Chapters 17-3 and 17-4 "are designed to protect the public health or welfare and to enhance the quality of waters of the State. They have been established taking into consideration ... propagation of fish and wildlife ..."

Sections 17-4.28(8)(a) and (b), Florida Administrative Code, likewise allow the DER to evaluate fish and shellfish areas in processing permits in Class II waters and, if dredge and fill activities might be expected to have an adverse impact on fish or shellfish, the Department is specifically empowered to deny such permits.

Another important rule which allows the Department to take biological factors into account is Section 17-3.121(7), Florida Administrative Code, ("The Biological Integrity" rule). Under the "Biological Integrity" rule, the Department has adopted a formula called the Shannon-Weaver Index, whereby the Department can measure the number of species diversity of benthic (bottom-dwelling) macroinvertebrates, (e.g. clams, oysters, snails, polychaete worms, dragonfly larvae), in a given square unit. The resulting numbers indicate the overall health and stability of a particular environment. The animal populations cannot fall below

the amounts specified in Section 17-3.121(7), Florida Administrative Code, without violating the water quality standards set for Class III waters.

All of the above rules govern the permitting of dredge and fill projects. To meet the test of 17-3, FAC, DER considers the functions of wetlands listed below as the basis for approval or denial of a permit. Through the adjudicatory hearing process, DER has established as non-rule policy that dredging and filling of wetlands may not be permitted, if such activity would degrade the capacity of a wetland to perform those essential water quality functions unique to the wetlands resource.

The legal basis of considering biological values as incipient policy, prior agency practice, and as required by agency rule under Chapter 403, Florida Statutes, was discussed at length in Cappeletti Bros., Inc. v. DER, Case No. 79-1602R (Final Order entered July 7, 1980). In that case it was held:

> (Incipient Policy)
> "Agencies are allowed certain latitude refining agency policy through adjudication of individual cases. The Florida Supreme Court recently held that "administrative agencies are not required to institute rulemaking procedures each time a new policy is developed...although that form of proceeding is preferable where established industry-wide policy is being altered."
>
> (Prior Agency Practice)
> "Thus, even if the biological concerns discussed above were first being raised in this case, it would be permissible under the cases cited above and under Chapter 120, Florida Statutes. However, the concerns addressed above are not new policy of the agency. To the contrary, there is a long line of cases which have been litigated before the Division of Administrative Hearings, discussed in final orders, and appealed to the courts. This is a well established, fully discussed and explicated policy. A number of cases in which such concerns have been discussed and upheld include:
>
> > Flossie H. Manucey v. Department of Environmental Regulation, Case No. 76-1441; Conley P. Glover and W. E. Kirchoff, Jr., v. Department of Environmental Regulation, Case No. 76-1235; Orange County v. Department of Environmental Regulation, Case No. 77-648; E. F. Guyton v. Department of Environmental Regulation, Case No. 78-1817, and Vo-Salle Farms, Inc., v. Department of Environmental Regulation, Case No. 76-1179.

(Agency Rules)
"The Department adopted rules further establishing this policy. These rules include: 17-3.021(15), (16), (20); 17-3.05(1)(a)1.; 17-3.05(1)(f)(i); 17-3.051(1)(e); 17-3.061(1)(o); 17-3.091(6); 17-3.111 (4); 17-3.121; 17-3.121(7), Florida Administrative Code.

Thus, it has been a long standing and well explicated policy of the Department that biological considerations may and in fact are required to be considered under Chapter 403, Florida Statutes. The water quality implications of destruction of plant, animal, and aquatic life must be considered and are an integral part of the permitting process of Chapter 403, Florida Statutes.

The Cappeletti order was subsequently challenged as an invalid rule. The order was upheld in two separate cases: Deltona Corporation v. D.E.R., Case No. 80-1065R and Occidental Chemical Company v. D.E.R., Case No. 80-895R.

Specific wetland values which are considered under Chapter 403, Florida Statutes, include:

a. The "kidney effect" of the wetlands in absorbing nutrients and converting into detrietal material. Ruzicka v. DER, Case No. 78-1358, Occidental Chemical Company v. DER, Case No. 80-895R.

b. The conversion of unwanted nutrients into food material which is assimilable into the food chain. See Key Haven Associated Industries, Inc. v. DER Case No. 946.

c. Erosion and sedimentation control provided by wetland species of plants. In the Key Haven case cited above, the erosion that would occur as a result of the proposed project was cited in Finding of Fact No. 6 as a reason for denial. The Department has adopted a Storm Water Runoff Rule which specifically addresses this factor.

d. Contamination of acquifer through saltwater intrusion or stormwater runoff generated by dredge and fill projects. See definition of waters of the state, Section 403.031(3), F.S., which includes underground water.

e. The effects of water pollution on aquatic plants and animals. See Universal Adams, 44 Fla. Supp. 165 (1974), Farrugia v. Frederick, 344 So. 2d921 (1st DCA 1977), and Dowdy v. DER, Case No. 74-219.

The valuable water quality roles which wetlands play in terms of oxygen levels, assimilation of nutrients, erosion control, stabilization of bottom sediments, habitat, and fish food has been

established; Flossie H. Manucey, DOAH Case No. 76-1441 (proposed fill of 140 feet by 200 feet in salt marsh), Conley P. Glover and W. E. Kirchoff, Jr. DOAH Case No. 76-1235 (proposed 1/4 acre fill in St. Johns River floodplain), Orange County, DOAH Case No. 77-648 (proposed widening and concreting of vegetated drainage canal), E. F. Guyton, DOAH Case No. 78-1817 (proposed boat basin).

Chapter 403, Florida Statutes, mandates the protection of plants, animal, and aquatic life. Section 403.161, Florida Statutes, prohibits pollution "so as to harm or injure human health or welfare, animal, plant, or aquatic life or property." Pollution is defined in Chapter 403, Florida Statutes, as:

> "the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life..."

Requiring restoration of "the air, waters and property, including animal, plant, and aquatic life, of the state to their former condition." is also authorized. Section 403.141(1), Florida Statutes.

Specific water quality criteria published pursuant to Chapter 403, Florida Statutes, are found in 17-3, (FAC). The Dredge and Fill rule, Section 17-4.28(3), F.A.C. requires that each applicant for a dredge and/or fill permit:

> "...shall affirmatively provide reasonable assurance to the department that the short-term and long-term effects of the activity will not result in violations of the water quality criteria, standards, requirements and provisions of Chapter 17-3, Florida Administrative Code."

These statutory and regulatory provisions grant to the department the authority to affirmatively, predictably and enforceably apply the specific water quality criteria of Chapter 17-3, F.A.C. for the protection of wetlands plants, animal and aquatic life.

This protection is not achieved, however, through generalized habitat preservation as is true in navigable waters under 253 F.S. As stated in the Recommended Order in Whitehurst & Sons v. DER, No. 76-1919 (Final Order May 17, 1977):

> "[t]he department's only authority for regulation of such a project as this (Chapter 403 Florida Statutes jurisdiction only) is on the grounds of water quality, not the preservation of natural habitat."

Thus, organisms themselves are to be protected from water pollution in the specific sense and not in the ecological sense.

The Orders demonstrating protection of plants, animals and aquatic life under Chapter 403, Florida Statutes, include Dowdy v. DER, No. 74-219 (Final Order August 30, 1979). In that case, the hearing officer recommended denial of the applicant's post hoc application for a fill permit pursuant to Chapter 403, F.S. and Section 17-4.28, F.A.C., because the fill would eliminate an aquatic plant community which contributed to water quality of the lake and would release nutrients, specifically including phosphorus and nitrogen, and upland runoff into the lake, which would contribute to the eutrophication of the lake with resultant harm to plant, animal and aquatic life. The hearing officer also recommended that the Dowdys be required to restore the waters to their former condition. The Secretary of DER adopted these recommendations in toto and issued a Final Order denying the permit.

Another such case applying specific water quality to organisms is that of Occidental Chemical Company v. DER, Case No. 77-2051, (Final Order May 6, 1980). DER issued a Notice of Intent to Deny Occidental's application to excavate in a creek which is waters of the State. Among the reasons for the Intent to Deny were the elimination of 300 acres of vegetated wetlands, the presence of organisms intolerant to the resultant depressed level of dissolved oxygen, as well as potential violations of the biological integrity criterion, increased Biochemical Oxygen Demand, and nutrient levels. In addition, since the waters involved were designated as Outstanding Florida Waters, pursuant to 17-3.041, F.A.C., it was determined that Occidental had not met its burden of an affirmative showing that its activities were clearly in the public interest under Section 17-4.242, F.A.C. DER issued a Final Order adopting the grounds for denial set forth in the Recommended Order. See also Occidental Chemical Company v. DER, Case No. 80-895R.

The courts of Florida have upheld the State's use of specific water quality criteria promulgated pursuant to 403 F.S. to protect plant, animal and aquatic life. In Department of Pollution Control v. Universal Adams, Inc., 44 Fla. Supp. 165 (1974) (attachment 8), the court required the defendant to apply to the plaintiff for a dredge and fill permit pursuant to the requirements of Chapter 403, Florida Statutes, because:

> It can reasonably be expected that stormwater would pick up substances such as tire debris, oils, greases, fertilizers, nutrients and sediments from such causeway and golf course areas and would run off into the Savannas (a wetland area) in such amounts and concentrations as to be harmful to plant, animal, and aquatic life; and that dredging and filling would result in turbidity in such amounts and concentrations as to be harmful to plant, animal and aquatic life in the Savannas.

In Farrugia v. Frederick, 344 So.2d 921 (1st DCA 1977), a developer sought review of a decision of the Florida Environmental Regulation Commission denying a dredging permit to construct a dead-end canal which would connect to waters of the State. Among the reasons for the denial was that fish life would not be able to exist in the canal due to low dissolved oxygen. The court held that the permit denial was based on competent, substantial evidence and affirmed the agency order.

The above discussion demonstrates that specific water quality criteria promulgated pursuant to Chapter 403, Florida Statutes, are used at all levels of permit review to protect plant, animal, and aquatic life and that these decisions have been upheld on judicial review. In addition, the small number of decisions based solely on the protection of these organisms from pollution demonstrates how few such cases there are. To place these cases in perspective, the large majority of dredge and/or fill cases come under the jurisdiction of both Chapters 253 and 403, Florida Statutes, particularly in coastal areas. Of the cases arising under Chapter 403, Florida Statutes, in which destruction of organisms is at issue, some are decided solely on he basis of the filtration and assimilative qualities of aquatic or wetland vegetation (the kidney effect). Those few remaining are of the type discussed above, where plant, animal and aquatic life is protected from pollution for its own sake.

It has been stated that Chapter 403, Florida Statutes, is not meant to protect "habitat" or wetlands per se, in the general sense. However, since Chapter 403, Florida Statutes, can and does protect individual plant, animal and aquatic communities, this distinction is only a matter of semantics. If the individual types of organisms in a particular location are protected, then their habitat is protected. For instance, plants, if protected from damage or destruction from to pollution, continue to provide habitat, along with undegraded water, for animals and aquatic life. Therefore, Chapter 403, Florida Statutes, can be considered to protect wetland habitat, although it does not expressly provide such protection.

3. Case Law Examples

A permit may be obtained if the applicant provides information which shows that the area proposed for dredging or filling contributes little or nothing to the maintenance of water quality or aquatic resources. Such a situation may exist where there is a paucity of vegetation, where other activities, not the work of the applicant, have eliminated the subject area as a contributor to the maintenance of water quality, or where the proposed project will reduce significantly, or eliminate a present source of pollution; Vo-Lasalle Farms, Inc., DOAH Case No. 76-1779 (previously altered drainage pattern, polluting canal would be eliminated), Edward Shablowski vs. State of Florida Department of Environmental Regulation, Case No. KK-341 (Florida 1st DCA, 1979), Izaak Walton League of America, et al, DOAH Case Nos. 78-3210 and 78-2311.

The following two cases illustrate the issuance and denial of permit applications involving only Chapter 403, F.S., jurisdiction.

a. Application No. 11-50-3769

PROJECT DESCRIPTION: To provide construction sites for residential development in a planned community by: placing approximately 700,000 cubic yards of clean upland fill material onto approximately 94 plus acres of submerged lands of waters of the state landward of the line of mean high water; constructing a surface water management system.

LOCATION: Adjacent to Vanderbilt Beach Road, Upper Clam Bay, Collier County, Sections 32 and 33, Township 48 South, Range 25 East, Sections 4 and 5, Township 49 South, Range 25 East, not in aquatic preserve, Class III (adjacent to Class II) Waters.

STAFF ASSESSMENT: This application was received on July 11, 1976. As the project was conceived then, approximately 1.9 million cubic yards of material would be placed onto approximately 145 acres of submerged lands of waters of the state. The applicant subsequently made three significant reductions in the areal extent of its project; the second revision, accompanied by a study of carbon cycling in the Clam Pass estuarine system, was received on February 8, 1978. The revised proposal would have filled approximately 100 acres of submerged lands of waters of the state with approximately 800,000 cubic yards of clean upland fill material.

The carbon cycling study indicated that the areas proposed for filling did not contribute significant amounts of organics to the Clam Pass system. The applicant demonstrated effective upland control over all significant drainage into the Clam Pass estuarine system, and agreed to preserve the significant portions of the Clam Pass estuarine system, other than those portions expressly intended to be altered pursuant to the permit application, by means of deeds and restrictive covenants running with the land.

ACTION TAKEN: On February 16, 1979, at the recommendation of the staff, the Director of the Division of Environmental Permitting signed a Notice of Intent to issue a permit for this project. On March 2, 1979, petition for an administrative hearing was filed on behalf of Florida Audubon Society and the Sierra Club. On April 27, 1979, petitioners and the applicant submitted a settlement proposal reducing the fill material to approximately 700,000 cubic yards. This project, as defined by the April 27, 1979 settlement offer, was permitted by the entry of a Final Order by the Secretary of DER. The permit provided that (1) the permittee agrees that, upon receipt of all required local,

state, and federal permits, a survey of its property will be conducted to determine the extent of its work area and preservation area. A legal description of the preservation area shall be prepared. The survey and legal description shall be approved by the Department. Upon receipt of the Department's approval, the permittee shall complete and execute and file the Declaration of Restrictions; (2) before beginning construction pursuant to the permit, the Declaration of Restrictions shall be recorded in Collier County; (3 the water quality of the adjacent waters and any discharges resulting from the project shall conform to Sections 17-3.02 17-3.05, and 17-3.09, Florida Administrative Code.

b. Application No. 13-8858

PROJECT: To make submerged lands in waters of the state suitable for development by: excavating 170,340 cubic yards of material from approximately 7.0 acres for fill material and 22,660 cubic yards of muck for borrow site preparation; depositing 150,000 cubic yards of material in waters of stat to raise the property to Dade County Flood Criteria elevatio of 8.5 mean sea level.

LOCATION: Near intersection of Krome Avenue and Okeechobee Road, Section 3, Township 52 South, Range 39 East, not in an aquatic preserve, Class III Waters.

STAFF ASSESSMENT: The completion of the project would destroy approximately 27 acres of the Florida Everglades sawgrass prairie. This land contains waters of the state and, as a result of the project, the historical hydrologic sheet flow of the area would be altered. In addition, completion of the project would result in the elimination of a productive feeding ground for a variety of freshwater marsh organisms that includes the Florida Everglade kite. Furthermore, since the sawgrass community contributes to the maintenance of water quality by the assimilation and transformation of nutrients, its destruction would have an adverse effect on the water quality of the adjacent wetlands. It can also be expected, as a result of the increased human activity, that a variety of deleterious materials (herbicides, pesticides, heavy metals, petroleum products) would be introduced through sheet flow and ground water into the adjacent wetlands. These materials and their degradation products are known to be toxic to plant and animal life as well as causing carcinogenic, teratogenic and mutagenic affects. As a result of these factors, the project would contribute to the degradation of water quality in the adjacent wetlands and borrow canal.

ACTION TAKEN: An Intent to Deny and Proposed Order of Denial was signed August 21, 1978. Subsequently, the applicant requested a 45 day time extension to allow for the

submission of project modifications. The modifications were submitted October 16, 1978, however, review of modifications by the Department found no evidence that the indicated changes would provide reasonable assurance that state water quality standards would be maintained. The applicant was notified of the Department's finding. The applicant declined to request a hearing. A final order of denial was entered by the Secretary of DER.

In cases involving public projects such as ports, highways, beach renourishment and boat ramps, the public necessity and lack of reasonable aternatives is taken into account when evaluating the permit application against adverse impacts on aquatic resources; Arlington East Civic Association, DOAH Case No. 78-1875.

The following decisions illustrate the application of the principles of mitigation and public necessity.

a. Application No. 44-37-3684

PROJECT: Proposal by the Florida Department of Transportation to construct a 320-foot two-lane bridge involving (1) removal of the existing fender system; (2) construction of approximately 340 feet of vertical bulkhead with riprap at the toe except where bulkhead is upland of the line of mean high water; (3) dredging of approximately 450 cubic yards of material, recoverable spoil to be deposited on DOT right-of-way; (4) filling approximately 980 cubic yards of material waterward of the line of mean high water and 810 cubic yards of material upland of the line of mean high water but within the submerged or transition zone; (5) to add a 4-foot 10 1/2-inch pedestrian sidewalk supported by a row of pilings, along the entire southern side of the proposed bridge; (6) to remove the existing bridge by pulling up or breaking off the pilings at the existing bottom contour. All bridge material is to be deposited on uplands; and (7) to provide for the removal of the causeway and the creation of new submerged lands by excavating an additional 6,185 cubic yards of material landward and 815 cubic yards of material waterward of the mean high water.

This project was part of a comprehensive program to repair and widen the Florida Keys Bridges from two lanes to four. The repair and widening was necessary to reduce the general risk to the safety of the public, as well as the special risks associated with disaster evacuations. It involved permits under Chapters 253 and 403, F.S.

LOCATION: U.S. 1, Tavernier Creek, Monroe County, Section 33, Township 62 South, Range 38 East, not in an aquatic preserve, Class III Waters.

STAFF ASSESSMENT: As Tavernier Creek is constricted by the present arrangement of bridge approaches, their removal would reduce the force of existing daily tidal currents. On the long-term, increasing the width of Tavernier Creek could be expected to reduce tidal storm pressure on the bridges and approaches during times of stress. The Florida Department of Transportation requested that the subject permit be modified to include the removal of a portion of the existing causeway to increase circulation in the project area. This modification is proposed as part of the Federal Keys Bridges Mitigation Plan and is to be used in lieu of the original hydrographic study requested by EPA. The Mitigation Plan calls for extensive planting of seagrasses to compensate for grasses destroyed in the four-laning of the Keys Bridges. This proposal was submitted at a joint state-federal meeting in Panama City on November 7, 1978. Representatives of COE, FDER, EPA, NMFS and USFWS attending the meeting concurred with the proposal.

ACTION TAKEN: A permit was signed by the Assistant Secretary of DER with conditions relating to construction controls and water quality monitoring.

b. Application No. 29-6580

PROJECT: Proposal by Tampa Port Authority to construct a shrimp docking and processing facility by: excavation of 34,500 cubic yards of material waterward of the mean high water line to provide water depth of 24 feet MLW; placement of 34,500 cubic yards of material behind a bulkhead to fill submerged and transition areas to create upland areas on which to build four packing houses, maintenance, and fueling facilities; construction of four 20 foot by 300 foot docks extending from 40 foot by 20 foot platforms adjacent to each packing house; and construction of three marine railways. A total area of 8.8 acres will be impacted.

The purpose of the project was to relocate the shrimp fleet in Tampa Bay. The fleet had been docking in an area of the port designed for the repair of large vessels. Increased demand on port facilities required the removal of the shrimp fleet from the repair area. The site selected by the Port Authority was on and adjacent to a portion of an earthen causeway along which existed volunteer mangroves.

LOCATION: 22nd Street Causeway, between East Bay and McKay Bay, City of Tampa, Hillsborough County, Section 29, Township 29 South, Range 19 East, not in an aquatic preserve, Class III Waters.

STAFF ASSESSMENT: The original project included the excavation of 78,500 cubic yards of material, the placement of 164,500 cubic yards of material to create docking areas and

a 1,300 ft. long breakwater, a 200 ft. by 1,300 ft. basin, and an oil bulk loading facility on the breakwater. The packing houses were to be constructed over the water on pilings. The relocation of the packing houses to the fill should minimize the possibility of discharge and spills from the packing houses into the water. The elimination of the bulk oil facility, the basin, and the breakwater reduced the area with submerged or transition vegetation and water depth of 2 ft. or less to approximately 4.8 acres. The Tampa Port Authority committed itself to replanting all the mangroves that could be moved and revegetating an area equal to that eliminated. The revegetation areas were to be on a Corps of Engineers dredge spoil island, CDAD, Fishhook Island, and, if additional areas were necessary, on the south side of a spit by Bird Island.

ACTION TAKEN: A permit was signed by the Secretary of DER with conditions relating to construction controls and water quality monitoring.

c. Robert A. Peterson, Lee County
Application for fill permit

PROJECT: Application for permit to fill salt water swamplands along the shoreline of Pine Island, Lee County, Florida. Applicant owns approximately 100 acres of shorefront property. Roughly one-half of applicant's property is intertidal mangrove swamp. Applicant seeks authorization to construct several ponds on his property and use the excavated material to fill the intertidal wetlands to an elevation of three feet, mean sea level. Applicant proposed to build a dike along the shoreline, roughly landward of the mean high water line and then fill behind it.

STAFF ASSESSMENT: No reasonable assurance have been given that the project will not degrade water quality.

APPLICANT'S ASSESSMENT: Applicant contends that he is entitled to the requested permit because he will not do any work below the mean high water line and therefore the Department is without authority to deny the permit. Applicant also asserts that the departmental rules relating to idle wetlands are invalid and that the installation would not be a source of pollution. Applicant further asserts that permit denial would amount to inverse condemnation for which the applicant should be compensated.

HEARING EXAMINER'S CONCLUSIONS: Regardless of the location of the mean high water line, it is evident that were the project completed it would result in serious detrimental effects to the surrounding waters. The destruction of 50 acres of mangrove wetland will have a generally harmful impact upon the waters and marine ecology of the entire

area. Rule 17-4.28(3), FAC, requires that an applicant for a permit to affirmatively show that the work will not interfere with the conservation of fish, marine life and wildlife and other natural resources. In the absence of reasonable assurance by the applicant, it is evident that the proposed project will have adverse effects contrary to both the above administrative rules.

The regulatory powers of Chapter 403, F.S., are not limited to navigable waters (the mean high water line), but to "waters of the state". The tidal wetlands in question are frequently inundated by normal tidal action and are thus the "waters of the state". The Department does, therefore, have jurisdiction over the project.

Applicant has not properly challenged the validity of Departmental rules by filing a petition with the Division of Administrative Hearings as required by Section 120.56, F.S. Therefore, no ruling can be made on the validity of the Department's rules. Finally, no factual basis was established for concluding that denial of this permit would entitle the applicant to compensation for his lands.

HEARING EXAMINER'S RECOMMENDATION: Denied.

FINAL ORDER: Adopts Recommended Order en toto.

ENVIRONMENTAL REGULATION COMMISSION: Affirmed.

FIRST DISTRICT OF APPEAL: Granted motion to dismiss. Substantive appeal later confirmed.

Marinas And Docks

Marinas and docks may gain approval, if they do not impact upon dense vegetation by dredging, filling, shading, boat traffic, and if they do not impede navigation, or service liveaboard vessels. In addition, spill prevention and abatement controls must be provided; William S. and Nellie B. Byrd, OAH Case No. 79-350, Peter Mansfield, DOAH Case No. 79-528.

Certification And Acceptance

Section 403.061(14), F.S., authorizes the Department of Environmental Regulation (DER), to adopt a rule pursuant to which the Department of Transportation (DOT) may perform activities relating to the maintenance, repair, or replacement of existing structures upon certification by DOT that they will meet all applicable requirements of DER. The purpose of this statutory provision was to reduce the ordinary permitting time while ensuring that environmental standards would be met. In June of 1979, DER adopted section 17-4.32, F.A.C., which implements the certification and acceptance program with DOT. The rule authorizes DOT to submit certifications for individual

projects, classes of activities, geographical areas or geophysical features (such as a particular water body). The rule prescribes minimum criteria for the certifications and their approval or disapproval, for their revocation or modification, and for public notice.

Once a certification is accepted by DER, DOT must then notify DER of each project undertaken pursuant to the certification. While DOT is responsible for ensuring that a project is conducted in accordance with the certification, DER retains authority to conduct independent surveillance of projects.

Compliance Determination

Determinations of compliance with permits are made by on-site inspections performed by DER's personnel in the field offices. In addition, permittees frequently are required to submit to the department monitoring information specified in their permit.

Enforcement by Department of Environmental Regulation

Permits issued under Chapter 253, Florida Statutes, are enforceable judicially pursuant to sections 120.69, 253.04, 253.127, and 403.412, Florida Statutes. Permits issued under Chapter 403, Florida Statutes, are enforceable pursuant to administrative and juducial remedies provided by sections 120.69, 403.121, 403.131, 403.141, 403.161, and 403.412, Florida Statutes. Enforcement actions are initiated through DER's field offices in coordination with DER's Office of General Counsel. Cases are tracked by DER's Office of Enforcement. For a discussion of citizen enforcement provisions, see Part II, Section IIE of this document.

Insuring Consistent Agency Practice by the Department of Environmental Regulation

The Department discussed this issue in-depth in regard to cumulative impact in Cappeletti Bros., Inc., v. D.E.R., Case No. 79-1602R, (Final Order entered July 7, 1980).

> Section 120.68(12)(b), Florida Statutes, requires a reviewing court to remand the case to the agency if it finds the agency's exercise of discretion to be inconsistent with an agency rule, an officially stated agency policy, or prior agency practice, if deviation therefrom is not explained by the agency. The courts have interpreted this to mean that agencies are bound to follow their previous decisions and practices unless a good explanation is given for deviation. It has been described as setting up an ever expanding library of precedent which would provide predictability of future agency decisions, based upon actions they have taken in the past. See MacDonald v. Department of Banking and Finance, supra. Further requirements are placed upon agencies by Section 120.53(2), Florida Statutes, which requires an agency to keep a file of all of its final orders

available for public inspection as well as a current subject matter index of these orders. The Department has complied with this requirement. Evidence of the use of this subject matter index and library of administrative case decisions before the Department is the number of cases cited by Petitioner to support its application and case. The hearing officer recognized this principle of adherence to agency precedent by citing previous decisions of the Department on similar applications.

Consequently, it is difficult to understand why the hearing officer has found in this conclusion of law that the agency may not consider the long-range ramifications of granting this application, when the precedent of granting this permit may require the granting of permits to a number of other similarly situated applicants. The application of this doctrine is recognized specifically in Section 403.141, Florida Statutes, where the Department is granted the authority to take action against several sources of pollution if it cannot prove the degree of contribution by individual applicants. The Department can also consider such combined or cumulative discharges in the preconstruction stages rather than waiting until the problem occurs.

A number of administrative cases have recognized the authority of the Department to consider past and future agency practice in the consideration of Chapter 403, Florida Statutes, permits: Leeson v. Department of Environmental Regulation, Case No. 75-2042; Glover and Kirchoff v. Department of Environmental Regulation, Case No. 76-1235; Lauthain v. Department of Environmental Regulation, Case No. 76-1960; Dowdy v. Department of Environmental Regulation, Case No. 79-219.

The conclusions of law of the hearing officer in regard to cumulative impact are rejected and it is specifically concluded that the Department may consider cumulative impacts as a part of a review of previous agency practices and future agency actions that may be mandated by the issuance of a particular permit.

In Petry v. Department of Environmental Regulation, Case No. 77-412 (Final Order entered September 12, 1977), the Department of Environmental Regulation held that:

> "Section 120.68(12)(b), Florida Statutes, requires all agencies to comply with a type of administrative Stare decisis. Should the Department grant the above permit it may commit itself to granting similar applications on a state-wide basis."

Section 120.69(1)(b), Florida Statutes, allows any substantially affected person to enforce agency action by the filing of a petition

for enforcement in circuit court. In addition, Section 403.412, Florida Statutes, allows any citizen of the state upon filing of a verified complaint with the agency, to bring an action against the agency or persons, agencies or authorities violating laws or rules for the protection of air, water or natural resources of the state. Thus, an agency such as the Department of Environmental Regulation is susceptible to suit if it fails to carry out its responsibilities under the law. The constitutionality of Section 403.412, Florida Statutes was recently upheld by the Florida Supreme Court in Florida Wildlife Federation v. South Florida Water Management District and Florida Department of Environmental Regulation (Florida 1980). The court in that case also noted that they agreed with lower court opinions that corporations (including environmental or citizens groups incorporated as non-profit corporations) were citizens for the purpose of the Environmental Protection Act.

* * *

OWNERSHIP AND MANAGEMENT OF PUBLIC LANDS

The Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, hold ownership over, and are responsible for managing, public lands pursuant to Chapter 253, Florida Statutes. Chapter 253 was first enacted in 1854 and has been amended periodically ever since, most recently in 1980 when the Florida Legislature provided land management direction to the Board; ss. 253.001, 253.01, 253.02, F.S. Staff duties for the Trustees are performed by the Division of State Lands of the Department of Natural Resources, s. 253.002, F.S.

The Board of Trustees is authorized to acquire and dispose of land subject to the requirements of Chapter 253.025. In addition, the Board may condemn submerged lands "as shall be in the public interest and for a public purpose, ss. 253.02, 253.025, F.S.

Lands owned and managed by the Board of Trustees include "all lands owned by, or which may hereafter inure to, the state or any of its agencies ... excluding lands held for road and canal rights-of-way, spoil areas and lands required for disposal of materials or borrow pits, any land title to which is vested or may become vested in any port authority, flood control district or water management district or navigation district ...". These lands include:

- All marsh, swamp, and overflowed lands held by the state, or which may hereafter inure to said state;
- All lands owned by the state by right of its sovereignty;
- All internal improvement lands proper;
- All sovereignty tidal lands;
- All lands covered by the shallow waters of the ocean, gulf, or bays or lagoons thereof, and all lands owned by the state covered by fresh water;
- All parks, reservations, or lands or bottoms set aside in the name of the state, excluding lands held for road and canal rights-of-way; and

-- All lands which have accrued, or which may hereafter accrue, to the state from every source whatsoever, excluding lands held for road and canal rights-of-way, etc., ss. 253.03, 253.12, 253.36, F.S.

STATE LANDS MANAGEMENT AND ACQUISITION

The Board of Trustees is required to develop an overall and comprehensive plan of development for the acquisition, management, and disposition of state lands to insure maximum benefit and use, 253.03 (7), F.S. In addition, the Trustees are to develop a complete inventory of all public lands in the state, including lands owned by local and regional governmental agencies. All state agencies are required to submit detailed lists of properties owned or managed by them to the Trustees by December 31 of each year, s. 253.03(8), F.S.

Lands may be acquired by the Trustees pursuant to the Conservation and Recreation Lands Trust Fund, including lands acquired as environmentally endangered lands pursuant to s. 259.03(2), and for the following other uses:

-- Natural floodplain, marsh or estuary;
-- State parks, recreation areas, public beaches, state forests, wilderness areas or wildlife management areas;
-- Restoration of altered ecosystems to restore damage; and
-- Preservation of significant archaeological sites.

When purchasing lands, the Trustees are urged to give high priority to purchasing lands near population centers, s. 253.023, F.S. The fund also may be used, pursuant to Chapter 80-356, Laws of Florida (to be codified as s. 253.023(4), F.S.), to conduct a natural areas inventory.

In 1980, the Legislature passed Chapter 80-280, Laws of Florida (to be codified as s. 253.034, F.S.), requiring the Board of Trustees to manage state lands for multiple use unless a single use was necessary or more desirable. Each state agency which manages lands is required to develop a land management plan within two years.

SALE AND LEASE OF STATE-OWNED LANDS

The Board of Trustees has authority to sell, exchange, lease, or grant easements for the use of state lands if certain conditions are met, ss. 253.12, 253.42, 253.51-253.62, 253.67-253.75, 258.16(3)(a), 258.165(3)(a), and 258.42(a), F.S. Prior to any sale, however, the lands must be offered to the county government to be used for public purposes. If the county has no need for the lands, the Trustees may sell the land, s. 253.111, F.S. A proposed lease, sale or exchange must also be advertised in a newspaper in the county in which the lands are located. If there are no objections which would require a public hearing, the Trustees may take the requested action, s. 253.115, F.S.

Submerged lands may be sold if the Trustees determine the sale is in the public interest. Article 10, Section 10, Florida Constitution, provides that "Sale or private use of ... (submerged) ... lands may be authorized by law, but only when not contrary to the public interest". Before consummating a sale, the Trustees must determine whether the sale would "interfere with the conservation of fish, marine and other wildlife, or other natural resources, including beaches and shores, and would result in destruction of oyster beds, clam beds, or marine productivity, including, but not limited to, destruction of marine habitats, grass flats suitable as nursery or feeding grounds for marine life, and established marine soils suitable for producing plant growth of a type useful as nursery or feeding grounds for marine life, and if so, in what respect and to what extent, and it shall consider any other factors affecting the public interest", ss. 253.12(2)(a), 253.12(3), F.S.

The board also is prohibited from making a sale if the applicant does not also have pending, an application for approval of a fill permit, and an application for a permit to dredge fill material, except that the Trustees may sell the lands if the sale contains a restriction against dredging or filling, s. 253.12(2)(b), F.S. Rules may be adopted requiring sales of submerged lands to be preceeded by an ecological survey conducted at the expense of the applicant, s. 253.12(7), F.S.

The Trustees lease state submerged, and other lands for a number of purposes. Submerged land leases most commonly are for the purpose of exploring for oil or gas, aquaculture operations, or for facilities such as marinas and other waterfront-dependent operations. Oil and gas leases are granted only after advertisement in newspapers, receipt of sealed bids, and a determination of royalties due the state, ss. 253.45-253.61, F.S.

Aquacultural leases cover the submerged lands and the water column above the submerged lands, and may be granted so long as the Trustees find the lease is not contrary to the public interest. Public notice, and if objections are filed, public hearings, are required prior to issuing an aquaculture lease, ss. 253.67-253.75, F.S.

The Trustees also are empowered to grant easements and perpetual easements to riparian owners, s. 253.665, F.S., and to lease, or sell lands, for mineral exploration and mining, s. 253.45, F.S.

* * *

COASTAL CONSTRUCTION

Florida's extensive coastline of several thousand miles coupled with a very low rise in elevation landward of coastal waters renders coastal construction a matter of particular concern. The Florida Legislature addressed this concern by enacting the Beach and Shore

Preservation Act, Chapter 161, Parts I and II, Florida Statutes. The requirements and constraints of Chapter 161 are in addition to those of Chapters 253 and 403, Florida Statutes, discussed under Part II, Section II.B.1., 2., and 13 of this document.

The coastal construction setback line was the first requirement established under Chapter 161, Florida Statutes. Construction can be undertaken waterward of that line only pursuant to a waiver or variance. Subsequent to the enactment of the setback line program, the Legislature enacted the coastal construction control line approach. Construction can be undertaken waterward of the control line only pursuant to a permit. The setback line focuses on the protection of sandy beaches, while the more recent control line focuses on both potential hazards to people and property and the protection of the beach and dune system, Chapter 16B-33.05, F.A.C.

When a control line is established in a particular area, it replaces the setback line and construction is undertaken pursuant to permits, rather than waivers or variances. The Department of Natural Resources has adopted rules, codified as Chapter 16B-33, Florida Administrative Code, to implement the program. The rules prescribe coastal construction criteria, criteria for establishing and locating control lines, and procedures for delegation to local governments. (See Appendix).

Pursuant to Chapter 161.053, the Department of Natural Resources has established coastal construction control lines in twenty-two counties. These lines were established as a result of a comprehensive engineering study, topographic survey, and public hearings as required by the statute.

LEGISLATIVE GOALS

Section 161.053(1), F.S., provides that:

> The Legislature finds and declares that the beaches of the state, by their nature, are subject to frequent and severe fluctuations and represent one of Florida's most valuable natural resources and that it is in the public interest to preserve and protect them from imprudent construction which can jeopardize the stability of the beach-dune system. In furtherance of these findings, it is the intent of the Legislature to provide that the department, acting through the division, shall establish coastal construction control lines on a county basis along the sand beaches of the state fronting on the Atlantic Ocean and the Gulf of Mexico. Such lines shall be established so as to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge or other predictable weather conditions, and so as to define the area within which special structural

design consideration is required to insure protection of the beach-dune system, any proposed structure, and adjacent properties, rather than to define a seaward limit for upland structures.

ADMINISTRATION

The Beach and Shore Preservation Act is administered by the Department of Natural Resources (DNR). The Department is headed by the Governor and Cabinet. Daily operations are managed by an Executive Director. The Act provides for delegation of authority to coastal counties and municipalities to administer coastal construction control line requirements; s. 161.053(3), F.S.

The control of construction activities for beach and shore protection consists of three separate types of regulatory procedures. The application of these procedures depends upon the type and location of the proposed structure. Chapter 161.041 F.S. regulates the construction of shore protection structures on sovereignty lands. Chapter 161.052 regulates construction and excavation activities in areas subject to the coastal construction setback line. Chapter 161.053 regulates excavation and construction activities in areas subject to the coastal construction control line.

CONSTRUCTION AND ACTIVITIES ON SOVERIEGNTY LANDS UNDER TIDAL WATERS OF THE STATE

Permits from DNR are required for the construction or reconstruction of shore-protection structures and for other structures or activities upon sovereignty lands below the line of mean high water in tidal waters of the state; s. 161.041. Since the areas subject to regulation under section 161.041, Florida Statutes, are also subject to regulation under Chapters 253 and 403, Florida Statutes, DNR applies this section only to the construction or reconstruction of shore-protection structures. By so doing, redundancy in state permitting is minimized.

COASTAL CONSTRUCTION SETBACK LINE

General Restriction

No dwelling house, hotel, motel, apartment building, seawall, revetment, or other structure incidental to or related to such structure, including but not limited to such attendant structures or facilities as a patio, swimming pool, or garage, may be constructed within 50 feet of the line of mean high water on the sandy portions of the coast fronting on the Gulf of Mexico or the Atlantic Ocean, unless a waiver or variance is granted by DNR; s. 161.052(1), (2), and (5), F.S.

The setback line restrictions may be superseded by a coastal construction control line or local coastal construction zoning and building codes approved in lieu of a control line; s. 161.053 (9), F.S.

Exceptions

1. The following activities are expressly exempted from the setback line restriction:

   a. structures intended for shore protection purposes and which are regulated by the permit requirements of section 161.041, F.S.; s. 161.052(3), F.S.;

   b. structures existing or under construction on June 27, 1970; s. 161.052(3), F.S.; Chapter 16B-33.04, F.A.C.

   c. any modification, maintenance, or repair to any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure; s. 161.052(6), F.S.

2. Expressly excluded from the areas of the coast subject to the setback line are "bays, inlets, rivers, bayous, creeks, passes, and the like"; s. 161.052(1), F.S. In addition, DNR is authorized to exempt other specifically described portions of the sandy coastline which, because of their nature, are not subject to erosion of a substantially damaging effect to the public; s. 161.052(4), F.S. The shoreline fronting the Atlantic Ocean or the Gulf of Mexico is subject to the setback line, except for the shoreline in the following counties or areas in which DNR has determined that high energy beaches do not exist: Wakulla, Taylor, Dixie, Levy, Hernando, Pasco, Monroe, all islands fronting the Gulf of Mexico in Collier south of Caxambas Pass, and Soldier Key, Sand Key, Elliot Key, Rhodes Key, and the Ragged Keys in Dade.

Waivers or Variances

DNR is authorized to grant a waiver or variance from the setback line restriction for the following structures:

1. an excavation or erection of a structure which DNR determines is clearly and unequivocally justified based upon a consideration of the facts and circumstances of the situation, including engineering data concerning shoreline stability and storm tides related to shoreline topography; s. 161.052(2)(a), F.S.

2. a structure along a line closer to the line of mean high water than the setback line, if such closer line has been established by a number of existing structures in the immediate contiguous or adjacent area, is reasonably continuous and uniform, and if the existing structures have not been unduly affected by erosion. DNR is prohibited from granting a waiver or variance under this

provision which would contravene the setback requirements established by a county or municipality which are equal to, or more strict than, the state setback requirements; s. 161.052(2)(b), F.S.; and

3. pipelines or piers extending outward from the shoreline, unless DNR determines that such structures would cause erosion of the beach in the area of the structures; s. 161.052(2)(c), F.S.

DNR has adopted regulations setting forth the information which must be provided by applicants for a waiver or variance; s. 16B-33.05, F.A.C. Waivers or variances may be subject to conditions imposed by DNR; s. 16B-33.15, F.A.C. Unless otherwise specified, construction pursuant to a waiver or variance must be initiated within six months and completed within eighteen months of issuance. Time extensions may be granted; s. 16B-33.17, F.A.C.

Enforcement

Violations of the setback line requirements and waivers or variances are subject to criminal prosecution as a first degree misdemeanor; ss. 161.052(8), and 161.121, F.S. Structures erected or excavations undertaken in violation of the setback requirements are expressly deemed public nuisances; s. 161.052(7), F.S. Public nuisances are subject to abatement by injunctive and criminal remedies; ss. 161.081, 60.05, 823.01, and 823.05, F.S. DNR is authorized to remove such structure or refill such excavation, if, after notice to the responsible party, removal or refilling is not completed within a reasonable time after receipt of the notice. Costs incurred by DNR's removal or refilling become a lien upon the property involved; s. 161.052(7), F.S., ss. 16B-33.19, 16B-33.20 and 16B-33.21, F.A.C.

COASTAL CONSTRUCTION CONTROL LINES

DNR is authorized to establish on a county-by-county basis coastal construction control lines for the purpose of defining beach areas within which special structural design consideration is required to insure protection of the beach-dune system, any proposed structure, and adjacent properties; s. 161.053(1), F.S.

Establishment of a Line

Such a line may be established only after a public hearing has been held in the area to be affected, and only after DNR has determined that such a line is necessary for the protection of upland properties and for the control of beach erosion. DNR's determination must be based upon a consideration of the information presented at the public hearing and upon a comprehensive engineering study and topographic survey, ground elevations in relation to historical storm and hurricane tides, predicted maximum wave uprush, beach and offshore ground contours, the vegetation line, erosion trends, any dune or bluff line, and existing upland development. Concurrent with the establishment of a coastal construction control line, DNR is required

to make recommendations to the Governor and Cabinet concerning the purchase of lands seaward of the line as environmentally endangered lands or outdoor recreation lands; s. 161.053(11), F.S.

Established control lines are reviewed by DNR periodically. Reviews may be initiated by request of officials of an affected county or municipality or by request of any affected upland riparian landowner; s. 161.053(2), F.S., s. 16B-33.10, F.A.C.

Effect of a Control Line on the Setback Line

Once a coastal construction control line has been established or a local coastal construction zoning and building code has been approved in lieu of such a line, the coastal construction setback line and requirements are deemed superseded by the control line or local code requirements; s. 161.053(9), F.S.

Coastal construction control lines have been established by DNR in all coastal counties to which the setback line applies (see subsection entitled "General Restriction", above), except for Dade and Broward Counties. Control lines will be established in Dade and Broward Counties as soon as possible.

Local Government Role

A coastal county or municipality may establish coastal construction zoning and building codes in lieu of the state requirements associated with a coastal construction control line. Once approved by DNR as adequate to protect the shoreline from erosion and to safeguard adjacent structures, such codes operate in lieu of state requirements. In addition to evaluating the substantive requirements of the codes, DNR must also evaluate the sufficiency of the local governments funds and personnel allocated to administer the codes. If, after approval of a local code, DNR determines that the codes are being inadequately administered, DNR is authorized to revoke its prior approval thereby reinstituting the effectiveness of the state requirements; s. 161.053 (3), F.S., ss. 16B-33.22 and 16B-33.23, F.A.C. To date, local codes have been approved in Lee, Pinellas, Sarasota and Okaloosa Counties.

General Restriction and Permits

Upon the establishment of a coastal construction control line, no structure may be constructed, excavation undertaken, beach material removed, or other alteration of existing ground elevations made seaward of the line without a permit from DNR. Furthermore, no vehicle may be driven on, over, or across any sand dune located seaward of the line; s. 161.053(2), F.S.

Permits may be granted by DNR in the following situations:

1. The department may authorize an excavation or erection of a structure at any riparian coastal location as described in subsection 161.053 (1) upon receipt of an application from a

riparian owner and upon the consideration of facts and circumstances, including adequate engineering data concerning shoreline stability and storm tides related to shoreline topography, which, in the opinion of the department, clearly justify such a permit;

2. If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if said existing structures have not been unduly affected by erosion, a proposed structure may be permitted along such line on written authorization from the department if such proposed structure is also approved by the department. However, the department shall not contravene setback requirements or zoning or building codes established by a county or municipality which are equal to, or more strict than, those requirements provided herein.

3. The department may authorize the construction of pipelines or piers extending outward from the shoreline, unless it determines that the construction of such projects would cause erosion of the beach in the area of such structures.

DNR has promulgated rules governing the issuance of permits; Chapter 16B-33.06, 16B-33.07, 16B-33.08, F.A.C.

Exemptions

1. Structures exempt from the requirements associated with a coastal construction control line are as follows:

   a. structures intended for shore protection purposes and which are regulated by section 161.041, F.S.; s. 161.053 (7), F.S.;

   b. structures existing or under construction prior to the establishment of the line, unless a material alteration is proposed; s. 161.053(7), F.S.

   c. the modification, maintenance, or repair to any existing structure within limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure; s. 161.053(10), F.S.

2. In addition to the structures which are exempt, DNR is authorized to exempt by rule specifically described portions of the coastline which it determines are not subject to erosion of a substantially damaging effect on the public; s. 161.053(8), F.S. The same coastal areas exempted from the setback line have been exempted from the coastal construction control lines; see subsection entitled "General Restriction" above.

Enforcement

The enforcement remedies for violations of the coastal construction control line requirements are basically the same as those for the coastal construction setback line. However, driving a vehicle on, over, or across any sand dune and damaging or causing to be damaged such dune, or the vegetation growing on the dune, constitutes a violation of the control line and is subject to a criminal prosecution as a second degree misdemeanor; ss. 161.053(5) and (6), and 161.121, F.S.

BEACH NOURISHMENT AND EROSION CONTROL

The Legislature has authorized the Governor and Cabinet, acting through DNR, to undertake beach nourishment and erosion control projects in conjunction with local governments and the federal government; ss. 161.141 through 161.45, F.S. County commissions act as beach and shore preservation authorities with powers to acquire land by eminent domain, levy ad valorem and special benefit taxes, and issue bonds for beach and shore preservation projects; ss. 161.25, 161.36, 161.37, and 161.38, F.S.

* * *

OUTDOOR RECREATION AND CONSERVATION

The State of Florida has several programs designed to provide for the outdoor recreation of its residents and visitors and for the conservation of lands. These programs include state parks, wilderness areas, aquatic preserves, environmentally endangered lands, and recreational trails. Provision is made for the acquisition and management of areas for these purposes in Chapters 258, 259, 260, 372 and 375 of the Florida Statutes. Additional discussions of these programs may be found elsewhere in Section II of this document and in the Appendix.

LEGISLATIVE GOALS

Section 258.037, Florida Statutes, provides that:

> it shall be the policy of the state to promote the state park system for the use enjoyment, and benefit of the people of Florida and visitors; to acquire typical portions of the original domain of the state which will be accessible to all of the people, and of such character as to emblemize the state's natural values; conserve these natural values for all time; administer the development, use and maintenance of these lands and render such public service in so doing, in such a manner as to enable the people of Florida and visitors to enjoy these values without depleting them; to contribute materially to the development of a strong mental, moral, and physical fibre in the people; to provide for perpetual

> preservation of historic sites and memorials of statewide significance and interpretation of their history to the people; to contribute to the tourist appeal of Florida.

Section 258.18, Florida Statutes, provides

> that it is the legislative intent to establish a state wilderness system consisting of designated wilderness areas which shall be set aside in permanent preserves, forever off limits to incompatible human activity. These areas shall be dedicated in perpetuity as wilderness areas and shall be managed in such a way as to protect and enhance their basic natural qualities for public enjoyment and utilization as reminders of the natural conditions that preceded man.

ADMINISTRATION

The outdoor recreation and conservation programs are managed by the Department of Natural Resources (DNR). The DNR is headed by the Governor and Cabinet and managed on a daily basis by an executive director; s. 20.25, F.S.

The Outdoor Recreation and Conservation Act of 1963 requires the Department of Natural Resources to develop a comprehensive multipurpose outdoor recreation and conservation plan; s. 375.021 (1), F.S. The Department is authorized to acquire lands, water areas, and related resources for outdoor recreation, wildlife management, forestry management, nature preservation, water conservation and control and other similar purposes; s. 375.031, F.S. Funding is provided by the Land Acquisition Trust Fund which is comprised of legislative appropriations and money from the operation, management, sale, lease, or other disposition of state land, water areas, related resources and the facilities thereon acquired or constructed under the Act; s. 375.041, F.S. Special provision is made for assisting local governments in the acquisition of public beach properties; s. 375.065, F.S. The Game and Fresh Water Fish Commission is authorized to regulate the use of off-road vehicles on public recreational lands; s. 375.313, F.S. It is a second degree misdemeanor to damage trees, flora, sand dunes or other environmentally sensitive land, roads, trails, drainage systems or natural water courses or sources, wildlife resources on public recreational lands; s. 375.314, F.S.

STATE PARKS

The Department of Natural Resources is authorized to acquire by purchase, donation, condemnation, or otherwise lands for use as state park areas and to adopt regulations for the management and use of such areas; ss. 258.007 and 258.011, F.S. The Department may also grant leases, concessions, and permits for the use of park areas for the accommodation of visitors provided that such uses do not interfere

with or deny the public free access to natural curiosities or objects of interest; s. 258.007(3), F.S. DNR has the authority to charge fees for the use by the public of park areas; s. 258.014, F.S.

STATE WILDERNESS AREAS

The Department of Natural Resources is authorized to set aside state lands for preservation as wilderness areas for hiking, swimming, fishing, restricted boating, hunting, picnicking, sightseeing, primitive camping, nature study, and research. Additional, but not exclusive, purposes for which wilderness areas may be established include natural water storage, groundwater recharge areas, preservation of estuarine and marsh systems, and fish and wildlife breeding grounds and refuges; s. 258.21, F.S. To date five wilderness areas have been established.

In the establishment of wilderness areas, DNR is required to give priority consideration to areas which are in close proximity to urban or rapidly developing areas, are in imminent danger from some other source, are designed to protect rare or endangered species or other unique natural features, or which constitute the last vestiges of natural conditions in a region; s. 258.26, F.S. The Department is required to adopt rules prescribing general management criteria for wilderness areas; s. 258.30, F.S. Activities or uses prohibited by statute include:

1. Dredging and dredge spoil dumping;

2. Artificial drainage or impoundments;

3. Farming;

4. Clearing of land;

5. Dumping of wastes;

6. Mining;

7. Pesticide spraying, except emergency measures required to protect public health and spraying for forestry disease control;

8. The use of motorized vehicles on land or water, except for emergencies or valid management purposes; and

9. Removal of timber, except to restore original plant communities.

AQUATIC PRESERVES

The state has established some 34 aquatic preserves, most of which are located in coastal counties; ss. 258.16, 258.165, 258.39, 258.391, and 258.392, F.S. Aquatic preserves are areas which are to be maintained in essentially natural or existing conditions for their biological, aesthetic, or scientific values; ss. 258.37 and 258.38,

F.S. Limitations are placed on dredging, spoiling, waste discharges, and the erection of structures within preserves; s. 258.42, F.S. The drilling of oil or gas wells within preserves is prohibited; s. 258.42 (3)(c), F.S. The Board of Trustees of the Internal Improvement Trust Fund (Governor and Cabinet) have the authority to adopt rules for the management and use of preserves; s. 258.43, F.S. Such rules have been adopted for the Biscayne Bay Aquatic Preserve, as well as a general rule for all the preserves (see Appendix for adopted rules).

ENVIRONMENTALLY ENDANGERED LANDS

The State of Florida issued $200 million in bonds for the purchase of environmentally endangered lands containing unique and irreplaceable ecological resources. Lands are selected for purchase by the Governor and Cabinet based upon the recommendations of an interagency selection committee; s. 259.04, F.S. The selection committee is comprised of the Secretary of the Department of Environmental Regulation, the executive director of the Department of Natural Resources, the director of the Division of Forestry of the Department of Agriculture and Consumer Services, the executive director of the Game and Fresh Water Fish Commission, the director of the Division of Archives, History, and Records Management of the Department of State, and the Secretary of the Department of Administration; s. 259.035, F.S.

With regard to each proposed project, the selection committee is required to prepare a report which addresses the project's ecological value, vulnerability, utilization, location, cost, and any other relevant factors; s. 259.035, F.S. Prior to the selection committee making a purchase proposal to the Governor and Cabinet, a public meeting on the proposal must be held in the county where a majority of the land is located; s. 259.07, F.S.

RECREATION TRAILS

The 1979 Legislature enacted the Florida Recreational Trails Act of 1979 for the purpose of providing greater public access to the use, enjoyment, and appreciation of the outdoor areas in Florida and to conserve, develop, and use the natural resources of the state for healthful and recreational purposes; s. 260.012 (1), F.S. Recreational trails are public trails for horseback riding, hiking, bicycling, canoeing, and jogging; s. 260.013(1), F.S. In administering the program, the Department of Natural Resources is authorized to acquire trail areas by means other than condemnation and to promulgate rules for the use of recreational trails; ss. 260.016 and 260.017, F.S.

STATE FORESTS

The Division of Forestry, operating under Chapter 589, F.S., promotes outdoor recreation in state forest areas. The Division's primary outdoor recreation objective is to maximize compatible recreational use of forestlands. Through the years, development of recreation in state forests has been guided largely by public demand. It

ranges in scope from the development of game habitat as part of the basic forest management program to the provision of fully developed campgrounds.

Florida's state forest system, consisting of four forest areas with over 306,000 acres, provides opportunities for many outdoor recreation activities such as hunting, fishing, camping, picnicking, and nature study. All state forests must be managed in the interests of the public. The Division of Forestry has the authority to acquire state forest areas through eminent domain.

SPECIAL TAX TREATMENT FOR CONSERVATION EASEMENTS

Special ad valorem tax treatment is available to private owners of environmentally endangered land or land utilized for public outdoor recreational or park purposes. The special treatment is gained by an owner conveying the development right or covenanting that the land will be subjected to conservation restrictions to the governing board of a county or to the Governor and Cabinet. Outdoor recreational or park purposes include historical, archaeological, scenic, or scientific sites open to the general public; s. 193.501, F.S.

* * *

ECONOMIC DEVELOPMENT

Chapter 288, Florida Statutes, deals with the Economic development of the state. Administration is through the Division of Economic Development of the Florida Department of Commerce.

LEGISLATIVE GOALS

Section 288.03, F.S., provides that the general purpose of the act and the division is:

> ... to guide, stimulate, and promote the coordinated, efficient, and beneficial development of the state and its regions, counties, and municipalities in accordance with present and future needs and resources and the requirements of the prosperity, convenience, comfort, health, safety, and general welfare of the people of the state ...

The division is charged to promote and develop industry, encourage commerce and the sale of Florida products, and encourage employment opportunities for Florida citizens. It conducts a promotional and advertising campaign designed to attract industry, business and jobs, ss. 288.03(1)-(5), F.S.

By January 15 of each year, the Division must submit recommendations to the Governor and Legislature on "such actions or measures as are necessary or desirable to remove barriers to free and advantageous

flow of commerce and to relieve restrictions or burdens imposed by law or otherwise which adversely retard or affect the legitimate expansion and development of commerce and industry", ss. 288.03(9) and (16), F.S. The division encourages research into ways to further uses of the natural and other resources of the state, promotes and encourages expansion and development of markets for Florida products, and serves as a clearinghouse for research and planning designed to relieve the industrial problems of the state, ss. 288.03(10)-(12), F.S.

* * *

INDUSTRIAL SITING

The Florida Legislature enacted the Florida Industrial Siting Act in 1979; Ch. 79-147 (Laws of Florida). The Act was a response to the desire to encourage new industry in Florida consistent with the protection of the State's natural resources and environment. It was the conclusion of the Legislature that an optional consolidated permit review process would facilitate the accomplishment of the goal to expand Florida's industrial base. The Act is patterned after the Florida Electrical Power Plant Siting Act. It provides a procedural format, but does not establish new standards for the review of projects.

GENERAL

For industries which qualify and which apply under the optional act, the Industrial Siting Act brings all state and regional agencies into a single forum to consider permitting or other regulatory requirements for the project. Although the procedures of the Siting Act are patterned closely upon those of the Electrical Power Plant Siting Act (discussed earlier in this section), the Industrial Siting Act does not preempt the jurisdiction of local governments. Local government approval is a condition precedent to issuance of a site certification.

The Act is administered by the Department of Environmental Regulation which accepts applications, distributes them to appropriate state and regional agencies, conducts studies and consolidates the studies of other agencies into a report for the Siting Board. Final agency action is taken by the Governor and Cabinet sitting as the "Siting Board".

One hearing is required under the Act -- the Certification Hearing. Local government approval must have been received before a certification hearing may be scheduled. Failure to receive timely local approval results in postponement, and possible eventual cancellation, of the hearing. Hearings are conducted by an independent hearing officer.

The act includes a pre-application procedure designed to allow applicants to receive binding statements on the materials which will be required during the certification process.

As with the Power Plant Siting Act, the Industrial Siting Act imposes no new standards upon an applicant. The seven-month-long process is designed to allow consideration of all pre-existing agency standards in one procedure. Certification may include variances from agency standards which were specifically considered during the process.

LEGISLATIVE GOALS

Section 288.502(1), F.S., provides that:

> The Legislature finds and declares that, in order to protect and promote the health, safety, welfare, and prosperity of the state and its citizens and improve the quality of life of the citizens of the state, it is appropriate to promote the creation of new jobs for Florida's citizens and expansion of the industrial economy of the state, so long as such projects are consistent with the protection of our natural resources and environment, and are located, constructed, and operated in a manner that facilitates orderly and planned growth and development in the state. The Legislature further finds that the accomplishment of such public purposes requires that the state establish procedures to coordinate and facilitate state decisions relating to industrial plant siting, new business development, and expansion of existing facilities so as to enhance job opportunities for citizens of this state who are unemployed or underemployed.

Section 288.502(2), F.S., provides that:

> The Legislature finds that these objectives can best be achieved by the implementation of a process whereby all state permit applications are centrally coordinated and all state permit decisions are reviewed on the basis of standards and recommendations of the deciding state agencies. It is the intent of the Legislature that this procedure shall not compromise standards or policies for the protection or enhancement of the state's natural resources and environment.

THE SITING PROCESS

The Florida Industrial Siting Act provides persons with an optional licensing procedure under which all required state permits and approvals may be sought at one time through a coordinated and consolidated review process; s. 288.502(3), F.S.

Applicability

The Act may apply to any new business activity and to the expansion of or addition to an existing business activity which meets the following criteria:

1. it must have the potential for creating 50 or more fulltime employment opportunities;

2. it must engage in industrial, commercial, wholesale, or retail business, but it must not involve residential housing construction or development or be an electrical power plant subject to certification under the Florida Electrical Power Plant Siting Act;

3. it must need licenses from two or more state or regional government agencies;

4. it must be water dependent and consistent with an applicable aquatic preserve act, if it is to be constructed within an aquatic preserve; and

5. it must be consistent with state water quality standards and requirements, if it is to be constructed within or discharge into Outstanding Florida Waters as defined by Chapter 17-3, F.A.C., as amended; s. 288.503(13), F.S.

Administration

The Act is administered by the Department of Environmental Regulation; s. 288.504, F.S. Final decisions on applications filed under the Act are made by the siting board which is comprised of the Governor and Cabinet; ss. 288.503(3) and 288.511, F.S. The Department has promulgated Chapter 17-23, F.A.C., to implement the Act. The Act contemplates a seven-month processing period; ss. 288.510(1)(a) and 288.511(1), F.S.

Notices of Intent and Binding Written Agreements

Prior to applying for certification, a person may file a notice of intent to file an application in order to secure from the Department a binding written agreement setting forth:

1. the studies and reviews which will be included within the certification proceedings;

2. the data to be included with the application;

3. the level of information to be required in the application; and

4. deadlines for the submission of data; s. 288.508, F.S.; and s. 17-23.04, F.A.C.

Notices of Intent must be accompanied by a fee of $2,500 and certain minimum information; s. 17-23.04, F.A.C. Binding written agreements are valid for two years, and bind the Department, other signatory agencies, and the applicant unless modified by agreement; s. 17-23.04(6), F.A.C.

Applications for Certification

Applications for certification must follow the format and be supported by information and technical studies prescribed by the Department; s. 17-23.05(1), F.A.C. The application must address adjacent land uses, soils, vegetation, drainage, master development plan, existing and proposed public facilities serving the site, existing highway and transportation network, economic impacts, impacts on necessary public facilities and services, impacts on transportation facilities, energy demands, and impacts on archaeological and historical sites; s. 17-23.20, F.A.C.

Applications must be accompanied by the appropriate fee as set forth in a graduated scale ranging from $10,000 to $25,000; s. 17-23.05(3)(a), F.A.C. Procedures are established for determining the completeness of applications and the sufficiency of the information submitted in support of applications; s. 288.507, F.S., and ss. 17-23.07, F.A.C.

Local Government Approval

No certification hearing can be held until the project has been approved by the affected local government as being in compliance with Chapter 380, Florida Statutes, and all local development ordinances (including, but not limited to, zoning, land use, pollution control, and local government comprehensive plan). Such approvals remain valid for two years during which time the zoning and land use of the project may not be altered except with the concurrence of the applicant, or as provided for in section 163.3191, Florida Statutes; s. 288.505, F.S.

Studies

The Department of Environmental Regulation is required to conduct, or contract for, studies of the proposed project. Such studies must address environmental impacts, economic impacts, impacts on public facilities, energy demand, site features, water quantity demands, and impacts on works or properties of state agencies; s. 288.509(4), F.A.C., and s. 17-23.08, F.A.C. Studies must also be conducted by the Department of Veterans and Community Affairs and the appropriate water management district. Both consider the impact of the project on matters within their jurisdiction.

Parties and Public Notice

The Department of Environmental Regulation, the Division of State Planning (now Local Resource Management), the appropriate water management district, the applicant, and the Department of Natural Resources,

where state lands are involved, and are mandatory parties to the certification proceeding. Liberal provision is made for intervention by other agencies, affected local governments, and domestic non-profit organizations; s. 288.510, F.S. Public notice requirements for notices of intent, applications, and hearings are prescribed in section 17-23.09, Florida Administrative Code.

Certification Hearing

The certification hearing is conducted by an independent hearing officer assigned from the Division of Administrative Hearings in the Department of Administration; ss. 288.507 and 288.510, F.S. Hearings are conducted in the county where the site is located and as near to the site as practicable; s. 288.510(1), F.S., and s. 17-23.11, F.A.C. The hearing procedures of Chapter 120, Florida Statutes, the Administrative Procedure Act, are applicable; s. 288.510(4), F.S., and s. 17-23.11, F.A.C. At the conclusion of the hearing, the hearing officer submits a recommended order to the siting board (Governor and Cabinet). The recommended order must include findings of fact and conclusions of law as to each license required of the applicant by law and the standards governing those licenses; s. 288.510(1)(a), F.S.

Certifications

Applications for certification are approved or denied by the Governor and Cabinet; s. 288.511, F.S. Approvals may include variances, exceptions, and exemptions which are allowed by law from non-procedural standards or rules of agencies who were parties to the proceedings; s. 288.514(2), F.S. Certifications are valid for seven years and may include conditions deemed appropriate by the siting board, ss. 288.511(1) and 288.514(5), F.S. New or stricter criteria adopted subsequent to certification by the Department of Environmental Regulation are applicable to certified projects, unless they involve a requirement for which an express variance, exception, or exemption was granted in the certification; s. 288.514(4), F.S.

Provisions are made for the revocation, suspension, modification, and renewal of certifications; ss. 288.514(5), 288.515, and 288.518, F.S., and ss. 17-23.17, 17-23.18, and 17-23.19, F.A.C. Certifications are enforceable pursuant to the administrative and judicial provisions of Chapter 403, Florida Statutes; s. 288.517, F.S.

* * *

PORT FACILITIES FINANCING LAW

The Port Facilities Financing Law, Chapter 315, F.S., was enacted "for the welfare of the inhabitants of the state" to allow port districts or port authorities to finance and develop harbor and shipping

facilities at suitable locations around the state. The Legislature determined that port facilities constitute a public purpose and the proper performance of public and governmental functions, and as such, should be exempt from state or local taxes. Port districts and authorities also have authority to issue bonds, to acquire property by eminent domain, and to promote and advertise the developed port facilities.

* * *

PORTS MAINTENANCE DREDGING AND SPOIL DISPOSAL

The 1981 Florida Legislature amended Chapters 403 and 376, F.S. to create opportunities for resolving maintenance dredging and spoil disposal problems.

LEGISLATIVE GOALS

The state legislative policy, set forth in S. 403.021, F.S. declares that:

> "it is essential to preserve and maintain authorized water depth in the existing navigation channels, port harbors, turning basins, and harbor berths . . . in order to provide for the continued safe navigation of deep-water shipping commerce."

This law authorizes DER to develop a regulatory process enabling ports to maintain channels in an environmentally sound, expeditious, and efficient manner. In order to achieve this, the law further authorizes the Department to develop standards and criteria for waters used for deep-water shipping, and, where necessary, create a separate classification for such waters.

Section 403.816, F.S. establishes a permit system under Chapters 403 and 253, F.S. providing for up to 25 year maintenance dredging permits at the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Fort Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, and Pensacola. In addition, spoil disposal is exempted from certain requirements if spoil is deposited in approve areas.

The Department of Natural Resources is directed to establish a priority acquisition and improvement program for spoil disposal sites to be acquired using money from the Florida Coastal Protection Trust Fund. The law also provides for disbursement of money from the Fund.

* * *

TRANSPORTATION ADMINISTRATION

The Legislature, in adopting Chapter 334, established the "Florida Transportation Code" and determined that "the development of a balanced and efficient transportation system adequate to meet current and future transportation needs of the state is essential to the commercial life and general welfare of the people of the state and to the national defense", s. 334.02(1), F.S. The Department of Transportation and local governments are responsible for developing an integrated, efficient and well-balanced state highway system.

* * *

POWER PLANTS AND ELECTRICAL TRANSMISSION LINES

The siting of electrical power plants and electrical transmission lines is governed by the Florida Electrical Power Plant Siting Act, Part II, Chapter 403, Florida Statutes.

POWER PLANTS

Legislative Goals

Section 403.502, F.S., provides that:

> The legislature finds that the present and predicted growth in electric power demands in this state requires the development of a procedure for the selection and utilization of sites for electrical generating facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites and the routing of associated transmission lines will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. The legislature finds that the efficiency of the permit application and review process at both the state and local level would be improved with the implementation of a process whereby a permit application would be centrally coordinated and all permit decisions could be reviewed on the basis of standards and recommendations of the deciding agencies. It is the policy of this state that, while recognizing the pressing need for increased power

generation facilities, the state shall ensure through available and reasonable methods that the location and operation of electrical power plants will produce minimal adverse effects on human health, the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent to seek sources of action that will fully balance the increasing demands for electrical power plant location and operation with the broad interests of the public. Such action will be based on these premises:

(1) To assure the citizens of Florida that operation safeguards are technically sufficient for their welfare and protection.

(2) To effect a reasonable balance between the need for the facility and the environmental impact resulting from construction and operation of the facility, including air and water quality, fish and wildlife, and the water resources and other natural resources of the state.

(3) To provide abundant, low-cost electrical energy.

GENERAL

The Florida Electrical Power Plant Siting Act was one of the first laws of its kind in the nation. Because of its success, it has become a model for attempts by other states to unravel the web of regulatory requirements which surround the siting and licensing of electrical power plants. The Act provides a single centralized forum for all aspects of the siting, construction, and operation of fossil fuel and nuclear power plants.

All local, regional and state laws and regulations are considered together in the Florida power plant siting process. Each agency--from whichever level of government--with a regulatory or other concern with the siting, construction, or operation of these facilities is either a mandatory party to the proceedings, or easily can become a party, and can participate. The siting act imposes no new standards or requirements upon the utilities industry. It is designed to incorporate all agency standards which--in the absence of a siting act--would otherwise be imposed upon the utility.

One agency--The Department of Environmental Regulation (DER)--is the coordinator/administrator of the siting process. It accepts the application, distributes it to all other involved agencies, publishes the required public notices, develops its own studies and incorporates

the studies of other agencies into an analysis of the application, and, after certification monitors compliance with the terms of certification.

An independent hearing officer conducts the two required hearings under the Act, and makes recommendations to the Governor and Cabinet which has sole authority to make final decisions on the disposition of the application. Local land use requirements are the only consideration at the first of the two hearings--the Land Use Hearing. Upon determination that the proposed utility site conforms to local land use regulations, the siting procedure proceeds to the second hearing--the Certification Hearing. A determination by the Governor and Cabinet at the first hearing that a proposed site does not conform to local land use requirements, requires the utility to seek a rezoning or other change in the local requirements. If an applicant is unsuccessful, the Governor and Cabinet may authorize a "non-conforming use," in effect overriding local government requirements.

The Certification hearing deals with the other state and regional regulatory requirements to which a utility is subject. It is the forum at which all parties to the proceedings--the applicant, the DER, the Florida Public Service Commission, the Department of Veterans and Community Affairs, the appropriate water management district, other state and local governments which have requested to be parties, and individuals and groups--outline their requirements or state their views on the application.

Certification occurs fourteen months after the application is filed. The certification--issued by the Governor and Cabinet based upon the report of the hearing officer after the Certification Hearing--is the only license or approval the utility must obtain in the state of Florida. It represents permits or licenses from local governments, regional agencies, and state agencies. Variances to agency standards may be included as conditions in a certification, if the variance requests were considered during the hearings, and if the variances could be issued in the absence of a siting act.

The following paragraphs outline the siting process in more detail.

IMPLEMENTATION

Statutory

1. Types of plants and sites covered

The types of power plants and associated facilities governed by the Act include: ...any steam or solar electrical generating facility using any process or fuel, including nuclear materials, and shall include associated facilities and those directly associated transmission lines required to connect the electrical power plant to an existing transmission network or rights-of-way to which the applicant intends to connect ... but ... does not

include any power plant or steam generating plant of less than 50 megawatts in capacity; s. 403.503(7) F.S.; Chapter 79-76 (Laws of Florida).

Sites covered include onshore and offshore locations where an increase in generating capacity will occur; s. 403.503(5), F.S. Expressly excluded from the Act are modifications of non-nuclear fuels, internal related hardware, or operating conditions not in conflict with a site certification which increase the electrical output of a unit to no greater capacity than the maximum operating capacity of the existing generator; s. 403.506 (2), F.S.

2. Administering Agency

The Act designates the Department of Environmental Regulation (D.E.R.) as the administering agency, and authorizes it to adopt rules of procedure, notice forms, and documentation requirements; s. 403.504, F.S. The necessary rules have been promulgated as Chapter 17-17, F.A.C.

3. Sole License and Issuing Body

Power plant site certifications are issued by the Governor and Cabinet, and constitute the sole license of the state and any State, regional or local agency as to the approval of the site and the construction and operation of the proposed electrical power plant; ss. 403.503(9), 403.509, 403.510, 403.511, F.S. Not affected by the Act, however, are the rate-making powers of the Public Service Commission and the right of local government to charge appropriate fees or to require that construction be in compliance with local building codes, standards, and regulations.

4. Reports and Studies

a. Division of Local Resource Management, Department of Veterans and Community Affairs

The Division is required to submit a report as to the compatibility of the proposed electrical power plant with the state comprehensive plan; s. 403.507(1)(a), F.S.

b. Public Service Commission

After making an initial determination of need pursuant to 403.519, F.S., the Commission is required to submit a report as to the future need for the electrical generating capacity to be supplied by the proposed electrical power plant; s. 403.507(1)(b), F.S.

c. Department of Environmental Regulation

The Department is required to conduct, or contract for, studies of the proposed electrical power plant and site.

Such studies are to include, but not be limited to, the following:

(1) Cooling system requirements;

(2) Construction and operational safeguards;

(3) Proximity to transportation systems;

(4) Soil and foundation conditions;

(5) Impact on suitable present and projected water supplies for this and other competing uses;

(6) Impact on surrounding land uses;

(7) Accessibility to transmission corridors; and

(8) Environmental impacts; s. 403.507(2), F.S.

In addition, the Department is required to prepare a written analysis of the proposed site and facility which shall include:

(1) A statement indicating whether the proposed electrical power plant and proposed ultimate site capacity will be in compliance with the department's rules.

(2) The report from the Public Service Commission as required by s. 403.507.

(3) The report of the Division of Local Resource Management as required by s. 403.507.

(4) The studies conducted pursuant to s. 403.507.

(5) The comments received by the department from any other agency.

(6) The recommendation of the department as to the disposition of the application and any proposed conditions of certification which the department believes should be imposed; s. 403.504(8), F.S.

5. Hearings

Two hearings are required prior to the issuance of a certification, a land use hearing and a certification hearing; s. 403.508(1) and (3), F.S. The hearings are conducted by an independent hearing officer assigned by the Division of Administrative Hearings in the Department of Administration; s. 403.5065, F.S.

a. Land Use Hearing

A land use hearing is conducted within 90 days of receipt of a complete application for certification, and is held in the county where the proposed site is located. It is conducted for the sole purpose of determining whether or not the proposed site is consistent and in compliance with existing land use plans and zoning ordinances. After the hearing is concluded, the hearing officer submits a report to the Governor and Cabinet. If the Governor and Cabinet determines that the proposed site conforms to existing land use plans and zoning ordinances, the responsible zoning or planning authority is prohibited from changing such plans or ordinances as they affect the site, unless site certification is subsequently denied. If the Governor and Cabinet determines that the proposed site does not comply with an applicable zoning ordinance or plan, then the applicant must seek a rezoning. Should a request for rezoning be denied by the local government, the Governor and Cabinet has authority to override that denial, if it finds it to be in the public interest to authorize a non-conforming use; s. 403.508(2), F.S.

b. Certification Hearing and Parties

Within 10 months after the filing of a complete certification application, the designated hearing officer is required to conduct a certification hearing on all issues relevant to the application; s. 403.508(3), F.S. Mandatory parties to the proceeding include:

(1) The applicant.

(2) The Public Service Commission.

(3) The Division of Local Resource Management.

(4) The water management district, as defined in chapter 373, in whose jurisdiction the proposed electrical power plant is to be located.

(5) The department; s. 403.508(4)(a), F.S.

Other parties may include:

(1) Any county or municipality in whose jurisdiction the proposed electrical power plant is to be located.

(2) Any state agency not listed above as to matters within its jurisdiction.

(3) Any domestic nonprofit corporation or association formed, in whole or in part, to promote conservation or

natural beauty; to protect the environment, personal health, or other biological values; to preserve historic sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote orderly development of the area in which the proposed electrical power plant is to be located.

(4) Any person whose substantial interests are affected and being determined by the proceeding and who timely file a motion to intervene pursuant to chapter 120 and applicable rules.

(5) Any agency whose properties or works are being affected; s. 403.508(4)(b); (d), and (e), F.S.

Hearings are conducted pursuant to section 120.57, F.S., of the Florida Administrative Procedure Act; see Part II, Section IIE of this document for a further explanation. Within two months after the certification hearing, the hearing officer is required to submit a recommended order of issuance or denial to the Governor and Cabinet for final disposition of the application; s. 403.508(3), F.S. The Governor and Cabinet must take final action within 60 days of receipt of the recommended order; s. 403.509, F.S.

6. Effect of Certification

As the sole state license, a certification is issued in lieu of all other state, regional or local licenses or authorizations which otherwise would be required for the various components of a power plant and its site. A certification may include special conditions and may grant variances from any agency standard, except procedural requirements of D.E.R., where such standards were expressly considered during the hearings; s. 403.511(2) and (3), F.S. Furthermore, plants which have been certified must comply with standards adopted subsequent to certification which are new or stricter in nature, unless they relate to a standard for which an express variance was granted; s. 403.511(5)(a), F.S.

7. Enforcement

Enforcement of the Act and certifications is done under the general enforcement provisions of Chapter 403, F.S.; see discussions under section II, part IIG of this document.

8. Other

The Act also provides for the revocation and suspension of certifications, the amendment or modification of certifications, and the processing of supplemental applications for certification of power plants at sites previously certified for ultimate site capacity; ss. 403.512, 403.516, 403.517, F.S.

9. Ten-Year Site Plans

Each electric utility is required to submit to the Division of Local Resource Management in the Department of Community Affairs a ten-year site plan which provides estimates of its power generating needs and the general location of proposed power plant sites. The plan is to be updated no less frequently than every two years. Such plans may be amended at any time by the utility upon written notice to the Division. The Division is required to review each plan with regard to:

a. The need, including the need as determined by the Public Service Commission, for electrical power in the area to be served.

b. The anticipated environmental impact of each proposed electrical power plant site.

c. Possible alternatives to the proposed plan.

d. The views of appropriate local, state, and federal agencies, including the views of the appropriate water management district as to the availability of water and its recommendation as to the use by the proposed plant of saltwater or freshwater for cooling purposes.

e. The extent to which the plan is consistent with the state comprehensive plan.

f. The plan with respect to the information of the state on energy availability and consumption; s. 23.0191(2), F.S.

Rules

Chapter 17-17, F.A.C., was adopted to provide more explicit procedures for the processing and review of certification applications. Specific provision is made for applications, payment of fees, conduct of studies, public notice, land use hearings, appeals of denials of requests for variances from local zoning and land use plans, monitoring, revocation and suspension hearings, determinations of application insufficiency, and completeness requests for variances from standards, and modification of certifications.

1. Construction

The types of construction activities which activate the certification process include any clearing of land, excavation or other action which would alter the physical environment or ecology of a site. Construction does not include those activities essential for surveying, preliminary site evaluation or environmental studies, nor does it include use of the site for agriculture, forestry, mariculture, oil or mineral exploration, or recreation; ss. 17-17.02(2), 17-17.03, F.A.C.

2. Applications

As an alternative to the State's application format, an applicant may substitute the United States Nuclear Regulatory Commission's format for submission of a certification application for nuclear power plants or any substantially similar federal format approved by the Department; s. 17-17.04(1)(a), F.A.C.

3. Studies

In addition to those study elements expressly required by s. 403.507, F.S., several other elements are specified by rule and relate to: construction and operational safeguards; impacts on air and water quality impacts on public lands and submerged lands; impacts on terrestrial and aquatic plant and animal life, especially on endangered and threatened species; and impacts on archaeological sites and historic preservation areas; s. 17-17.05, F.A.C.

4. Monitoring

Applicants may be required by the Governor and Cabinet to conduct monitoring of the effects arising from the construction and operation of a certified plant. That monitoring may include, but is not limited to, an evaluation of:

(a) Geological information developed during construction.

(b) Environmental effects of air and water contamination.

(c) Radiation hazards and contamination from nuclear or other power plants.

(d) Meteorological conditions.

(e) Hydrology, including surface runoff, water use and consumption.

(f) Ecological effects of construction and operation.

(g) Impact of the construction and operation of the plant on animal and plant life, fish and other aquatic life.

(h) Archaeological or historical site deposits invaded or disturbed during construction excavation.

(i) Noise levels at the site boundary or within adjacent residential areas; s. 17-17.13, F.A.C.

5. Ten-Year Site Plans

The Division of Local Resource Management has adopted rules for filing, review, and determination of suitability of ten-year site plans; Chapter 22E-2, F.A.C.

ELECTRICAL TRANSMISSION LINES

The 1980 Legislature added sections 403.520 - 403.535 to Part II of Ch. 403, Florida Statutes, to deal with the siting of major electrical transmission lines. The Act -- known as the "Transmission Line Siting Act" -- establishes a six-month siting procedure based upon the Power Plant Siting Act process.

Legislative Goals

Section 403.521, F.S., provides that:

> The Legislative intent of this act is to centralize and coordinate a permitting process for the location and maintenance of transmission line corridors and the construction of transmission lines, which necessarily involves the subject matter jurisdiction of several agencies and several broad interests of the public. The Legislature recognizes that transmission lines will have an effect upon the welfare of the population. Recognizing the need to insure electric power system reliability and integrity, and to meet the electric energy needs in an orderly and timely fashion, the state shall ensure through available and reasonable methods that the location and maintenance of transmission line corridors and the construction of transmission lines will produce minimal adverse effects on the environment and public health, safety, and welfare. It is the intent of this act to fully balance the need for transmission lines with the brad interests of the public in order to effect a reasonable balance between the need for the facility as a means of providing abundant low-cost electrical energy and the environmental impact resulting from the construction of the line and the location and maintenance of the corridor. The Legislature intends that the provisions of Chapter 120 shall apply to this act and to proceedings pursuant to it.

General

The Transmission Line Siting Act, like the Power Plant Siting Act described earlier in this section, is a single centralized forum for deciding all issues relating to the location and construction of these

facilities. All local, regional, and state laws and regulations are incorporated into a single process. The final decision is by the Governor and Cabinet sitting as the "Siting Board."

Administrator of the program, again, is the Department of Environmental Regulation which accepts applications, distributes them to all parties, conducts and consolidates all the studies, and recommends to the Siting Board. The Act imposes no new standards, but incorporates all standards of all agencies which, in the absence of a siting act, would be imposed upon a transmission line.

Only one hearing -- the Certification Hearing -- is required under the Transmission Line Siting Act. It is conducted by an independent Hearing Officer who makes recommendations to the Board. All issues are decided at this single hearing.

Certification by the Siting Board constitutes the sole approval to construct, operate, and maintain the transmission line and its corridor. It incorporates all the approvals otherwise required from local, regional, or state agencies. The process is designed to take six months.

Implementation

Transmission Lines Covered

Transmission lines covered by the Act include "...any electrical transmission line extending from a substation or power plant to an existing transmission network or rights-of-way or substation to which the applicant intends to connect which defines the end of the proposed project and which is designed to operate at 230 kilivolts or more and which crosses a county line. A transmission line's starting point and ending point must be specifically defined by the applicant and be verified by the (Public Service) commission in its determination of need." s. 403.522(3), F.S.

The Act also includes transmission line corridors, defined as "...the proposed area within which a transmission line is to be located." s. 403.522(8).

Expressly excluded from the Act are transmission lines for which development approval has been obtained pursuant to Chapter 380 (The Development of Regional Impact procedure); lines which have been exempted pursuant to a binding letter of interpretation under s. 380.06 (4) or which are vested under s. 380.05(18), F.S.; transmission line development within established rights-of-way; and transmission lines on which construction has commenced by October 1, 1980 designed to transmit electricity from one state to another (applies only to the interstate connection segment).

Administering Agency

The Act designates the Department of Environmental Regulation (DER) as the administering agency, and authorizes it to adopt rules of

procedure, notice forms, and documentation requirements; s. 403.521, F.S. The rules are under development.

Sole License and Issuing Body

Transmission Line site certifications are issued by the Governor and Cabinet sitting as the "Siting Board" and constitute the sole license of the state and any regional or local agency as to the approval of the corridor, construction of the transmission line, and the maintenance of the line and the corridor; ss. 403.522(5), 403.529, 403.530, and 403.531, F.S. However, the Act does not affect the rate-making powers of the Public Service Commission or the authority of local governments to charge appropriate fees or require that construction be in compliance with the National Electric Code. s. 403.531, F.S.

Reports and Studies

The Act requires several agencies to issue reports to the Department on the impact a transmission line will have on matters within each agency's jurisdiction. These include: The DER on the environmental impacts of the transmission line and the corridor; The Department of Natural Resources; the water management district, or districts, in whose jurisdiction a proposed transmission line will be located on the impact on water resources; The Department of Veterans and Community Affairs on the effects on land use; and The Game and Fresh Water Fish Commission on the effects on fish and wildlife. Reports are to be submitted within 60 days of each agency's receipt of the application. s. 403.526, F.S.

Hearing - Parties

A Certification Hearing is to be scheduled no later than four months after a complete application is filed with the Department. The hearing is conducted by an independent hearing officer from the Department of Administration. s. 403.525, F.S. All issues relevant to the site certification proceeding are aired at the hearing. At the conclusion of the hearing, and no later than five months after a complete application is filed, the hearing officer is to submit a recommended order to the Siting Board.

Mandatory parties to a certification hearing are:

1. The applicant.
2. The department.
3. The Public Service Commission.
4. The Department of Veterans and Community Affairs.
5. The Department of Natural Resources.
6. The Game and Fresh Water Fish Commission.
7. Each water management district through whose jurisdiction the proposed line runs.
8. Any local government in whose jurisdiction the line will be located.

Other Parties may include:

1. Any other state agency as to matters within its jurisdiction.

2. Any domestic nonprofit corporation or association formed in whole or in part to promote conservation of natural beauty; to protect the environment; personal health, or other biological values; to preserve historical sites; to promote consumer interests; to represent labor, commercial, or industrial groups; or to promote orderly development of the area in which the proposed transmission line or corridor is to be located. S. 403.527(3), F.S.

Hearings are conducted pursuant to S. 120.57, F.S., of the Florida Administrative Procedures Act; see section II, part IIG of this document for a further explanation.

The Governor and Cabinet, sitting as the Siting Board, must take final agency action on the application within one month of receipt of the hearing officer's recommended order. s. 403.529, F.S.

Effect of Certification

As the sole state license, the certification is issued in lieu of all other local, regional, or state licenses or authorizations for the transmission line corridors or transmission lines which otherwise would be required for site approval or construction. A certification may include special conditions, and may grant variances and exemptions otherwise provided by law when they were expressly considering during the proceeding. s. 403.531(1) and (2). The only exception is if an interest in state lands owned by the Board of Trustees of the Internal Improvement Trust Fund (Governor and Cabinet) must be obtained. The Act provides that the applicant may obtain the necessary interest before, during, or after the certification proceedings and that the certification may be contingent upon obtaining the necessary interest. s. 403.531(3), F.S.

Enforcement

Enforcement of the Act and certifications issued pursuant to the Act is under the general enforcement provisions of Ch. 403, F.S.; see discussions under section II, part IIG of this document.

Other

The Act also provides for the amendment of applications; s. 403.534, F.S.; the revocation or suspension of certification; s. 403.532, F.S.; and modification of certification; s. 403.535, F.S.

Determination of Need

Section 403.537, F.S., provides that the Commission's determination of need for a line shall be binding on all parties

proceedings under the Act and is a condition precedent to the conduct of the certification hearing.

* * *

OIL AND GAS PRODUCTION

Oil and gas resources in the State of Florida are regulated under Chapter 377, Part II, of the Florida Statutes. The original statutory control was enacted in 1945, and has been amended several times to enhance regulatory control.

LEGISLATIVE GOALS

Section 377.06, F.S., provides that:

> It is hereby declared to be the public policy of the state to conserve and control the natural resources of oil and gas in said state, and the products made therefrom; to prevent waste of said natural resources; to provide for the protection and adjustment of the correlative rights of the owners of the land wherein said natural resources lie and the owners and producers of oil and gas resources and the products made therefrom, and of others interested therein; to encourage and cause the development in said state of said natural resources of oil and gas and the products made therefrom, to encourage the continuous and economic supply of the demand therefore; to safeguard the health, property and public welfare of the citizens of said state and other interested persons and for all purposes indicated by the provisions herein....

ADMINISTRATION

Oil and gas production in Florida is regulated by the Department of Natural Resources, Division of Resource Management; s. 377.07, F.S. The Department is headed by the Governor and Cabinet and managed on a daily basis by an executive director; s. 20.25, F.S. The State is a member of the Interstate Oil Compact Commission; s. 377.01, F.S. The Department reviews all applications for federal oil leases in the territorial waters of the United States lying adjacent to Florida Waters and signifies its approval or objection to each application; s. 377.2421, F.S.

The Department of Natural Resources (DNR) is required to conduct a geological survey of the state to determine the location of mineral

and other deposits of value, surface and subterranean water supply and power and mineral waters, and the best and most economical method of development; s. 377.075(3), F.S. Any dredging or filling which may be associated with oil and gas exploration and production must meet the applicable requirements of Chapters 253 and 403, Florida Statutes, and Chapter 17-4, Florida Administrative Code, which are administered by the Department of Environmental Regulation; see discussion on Dredging and Filling in Submerged Lands and Wetlands in this section.

REGULATION

The DNR has the authority to regulate all phases of the exploration, drilling, and production of oil, gas, and other petroleum products in the state, including that conducted in offshore waters. This authority covers the methods of drilling and production to prevent pollution, injury to other property, waste of energy resources, and the alteration of the sheet flow of water; ss. 377.22(2), 377.27, 377.28, 377.29, and 377.30, F.S., and 16C-1, 16C-2, 16C-3, 16C-4, and 16C-5, F.A.C.

The DNR has the authority to require permits for the drilling, exploration, or production of oil, gas, or other petroleum products which are to be extracted from below the surface of the land through well holes or for the extraction of minerals by means other than through well holes; s. 377.242, F.S. The Act includes special prohibitions and protection for submerged lands, beaches, parks, aquatic or wildlife preserves, and freshwater lakes, rivers and streams. ss. 377.24, 377.242, F.S., and 16C-9.08, F.A.C.

ENFORCEMENT

Violations of Chapter 377, Florida Statutes, and the rules and orders promulgated thereunder are subject to enforcement by injunction and civil penalties ($500.00 per day); ss. 377.34 and 377.37, F.S. The intentional falsification of required records constitutes a first degree misdemeanor; s. 377.36, F.S. Persons responsible for drilling or production of oil or gas which results in pollution of waters of the state are strictly liable for the costs of cleanup and damage to the state, unless such persons prove that the pollution was the result of:

1. an act of war;
2. an act of government;
3. an act of God; or
4. an act or omission of a third party; s. 377.371, F.S.

* * *

POLLUTANT SPILL PREVENTION AND CONTROL

The large amount of commercial navigation along Florida's coast and into and out of its ports heightened the Legislature's concern for the potential for severe damage to the state's waters, estuaries, and beaches from pollutant spills. Consequently, the Legislature enacted

the Oil Spill Prevention and Pollution Control Act in 1970, which was subsequently renamed and revised in 1974 as the Pollutant Spill Prevention and Control Act; Chapter 70-244 (Laws of Florida) and Chapter 74-336 (Laws of Florida).

The Pollutant Spill Prevention and Control Act prohibits the discharge of certain pollutants into coastal waters, requires the registration of terminal facilities, establishes pollutant spill abatement responsibilities, and provides for the recovery of damages, costs of abatement, and civil and criminal penalties. The Act also establishes the Florida Coastal Protection Trust Fund, and provides for an excise tax to fund it.

LEGISLATIVE GOALS

Section 376.021, F.S., provides in part that:

> (1) The Legislature finds and declares that the highest and best use of the seacoast of the state is as a source of public and private recreation.
>
> (2) The Legislature further finds and declares that the preservation of this use is a matter of the highest urgency and priority, and that such use can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches, and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests.
>
> (3) The Legislature further finds and declares that:
>
> ...
>
> (b) Spills, discharges, and escapes of pollutants occurring as a result of procedures involved in the transfer, storage, and transportation of such products pose threats of great danger and damage to the environment of the state, to owners and users of shore-front property, to public and private recreation, to citizens of the state and other interests deriving livlihood from marine-related activities, and to the beauty of the Florida coast; ...

ADMINISTRATION

The Act is administered by the Department of Natural Resources (DNR) which is headed by the Governor and Cabinet and managed on a daily basis by an executive director; s. 376.051(1), F.S. The Department of Environmental Regulation is required to cooperate with the DNR and to provide consultative services, enforcement, prosecution, and technical advice to the DNR; ss. 376.051(1) and 376.10, F.S. The DNR may promulgate rules to implement the Act, to issue licenses for terminal facilities, to conduct the abatement of spills, to recover damages, the costs of clean-up, and civil penalties, and to seek criminal penalties; ss. 376.07, 376.06, 376.09, 376.11, 376.12, and 376.16, F.S.

Whenever any disaster or catastrophe exists or appears imminent and arises from the discharge of a pollutant prohibited by the Pollutant Spill Prevention and Control Act, the Governor is required to issue a proclamation declaring the existence of an emergency. The Governor has the authority to issue and rescind emergency orders, rules, and regulations which are not inconsistent with the rules, regulations, and directives of the President of the United States or of any federal agency having specifically authorized emergency functions; s. 376.13, F.S.

POLLUTANTS COVERED BY THE ACT

The Act prohibits the discharge of oil of any kind and in any form, gasoline, pesticides, ammonia, chlorine, and derivatives thereof into or upon any coastal waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state. Discharges which occur outside of the territorial limits of the state, but which affect lands and waters within the territorial limits of the state are also prohibited; ss. 376.031(5) and (7) and 376.041, F.S. The constitutionality of the Act was upheld in Askew vs. American Waterways Operators, Inc., 93 S. Ct. 1590, 411 U.S. 325 (1973).

A discharge includes, but is not limited to, any spilling, leaking, seeping, pouring, emitting, emptying, or dumping of the pollutants listed in the paragraph above; s. 376.031(5), F.S. The DNR has defined those pollutants more specifically in section 16N-16.09, Florida Administrative Code. By statute, the storage or transportation of liquefied petroleum gas and industrial effluents discharged into the waters or atmosphere of the state pursuant to either a federal or state permit are excluded from coverage by the act; s. 376.20, F.S.

The Attorney General has issued an opinion in which it was concluded that the Pollutant Spill Prevention and Control Act is not in conflict with the Air and Water Pollution Control Act, Chapter 403, Florida Statutes. The Attorney General concluded that pollution incidents in coastal waters covered by the Pollutant Spill Prevention and Control Act and involving vessels, off-shore drilling, and terminal facilities are the responsibility of the DNR. Industrial effluents relating to production and other discharges not covered by the

Pollutant Spill Act are the responsibility of the Department of Environmental Regulation under Chapter 403, Florida Statutes; Op. Atty. Gen., 070-121 (Sept. 2, 1970).

FACILITIES REQUIRING A REGISTRATION CERTIFICATE

The Pollutant Spill Prevention and Control Act prohibits the operation of a terminal facility without a registration certificate from DNR; s. 376.06(1), F.S. A terminal facility is

> "... any waterfront or offshore facility of any kind, other than vessels not owned or operated by such facility, and directly associated waterfront or offshore appurtenances including pipelines located on land, including submerged lands, or on or under the surface of any kind of water, which facility and related appurtenances are used or capable of being used for the purpose of drilling for, pumping, storing, handling, transferring, processing, or refining pollutants, including, but not limited to, any such facility and related appurtenances owned or operated by a public utility or a governmental or quasi-governmental body. A vessel shall be considered a terminal facility only in the event of a ship-to-ship transfer of pollutants, and only that vessel going to or coming from the place of transfer and the terminal facility. For the purposes of this chapter, "terminal facility" shall not be construed to include waterfront facilities owned and operated by governmental entities acting as agents of public convenience for operators engaged in the drilling for or pumping, storing, handling, transferring, processing, or refining of pollutants; however, each operator engaged in the drilling for or pumping, storing, handling, transferring, processing or refining of pollutants through a waterfront facility owned and operated by said governmental entity shall be construed as a terminal facility; s. 376.031(9), F.S.; see also s. 16N-16.09(3), F.A.C.

Registration certificates are issued if the DNR determines that the applicant has implemented, or is in the process of implementing, state and federal plans and regulations for the prevention, control, and abatement of the discharge of the pollutants covered by the Act; s. 376.06(3) and (4), F.S. Applications for certificates must be renewed annually and accompanied by an application fee in accordance with a graduated scale not exceeding $250.00; ss. 376.06(2), F.S., and 16N-16.10(4), F.A.C. Through mid-1980, 791 terminal facilities have been registered.

Each registered terminal facility is subject to periodic inspections by the DNR to determine the nature of its preventative measures or containment and cleanup capabilities. If the storage capacity of the facility exceeds 250 barrels, the facility must be in compliance with all federal requirements as published in volume 37, number 246,

part II, of the Federal Register (December 21, 1972). In addition, such a facility must have on-scene capabilities reasonably sufficient for containment of a discharge, and it must have reasonably sufficient capabilities, either by agreement or ownership, for removal of a discharge. If the storage capacity of a facility is 250 barrels or less, it must be a member of an approved discharge cleanup organization, or have capabilities by contract or ownership reasonably sufficient to contain and remove a discharge from the facility; s. 16N-16.11, F.A.C. If the DNR determines that the measures or capabilities are inadequate, it is required to initiate suspension of the certificate by issuing notice to the registrant and providing an opportunity for a hearing; s. 376.07(2)(h), F.S.

REMOVAL OF PROHIBITED DISCHARGES

The Pollutant Spill Prevention and Control Act requires that any person discharging pollutants as prohibited by the Act immediately undertake to contain, remove, and abate the discharge to the DNR's satisfaction; s. 376.09(1), F.S. Such a person is also required to give immediate notice of the discharge to the DNR or the nearest coast guard station. Failure to give the required notice constitutes a third degree felony. If the discharge is from a vessel, the vessel is required to remain in the jurisdiction of the DNR a sufficient period of time to prove financial responsibility for the damages resulting from the discharge. Failure to do so constitutes a third degree felony; s. 376.12(8), F.S.; see also s. 16N-16.16, F.A.C.

In addition to corrective action taken by the discharger, or in the event the discharger fails to act or is unknown, the DNR may undertake the removal of the discharge on its own or through other agents. If the DNR undertakes the removal of a discharge into or upon the navigable waters of the United States, it is required to act in accordance with the national contingency plan for removal of such pollutant as established under the Federal Water Pollution Control Act, as amended; s. 376.09, F.S. The DNR also is required to establish a state response team and a contingency plan for response, organization, and equipment for handling emergency cleanup operations. The response team is required to cooperate with any federal cleanup operation; s. 376.07(2)(e), F.S.

FLORIDA COASTAL PROTECTION FUND

The Legislature established the Florida Coastal Protection Trust Fund as a mechanism to have financial resources immediately available for cleanup and rehabilitation after a pollutant discharge, to prevent further damage by a pollutant, and to pay for damages; s. 376.11(1), F.S. It is funded by a two-cents-per-barrel excise tax on pollutants transferred to and from registered terminal facilities. The tax ceases once the fund reaches $35 million and commences again when the fund falls below $30 million; s. 376.11(4), F.S. In addition, all registration fees, penalties, judgements, and other fees and charges collected by the DNR under the Act are to be deposited in the Trust Fund; s. 376.11(2), F.S. The fund currently has a balance of $35,056,247.00.

LIABILITY FOR; AND RECOVERY OF DAMAGES; COSTS; AND PENALTIES

Damages

Liability for damages is, in essence, strict; s. 376.12(1) and (7), F.S. No pleading or proof of negligence is required. One must only plead and prove that the prohibited discharge or other polluting condition occurred. The only defenses are as follows:

1. an act of war;
2. an act of government, either state, federal, or municipal;
3. an act of God, which means only an unforeseeable act exclusively occasioned by the violence of nature without the interference of any human agency; or
4. an act or omission of a third party without regard to whether any such act was or was not negligent; ss. 376.12(4) and 376.205, F.S.

The recovery of damages from a pollutant spill may be sought in a court of competent jurisdiction or from the Florida Coastal Protection Trust Fund; ss. 376.051(5), 376.12(2), and 376.205, F.S.

If a claim for damages is made against the Florida Coastal Protection Trust Fund, the executive director establishes the amount of damages. Either the claimant or the person responsible for the discharge may request a hearing pursuant to s. 120.57, F.S. The DNR may seek reimbursement for any funds expended from the Trust Fund for any given incident; ss. 376.09(6) and 376.12 (2)(d) and (4), F.S.

Costs of Cleanup and Abatement

1. Vessels

Any vessel, its agents or servants who permit or suffer a prohibited discharge or other polluting condition to take place within state boundaries are liable to the Florida Coastal Protection Fund for the costs of cleanup or abatement up to an amount not exceeding $14 million or $100.00 per gross registered ton of such vessel, whichever is the lesser amount. However, if the discharge was the result of willful or gross negligence or willful misconduct within the privity or knowledge of the owner, operator, or agent thereof, then such owner or operator is liable for the full amount of the costs; s. 376.12(1), F.S.

2. Terminal Facilities

When a discharge of pollutants occurs from a terminal facility, the owner or operator is liable to the Florida Coastal Protection Fund for the costs of cleanup or abatement up to an amount not exceeding $8 million. However, if the discharge is the result of willful or gross negligence or willful misconduct within the privity or knowledge of the owner or operator, then the owner or operator is liable for the full amount of the costs; s. 376.12(1), F.S.

Civil Penalties

Violations of the Pollutant Spill Prevention Control Act or any rule, regulation, or order of DNR promulgated or issued under the Act are subject to a civil penalty of up to $50,000 per violation per day. Each day during any portion of which a violation occurs constitutes a separate offense. Additional penalties may not be assessed under the Air and Water Pollution Control Act. Also, no penalty is assessed, if the discharger promptly reports the spill and removes it; s. 376.16, F.S.

Hold-Harmless Agreements

After July 1, 1974, a governmental agency or political subdivision is prohibited from entering into any agreement to hold harmless a vessel or terminal facility from liability for a pollutant discharge prohibited by the Pollutant Spill Prevention and Control Act; s. 376.165, F.S.

Local Government Limitation

Counties, municipalities, and other political subdivisions are prohibited from adopting or establishing a program of licensing and fees similar to that established by the Pollutant Spill Prevention and Control Act. Otherwise, they are not limited by the Act in the exercise of their police powers, unless such exercise is in direct conflict with the provisions of the Act or any rule, regulation or order of DNR promulgated or issued under the Act; s. 376.19, F.S.

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DEVELOPMENTS OF REGIONAL IMPACT AND AREAS OF CRITICAL STATE CONCERN

In 1972, the Florida Legislature enacted the Florida Environmental Land and Water Management Act of 1972; Ch. 72-317 (Laws of Florida). The Act was a recognition that the magnitude and features of some land development projects have not only local impacts, but regional ones. It also recognized that certain areas could be endangered, if development was undertaken in an uncontrolled and inadequate fashion. The Act evidenced a state interest in both of these situations, while acknowledging and preserving the traditional local interest and role in such matters. The Act addresses these situations under two concepts, developments of regional impact (DRI) and areas of critical state concern (ACSC). The Act constitutes Part I of Chapter 380 of the Florida Statutes. The Act was significantly revised by the Legislature in 1979 and 1980; see Appendix for the most recent amendments to Chapter 380.

LEGISLATIVE GOALS

Section 380.021, F.S., provides that:

> It is the legislative intent that, in order to protect the natural resources and environment of this state as provided in s. 7, Art. II of the State Constitution, insure a water management system that will reverse the deterioration of water quality and provide optimum utilization of our limited water resources, facilitate orderly and well-planned development, and protect the health, welfare, safety, and quality of life of the residents of this state, it is necessary adequately to plan for and guide growth and development within this state. In order to accomplish these purposes, it is necessary that the state establish land and water management policies to guide and coordinate local decisions relating to growth and development; that such state land and water management policies should, to the maximum possible extent, be implemented by local governments through existing processes for the guidance of growth and development; and that all the existing rights of private property be preserved in accord with the constitutions of this state and of the United States.

ADMINISTRATION

Chapter 380, Part I, F.S., is administered by the Bureau of Land and Water Management in the Division of Local Resource Management of the Department of Veteran and Community Affairs; Chapter 79-190 (Laws of Florida). The Governor and Cabinet, sitting as the Administration Commission and the Florida Land and Water Adjudicatory Commission, have certain rule-making and review functions under the Act; ss. 380.031(1), 380.05, 380.06, and 380.07, F.S. Specific roles are also designated for regional planning agencies and local governments; ss. 380.05, 380.06, and 380.07, F.S. Uniform procedural rules and forms for the DRI program have been adopted as Chapter 22F-1, Part II, F.A.C.

DEVELOPMENTS OF REGIONAL IMPACT (DRI)

Types of Developments Affected

A development of regional impact means

> any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county; s. 380.06(1), F.S.

1. Presumptions

A list of types of developments presumed to be of regional impact has been adopted as Chapter 22F-2 of the Florida Administrative Code. The list includes certain types of airports,

attractions and recreation facilities, electrical generating facilities and transmission lines, hospitals, industrial plants and industrial parks, mining operations, office parks, petroleum storage facilities, port facilities, residential developments, schools, and shopping centers which meet the threshold criteria specified in the rule; Chapter 22F-2, F.A.C. The rule, however, only creates a presumption. Projects not listed or which do not meet the threshold criteria may, nevertheless, be determined to be DRI's if sufficient facts support a finding that the statutory definition is met by the project; General Development Corp. v. Division of State Planning, 353So.2d1199 (Fla. 1st DCA 1977). The Power Plant Siting Act (s. 403.501-403.517) and the Transmission Line Siting Act (s. 403.520-403.535) have removed power plants and transmission lines from consideration as DRI's.

2. Vested Rights

The Act excludes from the DRI process certain developments in which legal rights to undertake the development vested prior to July 1, 1973 or prior to the effective date of the rules on developments presumed to be DRI's; s. 380.06(18), F.S. Vesting is tied to land sales registrations, local subdivision plat laws, building permits and other approvals, and conveyances or agreements to convey land to the county, state, or local government as a prerequisite to a zoning change; s. 380.06(18), F.S.

3. Binding Letters

A developer who is in doubt as to whether his or her proposed development would be a DRI, whether his or her rights have vested, or whether a proposed substantial change to a DRI concerning which rights had previously vested would divest those rights may request a binding letter of determination on the matter from the Department of Veteran and Community Affairs; s. 380.06(4)(a), F.S., and s. 22F-1.16, F.A.C. The Department must publish notice of receipt of such a request in the Florida Administrative Weekly and give additional notice to the appropriate local government and regional planning agency; s. 22F-1.16(2), F.A.C. Binding letters of interpretation bind all state, regional, and local agencies and the developer with regard to the DRI provisions of the Act; s. 380.06 (4)(a), F.S. A binding letter excluding a development from the DRI process does not exempt the project from compliance with the requirements, including permits, of other acts.

The DRI Review Process

1. In Areas with Zoning Ordinances

A developer who proposes to undertake a DRI in an area of the state where a local government has adopted a zoning ordinance or subdivision regulations, must file an application for development approval with that local government; s. 380.06(b), F.S.

However, prior to filing the application, a preapplication conference must be held between the developer, the regional planning agency, and any other affected state or regional agencies designated by the developer or the regional planning agency. The purpose of the conference is to avoid unnecessary paperwork and to advise the developer of the DRI process and review issues, as well as of the types of permits issued by other agencies, the level of information required, and permitting procedures; s. 380.06(7)(a), F.S. The developer also has the option to elect to proceed in a coordinated review process with other affected state or regional licensing agencies at the same time the DRI review is being conducted; s. 380.06(8), F.S. When an application is filed, it must be reviewed by the appropriate regional planning agency to determine if the application contains sufficient information to enable the agency to prepare a report on the proposed DRI; s. 380.06(9)(b), F.S. No hearing on the application can be held until the regional planning agency has notified the local government that the application is sufficient or that any additional requested information will not be supplied by the developer; s. 380.06(9)(c), F.S.

Once the DRI application has been determined to be sufficient or the applicant has given notice that additional information will not be supplied, a public hearing is held on the application. A minimum 60 day public notice of the hearing must be provided; s. 380.06(10)(b), F.S. Within 50 days after receipt of the hearing notice, the appropriate regional planning agency is required to submit a report and recommendations to the local government. In preparing its report and recommendations, the regional planning agency is required to consider whether, and the extent to which:

a. The development will have a favorable or unfavorable impact on the environment and natural resources of the region.

b. The development will have a favorable or unfavorable impact on the economy of the region.

c. The development will efficiently use or unduly burden water, sewer, solid waste disposal, or other necessary public facilities.

d. The development will efficiently use or unduly burden public transportation facilities.

e. The development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.

f. The development complies with such other criteria for determining regional impact as the regional planning agency shall deem appropriate, including, but not limited to, the extent to which the development would create an additional demand

for, or additional use of, energy, provided such criteria and related policies have been adopted by the regional planning agency pursuant to s. 120.54; s. 380.06(11)(a), F.S.

In reaching its decision to approve, deny, or approve with conditions, restrictions, or limitations, the local government is required to consider whether, and to the extent to which:

a. The development unreasonably interferes with the achievement of the objectives of an adopted state land development plan applicable to the area.

b. The development is consistent with the local land development regulations; and

c. The development is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (11) of this section; s. 380.06(13), F.S.

If the proposed DRI is planned for development over an extended period of time, the local government may grant master plan or conceptual approval of the development subject to subsequent preconstruction review of increments or phases by the appropriate regional planning agency pursuant to the DRI requirements; s. 380.06(20)(b), F.S., and s. 22F-1.24, F.A.C.

2. <u>In Areas without Zoning Ordinances</u>

A developer who proposes to undertake a DRI in an area for which a zoning ordinance or subdivision regulation has not been adopted must give a written notice of the proposed DRI to the affected local government and to the state land planning agency. If within 90 days after the notice is given, the local government does not adopt a zoning or subdivision regulation, or the area is not designated an area of critical state concern by the state, then the developer may proceed without being subject to the DRI process; s. 380.06(5)(c), F.S., and s. 22F-1.27, F.A.C. If, however, within the 90 day period, the local government adopts a zoning or subdivision regulation, then the developer must comply with the DRI process; s. 380.06(5)(c), F.S., and s. 22F-1.27, F.A.C. Also, if the state designates the area an area of critical state concern within the 90 day period, then the developer must comply with the DRI process if the designation rule requires such compliance; s. 22F-1.30, F.A.C.

3. <u>In Areas Designated Areas of Critical State Concern</u>

A developer who proposes to undertake a DRI in an area of critical state concern must comply with the rules governing such an area. Those rules may require compliance with the DRI process; s. 22F-1.30, F.A.C.

4. In Areas Controlled by Downtown Development Authorities

A downtown development authority may seek a development orde: under the DRI process for the entire area or portions of the area controlled by the development authority. Subsequent development by such authority or a private developer which is to be done in conformance with the amount of development set forth in the DRI order does not require further review under the DRI process; s. 380.06(21), F.S.

Review of DRI Decisions

Within 45 days after the local government renders its decision on a DRI application, the project owner, developer, regional planning agency, or the state land planning agency may appeal the decision to the Florida Land and Water Adjudicatory Commission (Governor and Cabinet). After a hearing, the Commission may grant or deny permission to develop and may include conditions or restrictions in its decision; s. 380.07, F.S. The Commission's decision is appealable to the appropriate district court of appeal; s. 120.68, F.S.

Substantial Deviations From Approved DRI's

A previously approved DRI for which a substantial deviation from the terms of the original approval are proposed may be subject to additional DRI review at the discretion of local government which issued the approval. A "substantial deviation" means

> any change to the previously approved development of regional impact which creates a reasonable likelihood of additional adverse regional impact or any other regional impact created by the change, not previously reviewed by the regional planning agency; s. 380.06(17)(a), F.S.

The following changes are presumed not to be substantial deviations, unless rebutted by clear and convincing evidence:

1. An increase in the number of dwelling units of not more than 5 percent or 200 dwelling units, whichever is less;

2. A decrease in the number of dwelling units which does not require a major redistribution of density;

3. A decrease in the area set aside for common open space of not more than 5 percent or 50 acres, whichever is less;

4. An increase in the area set aside for common open space;

5. An increase in the floor area proposed for nonresidential use of not more than 5 percent or 10,000 square feet, whichever is less;

6. A decrease in the regional impact of the development, as approved in the local government order;

7. A change required by permit conditions or requirements imposed by the Department of Environmental Regulation, the Department of Natural Resources, or any water management district created by s. 373.069, or any of their successor agencies, or any appropriate federal regulatory agency; ss. 380.06(h) and (i), F.S.

Enforcement

The Act authorizes the seeking of temporary and permanent injunctions by the Department of Community Affairs, state attorneys (local prosecutors), and counties and municipalities to secure compliance with the provisions of the Act, or any rules, regulations, or orders (including DRI decisions) issued under the Act; s. 380.11, F.S.

AREAS OF CRITICAL STATE CONCERN

Types of Areas Subject to Designation

Chapter 380, Florida Statutes, authorizes the designation of three types of geographic areas as areas of critical state concern:

1. An area containing or having a significant impact upon environmental or natural resources of regional or statewide importance, including, but not to, state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources;

2. An area containing, or having significant impact upon, historical or archaeological resources, sites, or statutorily defined historic or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts; and

3. An area having a significant impact upon, or being significantly impacted by, an existing or proposed major public facility or other area of major public investment including, but not limited to, highways, ports, airports, energy facilities, and water management projects; s. 380.05(2)(a), (b), and (c), F.S.

Designation Process

Areas are designated as areas of citical state concern (ACSC) by the Administration Commission (Governor and Cabinet); s. 380.05(1), F.S. Areas are proposed to the Commission for designation by the Department of Veteran and Community Affairs, the state land planning agency; ss. 380.031(16) and 380.05(1)(a), F.S. Regional planning councils and local governments may recommend areas to the Department of Community Affairs for consideration as possible areas of designation; s. 380.05 (3), F.S.

Prior to recommending an area to the Administration Commission for designation, the Governor, acting as the chief planning officer of the state, is required to appoint a resource planning and management committee for the area under study. The committee must include elected officials from affected local governments, affected local planning officials, representatives of affected state agencies, a water management district, if appropriate, and affected regional planning councils. The objective of the committee is to organize a voluntary, cooperative program to prevent the endangerment of resources and facilities of statewide or regional significance. The committee must make a report to the state land planning agency within six months of its appointment to include a schedule for meeting objectives identified by the committee. Depending upon whether or not these objectives are met, the DVCA may recommend designation of the area as an ACSC.

In recommending an area to the Commission for designation, the Department of Veteran and Community Affairs must include in its recommendation the following:

1. An identification of any lands within the area which it believes should be purchased as environmentally endangered lands or outdoor recreation lands under the Land Conservation Act of 1972;

2. Any report or recommendation of the resource planning and management committee;

3. The dangers that would result from uncontrolled or inadequate development of the area and the advantages that would be achieved from the development of the area in a coordinated manner;

4. A detailed boundary description of the proposed area;

5. Specific princples for guiding development within the area; and

6. An inventory of lands owned by the state, federal, county, and municipal governments within the proposed area; s. 380.05(1)(a), F.S.

The Administration Commission has forty-five days from receipt of a recommendation from the Department of Veteran and Community Affairs to reject the recommendation or adopt the recommendation as submitted with or without modifications. Adoption must be by rule in accordance with the procedures of Chapter 120, Florida Statutes, the Administration Procedure Act. The Commission is prohibited from adopting any rule providing for a moratorium on development in the designated area. An area designated by the Commission as well as the development principles, must be submitted to the Legislature for review. The Legislature may reject, modify, or take no action relative to the designated area; s. 380.05(1)(b) and (c), F.S. No more than five percent of the land of the state can be subject to area designations at any one time; s. 380.05(20), F.S.

Within 180 days after the Administration Commission's rule designating an area becomes effective (i.e. 20 days after filing with the Secretary of State), affected local governments may submit to the Department of Veteran and Community Affairs existing or newly adopted land development regulations for the designated area. If the Department finds that the local government's regulations comply with the principles for guiding development set forth in the area designation rule, it shall approve such regulations by rule. If the regulations are not in compliance with the development principles, or if a local government fails to submit any regulations, then the Department must propose land development regulations to the Administration Commission. The Commission then has forty-five days to reject, approve, or approve with modifications the proposed regulations. Such regulations cannot become effective until the Legislature has reviewed the designation of the area; s. 380.05(5), (6) and (8), F.S. Development within an ACSC must comply with the principles for development subsequent to legislative review of the designation and prior to adoption of development regulations. Thereafter, development must comply with the adopted development regulations. Such regulations are administered by the affected local governments; ss. 380.05(1)(b), (8), and (16), F.S. Provision is made for the protection of development rights which have vested prior to the approval or adoption of development regulations; s. 380.05(18), F.S.

An area designation automatically terminates, if no land development regulations have become effective within twelve months after designation by the Administration Commission. No part of such an area may be redesignated for at least twelve months after the designation terminates; s. 380.05(9), F.S. No earlier than twelve months and no later than three years after the approval of land development regulations for an area, the Commission must repeal the rule designating the boundaries and the principles for development of the area. The required repeal is, however, contingent upon the development regulations having been in effect for twelve months and upon adoption or modification by the local government of a local government comprehensive plan which conforms to the development principles. Repeals are limited to those portions of the area which meet the contingencies upon which repeal is predicated; s. 380.05(14) and (15), F.S. If, prior to repeal, the Department of Veterans and Community Affairs determines that the administration of local land development regulations is inadequate to protect the state or regional interest, the Department may seek injunctive relief to compel proper enforcement; s. 380.05 (13), F.S. Provision is also made in the Act for the modification of area boundaries and the amendment or recession of development regulations; ss. 380.05(10), (11), and (12), F.S.

To date three areas of critical state concern have been approved by the Legislature; the Big Cypress Area, the Green Swamp Area, and the Florida Keys Area; ss. 380.055, 380.0551, and 380.0552, F.S. Regulations for these areas are in Chapters 22-F-3, 5-13, F.A.C.

In addition, the Charlotte Harbor Resource Planning and Management Committee is developing goals and objectives for the Charlotte

Harbor area. The Committee is studying many coastal issues including minimum flows, aquatic preserves, barrier islands, ports, fisheries and marina siting. This program embodies many of the concepts of special area management planning and exemplifies the application of coastal management principles through cooperation and coordination between local, regional, state and federal agencies.

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RESOURCE RECOVERY

In recognition of the growing problems with the collection and disposal of solid wastes and the growing importance of recycling of solid wastes, the 1974 Florida Legislature enacted the Florida Resource Recovery and Management Act as Part IV of Chapter 403, Florida Statutes.

LEGISLATIVE GOALS

403.702(2), F.S. -- It is declared to be the purpose of this act to:

> (a) Plan for and regulate the storage, collection, transport, separation, processing, recycling and disposal of solid waste in order to protect the public safety, health, and welfare, enhance the environment for the people of the state, and recover resources which have the potential for further usefulness.

GENERAL AUTHORITY

The Act is administered by the Department of Environmental Regulation. The department has the responsibility to adopt a State Resource Recovery and Management program, provide technical assistance to local governments which develop resource recovery programs, issue permits for resource recovery facilities or for solid waste treatment and disposal facilities, and to prescribe the conditions under which such facilities operate; ss. 403.704, 403.707, F.S.

SCOPE

"Solid waste" under the act means "... sludge from a waste treatment works, water supply treatment plant, or air pollution control facility, or garbage rubbish, refuse, or other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations"; s. 403.703(9), F.S.

Regulations

Rules governing the permitting and operation of resource recovery facilities and facilities for the treatment and disposal of solid

wastes, are found in Chapter 17-7, F.A.C. Applicants for permits for landfills, except governmentally owned or operated facilities, must post a bond sufficient to cover the costs of closing the facility prior to receiving a permit; 17-7.03(1) F.A.C.

Violations

The Act prohibits the deposit of solid waste in or on the land or waters within the state and the burning of solid waste except in a manner approved by the department. Civil fines of up to $10,000 per day of violation may be levied against persons who violate the Act or rules adopted under the Act. The department or local governments may seek injunctions to enforce compliance with the Act and associated rules; s. 403.708, F.S.

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CONTROL OF HAZARDOUS WASTES

The 1980 Florida Legislature recognized that Florida was the only Southeastern state without a comprehensive program for managing hazardous waste materials and feared that as a result, the state would become a dumping ground for wastes from other states. As a result, it passed comprehensive legislation to control the generation, transportation and disposal of these wastes. Chapter 80-302, Laws of Florida -- an amendment to the state's Resource Recovery and Management Act -- closely follows the requirements of the Federal Resource Conservation and Recovery Act of 1976, in anticipation that the federal program will be delegated to the state.

LEGISLATIVE GOALS

403.702(1)(f), F.S.

> Certain solid waste, due to its quantity, concentration, or physical, chemical, biological, or infectious characteristics is expectionally harmful to human health, safety, and welfare, and to the environment; and ... exceptional attention to the transportation, disposal, storage and treatment of such waste is necessary to protect human health, safety, and welfare and the environment.

403.702(2), F.S.

It is declared to be the purpose of this act to:

> (f) Insure that exceptionally hazardous solid waste is transported, disposed of, stored, and treated in a manner adequate to protect human health, safety, and welfare and the environment.

(g) Promote the recycling, reuse or treatment of solid waste, specifically including hazardous waste, in lieu of disposal of such wastes.

(h) Promote the application of methods and technology for the treatment, disposal, and transportation of hazardous wastes which are practical, cost-effective, and economically feasible.

SCOPE OF THE ACT

The Florida Resource Recovery and Management Act, ss. 403.701-403.730, F.S., includes the regulation of all solid wastes. The Act was first passed in 1974 to create state jurisdiction over the treatment and disposal of solid wastes in general. The 1980 amendments broadened the act to include regulation of hazardous wastes.

Hazardous wastes are defined as:

> --solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed; s. 403.703(21), F.S.

GENERAL POWERS

The Act is administered by the Department of Environmental Regulation. The department is authorized to adopt, amend and repeal all necessary rules. However, rules adopted by the department may not be more stringent than corresponding federal regulations, except that the Environmental Regulation Commission may, pursuant to a finding of compelling need, adopt stricter standards, or may adopt standards for wastes not regulated by the U.S. Environmental Protection Agency. In either case, the rules must receive approval of the Governor and Cabinet before becoming effective; s. 403.704(16), F.S.

The Department is required to list hazardous wastes and to identify the characteristics of each. In preparing the lists, the department is to consider factors such as ignitibility, corrosivity, reactiveness, toxicity, infectiousness, radioactivity, mutagenicity, carcenogenicity, tetragenicity, bioaccumulative effect, and persistence and degradability in nature; s. 403.720(1), F.S. A generator or transporter of hazardous wastes, and those who treat, store or dispose of such wastes, must notify the department within 90 days after a substance is listed if the waste is present at his facility; s. 403.720 (2), F.S.

GENERATORS AND TRANSPORTERS OF HAZARDOUS WASTE: OWNERS OF HAZARDOUS WASTE FACILITIES

The Department is required to adopt rules governing the operations of those who generate and transport hazardous wastes, as well as those who operate waste treatment or storage facilities. Generators are required to:

- -- keep records as required by the Department;
- -- follow correct labeling requirements for hazardous waste containers;
- -- use appropriate containers for hazardous wastes;
- -- supply information on the composition and characteristics of the wastes to persons transporting, storing or disposing of the wastes;
- -- initiate a manifest system to insure that hazardous wastes are accounted for from the point of generation to the point of final disposition; s. 403.721(3), F.S.

Transporters of hazardous wastes must:

- -- keep appropriate records;
- -- comply with labeling requirements for transported wastes;
- -- maintain and follow the manifest system;
- -- deliver only to approved designated treatment, storage or disposal facilities; s. 403.721(4), F.S.

Owners and operators of hazardous waste disposal, storage or treatment facilities must:

- -- maintain complete and appropriate records of wastes handled, stored, or disposed of;
- -- conduct satisfactory monitoring and inspection for compliance with the manifest system;
- -- use approved techniques for the treatment, storage or disposal of the wastes;
- -- develop contingency plans for spills or other accidents;
- -- obtain a permit; s. 403.721(6), F.S.

PERMITS

Each person who intends to construct, modify, operate, or close a hazardous waste disposal, storage or treatment facility must obtain a construction, operation or closure permit from the department. Persons operating such facilities on the effective date of the rule listing hazardous wastes must apply to the department for temporary operating permits which will be valid for up to three years at which time an operation permit may be issued; s. 403.722, F.S. Permits may be revoked upon failure of a permit holder to comply with the Act, the terms of the permit, the standards or other requirements imposed by the department, for refusal to allow lawful inspection, or for the submission of inaccurate information in the application. Permits may be modified upon request of the permittee, or if the department determines that a modification is needed to ensure compliance with the Act;

s. 403.722(5), F.S. A maximum fee of $1,000 may be charged for a permit; s. 403.722(8), F.S. Permits issued by the department do not override local government ordinances, comprehensive plans, zoning ordinances, or regulations; s. 403.722(9), F.S.

SITING OF FACILITIES

Within 30 days of receipt of a permit application, the department must notify appropriate local governments. Local governments must determine if the proposed facility complies with appropriate local requirements. Upon a finding that the facility does not comply, the applicant may request a variance, and if denied, he may apply to the Governor and Cabinet for a variance from the local requirement, but only if the applicable regional planning council has previously recommended a variance. The Act provides standards by which regional planning councils and the Governor and Cabinet may act upon requests for variances from local government requirements; s. 403.723, F.S.

HAZARDOUS WASTE MANAGEMENT TRUST FUND

The Act establishes the Hazardous Waste Management Trust Fund into which is placed appropriations to the fund, permit fees, fines, grants and other funds, and funds received from an excise tax levied against generators of hazardous wastes. The excise tax is to be levied at a rate of 4 percent of the price of disposing of, storing, or treating hazardous wastes, and is in addition to all other taxes paid by the generator. The Act provides for a staggered implementation of the tax resulting in the full 4 percent levy by October 1, 1984; s. 403.725, F.S. The excise tax is in addition to financial responsibility requirements imposed upon all owners or operators of hazardous waste facilities; s. 403.724, F.S. A cap of $10-million is placed upon the Hazardous Waste Management Trust Fund. If the fund is at or exceeds $10-million, no tax is levied. The Florida Department of Revenue collects the tax; s. 403.725(6)(b), F.S.

OTHER PROVISIONS

The department has authority to act to abate imminent hazards, and may use the funds in the Hazardous Waste Management Trust Fund. Funds disbursed from the fund may be recovered by the person causing the imminent hazard; s. 403.726, F.S. Violations are punishable according to other provisions of Chapter 403, including damages and a civil penalty of up to $25,000 for each day of continued violation, unless the alleged violator can plead and prove that the alleged violation was solely the result of an act of war; an act of government, either state, federal or local; an act of God; an act or omission of a third party; or the negligence of a second party; s. 403.727, F.S.

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DISASTER PREPAREDNESS

A state disaster preparedness program is required under Chapter 252, Florida Statutes, which codifies the State Disaster Preparedness

Act of 1974; s. 252.31, F.S. In passing the Act, the Legislature recognized the vulnerability of Florida to large-scale disasters resulting from natural forces, such as wind, waves, and rain, and from human actions; ss. 252.32 and 252.34(5), F.S. The Act seeks to achieve a pre-planned response capability in which the efforts of local, state, and federal authorities are coordinated.

LEGISLATIVE GOALS

Section 252.32 provides in part that

> ... assistance be provided by the state in the prevention of disasters caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.

Furthermore, it is the policy of the state

> ... to coordinate all disaster preparedness efforts with appropriate federal agencies, local governments, private agencies, and other states to the maximum extent; s. 252.32 (1)(e) and (2), F.S.

ADMINISTRATION

The state disaster preparedness program is administered by the Division of Public Safety Planning and Assistance in the Department of Veterans and Community Affairs; s. 252.35(1), F.S. The Department is headed by a Secretary appointed by the Governor and subject to confirmation by the Senate; s. 20.18(1), F.S.

The Division is responsible for the preparation of a comprehensive plan and program for the civil defense of the state. The state program is to be integrated into, and coordinated with, the survival plans and programs of the federal government; s. 252.35 (2)(b), F.S. The Division is authorized to make recommendations to agencies for zoning, building, and other land-use controls designed to eliminate or reduce disasters or their impact; s. 252.35(2)(e), F.S. It is also authorized to assist local officials in designing local emergency action plans and to promulgate standards for local and interjurisdictional disaster plans; s. 252.35(2)(f) and (i), F.S.

The Governor is required to consider, on a continuing basis, steps which could be taken to prevent or reduce the harmful consequences of disasters. Of particular concern are the areas of flood plain management, stream encroachment and flow regulation, weather modification, fire prevention and control, air quality, public works, land use and land-use planning, and construction standards. The Governor is required to recommend changes in requirements, practices, or policies to the appropriate state and local agencies. If no action or insufficient action is taken by such agencies, then the Governor is required to seek legislative action to mitigate the impact of disasters; s. 252.44, F.S.

In the event of an actual or threatened disaster, the Governor has broad powers to direct the response to such a situation. The

Governor has the authority to issue necessary orders and regulations, to suspend the existing regulations of agencies, to utilize the resources of the state agencies and political subdivisions, to direct and compel evacuations, and to provide assistance to the public in clean-up and recovery operations; s. 252.36, F.S.

The boards of county commissioners, or the governing bodies of combined county-city governments, are required to establish and maintain local disaster preparedness agencies to complement the state program; s. 252.38(2), F.S. The Division of Public Safety Planning and Assistance and the Governor are authorized and encouraged to delegate their duties and functions regarding disaster preparedness to local agencies; ss. 252.35(2)(n) and 252.36(4) and (8), F.S.

ENFORCEMENT

Violations of orders, rules, and regulations entered or promulgated under Chapter 252, Florida Statutes, have the force and effect of law; s. 252.46(2), F.S. Violations of such orders, rules, or regulations are punishable as misdemeanors of the second degree by imprisonment for 60 days and a fine of $500.00; s. 252.50, F.S.

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PROTECTION OF HISTORIC SITES AND PROPERTIES

HISTORY

Historic preservation is not new in Florida. Citizens, government officials, and university communities have long recognized the State's rich and diverse heritage contained in its historical, archaeological, engineering, and architectural elements.

While archaeological survey and salvage programs began around 1875, it was not until the 1940's that the State began funding such activities through the Florida Park Service and the universities. In 1959 the State created the St. Augustine Historical Restoration Commission, now known as the historic St. Augustine Preservation Board. By 1965, the Florida Legislature had declared it to be State policy to protect and preserve objects of historic value. Between 1965 and 1967, State officials conducted an in-depth study to produce comprehensive legislation for the protection of Florida's archaeological and historic resources. As a result, the 1967 Legislature passed the Florida Archives and History Act (Chapter 267, F.S.). This statute was amended in 1969 as a result of the Government Reorganization Act; and, other amendments relative to historic preservation were added in 1973, 1976 and 1978.

The Florida Archives and History Act is the principal historic preservation legislation in Florida. It reflects the mounting concern for the adverse impacts on Florida's irreplaceable archaeological and historic sites and properties. In coastal areas, these non-renewable resources are located both on land and in the waters. Historic and archaeological sites, including the Fort Walton Beach Temple Mound in Okaloosa County, Weedon Island in Pinellas County, Indian Key in Monroe County, the Pensacola, St. Augustine and Key West Historic

Districts, and many other historic forts, lighthouses, indian mounds and the like, attract tourists to Florida, thereby contributing to the State's economy, and are a source of pride to local residents.

Unfortunately, many of these sites are threatened by coastal development activities, such as dredge-and-fill and coastal construction projects, urban development and city redevelopment, road and bridge construction, clear-cutting forests, and shoreline erosion and site looting owing to increased water-bourne traffic and public access. To counterbalance such threats, the State of Florida and the federal government have enacted legislation to help protect and preserve such resources when threatened by damage or destruction by land use activity.

Public and private users of Florida's coastal region must be aware of the policy of the State of Florida on the protection and preservation of historic sites, as well as the laws and regulations which implement the policy. These authorities, which are summarized below, mandate consideration of historic and archaeological resources, and prohibit their alteration or destruction in certain circumstances without investigating actions for preserving them or mitigating likely damage.

LEGISLATIVE GOALS

Section 267.061(1), F.S., provides that:

> (a) It is hereby declared to be the public policy of the state to protect and preserve historic sites and properties, buildings, artifacts, treasure trove and objects of antiquity which have scientific or historical value or are of interest to the public, including, but not limited to monuments, memorials, fossil deposits, Indian habitations, ceremonial sites, abandoned settlements, caves, sunken or abandoned ships, historical sites and properties and buildings or objects, or any part thereof relating to the history, government and culture of the state.
>
> (b) It is further declared to be the public policy of the state that all treasure trove, artifacts and such objects having intrinsic or historical and archaeological value which have been abandoned on state-owned lands or state-owned sovereignty submerged lands shall belong to the state with the title thereto vested in the Division of Archives, History and Records Management of the Department of State for the purpose of administration and protection.

ADMINISTRATION

General Powers

Chapter 267, F.S. authorizes the Florida Department of State, Division of Archives, History and Records Management (DAHRM), Bureau of Historic Sites and Properties to locate, acquire, protect, preserve and promote the location, acquisition, and preservation of archaeological and historic sites and properties; develop a comprehensive statewide historic preservation plan; and establish a permit program for conducting excavation and/or surface reconnaissance on state lands or lands within boundaries of designated state archaeological landmarks or landmark zones, ss. 267.061(2) and 267.12.

Department of State Rules, Chapters 1A-31 and 1A-32, are permit programs prepared by DAHRM under Chapter 267, F.S. Chapter 1A-31 ("Procedures for Acquiring and Protecting Antiquities on State Lands") outlines procedures for entering into contracts for exploration, and contracts for salvage of treasure trove on state-owned submerged lands. Chapter 1A-32 ("Research Permits for Archaeological Sites of Significance") presents the procedures and professional qualifications for being granted a research permit to conduct archaeological site surveys or excavations on state-owned lands. These rules have been promulgated to insure the proper management of these resources.

The Director of the Division of Archives, History and Records Management is also the State Historic Preservation Officer (SHPO). The SHPO has been designated by the Governor to administer federal historic preservation programs. Specific SHPO responsibilities are presented in Title 36, Code of Federal Regulations, Part 61.2(b) ("Criteria for Comprehensive Statewide Historic Surveys and Plans"), and include:

(1) Development of an administration framework for the State historic preservation program consisting of (i) the State historic preservation office; (ii) a professional staff working under the direction of the State Historic Preservation Officer; and (iii) a State Review Board designated by the State Historic Preservation Officer unless otherwise provided by State law.

(2) Direction of a comprehensive statewide survey of historic properties.

(3) Registration, or official recognition, of historic properties through (i) preparation and submission of nominations to the National Register, and (ii) participation in the Secretary's determinations that historic properties meet the National Register criteria and are therefore eligible for listing in the National Register.

(4) Cooperation in the development of effective working relationships with Federal agencies, other State officials, and

local governmental units that participate in the identification, registration, protection, enhancement, and management of historic properties and in project planning that may affect historic properties.

(5) Cooperation and integration of historic preservation planning with all levels of planning, in order to ensure that the need to preserve historic properties is taken into consideration by all planning and development agencies.

(6) Cooperation in the development and maintenance of a review procedure of publicly funded, assisted, and licensed undertaking that may affect historic properties within the State.

(7) Participation in the review of Federal, federally assisted, and federally licensed undertakings that may affect historic properties included in or eligible for inclusion in the National Register under section 106 of the National Historic Preservation Act and Executive Order 11593, in accordance with the Advisory Council on Historic Preservation's "Procedures for the Protection of Historic and Cultural Properties" (36 C.F.R., Part 800), and participation in the review of non-federal undertakings when required or permitted by State law.

(8) Assisting Federal agencies in fulfilling their historic preservation responsibilities under Federal laws and regulations.

(9) Liaison with organizations of professional archaeologists, historians, architects, architectural historians, planners, and others concerned or potentially concerned with historic preservation.

(10) Development and operation of a program of public information and education concerning the National Register and grants programs.

(11) Administration of the grants program within the State.

(12) Preparation and maintenance of a comprehensive statewide historic preservation plan, subject to approval by the Secretary.

These activities are intended to implement the goals and policies contained in the National Historic Preservation Act of 1966 (Public Law 89-665) as amended by P.L. 91-243, P.L. 93-54, P.L. 94-422, and P.L. 94-458 and Presidential Executive Order 11593 ("Protection and Enhancement of the Cultural Environment"), and are carried out in accordance with the procedures contained in 36 C.F.R., Part 800 ("Procedures for the Protection of Historic and Cultural Properties") and 36 C.F.R., Parts 60, 61, 63 and 66.

In addition, the National Environmental Policy Act of 1969 (P.L. 91-190) obligates federal agencies to prepare an environmental impact statement (EIS) for every major federal action affecting the natural and man-made environment prior to commencing such actions. Section 101(b)(4) of the act directs the involved federal agency to "coordinate federal plans, functions, programs, and resources to ... preserve important historic, cultural, and natural aspects of our national heritage...". EIS's prepared under NEPA are circulated at the State level through the State Planning and Development Clearinghouse in accordance with OMB Circular A-95. One of the recipients is the SHPO who reviews project documents to insure compliance with the National Historic Preservation Act and to determine what impact, if any, the project will have on significant archaeological and historic sites and properties.

The Coastal Zone Management Act of 1972 (P.L. 92-583 as amended) encourages states to undertake comprehensive planning and management "to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic and aesthetic values as well as to needs for economic development". Section 307(a) and a resulting 1978 interagency agreement with the U.S. Department of the Interior to help insure compatibility with historic preservation programs are presented elsewhere in this document.

Chapter 267, F.S., provides the basic expression of State Policy for historic preservation, defining goals and outlining the responsibilities of the DAHRM. It also addresses various aspects of protecting and preserving archaeological and historic sites and properties abandoned on state-owned lands and state-owned sovereignty submerged lands. Other Florida statutes however, also address protecting and preserving cultural resources. These include the "Historic Preservation, etc., Boards of Trustees" Act (Chapter 266, F.S.), which established the Historic St. Augustine, Pensacola, Tallahassee, Key West, Boca Raton, and Tampa-Hillsborough Preservation Boards of Trustees. Additionally, there is the "Environmental Land and Water Management Act" of 1972 as amended in 1979 (Chapter 380, F.S., and Laws of Florida); and Chapter 79-255 (Laws of Florida) which amends both the "Public Lands and Property" Act (Chapter 253, F.S.), and the "Land Conservation Act" of 1972 (Chapter 259, F.S.).

The Environmental Land and Water Management Act of 1972 as amended in 1979 (Chapter 380, F.S.) defines Areas of Critical State Concern (Section 380.05, F.S.) and Developments of Regional Impact (Section 380.06, F.S.). In accordance with Section 380.05(2), Areas of Critical State Concern may be designated for:

(b) An area containing, or having a significant impact upon, historical or archaeological resources, sites, or statutorily defined historical or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites or districts.

This subsection, which is presented in more detail in Part II, Section Two.C., clearly indicates the State's continued recognition of the value of protecting and preserving its archaeological and historic sites.

Developers of projects determined to be Developments of Regional Impact (DRI's) must submit Applications for Development Approval (ADA). Developers must address the effect of their project on archaeological and historic sites and properties. In cooperation with the Department of Veterans and Community Affairs, Division of Local Resource Management, the DAHRM reviews and comments upon the adequacy of the answer to Question 19 of the ADA. If significant archaeological and/or historic sites are present, the Division of Local Resource Management may require the developer to consider the means for preserving such areas.

Section 253,023, F.S., of the "Public Lands and Property" Act states that lands may be purchased with funds from the Conservation and Recreation Lands Trust Fund "for (the) preservation of significant archaeological or historic sites". The "Land Conservation Act of 1972" (Chapter 259, F.S.) was amended by adding Section 295.035 ("Selection Committee; Powers and Duties"). The Director of the Division of Archives, History and Records Management of the Department of State is a statutory member of the selection committee. Section 259.032, F.S. states that: "All proposals for acquisition projects pursuant to this chapter or s. 253.023 shall originate from the committee".

Finally, under the authority granted in Section 403.504, F.S., of the "Florida Electrical Power Plant Siting Act", the Department of Environmental Regulation has prepared Chapter 17-17, F.A.C. ("Electrical Power Plant Siting"). Section 17-17.05 addresses the studies required to assist in the certification of power plant sites and requires consideration of the project impact on cultural resources.

In general, State policy expressed in Chapter 267, F.S., encourages the protection and preservation of historic sites and properties in coastal regions as well as elsewhere in the State. Chapter 267, F.S., also specifically provides for the protection of privately owned lands and allows the State to take a role in federal preservation programs.

Federal preservation authority which is implemented at the State level through the SHPO provides a way to protect significant historic and archaeological sites from Federal or federally involved projects. If preservation is not feasible, the authority provides for recording information about objects, sites, structures, and districts of historical, architectural, or archaeological significance prior to their disturbance or destruction as a result of project activities. Significant properties are those which are listed, or determined eligible for listing, in the National Register of Historic Places.

Review and Compliance Program Activities

Documents on projects requiring cultural resource assessment reviews are received by the Florida Division of Archives, History and Records Management (FDAHRM)/State Historic Preservation Officer (SHPO) directly from project and applicants; or through the A-95 review process; or from State agencies.

This agency encourages submission of projects and project alternatives for review early in the planning stage. Early review permits the applicant to know in advance whether a proposed project will or may affect significant known or potentially occurring archaeological or historic sites and properties to arrange to have an archaeological and historic site assessment survey conducted if needed; and to modify the proposed project, if necessary, to comply with applicable State and Federal Historic Preservation rules and regulations.

After receiving a cultural resource assessment request, the DAHRM/SHPO checks the Florida Master Site File, and the central site inventory, to determine if any known sites are recorded on the property and whether the tract has been surveyed previously for sites by a professionally capable agency. The DAHRM/SHPO also assesses the likelihood of unknown sites or properties occurring on the property. If a review indicates that the potential for site occurrence is low or if there is documentation of extensive land fill or ground disturbing activities, the DAHRM (for State) or SHPO (for Federal) usually will issue an opinion that there is little likelihood of the activities affecting significant archaeological or historic sites and properties. If, however, the DAHRM/SHPO believes the likelihood of significant sites within a tract is high or if there are known sites on the property, the DAHRM/SHPO will recommend that a site assessment survey be conducted to locate and assess the condition and archaeological or historical significance of any sites within the tract. The DAHRM/SHPO staff will review the site assessment survey report and determine if significant sites will be affected. Significant sites are those which have contributed or may contribute significantly to our understanding of an area's history or prehistory. If significant sites are involved, the DAHRM/SHPO generally will recommend that the project be modified to permit the preservation of those sites. If preservation is not acceptable to the applicant and there is no feasible or prudent alternative to site alteration, the DAHRM/SHPO will recommend that the information contained at the site(s) be recovered through archaeological or architectural salvage and/or recording by a professionally competent agency.

Since preservation is the preferred alternative, issuance of a federal permit, license, federal grant, loan guarantee, or acceptance of an Application for Development Approval for a Development of Regional Impact may depend upon the applicant's agreeing to preserve any significant sites. This does not mean the applicant is prohibited from using the parcel located or using a building or structure deemed significant. However, the categories of use must be designed to

preserve or enhance the site(s). Some of the land uses most frequently planned in these instances include green-belts, nature preserves, passive recreation areas, or other such uses which do not disturb or alter the integrity of the site(s).

Technical and Financial Assistance

In addition to the cultural resource assessment review program, the Division, acting as staff of the SHPO, also administers a grants program and provides technical assistance.

The DAHRM/SHPO is responsible for processing all National Register of Historic Places nominations for Florida. The National Register is the official list of the nation's cultural resources worthy of preservation. Properties listed in the National Register may be eligible for various funding programs and federal tax incentives. In addition, listing provides protection to these resources by requiring comment from the DAHRM/ SHPO on the effect of federally assisted projects. Before submission to the National Register, all proposed nominations must be approved by the State Review Board whose membership includes professionals in the fields of architecture, architectural history, and prehistoric and historic archaeology. If the proposed nomination meets the National Register criteria, the Board recommends it to the SHPO. The proposed nomination is then forwarded to the Keeper of the National Register in Washington, D.C.

In addition to the above activity, DAHRM/SHPO administers the Department of the Interior, Heritage Conservation and Recreation Service Historic Preservation Grant Assistance Program in Florida. This program encourages the identification of, and preservation through acquisitions, rehabilitation, restoration or reconstruction, of sites and properties of archaeological, architectural and historic significance.

The Heritage Conservation and Recreation Service Grant Assistance Program for Survey and Planning provides grants which may reimburse up to 50% of the costs of preparing preservation planning studies and conducting archaeological, architectural and historic preservation surveys. As a result of these surveys, many new sites have been entered in the Florida Master Site File, which is the central inventory and archival record of Florida's cultural resources.

The Heritage Conservation and Recreation Service's Historic Preservation Program for Acquisition and Development projects provides grants which may reimburse owners of National Register properties for up to 50% of the costs of the restoration, rehabilitation, or acquisition of properties listed on the National Register or significant properties within the boundaries of a National Register District. To be eligible for these funds, a project must comply with the comprehensive statewide historic preservation plan approved by the Secretary of the Interior and must meet appropriate restoration/rehabilitation guidelines.

In addition to the Federal Historic Preservation Grants program, the DAHRM administers the State Historic Preservation Grants-In-Aid program. This program, funded by the State of Florida, provides matching grants-in-aid, not to exceed 50% of the total costs, for the preservation of certain designated historic properties. Unfortunately, funds have yet to be appropriated by the Legislature. The Administrative Rules and Regulations for this program are currently under revision.

A third program is the Certification and Review Process required by the provisions of the Tax Reform Act of 1976 and the Revenue Act of 1978 which establishes important tax incentives for the preservation and rehabilitation of historic architectural structures. The law amended the Federal Income Tax Code to stimulate preservation of historic income-producing buildings. The Act allows tax incentives for preservation to approach parity with those for new construction. "Historic" is defined as being listed in the National Register or certified by the Secretary of the Interior as significant to a National Register Historic District. The Act also provides the same incentives to certified historic structures located in a state or local historic district, if the ordinance or statute is certified by the Secretary of the Interior.

The DAHRM also consults with State agencies which administer properties containing archaeological, architectural and historic sites. One of these is the Division of Recreation and Parks, Department of Natural Resources which maintains several historically important sites and structures. These consultations include research for interpretive purposes, on-site archaeological and architectural investigations, and technical preservation assistance. The latter concentrates new methods and materials in the preservation field which help the involved state agency correct structural problems and maintain their historic sites and structures.

LOCAL APPROVAL

In addition to applicable State and Federal regulations, some county and local governments, among them Pinellas and Monroe Counties and the city of St. Augustine, have ordinances which include historic preservation components. These ordinances interface with the statewide historic preservation plan and involve review and comment by DAHRM. Such local ordinances should be consulted prior to beginning work on a proposed project under their jurisdiction.

* * *

ARTHROPOD CONTROL

As a consequence of the climate and the extensive wetlands areas in Florida, the control of mosquitoes and other arthropods has always been a problem. In 1959, the Legislature enacted the legislation which forms the basis for arthropod control activities in the state; Ch. 59-195, Laws of Florida (1959). The legislation, codified in Chapter 388, Florida Statutes, provides for a cooperative effort between the state and local governments in the control of arthropods.

LEGISLATIVE GOALS

Section 388.021, Florida Statutes, provides that:

> The abatement or suppression of mosquitoes and other arthropods, whether disease-bearing or merely pestiferous, within any or all counties of Florida, is advisable and necessary for the maintenance and betterment of the comfort, health, welfare, and prosperity of the people thereof; and is found and declared to be for public purposes...

ADMINISTRATION

The arthropod control program is administered through mosquito control districts (special taxing districts) and county governments with the Department of Health and Rehabilitative Services (DHRS) having general control, particularly through the disbursement of state matching funds; ss. 388.031, 388.241, and 388.261, F.S. Arthropod control projects may be undertaken by mosquito control districts or counties, or in the case of public lands, by DHRS; ss. 388.161, 388.241, and 388.411, F.S. The Department of Health and Rehabilitative Services is headed by a secretary appointed by the Governor and subject to confirmation by the Senate; s. 20.19, F.S. Mosquito control districts are headed by three member boards elected by the electors within the district; s. 388.101, F.S.

ARTHROPOD CONTROL PROGRAMS

Control programs may involve structures, ditching, draining, filling, and the use of oil and chemicals. However, the use of oil or chemicals must be approved by DHRS, must not exceed quantities necessary to control breeding, and must not be detrimental to fish life; s. 388.161(1), F.S. Furthermore, the application of pesticides to waters in the state must be performed under programs approved by DHRS pursuant to program approval procedures established by DHRS and the Department of Environmental Regulation (DER) through an interagency agreement; s. 403.088(1), F.S. Such an agreement was executed by DHRS and DER on June 2, 1979. The only chemicals which can be used are those approved for the particular use by the U.S. Environmental Protection Agency or the Florida Department of Agriculture and Consumer Services and only in accordance with registered label instructions, state application standards, and the Florida Pesticide Law, Chapter 487, Florida Statutes; s. 403.088(1) and 403.141 (4), F.S.

No dredge or fill permits are required for the maintenance of existing insect control structures, dikes, and irrigation and drainage ditches provided that (a) spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state, or (b) where it is determined by DHRS that upland spoiling is so costly as to inhibit the proposed insect control, spoiling may be allowed in the water on existing spoil

sites or dikes, provided that DER is notified and turbidity controls are used in waters utilized for potable water supplies, designated as shellfish harvesting waters, or functioning as habitat for commercially or recreationally important shellfish or finfish.

In all cases, no more dredging is to be performed pursuant to the exemption that is necessary to restore the dike or irrigation or drainage ditch to its original design specifications; s. 403.813 (2)(g), F.S. With regard to new structural projects involving dredging or filling, DER is required to consider in its review of permit appliations not only the ambient pollution standards, but also the total well-being of the public if there may be the danger of a public health hazard; s. 403.021(8), F.S.

To receive state financial aid, each district or county must submit annually to DHRS for approval a work plan and budget; s. 388.271, F.S. Prior to undertaking any permanent eliminative control measures, DHRS must approve the operating or construction plans; s. 388.291(1), F.S.

* * *

SOIL AND WATER CONSERVATION

Sections 582.02-582.05 establish the state position and policy for soil and water conservation in the State. Land is established as a "basic asset of the state" by s. 582.02, while s. 582.03 describes the consequences of soil erosion. Appropriate corrective mechanisms to combat soil erosion are set out in s. 582.04.

LEGISLATIVE GOALS

The state legislative policy, set forth in s. 582.05, F.S., is to

> provide for control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering the conservation, development and utilization of soil and water resources, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety and general welfare of the people of this state.

The chapter establishes soil and water conservation districts, provides the powers and duties of the districts, and establishes their taxing powers.

* * *

REGIONAL PLANNING COUNCILS

The 1980 Florida Legislature amended Chapter 160, F.S., creating the Florida Regional Planning Council Act which clearly outlines the duties and responsibilities of the regional planning councils in the state. Under the new law, the councils must develop comprehensive regional policy plans and have the responsibility to assist local governments with resolution of regional issues.

LEGISLATIVE GOALS

Section 160.02, F.S. states that the purpose of the Florida Regional Planning Council Act is to:

> "...establish a common system of regional planning councils for areawide coordination and related cooperative activities of federal state and local governments...and enhance the ability and opportunity of local governments to resolve issues and problems transcending their individual boundaries."

The new law requires that one-third of the governing body of each regional planning council is to be appointed by the governor. Other members include representatives of member governments; s. 160.04, F.S.

The Executive Office of the Governor has the responsibility to arbitrate and settle disputes between councils. In addition, the Office reviews, and may modify, reject, or approve rules adopted by the councils, insuring a degree of state-level oversight of regional planning council activities; s. 160.05, F.S.

Regional planning councils are required to adopt regional policy plans. An interim progress report is due on or before March, 1981. Plans, which are to be adopted by rule, must be consistent with Chapters 373 and 403, Florida Statutes, the state's Water Resources and Pollution Control laws. The water management districts or the Secretary of the Department of Environmental Regulation have the authority to resolve inconsistencies between council plans. District or department findings may be appealed to the Land and Water Adjudicatory Commission. Plans are used as the basis of review for Developments of Regional Impact, local comprehensive plans and federally assisted projects; s. 160.07, F.S.

* * *

PUBLIC UTILITIES

Chapter 366 establishes the state position and policy for public utilities. Public utilities are defined to include any legal entity which supplies electricity or gas to or for the public. The jurisdiction of the Florida Public Service Commission over public utilities is described in Section 366.04, F.S.

LEGISLATIVE GOALS

The state legislative policy set forth in s. 366.01, F.S., is

> The regulation of public utilities, as defined herein, is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power for the protection of the public welfare ...

The chapter establishes commission jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure a continued adequate and reliable source of energy.

C. GEOGRAPHIC AREAS OF PARTICULAR CONCERN: AREAS OF SPECIAL MANAGEMENT

The Federal Coastal Zone Management Act of 1972, while recognizing the entire coastal zone of each state as an important and vital resource, also declares that certain areas are of even more, special significance, and warrant particular attention to their preservation and development. The Act requires, in Section 305(B)(3), that each state inventory and designate the "Areas of Particular Concern" within its coastal zone as part of the state's program.

Section 923.21 of the Coastal Zone Management Development and Approval Regulations (Federal Register, Vol. 44, No. 61, March 28, 1979) defines the Federal requirements for Geographic Areas of Particular Concern (GAPCs). The subsection reads in part as follows:

(a) Requirement. In order to meet the requirements of subsections (305(b)(3) and (5) of the Act, States must:

(1) Designate geographic areas that are of particular concern, on a generic or site-specific basis or both;

(2) Describe the nature of the concern and the basis on which designations are made;

(3) Describe how the management program addresses and resolves the concerns for which areas are designated; and

(4) Provide guidelines regarding priorities of uses, in these areas, including guidelines on uses of lowest priority.

Also, as a subpart of GAPC designations, the state must:

(1) Describe the criteria by which areas can be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or aesthetic values; and

(2) Describe the procedures by which such designations can be made.

The federal regulations suggest that several different kinds of areas should be considered for designation, including important natural resource areas, habitat, cultural and scenic resources, hazard areas, areas for development and for siting of large facilities, and areas of intense competition for space or resources. In addition to considering the many types of areas, the state must, prior to program approval, demonstrate that it has developed and implemented policies or actions to address the concerns expressed for each area.

Florida proposes to use several existing state programs which have identified areas of particular state interest where special management measures are applied to ensure protection of Florida's land and water resources. These four state programs, the Aquatic Preserves System, the State Wilderness System, Areas of Critical State Concern, and the Conservation and Recreation Lands Program, are major programs which provide for the designation, establishment of priority of uses, and management of GAPC's within Florida's Coastal Management Program. These areas, designated as Areas of Special Management (ASM's) for the Florida CMP, are described in detail in the following discussion, with a listing of each category of ASM shown in Table 4.

In each ASM program category, there is a selection process which defines the (1) state objectives, (2) procedures and criteria for designation, and (3) management regulations and guidelines for each management category. Additionally, there is a brief discussion on a fifth program entity, Areas for Preservation and Restoration, which is considered as a special category of Areas of Special Management. Under each of these ASM programs, additional GAPC's can be designated. In the state's coastal management program, those uses which are permitted are considered of highest priority and those which are incompatible or not permitted are considered uses of lowest priority.

FLORIDA'S AQUATIC PRESERVES SYSTEM

State Concern And Program Fulfillment Of That Concern

Through Florida's Aquatic Preserve Act of 1975 (Chapter 258, F.S.) the state manages 30 estuarine and marine aquatic preserves within the coastal zone. The Act was passed to set aside certain state-owned submerged lands and associated coastal waters in areas which have exceptional biological, aesthetic, and scientific value as state aquatic preserves or sanctuaries for the benefit of future generations. A designated Aquatic Preserve may include open water areas, coastal marshes mangrove islands, grass flats, sandy beaches, and other features of estuarine, lagoon and nearshore marine tidal water bodies.

The preserves generally are areas of high natural productivity which provide an essential natural habitat for various living resources, including fish and wildlife. Because of the biological resources in these areas, many of them are extremely valuable from a scientific standpoint. This is recognized by a significant number of universities, environmental organizations and business interests which have research programs in these areas. The University of Miami, Florida State University, the Collier County Conservancy, and the Tropical Bio-Industries Development Company are examples of such research groups.

The state also values many of the aquatic preserves for their scenic and recreational qualities. A number of areas, such as the Rocky Bayou State Park Aquatic Preserve and the Fort Clinch State Park Aquatic Preserve have been designated to protect the aesthetics of

TABLE 4

AREAS OF SPECIAL MANAGEMENT

Aquatic Preserves System (AP) (Chapter 258.35 - 358.46, F.S.)

Number	
AP-1	Fort Pickens State Park Aquatic Preserve
AP-2	Yellow River Marsh Aquatic Preserve
AP-3	Rocky Bayou State Park Aquatic Preserve
AP-4	St. Andrews State Park Aquatic Preserve
AP-5	St. Joseph Bay Aquatic Preserve
AP-6	Apalachicola Bay Aquatic Preserve
AP-7	Alligator Harbor Aquatic Preserve
AP-8	St. Martins Marsh Aquatic Preserve
AP-9	Pinellas County Aquatic Preserve
AP-10	Boca Ciega Aquatic Preserve
AP-11	Cockroach Bay Aquatic Preserve
AP-12	Gasparilla Sound - Charlotte Harbor Aquatic Preserve
AP-13	Cape Haze Aquatic Preserve
AP-14	Matlacha Pass Aquatic Preserve
AP-15	Pine Island Sound Aquatic Preserve
AP-16	Estero Bay Aquatic Preserve
AP-17	Rookery Bay Aquatic Preserve
AP-18	Cape Romano - Ten Thousand Islands Aquatic Preserve
AP-19	Coupon Bight Aquatic Preserve
AP-20	Lignumvitae Key Aquatic Preserve
AP-21	Biscayne Bay - Card Sound Aquatic Preserve
AP-22	Biscayne Bay - Cape Florida to Monroe County Aquatic Preserve
AP-23	Loxahatchee River - Lake Worth Creek Aquatic Preserve
AP-24	Jensen Beach to Jupiter Inlet Aquatic Preserve
AP-25	North Fork, St. Lucie Aquatic Preserve
AP-26	Indian River - Vero Beach to Fort Pierce Aquatic Preserve
AP-27	Indian River - Malabar to Sebastian Aquatic Preserve
AP-28	Banana River Aquatic Preserve
AP-29	Mosquito Lagoon Aquatic Preserve
AP-30	Tomoka Marsh Aquatic Preserve
AP-31	Pellicer Creek Aquatic Preserve
AP-32	Nassau River - St. Johns River Marshes Aquatic Preserve
AP-33	The Fort Clinch State Park Aquatic Preserve

State Wilderness System (W) (Chapter 258.12 - 258.33, F.S.)

Number	
W-1	Audubon Island Wilderness Area
W-2	Hallman Island Wilderness Area
W-3	Robert Crown Wilderness Area
W-4	Town Islands Wilderness Area
W-5	Turkey Point Wilderness Area

TABLE 4 Con't.

Areas of Critical State Concern (ACSC) (Chapter 380, F.S.)

Number	
ACSC-1	Big Cypress Area of Critical State Concern
ACSC-2	The Florida Keys Area of Critical State Concern
ACSC-3	The Green Swamp Area of Critical State Concern

Conservation and Recreation Lands/Environmentally Endangered Lands (CARL/EEL) (Chapters 253.023, F.S. and 259, F.S.)

Number	
CARL/EEL-1	Rookery Bay
CARL/EEL-2	Lower Apalachicola River Addition
CARL/EEL-3	Charlotte Harbor
CARL/EEL-4	Cayo Costa/North Captiva Island
CARL/EEL-5	I.T.T. Hammock (Dade County)
CARL/EEL-6	West Lake
CARL/EEL-7	Spring Hammock
CARL/EEL-8	Latt Maxcy Tract
CARL/EEL-9	St. George Island - Unit 4
CARL/EEL-10	Green Swamp
CARL/EEL-11	South Savannas
CARL/EEL-12	Double Branch Bay (Bower Tract)
CARL/EEL-13	Little Gator Creek (Wood Stork Rookery)
CARL/EEL-14	Fakahatchee Strand
CARL/EEL-15	The Grove
CARL/EEL-16	Cockroach Key
CARL/EEL-17	San Felasco Hammock
CARL/EEL-18	Three Lakes Ranch Addition
CARL/EEL-19	Shell Island
CARL/EEL-20	Six Mile Cypress Swamp
CARL/EEL-21	Paynes Prairie Additions
CARL/EEL-22	New Mahogany Hammock
CARL/EEL-23	Josslyn Island
CARL/EEL-24	Ponce de Leon Springs
CARL/EEL-25	The Oaks
CARL/EEL-26	Horton Property (Snead Island)
CARL/EEL-27	Big Shoals (Suwannee River Corridor)

contiguous state parks. In addition, several of the aquatic preserves are thought to contain some of the best sport fisheries in the United States, making them extremely important recreational assets. Opportunities for other recreational uses such as hunting, boating and swimming are also abundant.

The majority of aquatic preserves are either in or near regions of increasing urbanization. Competition for the use of these areas is great. Many wetland areas within or adjacent to the preserves were filled in the past to create useable "dry" land. Conversely, significant portions have been dredged to provide fill materials or to create navigation channels. In some cases, coastal marshes and mangrove swamps have been drained for mosquito control and to improve upland properties. Exploratory wells have been drilled, shell and sand has been mined, and structures of all shapes and sizes have been erected. In addition, some of the areas have experienced increasing amounts of pollution of various forms. Concern over these problems resulted in passage of the Aquatic Preserve Act.

Selection Criteria

All of the aquatic preserves were selected on the basis of being areas of submerged lands (and associated waters) which were of exceptional value. The purpose essentially is to maintain them in their natural or existing condition, or to restore them. Additional general criteria which further describe the nature of the designated preserves are: 1) each area includes only state-owned lands or water bottoms specified by law; 2) privately-owned lands or water bottoms are excluded except where negotiated with a private owner; and 3) all established aquatic preserves exclude: a) any publicly-owned and maintained navigation channel or other authorized (by the U. S. Congress) public works project designed to improve or maintain commerce and navigation, and b) all lands which may be lost through avulsion or artificially induced erosion.

In addition to these requirements, the Act also specifies that each of the preserves be characterized as being of one or more of three principal types: (1) biological, where certain forms of animal or plant life, or their supporting habitat, is to be protected; (2) aesthetic, where certain scenic qualities or amenities are to be maintained; and (3) scientific, where other particular qualities or features are to be maintained. Six aquatic preserves, Estero Bay, Rookery Bay, Coupon Bight, Lignumvitae Key, North Fork St. Lucie River, and Cockroach Bay remain to be formally designated as belonging in one or more of these three types.

Selection Process

Establishment of Florida's aquatic preserve system resulted from a complex process over an eight-year period beginning in 1968 with creation of the State Interagency Advisory Committee on Submerged Land Management, and culminating with the enactment of the Aquatic Preserve Act of 1975. The interagency committee had the responsibility to

recommend a statewide system of aquatic preserves to Florida's Board of Trustees of the Internal Improvement Trust Fund (the administrative body charged with managing state-owned lands). Following a series of public meetings and a report from the committee, the Trustees approved a system of aquatic preserves by several resolutions. Before passage of the general Act, several aquatic preserves were designated by special act of the state legislature. In 1975, the Legislature enacted the Florida Aquatic Preserve Act.

Under this Act, the designation process for additional aquatic preserves is clearly provided. The process involves: (1) a proposal for an area to be established as an aquatic preserve (this may include an area already owned by a governmental agency upon written specific authorization from that agency, or an area in private ownership, specifically authorized in writing either through a lease or a dedication in perpetuity); (2) a public hearing in the county or counties where the area is located; (3) Trustees adoption of a resolution to set aside the area to be included in the aquatic preserve system; (4) confirmation by the Legislature; and (5) recording of the legal description of the area in the public records of the county or counties involved. (See Figure 3).

It should be noted that recommendations for consideration of new areas can originate from almost any source: government agency, private enterprise, environmental interest group, etc. The Division of State Lands of the Department of Natural Resources has authority to review all requests for additional aquatic preserves. After sufficient review, those areas which warrant official action then can be submitted to the Board of Trustees (the Governor and Cabinet) and the State Legislature for action.

The Act also provides stringent requirements before an area can be withdrawn from the system. Once the area is selected and included in the system, it cannot be removed without formal public notice and action by the State Legislature (except in cases where lease agreements provide for such a removal).

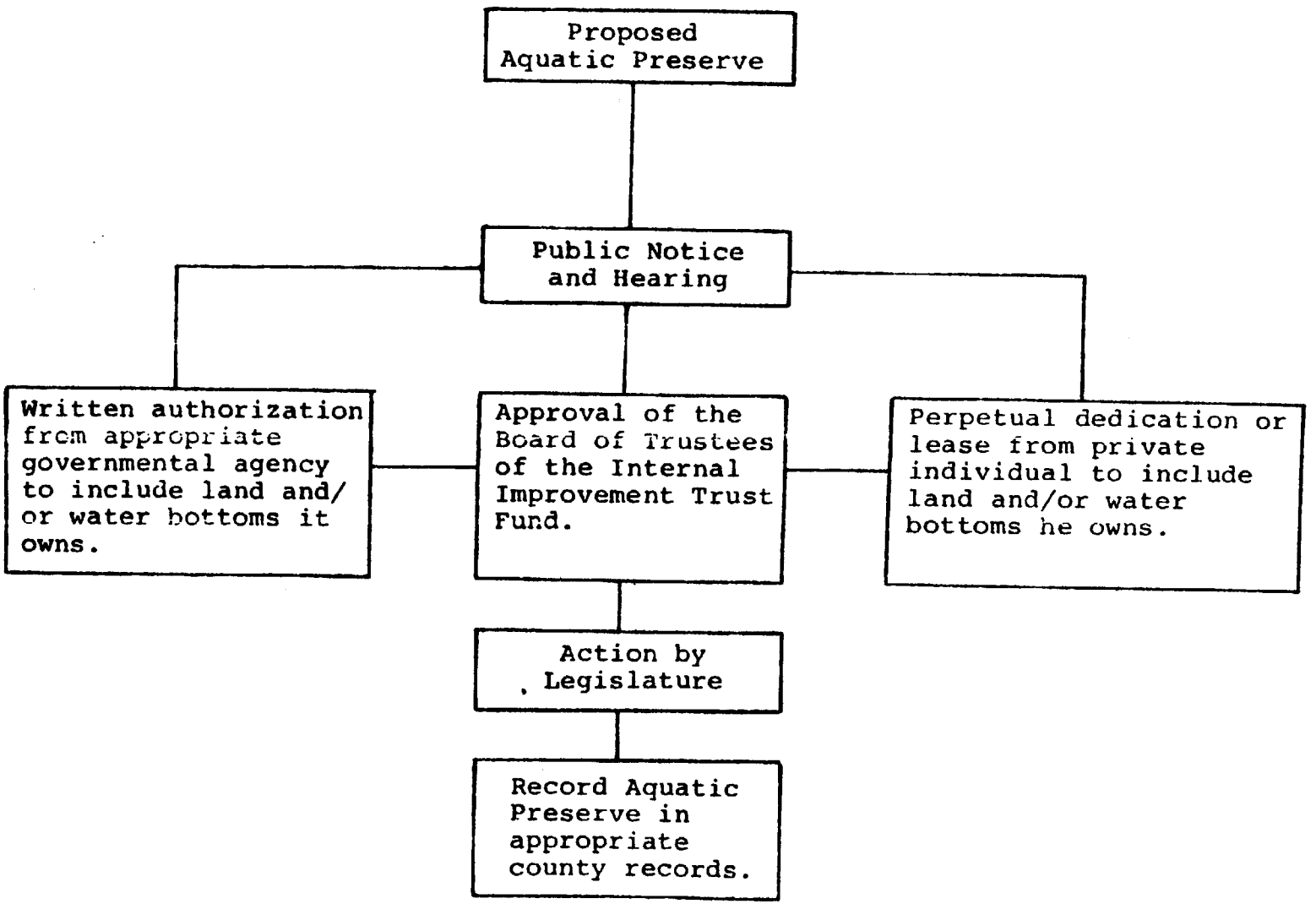
Management Guidelines/Authorities

The Board of Trustees holds title to all state lands and as such has the power to adopt and enforce rules and regulations for management of designated aquatic preserves and to carry out the provisions of the Aquatic Preserve Act. Generally, this includes the authority to regulate preserves as long as such regulation does not interfere with traditional public uses, including sport and commercial fishing, boating, swimming, etc.

In addition, the Trustees can permit other uses and activities which may not have been specifically provided for but which are found to be compatible with the intent of the Act. Hence, although these areas are called preserves, several uses and activities are permitted which may have some effect on the existing conditions in the areas.

FIGURE 3

AQUATIC PRESERVE SELECTION PROCESS



Specific prohibitions in the Act include:

1. The sale, lease or transfer of state submerged lands except when it is in the public interest;

2. Any further dredging or filling of submerged lands except in certain instances such as authorized public navigation projects and other authorized projects for the creation and maintenance of marinas, piers, etc;

3. The drilling of gas or oil wells;

4. The erection of certain structures; and

5. The discharging of wastes or effluencts when such action substantially departs from the intent of the Act.

The above guidelines serve to direct the management of the aquatic preserves.

With passage of the Florida Environmental Reorganization Act of 1975, Chapter 75-22, Laws of Florida, some regulatory functions of the Trustees were transferred to the Department of Environmental Regulation, such as permitting of dredge and fill activities. In addition, many of the administrative duties of managing the aquatic preserves, such as the development of rules and regulations, were reassigned to the Department of Natural Resources. Management of the Aquatic Preserves will be further enhanced by the adoption and enforcement of rules and regulations provided for by the Act. The DNR is developing and promulgating specific rules for aquatic preserves for adoption by the Board of Trustees, in addition to the guidelines in the Act. Also, pursuant to the Aquatic Preserve Act, DNR is also responsible for the development of a comprehensive plan for state lands, including aquatic preserves.

FLORIDA'S STATE WILDERNESS SYSTEM

State Concern And Program Fulfillment Of That Concern

The State Wilderness System Act (also in Chapter 258, F.S.) provides for the selection and management of state lands set aside as State Wilderness Areas in order to protect and enhance their natural qualities.

These areas are predominantly in a natural undisturbed condition, and are in need of additional protection by the state. Some of these areas are very fragile and are vulnerable to many of man's activities. In addition, some areas are near developing urbanized regions and thus are subject to secondary effects of neighboring development, such as pollution, disruption of habitat, and over-intensive recreation. These wild or natural areas possess certain features which are valuable resources and thus desirable to preserve. Their ecological value as important bird and fish habitats, breeding grounds, and natural

botanical areas, as well as their aesthetic and educational values were recognized by the state by enacting the State Wilderness System Act.

Designation and subsequent protection of these "Wilderness Areas" reserves them for public enjoyment and low intensity utilization, and also as a permanent reminder of the natural conditions which preceeded man. Under this protection, they will be off limits to incompatible human activities and shielded from undesirable side-effects of those activities. There are five state wilderness areas in Florida's coastal region (see Table 6).

Selection Criteria

As with aquatic preserves, each wilderness area is one or more of three principal types: 1) biological, 2) aesthetic and 3) scientific. Each may contain desirable aspects of all three types. A "biological" type of wilderness area is one which is set aside to promote certain forms of animal life in its supporting habitats; "aesthetic" wilderness areas protect certain scenic qualities; and "scientific" areas, preserve certain features (which may or may not include biological or aesthetic qualities) for scientific or educational purposes.

All wilderness areas must be large enough to at least include those principal features which would justify their establishment. There is no limit on the number of wilderness areas the state may establish but each area must be justified by its intrinsic merit, according to the provisions of the Act and rules established by the Board of Trustees.

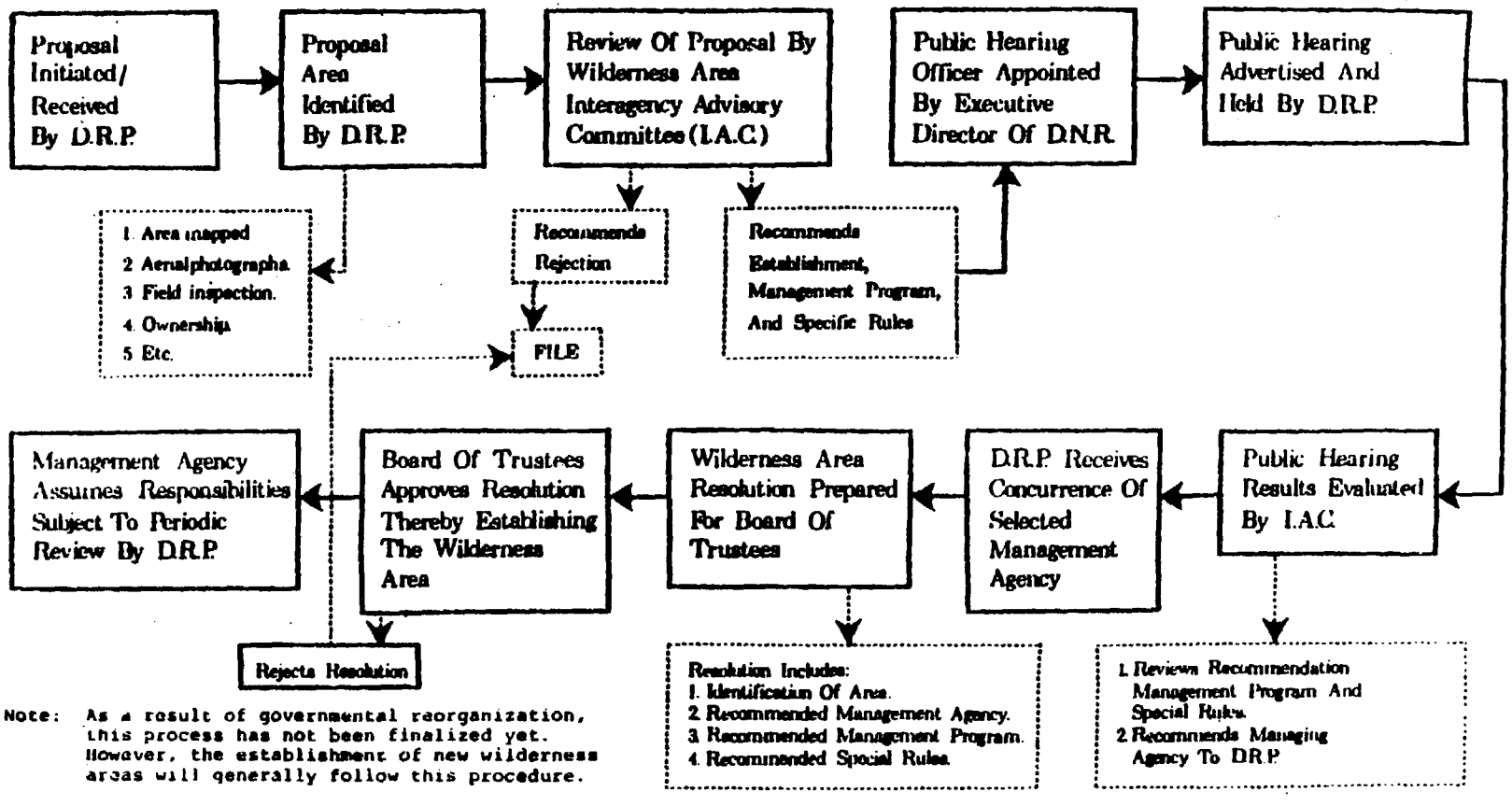
Certain priority guidelines must be met to ensure that the most appropriate wilderness areas are selected first. In general, the order of the selection and establishment of areas is governed by the relative vulnerability of their features. Specifically, the Board of Trustees is required to give high priority to areas which: 1) are in close proximity to urban or rapidly developing areas; 2) are in imminent danger from the effects of some other activity; 3) are intended to protect rare or endangered species or unique features; or 4) constitute the last vestiges of an area's natural conditions.

Selection Process

The process of selecting wilderness areas is relatively simple (see Figure 4). Nominations for wilderness areas are submitted to the Department of Natural Resources, Division of Recreation and Parks, for preliminary investigation. Normally, after completion of the initial examination, the Division staff works with an interagency advisory committee to conduct a more intensive study of the areas and to develop general management criteria. The committee can also initiate proposals on its own for new wilderness areas, and assists in formulating area rules and regulations. Public hearings must be held on each proposal, followed by final evaluation and recommendations to the Board of Trustees. The Trustees, by resolution, then can establish the area as a wilderness area.

FIGURE 4

WILDERNESS AREA SELECTION PROCESS



Note: As a result of governmental reorganization, this process has not been finalized yet. However, the establishment of new wilderness areas will generally follow this procedure.

On occasion however, a state agency which already has management responsibilities over an area, may recommend that the Board of Trustees, after public notice and hearing, directly establish a wilderness area rather than to go through the Interagency Committee.

Proposed wilderness areas may be privately or governmentally owned. Inclusion of lands owned by other governmental agencies is subject to the agencies' approval and acceptance by the Board of Trustees.

In addition to outright purchase of privately owned lands, another permissible method for acquiring wilderness areas is to lease them for a minimum period of 50 years. The State Wilderness System Act specifically authorizes the Board of Trustees to lease lands along with any other lawful means to acquire title. However, the Trustee's acquisition powers do not include the power of eminent domain.

Management Guidelines/Authorities

The Board of Trustees is required to adopt rules and regulations to ensure that all wilderness areas are regulated under a uniform set of general management criteria. These prohibit alteration of physical conditions within any wilderness area except:

1. Minimum development which is consistent with the public's convenience and necessity and is in accordance with the Act itself; and

2. Approved activities which are designed to enhance the area's quality or utility.

Other general management criteria are:

1. That all human activity within the area may be subject to additional rules and regulations that have been applied (in accordance with the Act) to that specific area; and

2. That other uses or human activities which were not originally contemplated under the guidelines, may be permitted if found to be compatible by the Board of Trustees.

Within these guidelines, various public uses are permitted, as long as they are compatible with those purposes for which the area was established. Permitted uses include:

1. Hiking
2. Bathing
3. Fishing
4. Boating
5. Hunting
6. Picnicking
7. Sightseeing
8. Camping
9. Nature Study
10. Research

In addition, wilderness areas may be designated and used for water storage areas or ground water recharge areas.

AREAS OF CRITICAL STATE CONCERN

State Concern And Program Fullfillment Of That Concern

Florida's phenomenal growth has caused severe problems for some areas of the state. The state's growth, coupled with its inadequate developmental controls, resulted in many of Florida's valuable wetlands becoming extensively and irretrievably altered. This situation led to the contamination of some coastal aquifers by saltwater intrusion and the loss of wetland areas which would normally reduce flooding and store water for use during the dry seasons. This, in turn, led to shortages of freshwater for some areas which required even more water to support their rapid development. Compounding the problem, the water situation became even more acute as a result of the South Florida drought of 1970-1971.

Florida's concern for its water resources led to the passage of the Environmental Land and Water Management Act of 1972 (Ch. 380, F.S.). The purpose of the Act is to "insure a water management system that will reverse the deterioration of water quality and provide optimum utilization of our limited water resources, facilitate orderly and well-planned development and protect the health, welfare, safety and quality of the life of the residents of this state."

To protect these resources, the Act provides the Division of Local Resource Management (Florida Department of Veterans and Community Affairs) with authority to recommend to the Administration Commission (the Governor and the Cabinet) the designation of specific "areas of critical state concern" (ACSC). The purpose of this action is to strengthen the capability of local government planning to protect resources of statewide and regional importance.

However, before an area is recommended to the Administration Commission, the Governor, acting as chief planning officer of the state, must appoint a resource planning and management committee -- consisting of designated representatives of local and regional, as well as state, governments -- which is to make a report and recommendation to the State Land Planning agency within six months.

There are three areas in the state designated as areas of critical state concern: Big Cypress Swamp in Collier, Monroe, and Dade Counties; the Florida Keys in Monroe County; and the Green Swamp in the west-central part of the state (see Table 4).

Selection Criteria

Chapter 380 is quite specific on the types of areas which may be designated Areas of Critical State Concern. An area must:

1. Contain, or have a significant impact upon environmental or natural resources of regional or statewide importance, including but not limited to state or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and

estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources;

2. Contain or have significant impact on historical or archaeological resources, sites, or statutorily defined historic or archaeological districts, the private or public development of which would cause substantial deterioration or complete loss of such resources, sites, or districts; or

3. Have a significant impact upon, or be significantly impacted by, an existing or proposed major public facility or other area of major public investment including, but not limited to, highways, ports, airports, energy facilities, and water management projects.

Selection Process

When the State Land Planning Agency recommends an Area of Critical State Concern to the Administration Commission, it must identify lands within the proposed area which should be purchased as environmentally endangered or recreational lands (see Figure 5, Critical Area Process). The agency also must include any report and recommendations from the resource planning and management committee, and must cite the danger to the area from inadequate development controls which is prompting the recommendation, as well as the advantages to be gained from the designation.

The agency recommendations also must include:

- Detailed boundary descriptions for the area,
- Specific principals for guiding development in the area, and
- An inventory of the lands owned by state, federal, county and municipal governments within the area.

Within 45 days of the submission, the Administration Commission must either reject the recommendation for the Area of Critical State Concern, or must accept it with or without modification. Adoption is by rule in accordance with the State's Administrative Procedures Act. The Commission rule is then submitted to the Legislature which may take no action (approve), reject, or modify the rule. Submissions to the Legislature may be no later than 30 days prior to the next session after the Administration Commission acts. No more than 5 percent of the area of the state may be designated an Area of Critical State Concern. The principles for guiding development which are included in the Commission's recommendation to the legislature, take effect following legislative approval and remain in effect until specific land development regulations have been adopted.

Management Process

Within 180 days after the Administration Commission rule designating an area becomes effective, local governments must submit their

FIGURE 5

CRITICAL AREA PROCESS

1. Selection of Study Area

2. Detailed Analysis of Specific Area

   * delineate study area boundary

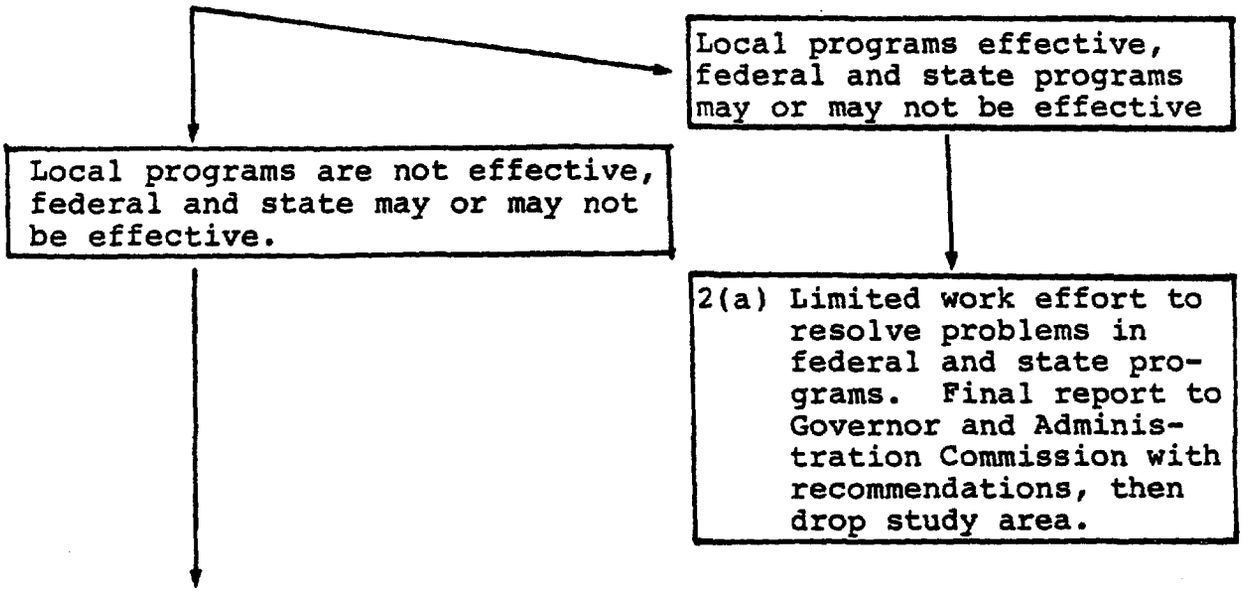
   * identification and description of resources and facilities of regional and statewide importance (Section 380.05(2), F.S.)

   * identify existing and future problems which may endanger those resources and facilities (state and regional concerns)

   * determine what measures are necessary to resolve problems and protect the resources and facilities

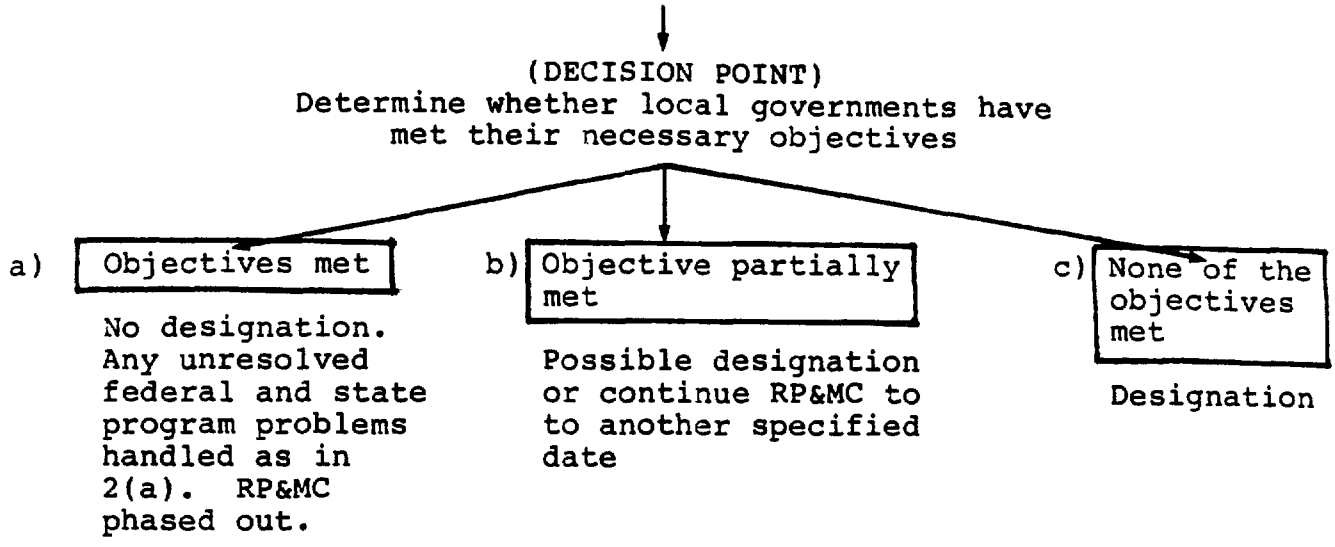
   * evaluate the effectiveness of existing authorities and programs (federal, state, and local) in resolving the problems and protecting the resources:

(DECISION POINT)



3. Recommend and Establish RP&MC (Section 380.045, F.S.)

   - identify overall objectives and steps that need to be taken to resolve the existing, and prevent future problems which endanger those resources in Section 380.05(2), F.S.
   - clearly specify the steps that should be taken by the local governments (CA designation Measure)
   - establish a definite time frame for the effort



4. Designation Procedure

A preliminary report and recommendations is prepared which will include:

- A detailed description of the resources and facilities of regional and statewide importance as identified in Section 380.05(2)(a), F.S. with a detailed statement of how the area meets the criteria for designation (Section 380.05(1)(c), F.S.).

- The dangers that would result from uncontrolled or inadequate development of the area (Section 380.05(1)(a), F.S.).

- The advantages that would be achieved from the development of the area in a coordinated manner (Section 380.05(1)(a), F.S.).

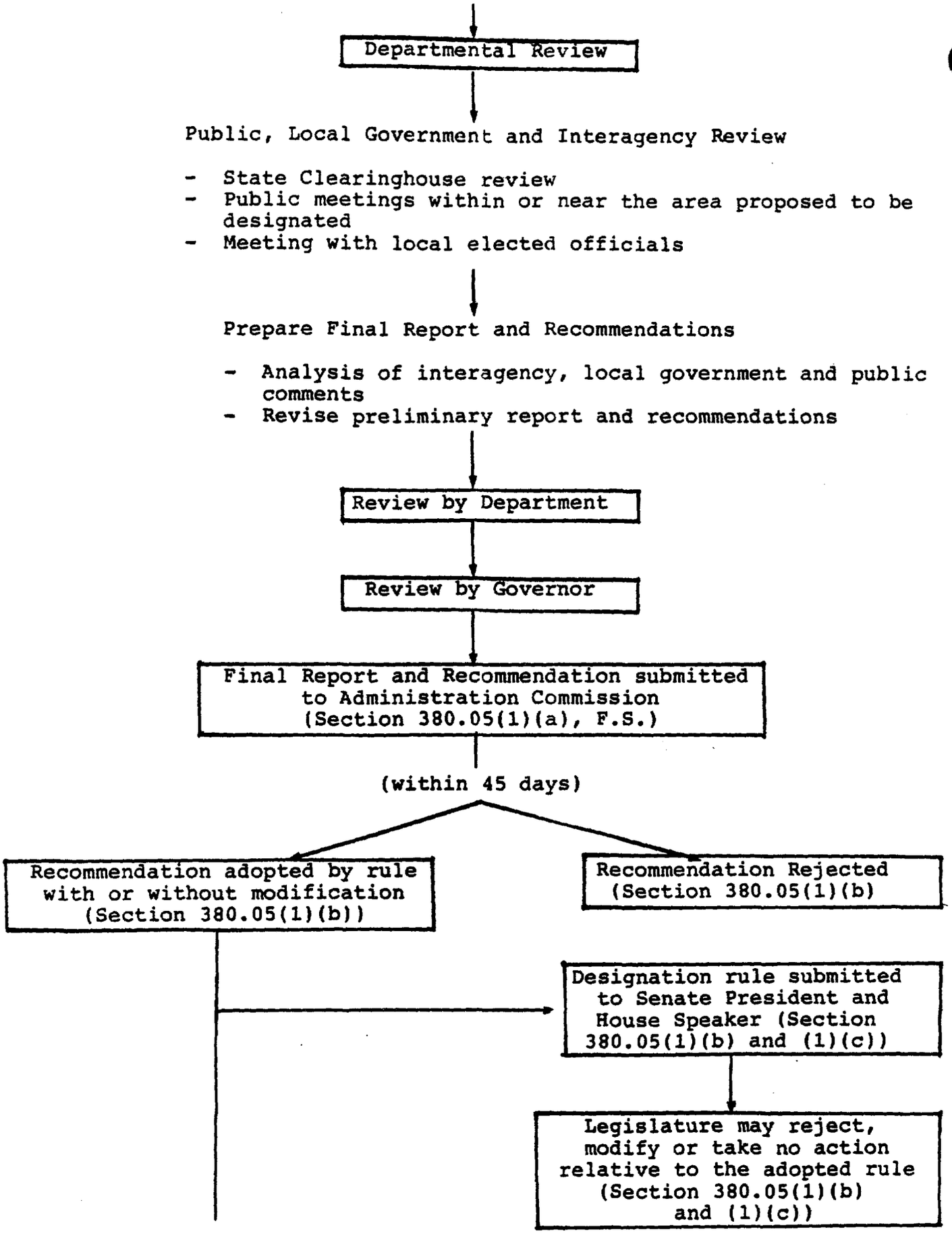
- A detailed boundary description (legal and narrative) of the proposed area (Section 380.05(1)(a) and (1)(c), F.S.).

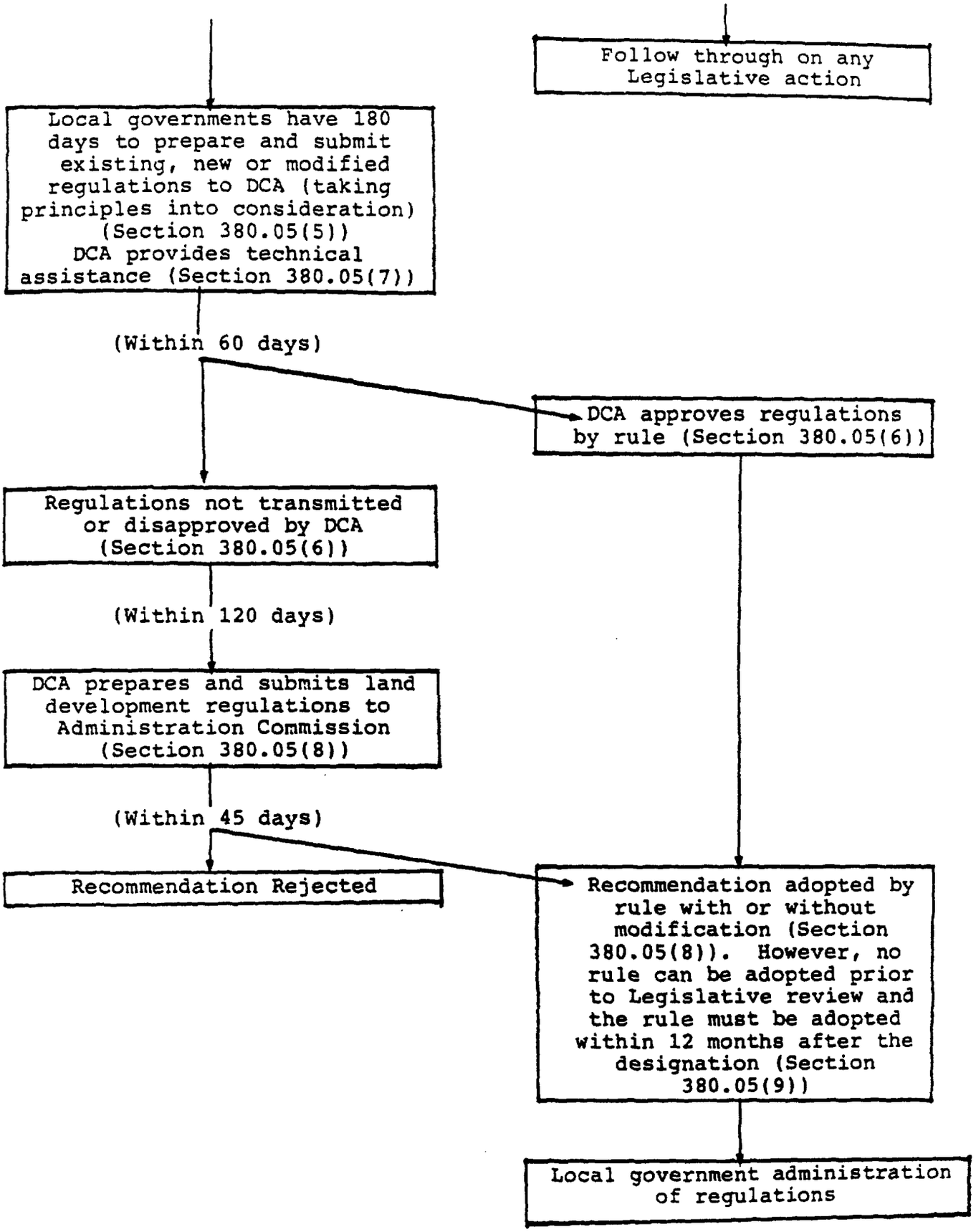
- Any report or recommendation of the RP&MC (Section 380.05(1)(a), F.S.).

- Specific principles for guiding development within the area (Section 380.05(1)(a) and (1)(c), F.S.).

- An inventory of lands owned by the state, federal, county and municipal governments within the proposed area (Section 380.05(1)(a), F.S.).

- Recommendations for the purchase of lands within the proposed area as environmentally endangered or outdoor recreation lands under the Land Conservation Act of 1972 (Section 380.05(1)(a) and section 259.04, F.S.).


Departmental Review
Public, Local Government and Interagency Review
- State Clearinghouse review
- Public meetings within or near the area proposed to be designated
- Meeting with local elected officials
Prepare Final Report and Recommendations
- Analysis of interagency, local government and public comments
- Revise preliminary report and recommendations
Review by Department
Review by Governor
Final Report and Recommendation submitted to Administration Commission (Section 380.05(1)(a), F.S.)
(within 45 days)
Recommendation adopted by rule with or without modification (Section 380.05(1)(b))
Recommendation Rejected (Section 380.05(1)(b)
Designation rule submitted to Senate President and House Speaker (Section 380.05(1)(b) and (1)(c))
Legislature may reject, modify or take no action relative to the adopted rule (Section 380.05(1)(b) and (1)(c))


Follow through on any Legislative action
Local governments have 180 days to prepare and submit existing, new or modified regulations to DCA (taking principles into consideration) (Section 380.05(5)) DCA provides technical assistance (Section 380.05(7))
(Within 60 days)
DCA approves regulations by rule (Section 380.05(6))
Regulations not transmitted or disapproved by DCA (Section 380.05(6))
(Within 120 days)
DCA prepares and submits land development regulations to Administration Commission (Section 380.05(8))
(Within 45 days)
Recommendation Rejected
Recommendation adopted by rule with or without modification (Section 380.05(8)). However, no rule can be adopted prior to Legislative review and the rule must be adopted within 12 months after the designation (Section 380.05(9))
Local government administration of regulations

existing, or newly adopted, land development regulations to the State Land Planning Agency. If the Agency finds that the regulations comply with the principles for guiding development, it must approve the local regulations. If the regulations do not comply, or if local government do not submit regulations, the State Land Planning Agency must propose state regulations to the Administration Commission, which has 45 days to act. State regulations cannot become effective until after legislative approval of the Area of Critical State Concern. After the become effective, state regulations are administered by the local government as if they were the government's own. The State Land Planning Agency may go to court to enforce land development regulation which are not being implemented adequately by local governments.

If regulations are not developed -- by the local government or by the state -- within 12 months of the designation, the designation terminates. No redesignation may take place for 12 months. No earlie than 12 months and no later than three years after the land developmen regulations take effect, the designation of an area must be repealed b the Commission. However, the regulations must have been in effect for at least 12 months and the local government must have adopted a local government comprehensive plan which conforms to the regulations. The State Land Planning Agency may redesignate an area after repeal if it determines that local administration of land development regulations i inadequate to protect the area. Redesignation is effective for 45 days, after which the Administration Commission must reapprove the area, again subject to legislative review.

CONSERVATION AND RECREATION LANDS: ENVIRONMENTALLY ENDANGERED LANDS

State Concern and Program Fulfillment of That Concern

As the direct result of the state's concern for preserving valuable and irreplaceable natural resources, the Land Conservation Act of 1972 (Chapter 259, F.S.) was enacted. It authorized the state to issue, upon approval of the voters, $200 million of state bonds for purchase of environmentally endangered lands.

The concern which led to the passage of this act stemmed largely from the recent realization that Florida's extraordinary natural systems were being rapidly degraded or destroyed. Man's insufficient regard for the value of the state's natural systems was a basic cause for this problem. The state's rapid population growth, coupled with inadequate governmental controls, further contributed to Florida's environmental degradation.

In response to these problems, the Environmentally Endangered Lands (EEL) Program was instituted. The program is designed to complement existing regulatory programs and contribute to the overall effectiveness of the state's environmental protection efforts. Hence, the acquisition of valuable lands was veiwed as an effective method foı meeting the state's concern for protecting Florida's environmental resources.

Additional sources of funding, as well as further emphasis on areas of special management, were provided in 1979 when the state legislature established the Conservation and Recreation Lands Trust Fund (Section 253.023, F.S.) administered within the Department of Natural Resources. Through this trust fund, money may be allocated in any one year to acquire lands in each of the following categories and proportions:

1. Up to seventy percent of these trust funds for purchase of lands qualified as environmentally endangered lands as defined in the Land Conservation Act of 1972 (Chapter 259, F.S.), or

2. Up to seventy percent of these trust funds for purchase of lands, other than EEL purchases, that the Governor and Cabinet (sitting as the Board of Trustees of the Internal Trust Fund) determines should be acquired in the public interest.

3. In addition, up to ten percent of these trust funds may be set aside for management and up to five percent set aside for natural area inventory requirements.

Between 1974 and 1979, 22 Environmentally Endangered Lands projects were purchased at a cost of slightly over $173 million. As of June, 1979, 10 out of 22 projects were essentially complete with the remaining 12 authorized for completion through fiscal year 1981. Thirty additional projects were selected for study by the Interagency Selection Committee last July. Table 5 gives the current status of the respective trust funds described in this section.

TABLE 5

STATUS OF THE ENVIRONMENTALLY ENDANGERED AND CONSERVATION AND RECREATION LANDS TRUST FUNDS - DECEMBER 16, 1980

DEPARTMENT OF NATURAL RESOURCES
Division of State Lands

Remaining EEL Funds	$ 24,342,616
Conservation and Recreation Funds (present)	$ 6,089,655
TOTAL FUNDS	$ 28,932,271

Selection Criteria

In support of the legislative intent expressed in the Land Conservation Act of 1972 (Chapter 259, F.S.) and more specifically, the amended State Lands Act in 1979, (Section 253.023 (1), F.S.) the DNR promulgated a rule (adopted by the Governor and Cabinet - March,

1980) that clearly sets criteria and procedures for the "... selectior acquisition and management of public lands from monies deposited in the Conservation and Recreation Lands Trust Fund, and from monies remaining in the Environmentally Endangered Lands Trust Fund..." such that authorized funding shall be used for the purpose of conserving ar protecting environmentally unique and irreplaceable lands. These include, without limitation, the numerous types and categories of lanc defined by evaluation criteria established by rule as required by Section 259.035.

In the rule, criteria are listed in order from Step 1 through Step 7. Evaluation of each proposed acquisition project is to begin with the first step by the selection committee, proceed in an orderly manner through each step, until all steps are satisfied. Evaluation c a proposed acquisition project is to cease when any of the steps, 1 through 6, are not satisfied. These steps are summarized as follows:

Step 1 - Public purpose and conformance to management plans in accordance with Section 259.04(1) and 253.03 (7), F.S., i.e. acquisition projects are to be acquired to meet one or more stated public purpose for:

1. Environmentally Endangered Lands, such as:

   a. Those areas of ecological significance, the development of which by private or public units, would cause the deterioration of submerged lands, inland or coastal waters, marshes, or wilderness areas essential to the environmental integrity of the area or of adjacent areas;

   b. Those areas which, in the judgement of the Game an Fresh Water Fish Commission, Department of Natural Resources, or Department of Environmental Regulation, would require a remedial public works project to limit or correct environmental damage i developed; or

   c. Any beaches or beach within the state which have been eroded or destroyed by natural forces or whic are threatened or potentially threatened, by erosion or destruction by natural forces.

2. Use as outdoor recreation lands.

3. Lands acquired in the public interest, such as:

   a. For use and protection as natural floodplain, marsh, or estuary, if the protection and conservation of such lands is necessary to enhance or protect water quality or quantity or to protect fish or wildlife habitat which cannot otherwise be accomplished through local and state regulatory programs;

b. For use as state parks, recreation areas, public beaches, state forests, wilderness areas, or wildlife management areas;

c. For restoration of altered ecosystems to correct environmental damage that has already occurred; or

d. For preservation of significant archaeological or historical sites.

Projects that are proposed for purchase as EEL acquisitions must be in conformance with the comprehensive plan to conserve and protect environmentally endangered lands in the state. All proposed projects must conform to the state land management plan for acquisition, management and disposition of all state-owned lands to ensure maximum benefit and use, when the plan is developed.

Step 2 - Ecological, recreational, archaeological, or historic value:

1. Projects are to be evaluated for their ecological value as natural resources, including consideration of species of fish and wildlife, habitat, geological features, water quality and quantity, contribution to quality of adjacent areas, and other considerations.

2. Projects are to be evaluated for their recreational value, including consideration as parks, sites for both primitive camping and recreational vehicular camping, sites for hiking, canoeing, fishing, hunting, and other recreational activities.

3. Projects are to be evaluated for their archaeological and historical value including value to the educational and scientific community of the State and to the public as a whole and potential for restoration or maintenance to insure availability for the public use and enjoyment.

4. Projects are to be evaluated to ensure that there is no available existing suitable state-owned lands.

Step 3 - Ownership Pattern:

1. Projects are to be evaluated for functional useability by the public, including appropriate access, proximity to potential users, sufficient areal extent for stated public purpose, and other appropriate considerations.

2. Projects are to be evaluated for manageability in accordance with stated public purpose, including the degree of protection afforded natural or cultural resources, proximity to other parcels of state-owned

land, potential for development of public facilities, capability for restoration and maintenance, and other appropriate considerations.

3. Projects are to be evaluated to ascertain if any porti of the project may already be in public ownership, including local, state or federal ownership.

4. Projects are to be evaluated in relationship to the ty of land, the stated public purpose and the quantity of that type already available to the public.

Step 4 - Vulnerability and Endangerment:

1. Projects are to be evaluated for vulnerability, that is, susceptibility to degradation caused by man's activities, directly or indirectly, including encroaching residential or commercial activity, land alteration activities, land-use changes and other considerations that may create an adverse impact on the proposed project.

2. Projects are to be evaluated for endangerment, that is, the potential for actual destruction or degradation by man's activities of the resources which form the basis of the stated public purpose, including development plans for the parcel, loss of the resource unless adequately protected or maintained, and other considerations that may result in an irreplaceable loss to the state.

Step 5 - Location:

1. Projects are to be evaluated for their location within the State to achieve a balance of available resources for the public including consideration of historical or archaeological significance, environmental significance or recreational significance, and consideration of unique qualities of different areas of the State.

2. Projects are to be evaluated for their local, regional or state-wide significance to the public, including consideration of recreational needs, water quality or quantity needs, environmental needs, and other appropriate considerations.

3. Projects are to be evaluated for their proximity to urban areas to provide a reasonable balance of available resources for the benefit and welfare of the public.

Step 6 - Cost:

Projects are to be evaluated for their availability for purchase in accordance with the stated public purpose and evaluated in view of the availability of other local, state or federal funding to accomplish the stated public purpose.

In addition, projects are to be evaluated in terms of unit cost in relationship to the regional cost of land and the need of the region for the resources, as well as in terms of their cost for development, restoration, maintenance or management.

Step 7 - Additional Criteria:

The Committee can use additional criteria as appropriate to achieve the legislative intent to insure the availability of public lands for recreation for the people residing in urban and metropolitan areas of the State, more particularly those areas exhibiting the greatest concentration of population, as well as those people residing in less populated, rural areas and to achieve the conservation and protection of valuable archaeological and historical sites and environmentally unique and irreplaceable lands as valued ecological resources.

Criteria in this step are optional and additional to the essential criteria in Steps 1 through 6. Identification of this additional criteria is not to be used as a reason to cease further consideration of a proposed acquisition project.

Selection Process

The parties determining which conservation and recreation lands, including EEL purchases, should be acquired include not only the Governor and Cabinet, but also the selection committee established in Section 259.035. However, the Land Conservation Act explicitly restricts the powers and duty to acquire EEL lands to the Governor and Cabinet. It states that the Governor and Cabinet (as the Executive Board of the Department of Natural Resources) may: "enter into contracts with the government of the United States or any agency or instrumentality thereof; the state or any county, municipality, district authority, or political subdivision; or any private corporation, partnership association, or persons providing for or relating to the conservation or protection of certain lands" in accomplishing the purposes of the Act. Furthermore, the law states that the Executive Board is authorized to acquire lands, water areas, and related resources and can enter into contracts for purchase and may purchase the fee or any lesser interest sufficient to protect any environmentally endangered lands.

The selection criteria for determining the most appropriate areas for acquisition has been outlined in the previous section. Figure 6 describes the 15-step review and selection process, including DNR's internal review process as an example of participating agency review requirements. An exception to this process is the Big Cypress Area, which was specifically authorized for acquisition by the Big Cypress Conservation Act of 1973. This act authorized $40 million of EEL funds for the acquisition of land and water areas within the proposed Federal Big Cypress National Preserve. In addition, it provided that the areas acquired or now owned by the state within the proposed preserve would be conveyed to the U.S. Government upon its making an acquisition expenditure of equal amount.

Management Guidelines/Authorities

Management criteria for conservation and recreation lands stem from management concepts proposed by rule and approved by the Governor and the Cabinet. Upon approval of an area for acquisition, specific management concepts tailored for the area are concurrently approved and a management agency or agencies are designated. Following purchase completion by DNR, management authority is transferred to the designated management agency or agencies, although Title to such property remains with the Board of Trustees of the Internal Improvement Trust Fund (DNR).

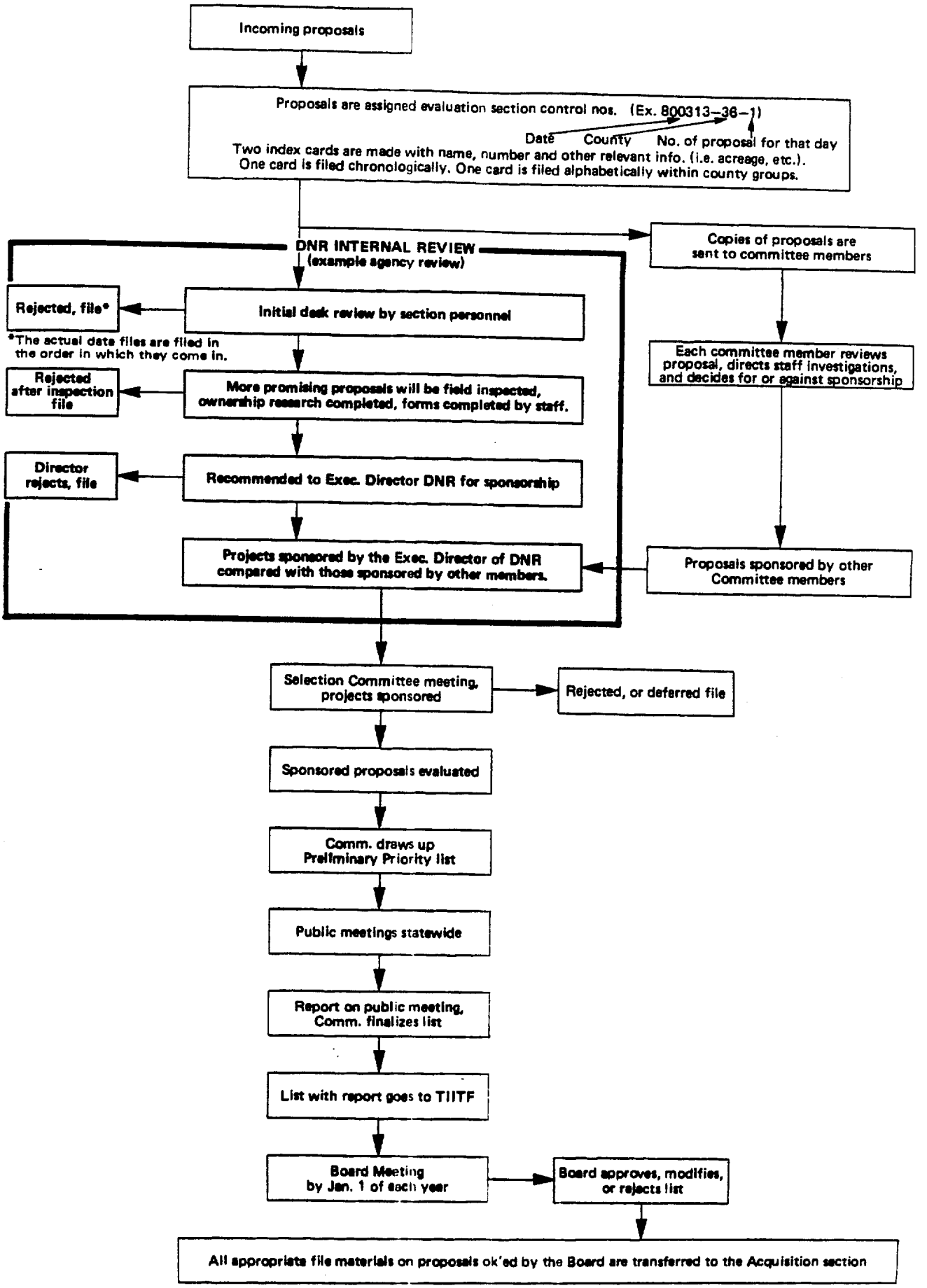
Upon designation of a management entity, or entities, the Division of State Lands of the DNR is authorized to oversee the implementation of the specific management plan developed by the designated agency or agencies. This management plan must also be consistent with the management concept included within the individual project summary of the Annual Report as approved by the Governor and Cabinet in their acceptance of the Annual Report by January 1 of each year.

On December 16, 1980, the Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund, approved the Annual Report of the CARL Selection Committee. The report included a recommended priority listing of 27 projects for potential CARL/EEL acquisition. These 27 projects represent the end product of an intensive nine month process which began with over 120 project applications, from which 43 were selected for final review and evaluation, which included: extensive field inspections, public hearings, assessment and evaluation reports, and the final Selection Committee vote. (A listing of the 27 projects appears in Table 4 under the CARL/EEL heading.)

With their acceptance of this list, the Governor and Cabinet also passed a motion which instructed the Selection Committee to consider the following:

1. develop more precise criteria for defining EEL and other lands in the public interest;

FIGURE 6
PROPOSED SELECTION PROCESS
ENVIRONMENTALLY ENDANGERED LANDS



2. apply the new definitions to the interim revised list to be submitted by July 1, 1981;

3. with this interim list, accompany each proposal with a brief management plan concept, reflecting the definitions of EEL and other lands;

4. that the management concept and the list should include provision for parcels which may contain both EEL and "other" lands and whic may, as a whole, qualify as EEL and other; and

5. that the interim revised list should take into account the need not to exceed the 70 percent purchase requirement in either category.

In addition to accepting the recommended priority acquisition list of the Selection Committee, the Governor and Cabinet also instructed DNR to begin acquisition procedures for the first four projects on the list: 1) Rookery Bay, 2) Lower Apalachicola River Additions, 3) Charlotte Harbor, and 4) Cayo Costa/North Captiva Islands. These four proposals alone represent nearly 19,000 acres of coastal marsh, estuary, floodplain, barrier islands, mangrove and associated habitats with an estimated value of approximately $21 million.

AREAS FOR PRESERVATION AND RESTORATION

Under the Coastal Management Program (CMP), areas subject to restoration are considered to be Areas for Preservation and Restoratio (APR's) and are placed as a special category of Areas of Special Management (ASM's). In addition to existing sites, nominations for ne sites occur through a variety of existing processes. State programs for preservation and restoration have criteria and procedures for selecting sites. In general, identification of areas for preservation or restoration depends heavily upon comment, advice, and analysis by the resource specialists associated with each state program.

Programs identified as major ASM's, such as aquatic preserves and environmentally endangered lands, are examples of programs providing for the preservation of coastal resources.

The state will rely on existing state restoration programs to implement the CMP provisions for restoration. Programs which identify specific areas for restoration include:

- Beach nourishment projects authorized by the Beach and Shore Preservation Act of 1970 (Chapter 161, F.S.). These include beaches which have suffered severe erosion.

- Water areas identified for restoration by the Pollution Recovery Fund (Chapter 403, F.S.) administered by DER. This fund provides monies to restore areas adversely affected by pollution incidents.

- Areas identified for restoration under the Water Resources Restoration and Preservation Act, (s. 403, F.S.) administered by DER. Criteria for identifying these areas are provided in Chapter 17-1, F.A.C., and include consideration of degradation, public use, and ecological value. Feasibility studies have identified several potential sites: North Biscayne Bay in Dade County; Bayou Chico and Bayou Texar in Escambia County; and Big Hickory Pass in Lee County.

- Areas identified for restoration through the provisions of the Florida Archives and History Act (Chapter 267, F.S.) and the Historic Preservation Trust Fund (Chapter 267.0617, F.S.) administered by the Division of Archives, History and Records Management, Florida Department of State. The Act encourages the acquisition, preservation, restoration and operation of historic sites, and establishes a process for acquisition.

As indicated, areas can be designated for restoration for different purposes. The objectives and the management techniques will vary, reflecting the different purposes of each program. A beach area designated as an area for restoration under the Beach and Shore Preservation Act would be designated to renourish or revegetate the beach or beach areas, and to restore sandy areas lost by erosion. Waters identified under the Water Restoration and Preservation Trust Fund would be designated and managed to restore water quality, living resources, or recreational opportunities. There are specific procedures for each individual site and set of conditions.

It clearly is not the intention of these restoration programs to restore developed areas - for example, homesites or buildings on filled wetlands or former bay bottoms - to natural conditions. The restoration efforts will be concerned with restoring undeveloped, damaged or lost resources to a more natural condition, compatible with existing uses and resource suitability.

In addition to the normal expenditure of funds, under the concept of areas of special management, areas designated for restoration purposes would, when no other sources of funding are readily available, be funded for acitivities related to: (1) personnel costs, (2) supplies and overhead, (3) necessary equipment, (4) feasibility studies and preliminary engineering reports, and (5) projects involving expendable materials such as seeds to be used as a non-structural erosion control technique.

PROGRAM EMPHASIS FOR AREAS OF SPECIAL MANAGEMENT

These programs, although established in different ways and administered as areas of special management by one or more government agencies, all complement management provisions of the FCMP. As is the case with most of Florida's management authorities, the ASM authorities existed prior to passage of the Federal CZMA in 1972 and the promulgation of federal rules and regulations.

Because of the complexity of the state programs which are involve in providing for areas of special management, the fact that money and staffing for implementing ASM programs is low, and the fact that there are limits on how much money is available through the coastal management program, initial emphasis will be on the Aquatic Preserve Systems The coastal management program, through a contractual agreement with the Department of Natural Resources (DNR) will provide funds to assist DNR in the development of rules and plans for the management of designated Aquatic Preserves (see "Estuaries", Issue of Special Focus)

D. ISSUES OF SPECIAL FOCUS

Other sections of this document describe the structure of the coastal program and the existing laws and programs under which it is implemented. The purpose of this section is to describe the primary issues which the state intends to address through its coastal management program, and to outline recommendations for addressing the issues. The adoption of this program and the recommendations contained in this section do not implement any new regulatory criteria or rules as such changes would have to be adopted pursuant to Florida law. Yet, this section is action oriented; it brings the various elements of the document together and welds the program into an effective tool for solving problems.

Ten issues are identified within three broad areas - resource protection, coastal development and coastal storms. Specific issues within these areas include coral reefs, estuaries, barrier islands, ports, dredged material disposal, marina siting, water related energy facilities, fisheries, recreation, and coastal hazards.

These issues are intended to provide a focus for the future direction of the program. As such, the issues do not provide detailed information on each subject and are subject to revision. Public comments will continue to be encouraged on both the selection and content of the issues during implementation of the coastal program.

RESOURCE PROTECTION ISSUES

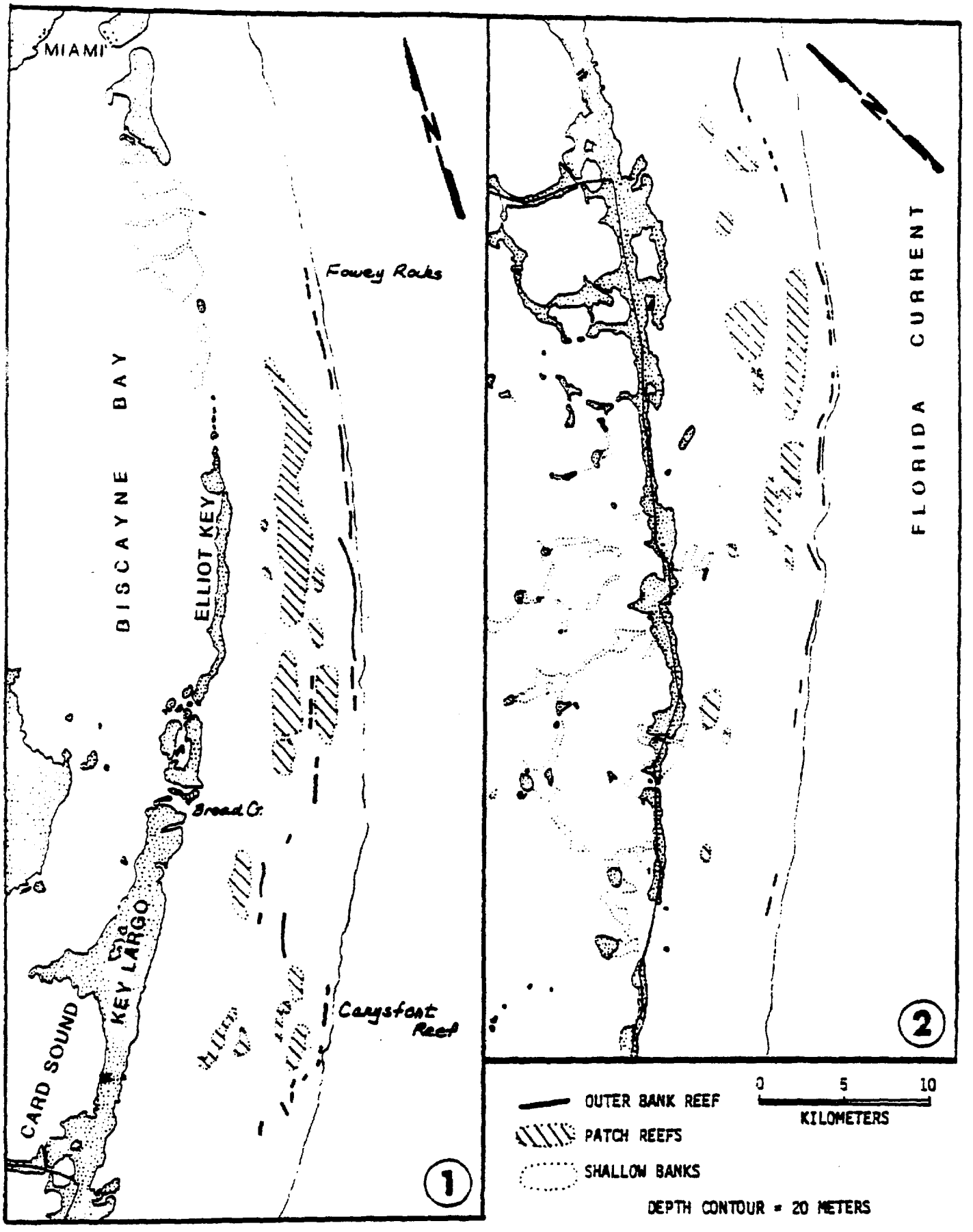
CORAL REEFS

Background

Southwest of the Florida peninsula, where the Florida Keys begin their extension into the Gulf of Mexico and are running south-southwest from Miami to the Dry Tortugas, lies one of nature's oldest and most artfully crafted underwater gardens: the Florida Reef Tract. This coral ecosystem, the most extensive living coral reef system in the continental United States, is concentrated three to five miles offshore of the Keys. These coral reefs occur either as linear ridges along the western boundary of the Florida Current (Gulf Stream), as outer bank reefs, or as "patch" reefs (6,000+) in the inner lagoon seaward from land between Hawk Channel and the outer bank reefs (See Figures 7 and 8).

Aerial photomosaics of the Florida Reef Tract reveal that coral reefs (both outer bank reefs and patch reefs) are concentrated in two areas, the northern tract area (Miami - Key Largo), and the southern tract area (Big Pine Key - Dry Tortugas). Coral growth in the middle Keys is relatively impoverished, although some outer bank reefs do occur. The location of federal and state marine preserves reflects this distribution. The Biscayne National park, John Pennecamp Coral Reef State Park and the Key Largo Coral Reef Marine Sanctuary are in

FIGURE 7



SOURCE: Rosenstiel School of Marine and Atmospheric Science, University of Miami, May, 1977.

FIGURE 8

SOURCE: Rosenstiel School of Marine and Atmospheric Science, University of Miami, May, 1977.

the northern tract, while the Looe Key National Marine Sanctuary and the Fort Jefferson National Monument at Dry Tortugas are in the southern tract.

These coral reefs are actually the skeletal deposit produced by billions of tiny coral polyps, invertebrate life forms that evolved during the Pleistocene period, thousands of years ago. The colonizing polyps have fashioned their skeletons into exquisite floral patterns, interspersed with giant boulders, jagged pillars, and spires, creating a magnificent submerged sculpture garden.

But the corals are not only beautiful, they are functional, as well. Coral reefs are vital building blocks in the marine ecosystem and prime benefactors to man. The coral reefs help cement the foundation of the Florida Keys and adjacent smaller islands and form a critical breakwater that diffuses the energy of storm-driven waves and mute the impact of hurricanes on the island chain and the mainland.

The coral reef is also a prime source of sand for Florida's glistening beaches. Scientists estimate that fish nibbling on corals and calcareous algae produce more than 2.5 tons of sand per acre annually. The intricate sculpture of the coral reef also provides a lush habitat for vast numbers of marine life. No fewer than 516 different species of fishes populate the reef, many of them of commercial or recreational value.

Tourism is crucial to the economy of the Keys, and the coral reefs are a main attraction for thousands of vacationers - more than 400,000 a year - who come for the abundant sport fishing or spectacular snorkeling and scuba diving in the colorful and diverse marine ecosystem.

Problems and Issues

Coral reefs are a phenomenon of the tropics. The Florida reef tract is at the northernmost limit for reefs. As a result, the Florida reef ecosystem is constantly under severe natural stresses (e.g. influx of cold water) and the extent of its ability to survive additional external stresses is an unknown and critical factor. The heavy commercial and recreational use of the reefs, their proximity to the dense population centers of South Florida, and man's shoreline activities, make the coral reefs highly vulnerable.

Recent awareness of man's possible adverse influence on the well-being of this fragile reef community has awakened public scientific concern. During three Coral Reef Workshops, one sponsored by Harbor Branch Foundation in February, 1974, and two at the Rosenstiel School of Marine and Atmospheric Science in October, 1974 and May, 1975, problems and issues were identified which illustrate the jurisdictional and scientific complexities involved in any attempt to regulate and manage the coral reefs. Some of these are:

1. Environmental Concerns

a. Dredge and Fill Activities - Siltation from dredge and fill projects can inhibit coral community growth. An increase of turbidity reduces the amount of light available for photosynthesis of symbiotic zooxanthella algae associated with reef building corals. Excess sediment in the water can smother the coral polyps and communities and reduce the dissolved oxygen concentration if organic materials are present. Unless moderate to strong water currents continually flush sediments from the coral surface, siltation and increased turbidity can seriously affect the growth rate of the reef community.

b. Channelization - The channelization of land areas, in addition to increased sedimentation, increases stresses on the coral reef community by altering current patterns and causing changes in water quality. It is believed that the luxuriant reef communities that occur along the Florida Reef Tract exist because these reefs are adjacent to land masses which are barriers to the movement of Florida Bay waters out over the reef area. The variable temperature, salinity, and turbidity of the shallow bay water lies outside the optimum requirements for coral reef survival and growth. Channelization through the Florida Keys permits bay water to mix with the more stable ocean waters, and may alter the chemical and physical characteristics of the ocean water and the existing current patterns through natural tidal passes.

c. Land Development - Bulkheading and land filling during shoreline development increases turbidity in adjacent waters and removes the mangroves. Mangroves act as a biological filter of runoff and contribute to the nutrient enrichment of surrounding waters.

d. Water Pollution - Discharges that can lead to reef resource damage include sewage disposal, agricultural and industrial waste runoff, and oil pollution. In 1975, the greater Miami area pumped 84 million gallons of sewage a day into marine waters.

Although the effects of inshore currents, counter-currents, and tides in the area are not fully understood, ecologists believe that much of this polluted water moves southward to the Keys. The problem is compounded by the existence of three outfalls in the Key Largo area. The ocean outfall at Plantation Key, just south of Key Largo, discharges 700,000 gallons of secondary treated sewage a day. Two outfalls dump sewage into the water of Largo Sound, Key Largo. In addition to killing live coral, sewage can affect reproduction rates, inhibit the ability of coral larvae to settle, decrease dissolved oxygen content, and increase turbidity.

Agricultural and industrial growth in South Florida has caused introduction of insecticides, herbicides, and other industrial chemicals into nearby bodies of water, especially during periods of heavy rain and excessive runoff. Aerial spraying for mosquitoes occurs throughout the Keys. Evidence of oil pollution from vessel traffic adjacent to reef areas increases yearly and may have impact on the coral reef ecosystems.

e. Diving - Corals are delicate structures and are vulnerable to abuse from divers. If a coral reef is under significant natural or human-induced stress, even small scrapes from divers rubbing or standing on corals will cause terminal infection of the coral by blue-green algae. In many cases, delicate coral branches are broken by fin kicks, by divers standing on corals, and by divers grabbing coral for support Octocorals frequently are ripped from their foundations.

Although it is illegal, the collecting of Florida Reef Tract resources still occurs, mostly coral and mollusk shells taken as souvenirs. Cultural resources are not exempt, and many artifacts disappear from reef tract waters.

f. Fishing - The unfortunate effects of indiscriminate spearfishing throughout the reef tract includes the killing of tropical species, including angelfish and butterfly fish, and the disappearance of larger game fish from the area. Although the Key Largo Coral Reef Marine Sanctuary regulations prohibit spearfishing inside the Sanctuary boundary, it still occurs in that jurisdiction.

There are less obvious threats that detract from the aesthetic quality of coral reef waters. Beverage containers, "flip-tops," fishing hooks, stainless steel lead wire, and monofilament fishing line litter the ocean bottom. Abandoned or lost fish traps, lines and buoys can damage delicate corals.

g. Anchoring and Boat Groundings - Divers and fishermen damage the coral reef by repeated anchorings and boat groundings. Many inexperienced boat operators anchor on top of thriving coral areas unaware of the damage they cause. Because of shifting winds and tides, anchors may pull and coral branches are broken. Entire colonies may be uprooted as the boat changes position. Chafing of coral heads by anchor chains and ropes also is common.

A less frequent threat, but no less damaging, is boat groundings. A large area of coral and associated fauna can be gouged out by a single boat hull. More common is damage from propellers, which slice through shallow head corals, leaving the animals vulnerable to disease.

h. Oil tanker traffic along the coast of Florida and potential oil production in the Eastern Gulf of Mexico increase the hazard of adverse impacts of oil on the reef system.

2. Management Concerns

a. Enforcement and Surveillance - Currently, there are five geographic segments of the Florida Reef Tract in which state or federal authorities attempt to provide some measure of protection to the coral reef ecosystem. These reef areas are as follows (see Figure 9):

(1) John Pennekamp Coral Reef State Park

The park is located in state waters off Key Largo, Florida. Management and enforcement is provided for by the Division of Recreation and Parks and the Division of Marine Law Enforcement of the Florida Department of Natural Resources.

(2) Key Largo Coral Reef Marine Sanctuary

The marine sanctuary is adjacent to and seaward of John Pennekamp Coral Reef State Park, and is the responsibility of the U.S. Department of Commerce, NOAA Office of Coastal Zone Management, with day-to-day management at the site delegated to the Florida Department of Natural Resources, Division of Recreation and Parks. Enforcement of Sanctuary regulations as well as surveillance of the reef areas is shared by the Florida Department of Natural Resources, Division of Law Enforcement and the U.S. Coast Guard.

(3) Biscayne National Park

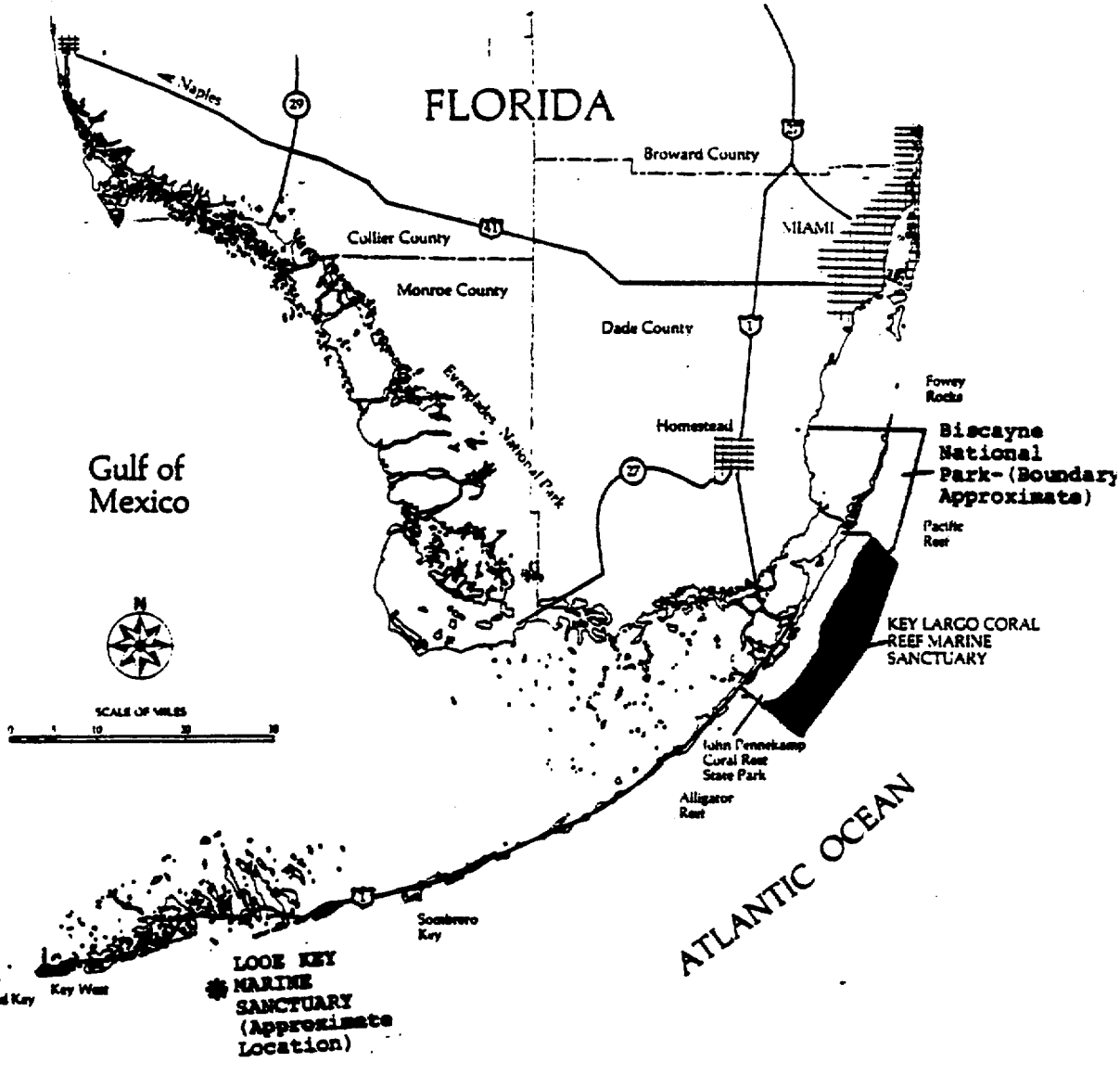
These reef areas are under the jurisdiction of the U.S. Department of Interior, National Park Service. The Biscayne National Part, located 25 miles south of Miami with headquarters at Homestead Bayfront Park, includes the waters of south Biscayne Bay, the northern extent of the Florida Keys (including Sands Key, Elliott Key, and Old Rhodes Key) and Atlantic waters offshore out to the outer bank reefs.

(4) Looe Key National Marine Sanctuary

The marine sanctuary consists of an area 5.05 square nautical miles of high sea waters off the coast of the lower Florida Keys, 6.7 nautical miles southwest of Big Pine Key. The area includes the waters overlaying a section of the submerged Florida Reef Tract at

FIGURE 9

CORAL REEF MANAGEMENT AREAS



y
rtugas -
. Jefferson
tional Monument

Looe Key. Responsibility for management of the sanctuary is with the U.S. Department of Commerce, NOAA Office of Coastal Zone Management.

(5) Fort Jefferson National Monument is located at Dry Tortugas, the southern end of the Florida Keys, 68 miles west of Key West, Florida.

While these segments of the Florida Reef Tract are representative of the more luxurient concentration of coral reefs (both patch and outer bank reefs), the remaining coral reef segments are no less important from a biological and aesthetic perspective.

It is evident from the problems and issues identified in the coral reef workshops, and information contained within the FEIS for the Key Largo Coral Reef Marine Sanctuary, that management of the coral reefs is a very complex effort. Several problems have been identified regarding the adequacy of enforcement and surveillance for the reef tract ecosystem.

(1) Management activities within and adjacent to the boundaries of specific segments of the coral reef tract are effective only to the extent that appropriate manpower and equipment is available for enforcement and surveillance. There is a need for improved capability.

(2) There is a current effort to provide some manpower and equipment to reef segments designated for management and regulation. However, reef tract segments outside management boundaries are under limited enforcement or surveillance protection.

(3) The thresholds for adequate enforcement and surveillance related to the long term survival of the coral reefs must be determined.

(4) The recent designation of the Looe Key National Marine Sanctuary, in the southern portion of the reef tract, emphasizes the need for further evaluation of federal and state capabilities for enforcement and surveillance.

(5) The provisions for the implementation of the Draft Fisheries Management Plan (DEIS) recently released by the Gulf of Mexico Fishery Management Council need to be carefully reviewed to ensure compatibility between the goals and objectives of the coral reef segment of the fisheries plan and those of coral reef sanctuary plans.

b. Research and Monitoring - Participants in the Coral Reef Workshops noted that the Florida coral reefs are under stress from natural causes and may be more susceptible to

man-induced stress than are reef ecosystems found elsewhere, such as in the Caribbean. A basic objective regarding research in the Florida Reef Tract, is the need to understand the causes and effects of reef damage - both natural and man-induced. Governmental agencies have engaged in short-term, mission-oriented research studies, while universities engaged in independent, uncoordinated research. Participants agreed that neither approach provides sufficient scope to deal with critical questions concerning the prudent management of a coral reef ecosystem. Research areas singled out included:

- What is the significance of changes in reef populations in various reef communities, both in the reef structures themselves and in fish populations?

- Are these changes man-induced, or the result of natural fluctuations?

- What are the natural parameters that largely influence and control the healthy growth of a reef community?

Long-term, multi-disciplinary research and monitoring studies are required to provide answers to these questions. Workshop participants defined the important first steps for a comprehensive research effort in the Florida Reef Tract:

(1) Mapping

The Florida reefs are the only major continental reef tract area of the United States but, they have not been mapped adequately. Two types of mapping are recommended:

(a) Aerial mapping - This would involve mapping by means of multi-spectral sensors* to determine the distribution of the major reef communities, along with important environmental characteristics (water temperature, salinity, oxygen content, etc.).

(b) Underwater mapping - This work would be carried out by means of SCUBA in shallow water, and by submersible in deeper forereef areas to determine the composition and distribution of the reef communities.

*i.e., air photography employing film sensitive to various wavelengths of light.

(2) Identification of Key Study Areas

An important aspect of the mapping effort would be to locate areas in which detailed observations and monitoring would produce the most useful data for understanding changes in the reef environment. Studies of these changes would be defined gradually, and expanded in the later stages of the overall research program.

(3) Techniques

Throughout the early stages of the reef research, techniques should be identified that could be applied in both observing and monitoring the reef environment. For example, it was suggested that remote sensing techniques employed for aircraft might be adapted to submersible craft and ground surveys in order to produce three-dimensional maps.

(4) Monitoring of Baseline Data

Several aspects of coral reef processes need to be carefully observed and monitored from the outset. Various physical and chemical characteristics of the water mass (e.g., temperature, salinity, pH, etc.) should be included in these measurements. These parameters would be monitored through various combinations of weather and tidal conditions. This type of information could be gathered at several defined study sites and on several different reef transects in order to gain a basic understanding of spatial and temporal characteristics of the marine environment in the Florida Reef Tract.

(5) Data Processing/Literature Survey

The information gathered during monitoring would require adequate data processing, assimilation, analysis, and dissimilation coordinated with the gathering of earlier data to compile a comprehensive review of published and unpublished information about the Florida Reef Tract.

Since the workshops in 1974 and 1975, much has been accomplished towards a comprehensive research and monitoring program. The majority of this effort has been funded by the National Oceanic and Atmospheric Administration (NOAA), through its Office of Coastal Zone Management (OCZM). The focus of the studies is within the boundaries of the Key Largo Coral Reef Marine Sanctuary. The Key Largo Coral Reef Marine Sanctuary Management Plan (September, 1979) notes the following program design which became operational in late 1979:

> Scientific data on the Sanctuary so far has been restricted to basic hydrographic, environmental, and biological studies. Little research to date has been designed to come to grips with specific management problems or to address any long-term environmental questions. During the next 5 years, therefore, NOAA will give the highest priority to conducting field studies, carrying out laboratory projects, and monitoring biological and sociological aspects of the Sanctuary. Such information will increase the understanding of the resources and assess the impact of human pressures on the Sanctuary environment.

Included will be a biological inventory in 1979 and 1980 that will provide baseline data on the distribution, diversity, and abundance of reef organisms. By comparing these data with the results of inventories to be conducted in 1985 and 1990, managers will be able to determine if conditions in the Sanctuary are changing, and will be able to restructure their management plans if conditions warrant.

In addition, two other crucial studies are scheduled for the Sanctuary: a reef health assessment (also in 1979 and 1980) to estimate the percentage of live coral versus dead coral cover on the reef and document the extent of coral disease and anchor damage; and a water quality assessment (primarily in 1980) to determine if such factors as organic pollutants, nutrients, temperature, salinity, and turbidity affect coral proliferation. In both instances, the information will provide baseline data to which future studies can be compared.

In 1979, NOAA, in cooperation with the Harbor Branch Foundation, will carry out a deepwater survey of the Sanctuary. Approximately half of the Sanctuary lies in waters between 100 and 300 feet (30-90 m). Because previous research in the area has been limited to waters no deeper than 100 feet (30 m), NOAA considers it important to fill this significant gap. The agency will examine in detail, using side scan sonar, a magnetometer, and submarines, a deep water reef discovered in 1973. The survey will gather information on the location of this and other deepwater reefs, their associated organisms, and archaeological resources.

Finally, a series of special studies in 1981, 1984, 1987 will be carried out. These will deal with specific rather than general aspects of the Sanctuary and may include a lobster assessment, coral disease studies, anchor damage studies, cultural research and development, and other special items of interest derived from the results of baseline studies.

To supplement this research, NOAA, in cooperation with the Florida Department of Natural Resources, will monitor, on a monthly basis, permanent stations established at environmentally different locations. The monitoring will include observation of coral diseases, mortality, growth, and recruitment; measurement of sedimentation, temperature, salinity, and turbidity; assessment of anchor damage, diver damage, or other user-related impacts; photographic documentation of representative coral colonies; and life history observations of other invertebrates in the Sanctuary.

The ongoing as well as the proposed research effort by NOAA is the beginning point for establishing a sound management foundation upon which future management decisions can be based. In terms of the management strategies proposed during the coral reef workshops and NOAA's current program efforts, the following concerns are identified regarding the adequacy of research and monitoring for the reef tract ecosystem:

(1) Lack of a definitive research program concerned with the Florida Reef Tract ecosystem in its entirety at any governmental level - emphasis is primarily focused on John Pennekamp Coral Reef State Park and the adjacent federal Key Largo Coral Reef Marine Sanctuary.

(2) Related to (1), there are insufficient funds, equipment, and manpower to adequately support the monitoring needs for short-term and long-term research efforts and related surveillance requirements in the Florida Reef Tract ecosystem.

(3) In recognition of state and federal goals and objectives expressed in the draft Coral and Coral Reef Resources Fisheries Management Plan, the proposed Looe Key National Marine Sanctuary (April, 1980), and the Key Largo Coral Reef Marine Sanctuary Management Plan (September, 1979); there is a need to establish a mechanism to assure compatible research and monitoring objectives between these programs (see also discussion on Fisheries in Issues Section).

(4) In support of baseline studies on segments of the Florida Reef Tract, there is a need to establish an information center to act as a clearinghouse for the storage, retrieval, dissemination, and exchange of coral reef research data.

(5) There has been a lack of commitment at any government level to finalize the synoptic mapping effort of the Florida Reef Tract which was identified in the coral reef workshops as a first step toward defining study areas and to serve as a framework for coordinating subsequent research, monitoring, and management requirements.

Recommendations

There are several actions that can be taken to address management concerns related to the protection and utilization of the Florida Reef Tract ecosystem. Under the state Coastal Management Program, the following actions will be pursued:

1. Fully utilize the existing state Interagency Management Committee to examine Coral Reef Management issues and to make recommendations for the resolution of those issues.

   Among the topics that could be constructively addressed by the Interagency Management Committee are:

   a. Review the adequacy of current state program efforts for management of the Florida Reef Tract as related to enforcement, surveillance, research, and monitoring in state territorial waters as well as support of Sanctuary Programs in federal waters. This review would include adequacy of funding as well as manpower and equipment requirements and alternatives to meet these needs.

   b. Following this review, the IMC would develop recommendations to the Governor and Legislature on deficiencies in Florida's coral reef management efforts, particularly related to long-term commitments. The State-Federal Advisory Board for administering the Key Largo Coral Reef Marine Sanctuary would be requested to assist the IMC in the review and the subsequent development of recommendations.

   c. Because of the multiple state-federal programs involved in management of various segments of the Florida Reef Tract, and the absence of a centralized authority for enforcement activities as a result of this mix of program efforts, the IMC, with assistance from the Advisory Board should review the jurisdictional problems associated with management programs. Particular attention should be paid to the jurisdictional overlap issues in the Draft Fishery Management Plan for the coral reefs and the Marine Sanctuary Plans.

2. Fully utilize available CZM "306" funding to assist DNR in improving state capability for developing specific cooperative management programs in the Florida Reef Tract.

   In addition to helping state level needs for baseline data to support management actions in territorial waters related to proper resource utilization of the coral reef ecosystem, these funds will be utilized to improve consistency between state and federal program requirements in adjacent federal waters.

ESTUARIES

An estuary is a semi-enclosed water body with an open connection to the sea and with a measurable dilution of sea water from fresh-water inflow. It is a zone of ecological transition between fresh and salt water systems, and is the ecological heart of the coastal area. An estuarine ecosystem includes not only the coastal water basin, but also the adjacent shorelands to the extent that they have a significant influence on coastal waters. No part of the estuary operates independently of any other. The flow of water from the land provides the essential linkage between land and sea elements of the coastal ecosystem.

The ecosystems of bays and other estuarine water basins are resources of exceptional productivity. Many physical features of estuaries provide a unique productive environment - shallow depths which allow light to penetrate to the bottom, fostering the growth of marsh plants; confinement which protects the estuary from disruptive ocean wave action; salinity changes important to the life cycle of many marine species; tidal energy and flow which provide important driving forces for the estuary; and nutrient storage and production. Historically, estuarine shelter and productivity has fostered many important commercial and recreational activities - ports, marinas, and commercial and recreational fisheries. Estuaries also are used by other water-dependent industries as sites for facilities.

Estuarine Management

Numerous state statutes significantly affect the way in which estuaries are managed in Florida. Although all coastal management program authorities may have some degree of impact, Chapter 258, F.S. (aquatic preserves), Chapter 253, F.S. (dredge and fill in state submerged lands), Chapter 373, F.S. (water resources), and Chapter 403, F.S. (water pollution and dredge and fill in waters of the state), have the greatest direct effect upon estuarine management. To a large extent, the successful implementation of another law, Chapter 370, F.S. (saltwater fisheries) depends on the administration of these laws.

Coastal wetland areas which lie below the mean high water level are regulated under Chapter 253, F.S., as lands and waters under the sovereign control of the state. Any dredging or filling activity in these areas may be conducted only pursuant to permits issued by the Department of Environmental Regulation. The Department, when it considers an application for a dredge-fill permit, must determine that the proposed permitted activity does not affect fish and wildlife values or habitats, or hydrographic considerations to a degree which is contrary to the public interest. For activities which are proposed on sovereignty submerged lands, the applicant also must receive permission from the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

Aquatic preserves, which are established and managed pursuant to Chapter 258, F.S., are estuarine areas in which man's activities are

kept to the minimum to maintain existing man-made facilities. Preserv areas are designated on the basis of their environmental or aesthetic features and are managed to insure that these features are maintained, and, if possible, improved.

The Water Resources Act (Chapter 373, F.S.) regulates the use of all water resources, including both surface and groundwaters. However most Water Management Districts have concentrated their efforts on inland fresh water systems. Inland water use can effect estuarine areas if the use is particularly heavy. The Act, managed by five wate management districts which blanket the state, calls for the developmen of minimum flows and levels in all watercourses (Chapter 373.042). These minimum flows must be sufficient to protect environmental values and fish and wildlife -- including those in estuarine areas which are dependent upon a reliable flow of fresh water. District permitting programs govern the amounts of water which can be taken, and ensure the availability of sufficient water for "natural" uses.

Chapter 403, Florida Statutes, the state's pollution control law, also governs dredging and filling in coastal wetlands. Jurisdiction under this statute is in "waters of the state" and encompasses a somewhat more broad area of estuarine wetlands than Chapter 253. The primary consideration in dredge and fill regulation under the pollution control law is the effect the proposed activity will have on water quality. Other activities regulated under this statute include industrial and domestic discharges of effluents into estaurine areas or into other water bodies which eventually discharge into coastal waters.

Two chapters of the Florida Administrative Code (F.A.C.) establish the rules under which permits are issued pursuant to Chapter 253 and 403, F.S. Chapter 17-4, F.A.C. governs requirements to be met by those seeking permits, while Chapter 17-3, F.A.C. establishes the water quality standards which must be met by any discharger into estuarine, or other waters.

In addition to state management of estuaries, local government decisions also affect estuarine systems. Local land use practices directly affect both the quantity and quality of water which flows into estuaries. State law requires local governments to develop comprehensive plans to guide future land use decisions. Elements of these plans must also include policies for conserving and protecting a community's environment.

Resource and Administrative Issues

Florida's estuarine areas are used for ports, recreation, fishing, etc. These activities are important to the economic health of the state. Communities, the state, and coastal users must provide each of these estuarine activities in ways that do not impair other important activities or resources.

Balancing the diverse interests in estuarine areas is central to coastal management. Under the coastal program, the effort to balance complex environmental, economic, and social benefits must be accomplished through the laws described earlier in this discussion - state submerged lands, aquatic preserves, water resources, and environmental control.

Resource Issues

No other area can produce as much basic plant material as the coastal area, and the heart of this productivity lies in the estuaries. These areas provide productive habitat that supports fish and wildlife. Estuarine systems, if allowed to function naturally, perform useful work for man at no cost for construction or maintenance. Estuaries provide the first line of defense against hurricane tides. They also serve as settling basins for silt and organic material, and, by converting these nutrients into vegetation, they act as cleansing agents which purify the water as it flows to the sea.

Estuaries provide a source of food and protection for many marine organisms. Plants growing in the estuary are consumed and plant decay, or detritus, is food for many small animals. In turn, these animals are consumed by larger fish and, ultimately, by birds and man.

Estuaries also are essential for certain types of commercial and economic development. These include the water-borne transportation of materials such as oil, phosphate and citrus products. Electrical generating facilities locate on estuaries and use estuarine waters for cooling.

While man benefits from estuaries, his use of these areas often brings changes. Development in and around estuaries is often accompanied by dredging and filling of wetlands. This activity disrupts the water storage and purifying capacity of vegetated wetlands, allows silt-laden, polluted fresh water to flow directly into estuarine waters, and reduces habitat and food supply for marine organisms.

A second major problem in estuaries is changes in the quality, quantity, and timing of fresh water flow into estuaries. The water entering an estuary must be clean and free of chemicals that are not natural to the area. Pollutants are introduced into Florida's watersheds from storm runoff, aerial spraying and sewage outfalls, etc. Storm runoff introduces chemicals and heavy metals to the waters. These originate from the improper application of fertilizers, herbicides and pesticides in agricultural areas, as well as auto and industrial wastes. These chemicals are washed into the waters where they may be ingested by estuarine organisms. The presence of very small quantities of lead, mercury and other compounds can stress estuarine organisms.

Aerial spraying for mosquito control is common in many parts of Florida. Evidence suggests these chemicals have harmful effects on organisms other than mosquitoes. For instance, tests conducted

by the Environmental Protection Agency determined that Fenthion, an insecticide used for mosquito control, kills juvenile shrimp. Improper aerial spraying may increase the chances of this chemical entering the watershed and subsequently, the estuary. Sewage outfalls in estuaries release large amounts of nutrients, primarily nitrogen and phosphorus compounds. This produces overenrichment, a lowered oxygen level, and forces organisms to leave.

The quantity and timing of freshwater flow to estuaries is a major factor in determining the health of the estuarine area. Development of coastal areas often cause alterations in natural flow patterns. This problem became quite apparent in Southwest Florida when a large development known as Golden Gate Estates was built. Cypress swamp was converted to dry land suitable for development by extensive drainage. The volume of fresh water drained from the land was channeled into two canals, the Golden Gate Canal and the Fahka Union Canal which emptied into the coastal area south of Naples. This influx of fresh water has changed the salinity regime and the biological characteristics of the estuarine areas and has adversely affected the estuarine plants and animals.

Administrative Issues

State-owned submerged lands are a valuable asset. The most valuable submerged lands are in estuaries. It is generally agreed that past state lands management policies and practices were inadequate to assure long term management in the public interest (Florida Senate Committee on Natural Resources and Conservation, 1979). Consequently, other state and local programs involved in shoreline access or submerged lands have proceeded without benefit of needed information or direction, with subsequent management inefficiencies or actual conflicts among management and regulatory systems being "built in". In recognition of this problem, the Division of State Lands (DNR) is developing a State Lands Management Plan which will take the first steps toward allowing the Governor and Cabinet to make consistent land management decisions. While steps have been taken, remaining issues include:

1. Predictability in state management decisions. This problem will continue until the State Lands Management Plan and Aquatic Preserves plans are implemented and rules adopted.

2. Interagency conflicts. These conflicts result from the lack of coordination and consistency between state management and regulatory programs.

3. Local government participation. This deficiency inhibits effective management of state submerged lands. Local government participation is necessary to obtain ownership and natural resource inventories, prevent encroachment on state-owned submerged lands, and develop management plans.

4. Balancing environmental, economic and social needs on a consistent basis. Clear administrative directions and an adequate information base are necessary to consistently assess and evaluate the tradeoffs that are necessary to meet diverse public interest goals.

Recommendations

The Florida Coastal Management Program will address the complex issues associated with the use and protection of the state's estuaries. Many important commercial and recreational activities take place in these areas, and the coastal program must provide for these in a way which is consistent with the long-term productivity and other benefits of the estuarine systems.

Estuarine-related problems, include the construction and maintenance of channel depths, protection of fishery habitat, and urban waterfront development. Specific discussions of these topics have been presented in the "Issues of Special Focus" and should be read in conjunction with this section.

1. The Florida Coastal Management Program, through the Interagency Management Committee, will assist existing management programs to address the environmental, economic, and social issues of estuarine areas.

   Many tasks must be accomplished to provide a balanced approach to using and protecting estuarine areas. The coastal program can provide technical and financial assistance, and can use the IMC to insure a unified state approach. The following are examples:

   (a) help develop administrative rules and cooperative management programs for state-owned submerged lands and aquatic preserves;

   (b) help establish rules to define seasonal flow rates on major river systems;

   (c) help improve consistency of decisionmaking between state lands management and regulatory programs, including assistance for cooperative data management programs.

   (d) help improve DER's water quality monitoring and enforcement programs in estuarine areas.

2. Utilize new techniques and organizational approaches to manage critical estuarine areas.

   Some states have developed intergovernmental and multidisciplinary efforts to create balanced management of important estuarine areas. These efforts have been characterized by the term "special area management planning".

While Florida, through its Resource Management and Protection Program (see discussion on "Geographic Areas of Particular Concern"), has begun special management area planning in the Apalachicola Bay and Charlotte Harbor areas, these efforts lack manpower and funding. Coastal management assistance could be used to address these needs and the other special area management planning requirements of estuarine areas.

3. The FCMP will help to improve coordination between research efforts and state resource management and regulatory decisions related to estuaries.

The transfer of useful information into state management and regulatory systems is a key need. Gaps exist between research findings and decisionmaking, and research often fails to incorporate the needs of management systems - even when it is feasible to do so. In particular, the coastal program will help with cooperative efforts between state resource management programs and the Florida Sea Grant Program.

4. Provide assistance to the Conservation and Recreational Lands Program (CARL) in its efforts involving the purchase of important estuarine areas.

BARRIER ISLANDS; BEACHES AND DUNES

Barrier Island Ecology

Barrier islands are a dominant geologic feature along much of the East and West Coast of Florida. Characteristically, these islands are elongated and parallel to the shoreline. Usually they are formed of sand. Individual islands may be more than thirty miles long. Most usually are less than a mile wide. They often occur in long chains (such as along the southwest Florida coast), separated from the mainland by estuaries and saltwater wetlands.

Barrier islands have several effects on the ecology of the coastal area. They form the first line of defense for the mainland against both winter storms and hurricanes. The protection also encourages the development of low-energy tidal wetlands and marshes. Barrier islands also create estuaries. The semi-enclosed lagoons behind the islands permit mixing of salt and fresh waters and create estuarine conditions. And finally, barrier islands are a unique microsystem in themselves.

Barrier islands are shaped by waves, wind and tidal energy, and by ocean flooding. As a result, barrier islands are extremely mobile and dynamic systems which constantly are in transition. While their dynamic nature may frustrate man's need or desire for development, the dynamic nature is necessary for the existence of barrier islands. Island beaches effectively absorb and dissipate the tremendous forces which batter them. Both longshore drift and storm waves are important to barrier island systems. Longshore drift is responsible for the deposition of sediment parallel to the shore. Storm waves breach the

dunes and flood the island, carrying sand and shells inland onto the island. Storm overwash contributes new sediments, supplies sand from the beach and offshore areas for new dune growth, adds to the elevation and extends the island into the estuary.

The beach and dune area is a characteristic feature of barrier islands. The beachfront is a harsh environment, subject to constant stress from natural forces. It also is a resilient area, one which can recover from the impacts of man and nature. Sandy beaches usually are backed by sand dunes. Dunes are waves of drifting sand that are predominantly affected by wind. The shifting dunes, which usually lie behind the berm, are the most subject to the stresses of wind and salt. Mild summer waves add sand to the berm and winds move it to the dunes. Winter storms may reclaim the berm, at which time the dunes must erode to replenish the lost sand. The berm, acting as a reservoir, makes sand available to the dune or beach as needed. Dunes typically are vegetated with sea oats which slow the rate of sand movement. The vegetation growing on dunes can withstand the forces of nature but not the impact of man. Human feet or vehicles can destroy the vegetation and eventually can destory the shifting frontal dune. As a result, the more stable dunes characterized by heavier vegetation and located behind the frontal dune, must absorb the force of storms. When both the shifting and stable dunes are destroyed, man is left with the costly and often impossible task of stabilizing the drifting sand. Dunes are important to barrier islands because they are the island's first defense against the force of wind and waves, and because they also are the means by which islands move and grow.

Each island also must be treated as a part of an entire system of islands and inlets. Barrier islands are separated from one another by inlets which provide access between coastal and estuarine waters for marine organisms as well as man's shipping activities. Like barrier islands, these inlets are unstable. Their channel depth is seldom constant. Barrier islands and inlets both are substantially affected by the flow and the availability of sand. Sand is subject to two types of movement, an onshore-offshore cyclic migration, and an along-shore transport which moves the sand parallel to the shoreline. The direction of net along-shore transport depends on prevailing wave conditions. The net movement past some points is as great as 250,000 cubic yards each year. Interruption of either type of sand movement can cause widespread erosion or accretion of sand on the beach or in an inlet.

Finally, barrier islands have a strong appeal to man and are extremely vulnerable to his presence. The very feature which maintains the islands - dynamism - impedes man's attempt to settle on the barrier islands. This is the basis for the issues and problems concerning man's utilization of barrier islands.

Resource Issues and Problems

Development of barrier islands often is accompanied by protective structural (rigid) measures. Man has tried to impose artificial

stability on barrier islands by building bulkheads, seawalls, groins (rigid alternatives) and by dune stabilization (a non-rigid alternative). Displacement of dunes and dune vegetation with homes and roads destroys the natural sand repositories as well as the ability for defense against storms. This was recognized in President Carter's Second Environmental Message: "...Man has altered two-thirds of our barrier islands and in some cases has destroyed these most effective natural storm buffers along the Atlantic and Gulf coasts."

Erosion of beaches is a natural phenomenon which is exacerbated by man's development on barrier islands. Forty-three percent of Florida's beaches are eroding, seventeen percent are suffering from critical erosion. Erosion threatens the stability of established development areas, costly rigid alternatives are constructed or beach renourishment is attempted. Such remedies are expensive and usually offer only temporary solutions. Attempts to stabilize shorelines with rigid alternatives may interfere with natural processes and further exacerbate erosion. Beach renourishment at a cost of $1,000,000 or more per mile sometimes must be repeated within three to five years. However, after a study of the alternatives available to protect an eroded beach, renourishment may be an appropriate alternative. When conditions are suitable, long reaches of shoreline may be protected by renourishment at a relatively low cost compared to the cost of rigid alternatives.

Barrier Island Management

Barrier islands in Florida and throughout the United States are fragile coastal resources. In response to President Carter's First Environmental Message, the Department of the Interior issued a report "Alternative Policies for Protecting Barrier Islands Along the Atlantic and Gulf Coasts of the U.S." which found that the Federal government encourages development of environmentally fragile islands with federal grants, loans and permits. The study also identifies significant problems associated with uncoordinated Federal policies pertaining to barrier islands, notes a lack of sufficient data for decision-making, and identifies the need for state and local government participation in any efforts to manage barrier islands.

Congress recently held hearings on the need for additional protection for barrier islands. Testimony identified federal agencies as major promoters and financial sponsors of barrier island development. Many persons encouraged further protection for barrier islands including a program for acquiring undeveloped islands. John Sheaffer, an expert in hazard mitigation, advised Congress that acquisition of undeveloped islands is the most cost-effective action. His studies show $11.2 billion in public costs expended over the next twenty years if the government continues to subsidize barrier island development. Acquisition of these undeveloped barrier islands will cost one fifth of the subsidy amount.

Florida has more barrier island acreage than any other state. And, like the Federal government, Florida has a number of agencies whose actions affect barrier islands. Some of the most significant include:

1. Chapter 161, F.S., is the state's primary statutory authority for the protection of beach and dune areas. Included are:

   a. Coastal Construction Control Line,

   b. Coastal Construction Setback Line,

   c. regulation of structures constructed for shore protection purposes, regulation of inlet dredging projects, and

   d. beach renourishment.

2. Chapter 252, F.S. is the state's authority for both preventing and responding to natural or man-made disasters.

3. Chapter 253.023, F.S. establishes the Conservation and Recreation Lands Trust Fund to purchase lands intended for conservation or recreational use. Public beaches are identified specifically for purchase.

4. Chapter 334, F.S. includes the basic authority of the state to plan for and develop a state transportation system.

5. Chapter 403, F.S. contains the primary authority of the state for the protection of air and water quality. The chapter requires permits for any stationary installation which may be a source of water pollution (403.087) and established a grant program for construction of sewage treatment facilities (403.1821).

6. Additional state authority mandates the development of and adoption of comprehensive plans by all local governments. Coastal communities must address both public access to beaches and natural control of beach erosion in the coastal zone protection element of the plan.

Administrative Issues and Problems

Development of barrier islands is often undertaken in ignorance of the environmental values associated with barrier islands. This development has destroyed valuable wildlife habitat, increased pollution into adjacent estuaries and reduced the ability of islands to protect mainland development from the effects of coastal storms.

Development practices on barrier islands may result in heavy flood and wind damage and loss of life. Many low barrier islands periodically are covered by flood waters during winter storms and hurricanes. Hazards from storm damage are compounded by problems with evacuation to the mainland in emergency situations. Subsequent to storm damage, heavy public expenditures are often requested to build and rebuild both public and private facilities on barrier islands.

Barrier island development often is subsidized either directly or indirectly by state and federal government funds. For example, the

federal government often provides the primary subsidies for highways and bridges, sewage treatment plants, beach renourishment projects, disaster relief and flood insurance. State and local governments also provide subsidies through bond issues for highways, bridges and sewage and waterlines, hurricane evacuation programs, and beach renourishment funding.

Yet, the State of Florida does not have a comprehensive state policy for barrier islands. This lack of policy results in conflicting goals between state programs. For instance, disaster preparedness officials are concerned about high-intensity development of barrier islands because of potential evacuation difficulties during a hurricane, while transportation officials may compound evacuation difficulties by building a causeway to an island which lacked direct vehicle access. The State also may affect the situation by providing funds for a new sewage treatment plant on a barrier island. Both types of public facilities encourage intensive growth and development. This lack of coordinated policy also frustrates local government and private enterprise efforts to manage future development of barrier islands. They cannot plan their efforts to complement state efforts. Instead, they must plan programs and activities without knowledge of future state actions.

Recommendations

1. The Florida Coastal Management Program should assist the Interagency Management Committee to develop a comprehensive program for the management of its barrier island system.

   This program would include identification of each island, gathering of sufficient environmental and socio-economic information on each island, analysis of the information, development of a broad strategy for barrier islands, and development of strategies related to each of the state's barrier islands.

   After development and adoption of such a program, it would be utilized as guidance by state agencies for:

   a. Reviewing permit requests relating to the Coastal Construction Control Line or the 50-foot Coastal Setback Line;

   b. Establishing priority areas for beach renourishment and for sand transfer projects;

   c. Reviewing local government requests for delegation of the Coastal Construction Control Line Program;

   d. Reviewing research requests for the Florida Sea Grant Program and other programs;

   e. Reviewing requests for new causeways;

   f. Reviewing water and sewer construction grants and permits.

   g. Reviewing potential new legislation to establish coastal construction control lines on estuarine beaches.

2. The State should develop a program to assist local governments manage barrier islands.

While the State can influence growth and development on barrier islands, the prime responsibility for land management throughout the state lies with local government. The Florida Legislature established this policy in the Local Government Comprehensive Planning Act of 1975. An effective program for barrier island management must include strong participation by local governments.

Basically, the state could establish a broad strategy on barrier islands, utilize its existing budgetary and management tools to implement adopted strategy, and provide assistance to local governments as they develop site-specific plans for each of the islands. This assistance would consist of:

a. Providing funds for developing and implementating local programs to address specific issues related to development of barrier islands (i.e. protection of beach and dune systems, hurricane evacuation). These programs should be a part of the local government's comprehensive planning process.

b. Developing a state information clearinghouse on barrier islands to provide existing site-specific resource information, innovative approaches to difficult technical and legal issues, and a list of expert personnel who could help local governments address difficult technical issues and problems.

c. Targeting state land purchase funds to acquire either undeveloped barrier islands or critical portions of these undeveloped islands. Also, consideration should be given to providing funds for purchase of developed islands which undergo substantial hurricane damage.

COASTAL DEVELOPMENT ISSUES

PORTS

Introduction

Ports have played a major role in Florida's history and will continue to figure prominently in its prospects for growth. Although most Florida ports are a form of local government, they operate within the private market system and must be able to respond to economic conditions. They compete vigorously for additional trade, and are a part of the fabric of state, national and international markets. Thus, the 10 major ports (identified in Florida Waterport Systems Study) and the 17 other Florida ports, in conjunction with the industries which result from their presence, make an important contribution

to the economic vitality of the coastal area and the nation (for discussion on ports and the "National Interest" see Part II, Section Two.G.).

Florida ports gain two major advantages from the geographical location of the State of Florida. Several major shipping lanes are convenient to Florida ports, and secondly, the ports enjoy relatively mild weather, free from the extremes experienced by other ports of the United States.

Approximately 81.3 million tons of general bulk cargo were moved through Florida ports in 1976. Shipments of bulk cargo (phosphate, petroleum, cement, etc.) represent the greater part of all tonnage handled by the ports. Nevertheless, general cargo (manufactured items agricultural products, chemicals, etc.) plays an important part in por planning since it requires more facilities per ton and generates highe revenues per ton than bulk cargoes (Florida Waterport Systems Study, Volume I, pages 4 and 5).

The conflict between various demands for use of our coastal area is being felt by the ports no less than by many others who obtain benefits from this region. As Florida's coastal population in the decade of the 1980's approaches 9 million people, ports will find thei development opportunities diminishing as people seek to use coastal areas for businesses, residences, fishing piers, marinas, parks, and other activities.

Complicating the urban squeeze on port activities is the growing recognition of the value of fish, wildlife and other living resources. As a result, a number of local, state and federal statutes and agencies now deal with port development and its relation to the natural environment. Table 8 lists the major agencies which are involved in various regulatory aspects of port development.

If the Florida Coastal Management Program is to be effective, it must assist with resolving the problems that occur when ports propose new activities or facilities. Problems fall under two types of general issues.

Environmental, Economic, and Social Issues

Many of Florida's ports lie within settings which are rich in natural amenities and provide a foundation for the tourist and recreational industries. Consequently, several problems arise from the effects of port activities on the natural environment. In addition, ports operate within urbanized settings where the land use requirements and impacts of many other activities affect port operations.

1. Water is the most important element among our coastal resources. Its quality governs the amount of life that can be sustained in tidal and aquatic areas.

TABLE 8

FEDERAL AGENCIES	PORT RELATED FACILITIES
U.S. Coast Guard	Safety of port and vessel operations and oil spill contingency planning
Army Corps of Engineers	Builds and maintains jetties, channels, and other public works; reviews all activities affecting navigable waters; regulates dredge and fill in navigable waters
U.S. Fish and Wildlife Service and National Marine Fisheries Service	Required to comment to Corps of Engineers regarding the effect of development on fish and wildlife resources
Environmental Protection Agency	Controls air and water pollution; reviews deposit of dredged material into navigable waters
STATE AGENCIES	
Florida Department of Environmental Regulation	Enforces state standards for air and water quality; dredged spoil disposal permits; administers Public Works Program
Florida Department of Natural Resources	Oversees leasing and management of state owned submerged lands; marine resources management; oil spill prevention and cleanup; safety of vessel equipment and navigation
Florida Game and Fresh Water Fish Commission	Comments to Corps, state agencies and ports on effect of dredge and fill on fish, wildlife, and aquatic environment
Florida Department of Transportation	Planning and funding for access; general planning and analysis
Florida Department of Veteran and Community Affairs	Administers the DRI program at the state level. Administers the Coastal Energy Impact Program (CEIP).

LOCAL AGENCIES

County and City Environmental and Health Departments	Control air and water pollutio oversee living resources
County and City Planning, Zoning, Building, and Public Safety Departments	Land use and density restrictic building and construction codes fire and police programs; contr of public services

Water quality is affected by dredging and filling operations. Yet, dredging and filling is necessary for ports in improving and maintaining navigability, extending dockage, and constructing other facilities. Water quality is also affected by contaminants in surface water runoff, spillage, and discharges from vessels. The problem is further complicated by the existence of other, non-port related, factors which degrade water qulaity, such as untreated solid waste, stormwater drainage, and industrial discharges.

2. Several ports are located in urban areas where air quality is a matter of concern. Industries, automobiles, and other activities often contribute to a regional air quality problem. Thus, ports, and the water dependent industries which use port facilities, find it difficult to site shoreline facilities where existing impacts on air quality have pre-empted coastal air space.

3. Ports have little option as to location. They must occupy the shoreline. The problem is that our shoreline is becoming very scarce. Intensive urban land use around ports and the soaring costs of shoreline property confine port operations and limit the opportunities of ports to respond to economic and technological changes.

   The urban squeeze on ports is most apparent when land adjoining a port becomes committed to other uses. Several ports have found their expansion opportunities pre-empted by development on adjacent property. Other activities which put land in intensive use can simply outbid the ports for valuable shoreline space. After these activities are sited, further problems occur if the port and the other land use is not compatible. Usually, the less water dependent the adjoining land use, the greater the likelihood that conflicts will occur between it and the port. For example, port operations may increase public safety hazards and create disturbances in nearby residential areas.

   If ports are to operate more efficiently, adequate roads and rail facilities are essential. Some ports cannot make full use of their potential "throughput capacity" because of the lack of an adequate public landside transportation system.

   A different port-related land use problem is raised by the need to provide adequate public access to the shoreline. In highly urbanized areas, public access to the shoreline is an important objective of local communities, and ports often occupy central locations where additional physical and visual access would be very desirable. In addition, the operation of the ports themselves are interesting and educational. Although ports must frequently discourage public access within their jurisdictions because of safety and security considerations, many U.S. ports have increased opportunities for physical and visual access.

Regulatory, Planning, and Other Administrative Issues

1. Many port projects in Florida are proposed in or near estuarine areas which are rich in living resources (Florida Waterport Systems Study). In these areas, environmental laws and several public agencies play an important part in influencing port development. Costly delays in construction may be caused by multiple or sequential permit requirements, conflicts between governmental agencies, or duplicative information requirements. Ports also fall under the Development of Regional Impact program and its system of reviews under Chapter 380, F.S. Many large port projects are financed with bonds. Long delays and lack of predictability can prevent local governments and port authorities from taking advantage of favorable bond market conditions.

2. One overriding drawback of the way port development and governmental agencies interact is that the ultimate impact on the environment cannot be anticipated. While this is true of the economic and social environments, it is of special concern for th natural environment. Case-by-case review of individual projects, inadequate port plans, vague policies, the diversity of criteria between agencies, and a lack of environmental information contribute to the problem of predicting the ultimate effect of individual permit decisions. Thus, longterm environmental problems can occur because of the problem of predicting the cumulative effects of individual permit decisions.

3. When governmental agencies and ports develop plans and implement programs, they frequently do so independently of each other. Although some disagreements will probably continue between conservation and development aims, the lack of coordination has heightened conflicts and increased costs.

   There is a need to bring different perspectives together to analyze competing coastal land and water uses, to resolve conflicts, and to promote sound siting decisions. In order to answer the need for coordination several actions might be carried out such as developing new areas of expertise and improving the transfer of information concerning resource capacity, economic forecasts, facility requirements, and technology.

Recommendations

The Florida Coastal Management Program recognizes that our ports are water dependent coastal users and that ports make substantial contributions to local, regional, and national economies. It is apparent that the needs of ports must be met in ways which are least damaging to other resources and activities of the citizens of Florida. The environmental, economic, social, and administrative problems associated with port requirements can be addressed through an improved management system. An improved system can provide for the optimization of economic benefits at the same time that other responsibilities are carried out for safeguarding the environment and the other resources of Florida.

Currently, the state is administering a Coastal Energy Impact Program under the provisions of the federal Coastal Zone Management Act. This program is providing assistance to ports for energy-related planning and will be closely involved with coastal management approaches to port issues.

1. The Florida Coastal Management Program will encourage, through technical and financial assistance, a port planning and institutional process which seeks to resolve the conflicts over port development and to maximize predictability in siting decisions.

   The implementation of a port planning process which incorporates an adequate level of specificity will give governmental agencies and ports an opportunity to make early decisions concerning cumulative impacts, to improve predictability, and to lay out alternative proposals. By considering long term needs, issues, and impacts, an improved approach to port development could correct the deficiencies of present case-by-case permitting. A more effective port planning approach would promote the recognition that there is a range of legitimate uses that should be accomodated and balanced.

   The effective implementation of this approach depends on the cooperation of the ports and governmental agencies. Local, state, and federal agencies will gain confidence in a management program to the extent that ports can provide the proper level of information and identification of development alternatives. In return, agencies can reduce delays and maximize predictability in their decisions by focusing their policies and criteria, aligning their information needs, and reducing intergovernmental conflicts.

   The Florida Coastal Management Program proposes that ports be given the opportunity to participate in an improved planning and management system. It is recommended that those ports which have completed long range master plans be funded to prepare supplemental planning reports which address the key information needs of affected state agencies. Within the need to retain economic flexibility and competitive advantage, supplemental port plans can be developed which outline future land use and the long term impacts on the environment.

   State agencies will assist the supplemental port planning efforts by developing information guidelines for supplemental plans and closely coordinating with the ports during development of the plans. Those plans identifying long-term future uses of particular areas and significant impacts can serve as the basis for governmental decisions which increase predictability for port development and resolve permit delay problems.

2. The Florida Coastal Management Program will encourage the major state agencies dealing with port facility development to maintain adequate staff capability.

Long range, comprehensive port development planning activities will involve environmental, economic, and technological considerations. The complexity of these planning elements will require that state agencies possess the capability to offer assistance and achieve an optimum balance between environmental and economic needs.

DISPOSAL OF DREDGED MATERIAL

Both dredging and spoil disposal are among Florida's major coastal issues. The environmental, economic, and administrative issues associated with the disposal of dredged material are the most complex and enduring.

Florida and its water dependent industries are not alone with the problem of spoil disposal. The national scope is reflected in the objectives of the federal Office of Coastal Zone Management. One of the purposes of coastal management is "... to identify environmentally suitable sites for dredge and spoil disposal" (memorandum by R. Knecht to state coastal program managers, September 17, 1979). In the southeastern United States, the shortage of spoil sites is said to be most acute because of upland soil characteristics, land use, the volumes of spoil material, and other factors (Chapman, 1968).

Water dependent activities frequently require dredging and spoil disposal operations. The larger dredging projects are constructed by the Army Corps of Engineers, often in cooperation with local governments or ports, to improve and maintain navigation channels and to develop related facilities such as turning basins, and slips. Federal funds for dredging projects are appropriated by Congress, but, the local government or port usually pays for disposal sites, plans, rights-of-way, and other costs associated with spoil disposal.

In the past, spoil was disposed of without regard for any consequences other than cost. More recently, dredging projects have been restricted, delayed, or stopped by the possibility that spoil disposal will degrade water quality or create adverse impacts on fisheries, wildlife, and vegetation. Florida's productive, vulnerable, and unique natural areas increase the usual problems associated with the alteration of estuarine systems.

Dredging and spoil disposal are essential if Florida's commercial and recreational ports, harbors, channels and inlets are to be improved and maintained. A spoil disposal impasse could create severe economic problems for water dependent businesses in Florida. Spoil disposal problems which are outlined below must be solved to safeguard the environmental and economic health of the state. There are two types of issues: the environmental effects of spoil disposal, and the economic, administrative, and other issues of spoil disposal.

Environmental Issues

The most direct effect of dredged material disposal is that fish and wildlife habitats and vegetation often are displaced. Wetlands and estuarine bottoms often are the most convenient places to deposit spoil material. The productivity of these areas may be reduced by the improper placement of spoil.

Dredged materials obtained from areas near urban centers and industrial sites frequently are contaminated with heavy metals, hydrocarbons, and toxic chemical compounds. The resuspension and redistribution of contaminated sediments increases the hazard to plants, animals, and shallow fresh water supplies.

Maintenance dredging is the chief source of contaminated dredged material. Deep harbor channels and turning basins can become reservoirs of contaminants from nearby urban and industrial sources. Maintenance dredging disturbs these areas and, unless proper practices are followed, results in their deposition in biologically productive areas.

Dredged materials often are composed of large amounts of fine sediments - clay, silt, and organic debris. When large quantities of "fines" are dispersed they can create several problems. They can: (1) accelerate the release of nutrients thus leading to the excessive growth of algae, (2) seal off water circulation through coarser sediments, reducing the aerobic conditions necessary for healthy bottom communities, (3) create an unstable bottom which is unsuitable for the attachment of plants and animals, and (4) increase turbidity thus reducing photosynthesis.

Maintenance dredging of poorly flushed channels and harbors creates difficult problems with handling fine material. Depositing such large concentrations of silt must be managed carefully to avoid fouling healthy habitats.

Water circulation is critical to the health of Florida's coastal water bodies. Water circulation governs the life cycle of fish and shellfish, transports nutrients, controls the mixture of fresh and salt water, flushes pollutants, and plays other important roles in coastal ecosystems. Long banks of spoil material obstruct, divert, or otherwise interrupt natural circulation patterns. When this occurs, areas may become isolated and stagnant, flushing may be reduced, salinity levels may change, mosquito problems may increase, and other adverse impacts may result.

Economic, Social, and Administrative Issues

Commercially important fish and wildlife resources have been reduced over the years because of improper spoil disposal. Wetlands and estuarine waters are crucial to the life cycles of fish, shellfish, and waterfowl. Poorly managed spoil disposal causes outright

losses of marsh and shallow nursery areas, interruptions in the flow o nutrients, and changes in salinity. All of these effects may be felt by commercial and recreational fisheries (Lindall, 1973) and result in economic losses.

Spoil disposal techniques which have the fewest severe impacts on the natural environment often are costly and have engineering problems Transporting of dredged material inland or to environmentally suitable ocean areas removes the impacts from the productive and vulnerable coastline, but, the costs of dredging and energy use rise dramatically as the distance and the amount of rehandling increases.

A common solution for depositing spoil near dredging operations is to put it in contained areas within or at the edge of estuaries. Placing spoil in these areas requires careful containment. These area are enclosed by dikes, include spillways, and have detention capabilit for settling suspended fine sediments.

Containment areas must be properly constructed, and must be maintained. Foundation and material failures occur because of inadequate dike design, poor construction practices, and improper inspection of dikes during dredging operations (Murphy and Zeigler, 1974).

Placing spoil on upland locations, which avoids damaging estuaries, may conflict with other land uses. Recent studies by the Corps of Engineers Dredged Material Research Program show that upland disposal may release toxic substances from the dredged material and degrade valuable upland habitat. Guidelines developed under section 404(b)(1) of the Clean Water Act state that upland disposal is one of several alternates for the spoil disposal problem.

Spoil disposal usually requires large amounts of land. Proposals for depositing spoil can encounter local objections to disposal sites. For example, where dredging occurs near urban areas, the large amounts of land required for the dredged material could consume land which is valuable for recreation and shoreline access. In areas where dredged material could provide a suitable foundation for other uses, extensive de-watering of the spoil delays the use of the land.

Dredged material disposal is regulated by both state and federal agencies, and in some cases by local government. As with other types of regulatory activity, many siting decisions are made on an ad-hoc basis during the governmental review of permit applications. This incremental approach leads to uncoordinated treatment of coastal projects (see further discussion under Ports in this section).

In some areas of the United States, large projects have been delayed for years because of problems with obtaining approval for spoil sites. Long delays lead to increases in architect and engineering fees, increases in total cost, and rescheduling of use. Capital which must be committed in anticipation of project approval accumulates interest costs during delays. These additional costs in publicly financed projects are, in turn, borne by the taxpayers.

Many large projects are financed with bonds. Long delays and lack of predictability can prevent municipalities, special districts, and port authorities from taking advantage of favorable bond market conditions.

When the dredged material is suitable, the Department of Natural Resources under Ch. 161, F.S. may direct that dredged spoil be used for beach renourishment. Most dredged spoil may not be suitable because of sediment size, or the contaminants trapped in the sediment, and approval from the DER is required before dredged material may be used for beach renourishment. Nevertheless, the beach renourishment option may be a solution to many disposal problems in the future.

Recommendations

There is a genuine concern over finding suitable sites for the disposal of dredged material. One of the fundamental conclusions of the Army Corps of Engineers Dredged Material Research Program (1973-1978) was "... that environmental considerations are acting more strongly than possibly any force to necessitate long-range regional planning as a lasting, effective solution to disposal problems" (R. Saucier, p. 7).

The Florida Coastal Management Program can assist with analyses, planning, and implementation of spoil disposal management strategies.

1. The Florida Coastal Management Program, through the Interagency Management Committee, should assist with development of a program for the long-range consideration of dredged material disposal needs.

   The environmental, economic, and other issues of spoil disposal should be addressed in long-range plans. Consensus on the best sites and disposal practices can be achieved through a process which promotes an understanding of each area's problems and is attentive to alternate approaches. As the Army Corps of Engineers Dredged Material Research Program demonstrated, "... there is no single disposal alternative that presumptively is suitable for a region or a group of projects" (R. Saucier, p. 7).

   Comprehensive spoil disposal management strategies must incorporate a number of tasks. These tasks, several of which are listed below, are necessary to meet and to balance the different objectives of spoil disposal.

   a. Early identification of the location, the estimated volumes of spoil, and the conditions of areas expected to be dredged.

   b. Assess the condition of spoil areas used in the past.

   c. Assess the ecological and other land use implications of alternate courses of action for candidate sites.

d. Provide information on direct and indirect costs, and assess alternate courses of action for candidate sites.

e. Develop a mechanism for improved coordination of dredged material disposal planning between the ports, and state, federal, and local agencies, and ensure consistency between all local, state and federal disposal programs.

f. Develop strategies for assuring that sites established under the spoil disposal planning program will be available for use, and that non-compatible uses will not restrict the utility of each site for disposal.

2. The Florida Coastal Management Program and the Interagency Management Committee will assist in the evaluation of cumulative impacts associated with spoil disposal.

One of the most troublesome concerns blocking predictability in the dredging and spoil disposal process is the gradual alteration of the estuarine environment. The FCMP can provide assistance in establishing a program to monitor and evaluate the long-term impacts of dredging and spoil disposal and develop long-term mitigation strategies.

3. The Florida Coastal Management Program and the Interagency Management Committee will assist in the investigation and design of multipurpose solutions to spoil disposal problems.

Two major topics can be pursued under this recommendation: (1) mitigation programs, and (2) productive uses of dredged material.

There are several approaches to mitigation, but generally it means taking action to reduce harmful effects or providing compensation for unavoidable impacts. Federal and state environmental agencies regularly apply mitigation requirements to dredging and spoil disposal projects.

The FCMP can assist in identifying the uses of dredged material which establish or restore marsh, island, or other habitats and increase the carrying capacity of these areas. The FCMP should support a mitigation planning approach which addresses long-term and regional needs. Mitigation planning provides an avenue for predicting economic impacts and distributing mitigation costs over time. Because mitigation planning addresses long-term and regional needs, it reduces fragmented decisions and enhances the biological worth of mitigation projects.

Although some dredged material is polluted or otherwise unsuitable, much is clean and can be used in innovative projects. Thus, the Florida Coastal Management Plan can assist in examining

the suitability of spoil for recreational development, increasing shoreline access, landfill for ports, aquaculture, and other productive uses. Using suitable dredged material for beach renourishment is an example of a possible productive use for sandy sediments which are not contaminated.

MARINA SITING

Background

Marina and boatyard operations are a major shorefront commercial activity in Florida. While exact figures are not available for these activities, it is estimated that statewide there are more than 800 facilities, with more than 500 of these located in Florida's 35 coastal counties.

This large number of facilities is a direct reflection of the popularity of recreational boating in the state. In 1978, Florida ranked fifth nationally in the number of boats registered. In terms of yachts greater than forty feet, Florida had more than any other state. In terms of yachts greater than sixty five feet, Florida had about nine times the number of its closest competitor, California. Florida thus has not only a large boating population, but tends to have larger vessels. This situation creates a demand for marina services. In addition to marina services for Florida residents, a significant yearly influx of waterborne visitors from other states causes additional demands on the marina industry.

To meet the varied and increasing demands of the boating public, marina operations range in size and complexity from small boat rental and launching facilities to major berthing and servicing facilities for offshore vessels. The great diversity in market demand results in considerably different operational needs and physical requirements for marina siting. Understanding the basic needs of the marina industry and providing a means for adequately accommodating this important activity is one of the clearest, yet most controversial challenges facing the Florida coastal management program.

Problems and Issues

Functional Aspects

In order to operate, marinas have several basic needs related to site characteristics. Among these are:

* adequate protection from storms;

* adequate depths to accommodate vessels utilizing the facility (including access to navigation channels);

* absence of strong currents which pose navigations hazards;

* adequate room for expansion;

* adequate land access for necessary services and emergency vehicles;

* compatible adjacent uses;

* reasonable running times to popular boating and fishing waters;

* ability to perform timely routine maintenance on slips, access channels, etc., and

* sufficient size to make the operation economically feasible.

The importance of any one of these needs varies with the market and the type of vessels being served, but collectively, they present a almost impossible set of criteria to be met by an unmodified site in Florida. Natural characteristics of most of Florida's coastal shoreline are such that considerable alteration usually is required to make a site usable. For marinas catering to the larger vessels, preparation of the site normally requires costly engineering works, some dredging and filling, as well as continuing maintenance on slips and access channels. For those facilities catering to smaller vessels, shoreline modifications can often be minimized through the use of dry storage facilities, dock access to deeper water, and launching facilities for trailered boats. In almost all cases, however, creation of new marina facilities requires modification of the natural shoreline and adjacent water bottom areas.

Environmental Aspects

Marinas share many of the same environmental problems as ports, but on a smaller scale. The general lack of naturally suitable marina sites often results in facilities being proposed in areas considered by regulatory agencies to be environmentally important. The prospect of habitat destruction, potential water quality impacts from dredging and filling, acute and chronic gas and oil spills, stormwater runoff, sewage disposal problems and heavy metals, as well as the noise factor, all tend to make marina operations less than desirable to many environmental interests.

Socio-Economic Aspects

Marina operations are but one aspect of the broader marine industry, which also includes boat, marine engine and accessories manufacturing and repair; raw materials supply; marine electronic sales and servicing; marine insurance companies; as well as financial institutions engaged in financing marine facilities and equipment. It

is estimated that the recreational boating portion of this economic mix provides over 35,000 full and part-time jobs for Florida residents, exceeds $700 million in sales annually, and has an annual payroll in excess of $150 million. The marina industry is a central component of this economic activity.

Marinas, like any other shorefront use, are subject to normal economic pressures brought about by zoning, taxation, competing land uses, and environmental regulation. However, marinas appear to be subject to much greater operational uncertainties and financial liabilities than is generally understood. Urban land values, fire hazards, accidents caused by boater incompetence, hurricanes, fuel shortages, regulatory requirements, as well as the inability to obtain adequate insurance and financing at favorable rates all combine to create economic risks that are making new or expanded marina operations an increasingly uncompetitive economic activity. Yet, because of the high value of merchandise in the sales rooms or berthed in the slips, marina operations often project a deceptive image of glamour and financial success.

Administrative and Regulatory Aspects

Marinas fall under a number of state regulatory programs, including the Development of Regional Impact program.

Industry Perspective

Based upon a recent state survey, marina owners and operators, with few exceptions, feel that the demand for marina services exceeds supply and that their inability or reluctance to expand to meet the demand is related primarily to the functions of government. Marina owners and operators feel strongly that they are over regulated and over taxed and that a continuing communications gap exists between the industry and government. From the industry viewpoint, this results in a governmental lack of understanding of, and basic misconceptions about the operational needs, economic benefits, as well as environmental impacts of marinas. They argue that this in turn results in: (1) an unwarranted environmental bias against marina construction, (2) unreasonable siting requirements and permit conditions, which effectively eliminate most practical siting options, and (3) excessive time frames required to obtain state and federal permits for construction or normal maintenance activities.

Within this regulatory setting as well as the financial liabilities mentioned earlier, marina construction and expansion is becoming increasingly impractical, and conversion of needed sites to more profitable, non-water dependent uses is indirectly being encouraged.

State Agency Perspective

From the regulatory perspective, state agencies, even if sympathetic to the plight of marina operators, must make permitting decisions based upon available information (primarily

provided by the applicant) and state standards. Information often is not adequate to determine the long range cumulative impacts of proposed facilities, and agency experiences with previous projects of similar nature become important to the fi decision. Additional information is needed to broaden the ran of considerations related to natural resource impacts and econ factors which affect marine siting decisions.

Management Problems/Issues

The state coastal management program recognizes these central problems and issues dealing with marina siting.

1. As was noted in the previous discussion on state-owned submerge lands, there is no effective mechanism for assuring that marina regulatory practices under DER are consistent with management principals and policies of the DNR State Lands Plan which is be developed.

2. Information is inadequate for determining long term cumulative environmental impacts of marina facilities, and there is no effective mechanism for obtaining needed information or for balancing environmental and economic considerations in final permit decisions on marina siting.

3. There is no generally accepted method for identifying suitable marina sites and no recognized set of criteria to avoid or minimize potential adverse impacts of marinas.

4. There is no effective forum for communication between the state regulatory agencies and the marina industry, to reduce misconceptions and unnecessary conflict.

5. Local land use and zoning plans generally reflect no recognition of marina needs and do not adequately provide for accommodating this use.

Recommendations

There are a number of possible actions that can be taken to improve the state's ability for to deal with marina siting questions. The state Coastal Management Program will:

1. Fully utilize the existing State Interagency Management Committee on Natural Resources to examine marina siting issues and to make recommendations for the resolution of those issues.

   Among the topics that could be addressed by the Interagency Management Committee are:

   * Agency applied research needs for to marina siting, including marina siting methods, marina design, cumulative environmental impacts, and legal considerations.

* Development of necessary legislation to facilitate systematic balancing of environmental and economic factors in the permitting process.

* Criteria for determining the conditions under which environmental and economic tradeoffs should be made.

* Mechanisms for achieving consistency between the State Lands Plan of DNR and the regulatory programs of DER as they pertain to marina siting.

2. Establishment of closer coordination between local comprehensive planning required under Chapter 163, F.S. and state and federal natural resource management and regulatory programs.

Chapter 163, F.S. (Local Government Comprehensive Planning Act), can provide a legal basis for addressing marina siting questions in an orderly, less controversial manner. Under the state coastal management program, increased efforts will be made to improve the technical ability of local land use and zoning plans to accommodate marina needs, and assure consistency of local planning with state and federal goals, objectives and policies. Steps that will be taken include:

*. Provision for state technical and financial assistance to local government through cooperative interagency efforts and agreements.

* Joint state and local planning and management efforts related to marina site selection, especially in Aquatic Preserves and other Areas of Special Management.

3. Establishment of a close working relationship between the Florida Sea Grant and Florida Coastal Management Programs.

The Florida Sea Grant Marine Advisory Program is already actively involved in marine industry activities. Among other things, this program provides applied research and advisory services to the private sector to help facilitate environmentally acceptable and economically viable marina operations. Under the coastal management program, the following actions will be taken to improve the working relationships between the two programs:

* Utilization of the Marine Advisory Program to help provide a forum for communication between the marina industry and state and local government (identification of regional marina needs, design considerations, permitting processes, etc.)

* Joint Sea Grant and Coastal Zone Management projects to meet state agency applied research needs related to marina siting.

WATER RELATED ENERGY FACILITIES

Two major water-related coastal activities are involved with energy -- electrical generating facilities and Outer Continental Shel: (OCS) oil and gas operations. Many OCS facilities, such as service bases and pipelines, must have shoreline locations. In Florida, electric power companies often must look to the coast for cooling wat because of constraints on freshwater consumption. Careful siting and design of these facilities is a necessary part of a national, regiona and local effort to meet energy needs. The Florida Coastal Managemen Program (FCMP) includes both of these energy industries as coastal development issues meriting special attention.

In both Part I and II, the FCMP identified several major concerns: (1) effective and efficient implementation of statutory responsibilities, (2) conflicts between governmental programs and agencies, (3) lack of predictability in decisions on facility siting proposals, and (4) time consuming governmental reviews of development proposals. There are few areas in which the need to address these concerns is more pressing than in energy facility siting.

The relationship between these issues and the siting of energy facilities has received attention at the national level. Congress addressed energy development in 1976 amendments to the Federal Coastal Zone Management Act of 1972 (CZMA). The federal Act requires that state coastal management programs include a planning process for energy facilities which are likely to require coastal locations or which may significantly affect the coast. A separate "Energy Facilities Planning" element is included in this document to fullfill the requirements of the federal Act and to provide the background discussion for this issue of special focus. The federal act also requires that in order to be eligible for federal funding, Florida's coastal management program must provide for "adequate consideration of the national interest involved in planning for, and in the siting of facilities (including energy facilities)" (CZMA, Section 306(c)(8)) where the concern is to meet needs which are other than local in nature. As in the "Energy Facilities Planning" element, a specific "National Interest" component is included in this document to cover the federal requirements and to complement the discussions in this issue of special focus.

Electric Generating Plants

Barring exceptional circumstances, Florida will continue to experience significant increases in population, primarily along its coastal fringe. The state also will continue its efforts to establish a strong, diversified economy. An adequate, stable supply of electrical energy is required to maintain a high quality of life and to insure that desirable industries are attracted.

The Florida Coastal Management Program can assist energy facility siting by (1) coordinating existing management processes

more effectively, thus reducing delays, duplication, and confusion, (2) promoting effective and clear implementation of existing processes, and (3) promoting predictability in site plan reviews and subsequent siting decisions.

The "Energy Facilities Planning Element", required under the provisions of the federal CZMA, and included in this section provides the framework for the recommendations contained in this issue of special focus. The "Energy Facilities" element contains the following areas of discussion: (1) an examination of the anticipated electrical energy demands and facilities in the state; (2) an identification of the environmental, social, and economic effects of electrical facilities; and (3) an identification of the state's legal authority and management processes affecting power plant siting. These and other discussions in the FCMP conclude that present policies, laws, and administrative rules satisfactorily address the federal requirements for managing energy facilities. However, at the same time, coastal management studies reveal areas of the planning process that could be improved. Thus, the final discussion in this element covers several recommendations for action by the FCMP.

The Requirements and Impacts of Electric Generating Plants and Ancillary Facilities -

There are several factors which affect the siting of fossil fuel, resource recovery, and nuclear power plants in coastal areas. Coastal areas have the natural resources and the population centers which attract energy facilities (for a detailed discussion of electric facilities, see "The Coastal Zone Management Act: Requirements for the Management of Energy Facilities in the Coastal Zone"; DOA, 1978).

Water is the most critical natural resource affecting the location of electric generating facilities. In Florida, where useable fresh water supplies are limited, coastal areas are attractive sources of cooling water. Since utilities often look toward the coast for potential sites, special consideration must be given to the effects of electrical facilities on estuaries and marshes.

Development in coastal areas also is related to the siting of power plants and associated facilities. Population growth in coastal areas and the rising ratio between coastal residents versus those in inland areas is an important locational consideration. The economies of transmitting electrical energy promote siting electrical generating facilities near population centers on the coast.

Access to coastal transportation traditionally has influenced important siting decisions and will be more important in the future. Power plants require fuel, and, except for relatively untested sources of electricity such as solar power, Florida lacks conventional energy resources for large scale generation of power. Most of the major rail, water, and port facilities needed to move fuel economically from outside the state are on the coast. With the emerging national energy policy moving toward greater use of coal, the ability to transport and

store large amounts of fuel will become more important in power plant siting decisions.

Electric generating plants need space for bulk fuel storage, and for aesthetic and public safety requirements. Related to the land requirements is the need for suitable soil foundations. These are among the land, water, economic, and engineering factors which the utilities and public agencies consider during the siting process. The discussion contained in the "Program Authorities" and "Energy Facilities Planning Element" describe the state statutory authorities and programs which provide for the consideration of requirements and impacts of power plants and transmission lines.

Recommendations

Energy will be one of the major issues during the 1980's. There will be very few areas where this issue will be felt more keenly than along the populated coastline since the coast will remain important to electric utilities.

Many factors make the forecasting of generation and fuel requirements and planning of new electric generating facilities increasingly uncertain. At the federal level, the full effects of new initiatives such as the National Energy Act and the Fuel Use Act have yet to be assessed. Planning and operating efforts are also hampered by the threat of oil embargos, labor disputes, and governmental impacts on planning, operating, and rate-making processes. The state of the national economy creates its own uncertainties which affect the financing of facilities. In brief, the energy outlook is not clear, and the state should take a positive role in coordinating its own efforts and increasing the predictability of siting electric generating facilities.

1. The Florida Coastal Management Program working through the Interagency Management Committee and in conjunction with outside and industry organizations will assist in the development and implementation of an in-depth program to address the suitability of once-through-cooling sites for electric generating plants and ancillary facilities.

   The evaluation of potential power plant sites conducted by the state Once-Through-Cooling Site Task Force concluded, among other things, that work was necessary to "turn up the power" on the sites identified in the Task Force report and to increase predictability in siting processes. The following tasks have been proposed: (1) pursue detailed environmental suitability assessments, (2) assess compatibility with local land use, zoning, and growth management objectives, (3) assess proximity to and enhancement of the transmission grid, (4) determine availability of service (make-up) water and consumptive use permits, and (5) examine air quality impacts at prospective sites.

2. The Florida Coastal Management Program will anticipate future needs by assisting in the investigation of power plant cooling alternatives.

New opportunities for power plant cooling have been suggested for populated areas such as South Florida where fresh water supplies are critical and the coastal environment is sensitive. The acceptability of these sites would depend on whether brackish water from the deep Floridan Aquifer could be used for cooling. This potential cooling source should be examined for its environmental, economic, and land use feasibility since it could avoid many of the coastal impact problems.

3. The Florida Coastal Management Program will assist the Department of Community Affairs in the development of guidelines and review of electric utilities ten-year site plans.

Many difficulties associated with siting power plants and ancillary facilities, such as impacts associated with the transportation and storage of large volumes of coal, can be examined and resolved early in the planning process before much money and time are committed. The efficiency of power plant siting would be promoted by increasing the capability of ten-year site plan reviews and by effectively coordinating these reviews with the Department of Environmental Regulation.

Outer Continental Shelf (OCS) Related Oil and Natural Gas Activities

Overview

One of the nation's most critical issues is the timely development of energy resources. Former Undersecretary of the Interior, James J. Joseph has said "The current international situation underscores the importance of finding responsible and acceptable means of improving production of our domestic resources". Pointing out that the outer Continental Shelf (OCS) represents one of the keys to this nation's energy independence, Joseph said: "Oil and gas remain our cheapest, cleanest, most flexible and transportable resource and OCS production provides jobs and puts money into the pockets of American taxpayers, not foreign powers." (J. Joseph to National OCS Advisory Board, December 6, 1979).

The Secretary of the Interior is directed to develop oil and gas resources of the OCS under the Outer Continental Shelf Lands Act. The purpose of the Outer Continental Shelf Lands Act (OCS Lands Act), as amended (92Stat.632), is to make oil and gas resources available to meet the nation's energy needs as rapidly as possible, and to balance orderly energy resource development with the protection of the coastal, marine, and human environments (Section 102). According to section 18 of this Act, the Secretary of the Interior is directed to prepare a leasing program to implement the policies of the Act, defined as consisting of: "a schedule of proposed lease sales indicating ... the size and location of leasing activity which he determines will best meet national energy needs for the five year period following its approval or reapproval."

A five year leasing schedule (1980 to 1985) recently proposed by the Department of the Interior, (Five Year OCS Oil and Gas Lease Schedule) has demonstrated the intent to aggressively pursue the national goal of energy self sufficiency. Under the proposed schedul Gulf of Mexico and South Atlantic lease sales will increase off the coast of Florida. By March, 1985, out of a total of thirty-one lease sales nationwide, eleven will have been held for the Gulf of Mexico a two lease sales will have been held for the South Atlantic.

Accelerated leasing activity in the eastern Gulf of Mexico and South Atlantic will be one of the largest and most organized federal actions to directly affect the state. If the leasing effort results the discovery of marketable hydrocarbons, the state will be confronte by a comprehensive federal government and private industry initiative.

The state then must to do its part to reduce uncertainty in the development of energy facilities and to assure that the protection of the natural and human environments is balanced with the exploitation of energy resources. The state must: (1) assess its responsibility and ability in OCS energy-related matters; (2) work in concert with all levels of government and the petroleum industry to develop a workable siting process for nearshore and shoreline facilities; and (3) develop coherent, unified planning and policy approaches to OCS related issues.

Three federal laws give states a voice in OCS related matters: The National Environmental Policy Act, the OCS Lands Act as amended in 1978, and the Coastal Zone Management Act (CZMA) as amended. The "Energy Facilities Planning" element (Part II, Section Two.I.) of the FCMP discusses particular opportunities for state and local involvemen provided by these laws.

Major OCS oil and gas operations will create environmental, fiscal, social, and administrative problems. Recognizing the need to anticipate and manage the possible adverse effects of OCS related activity, Congress has provided states and local governments with assistance under section 308 of the CZMA. Substantial federal grants and loans are available under this section (Coastal Energy Impact Program) to help states plan for problems associated with OCS energy related developments and help with the financing of public facilities and services required by energy development. Specific assistance is available to local governments to meet potential impacts caused by OCS activities.

State and local participation in OCS activities do not end with piecemeal public agency reviews of individual federal and industry proposals. The orderly development of Outer Continental Shelf resources, subject to environmental safeguards, cannot be pursued without organized state and local policy positions which reflect the needs and impacts of OCS activities. Full state participation in OCS decisions, if it is to express a partnership with the federal government and private industry, rests on the ability of the state to refine

its OCS related responsibilities, achieve cooperation among its agencies, and give a clear and sufficient indication of its concerns.

> Planning for the onshore impacts of offshore oil development is not easy. The location and extent of economically recoverable reserves, and the required number of onshore facilities, will not be known until after discoveries are made. For most OCS leasing areas, there are a number of potential onshore sites for facilities. Decisions about siting and construction are dependent upon a complex array of industry, economic, and planning criteria. To be prepared to influence siting and management impacts, states and communities will have to plan in advance for events that may never occur, creating contingency plans to be used when proposals are made for onshore facilities. (Department of the Interior, 1978).

Florida's environmental, economic and social characteristics point to impending conflicts between the parties involved in OCS activities. Off the coasts of California, New England, New Jersey, and Alaska, where the federal government has made lease sales, lengthy disputes and litigation have resulted in additional costs and delays in the pursuit of new energy resources. The severity of these conflicts would have been reduced, in most cases, if state OCS related policies had been articulated and all concerns discussed early in the federal decision-making process.

Issues of OCS Related Activities

The rapid fluctuations associated with OCS oil and gas operations are different from the types of development activity that usually occur in Florida. Although an offshore field may operate for thirty to forty years, there are several phases in which acceleration or deceleration of activity has major impacts on both communities and natural systems. These paragraphs provide a summary of the issues associated with OCS development. A discussion of the Florida management processes which relate to the requirements and impacts of OCS facilities and activities, is given in "Energy Facilities Planning".

Because of the "pressure cooker" atmosphere of oil and gas related activity, an impending OCS development can force people to make major decisions about their community and environment in a very short time. Consequently, the rate of change alone stresses the social, economic, and natural environments; stress which under more familiar types of development is not nearly as acute.

A second distinction is between the impacts associated with energy recovery and those which accompany other types of development. This distinction concerns the "qualitative" aspects of OCS impacts as opposed to the "quantitative" aspects produced solely by the rate of change. The following examples highlight the nature of these qualitative impacts, but are by no means all-inclusive. The diversity of OCS operations precludes any such inventory.

One striking characteristic of oil and gas exploration and recovery is the narrow range of siting requirements for OCS shoreline facilities. Many facilities need a variety of transportation systems and available municipal services. A pipe coating plant, for instance needs level land, dockage, rail service, access to adequate navigational depths, and housing. These siting constraints often make it difficult to suggest alternate sites which are acceptable to all parties. Coordination among public agencies and between the public sector and private industry is critical to minimizing conflicts and impacts.

The transportation requirements of OCS activities put heavy demands upon regional roads. The increased use of roads and larger load lengths creates traffic congestion which generally does not occur with other types of development. In addition, heavy vehicle loads contribute to more road wear for the many coastal roads which rest on unconsolidated soils.

Another major characteristic of oil and gas exploration and recovery is the occupational diversity associated with various phases of construction. Offshore pipeline construction, for example, requires twenty-five separate job types (approximately 96 employees). One of the primary drilling operations, exploratory drilling, involves some thirty-two different job types.

If the exploration for and extraction of energy resources increases in the eastern Gulf of Mexico and the south Atlantic, parts of the Florida coast will change. The pace and intensity of OCS operations may affect state and local interests in a variety of ways: environmental disruption, transportation, state and local revenue gains, new economic opportunities, altered job markets, expenditures for expanded public services, and new onshore facilities. If production of oil and natural gas occurs off the Florida coast, the energy demands of the nation will exercise considerable pressures on the state to accommodate these changes.

Opportunities For State and Local Involvement In Outer Continental Shelf Activities

The impacts of OCS activities affect two major jurisdictions: the federally "owned" area beyond the territorial sea and the state "owned" territorial sea and its coastal onshore area. Clearly, many decisions on activities on the continental shelf in federal waters, concern the citizens of Florida. These concerns are connected with such things as (1) operations that may affect commercial and sport fisheries; (2) activities that require coastal staging, processing, and transportation facilities; (3) possible oil well blowouts and oil spills that may affect fishing, recreation, and vulnerable natural areas; (4) management decisions for state-owned lands; (5) increased economic activity; and (6) decreased dependency on foreign oil.

Federal Consistency, National Interest, and Their Relationship to OCS Related Activities

OCS activities requiring federal licenses and permits are subject to compliance with the federal CZMA consistency provision. Also, under the CZMA a means must be identified for the continued consideration of the national interest in facilities serving more than local needs. Discussions on the national interest are provided in Part II, Section Two.G. A discussion on federal consistency and its relationship to OCS oil and natural gas exploration, development and production plans is given under "Federal Consistency".

Recommendations

The search for energy resources off Florida's coast is a component of the national energy policy. If the resources are discovered, they must be recovered and developed in a manner which is responsive to the quality of life enjoyed by the citizens of the state.

A response to OCS related activity and preparation for leasing off the Florida coast will require participation from a variety of public agencies. Exclusive authority for developing state OCS policy cannot be invested in any one agency because of the range of agency authority, expertise, and involvement.

Nevertheless, Florida's energy management process can be improved to deal efficiently with the complexities of OCS decision-making and to be responsive to the potential magnitude of the effects of OCS related activities. The Florida Coastal Management Program can assist to establish a smoother, more predictable, and affirmative energy management process.

1. The Florida Coastal Management Program will support the state Outer Continental Shelf Advisory Committee in its efforts to strengthen state decision-making capability and coordinate with the petroleum industry, local government, and affected interest groups.

   The Outer Continental Shelf Advisory Committee is administered through the Governor's Office and is composed of state agency personnel, representatives from the petroleum industry, and organized environmental groups. Representatives from local government also participate. This group performs such functions as: (1) gathering information, and analysis, (2) coordinating state responses to OCS issues, and (3) supporting the Gulf of Mexico and South Atlantic Regional Technical Working Groups. (For discussion of OCS Advisory Committee see attachment to Federal Consistency section).

   If a commercial discovery of oil or gas is found which affects the state significantly, the OCS Advisory Committee will provide the basis for forming the Department of Interior, Bureau of Land Management, Intergovernmental Planning Program State Technical Working Group Subcommittee.

Florida Coastal Management Program will assist in the devel-nt of a coordinated state level approach to OCS related vities and assist effective state participation in federal industry OCS decision-making processes which significantly affect state interests.

Current state-level problems with duplication, lack of coordination, conflict between program responsibilities, and the length of time spent on decisions concerning industry proposals, point toward more acute difficulties under broad federal initiatives on the OCS. The state, through the OCS Participation Program in the Governor's Office, will identify deficiencies in the existing management processes, develop genera policy approaches, promote the consent of agencies on unified approaches to OCS issues, provide assistance to local governments and encourage coordination between industry, state and local officials before plans are finalized. In addition to promoting more clear state decisions regarding OCS energy facilities and federal actions, the state OCS program will provide stronger stat participation and influence in the Regional and State Technical Working Groups.

3. The Florida Coastal Management Program will assist the Department of Veteran and Community Affairs in refining Development of Regional Impact guidelines for OCS related facilities, and assist DER in exploring the potential role of the Industrial Siting Act as it applies to oil and gas facilities.

The guidelines for OCS related facilities and other petroleu related complexes will provide a foundation for discussing state and local concerns and expediting the DRI review process. Clear guidelines concerning these facilities will facilitate responses to industry concerning judgements about potential environmental, economic, and social impacts.

A clearer knowledge of the Industrial Siting Act's effects or oil and gas siting decisions will provide a better understanding of the benefits of this Act and possibly lead to improvements in the Act.

4. The Florida Coastal Management Program will coordinate with the Department of Veteran and Community Affairs' Coastal Energy Impact Program.

The Coastal Energy Impact Program offers many opportunities to assist local governments to understand the implications of energy development and to develop strategies to receive the maximum benefits of energy facility development at the lowest reasonable cost. The CEIP's Allocation Strategy Plan will be considered before any decision is made to assist OCS related projects.

5. The Florida Coastal Management Program, in assessing the consistency of the federal license and permit activities described in detail in OCS plans, will carry out the following responsibilities: (1) work with the OCS Advisory Committee, (2) execute timely reviews of OCS plans and reports; and (3) to the greatest extent, use the consistency review as a means to expedite subsequent state, regional, and local decisions.

The determination of consistency is the first formal state review of many major OCS related activities. Since it occurs early in the siting process, the review provides an opportunity to begin coordination between the various actors in OCS related decisions, to outline public and private sector concerns, and, generally, to smooth the way into later, more site specific management processes.

COMMERCIAL AND RECREATIONAL FISHERIES

The growth of the importance and popularity of fishing in Florida parallels the growth in population. Florida established its reputation as a sport fishing paradise for tarpon, bonefish, sailfish, snook and many other species in the late 1800's. Commercial fishing grew rapidly as commercial storage, transportation, and marketing techniques improved. In the decades after World War II, the flourishing tourist industry, growing prosperity, and more recreational time multiplied the ranks of sport fishermen. Commercial fishermen increased more slowly. Over the years, exploitation of the fishery has increased in efficiency and effectiveness through the use of sonar, depth recorders, loran, radar, power trawling, and spotter airplanes.

The Economic Value of Florida's Commercial and Sport Fishing

Economic Impacts of Commercial Fishing

Statistics on the landings and the dockside value of fisheries are gathered by the U.S. Department of Commerce, National Marine Fisheries Services (NMFS). By sampling fishing ports around the state, the NMFS determines the size of the catch and its value for each species on a monthly basis. Although the data are not absolute reflections of catch (Florida Department of Natural Resources, 1976; Pierce and Hughes, 1979), the NMFS statistics presented in Tables 7 and 8 are indicators of the catch and its value.

The figures presented by the NMFS report only the dockside value. Commercial fisheries also provide employment and other benefits far beyond the immediate sale of the fish or shellfish. The economic impact of the commercial fisherman includes not only the sale of the fish but also expenditures on new vessels, maintenance, fuel, financing, ice, etc. The Florida commercial fishing sector sold $73.7 million of fish and shellfish in 1975. These sales generated $50.7 million for industries which provided various services for the fishermen (Prachaska and Morris, 1978).

TABLE 7

FLORIDA FIN FISH COMMERCIAL LANDINGS[1]

	EAST COAST		WEST COAST	
	Pounds	Dollars	Pounds	Dollars
1974[2]	33,897,500	6,058,036.00	72,644,104	17,314,984.00
1975[2]	34,832,815	6,777,299.00	64,821,730	16,896,990.00
1976[2]	36,221,124	8,912,533.00	60,411,186	18,606,586.00
1977[3]	38,503,000	8,961,000.00	47,317,000	17,496,000.00
1978[3]	34,689,000	10,040,000.00	55,986,000	18,701,000.00

TABLE 8

FLORIDA SHELLFISH COMMERCIAL LANDINGS[1]

	EAST COAST		WEST COAST	
	Pounds	Dollars	Pounds	Dollars
1974[2]	17,051,862	10,179,650.00	50,609,140	34,540,406.00
1975[2]	11,374,288	9,613,078.00	51,626,950	40,444,329.00
1976[2]	9,040,702	8,789,327.00	50,725,325	51,545,938.00
1977[3]	9,351,000	9,264,000.00	56,041,000	53,710,000.00
1978[3]	9,183,000	8,677,000.00	54,175,000	53,747,000.00

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[1]Prices shown are those paid to the fisherman.

[2]NMFS statistics reported in Florida Department of Natural Resources, Summary of Florida Commercial Marine Landings.

[3]Preliminary data, unpublished by NMFS.

Direct sales to and by fishermen are not the only economic impacts of the commercial fishing industry. Economic impacts also spread into processing, marketing, and retailing areas as well. For example, the Florida Restaurant Association reports that more than one half of the food served in restaurants is seafood. Allen Morris and Fred Prochaska report (1979) the following employment for fish processing establishments and total values of processed fishery products in Florida (Tables 9 and 10).

Commercial seafood statistics indicate the number of jobs, income, tax revenues, and other benefits that accompany the commercial fishing industry. But we must not lose sight of the most important value of all; that through the seafood industry, a nutritious and desirable food is made available to a variety of people. Many of these people, such as the elderly or poor, need a competitive source of nutrition, yet they cannot catch their own fish. The commercial fishing industry has an important place, not only in the marketplace, but also in filling basic health and social needs.

Economic Impacts of Recreational Fishing

Although no records equivalent to commercial landings exist for recreational fishing, national assessments of this industry estimate that recreational fishing yields twice the economic benefits (employment, etc.) and 40% of the food for human consumption as commercial fisheries (National Marine Fisheries Service, 1975). Recreational fishing also is a principal motivator behind the success of other outdoor recreational industries such as boating.

From North Carolina to Florida, the number of anglers is increasing at a rate estimated to be twice the population rate in the United States (Hinman, 1978). Tourist surveys conducted by the Florida Department of Commerce indicate that in 1978, 26% of the 22 million auto travelers and 6.6% of the 10 million air travelers find fishing one of the outstanding attractions of Florida (Florida Department of Commerce, 1979).

In sum, recreational fishing makes a large contribution to the state's economy. Of the millions of tourists who visit Florida each year, many come for the fishing. Additionally, many of our residents sustain themselves and their families on catches derived from recreational fishing. Thus, it is certain that recreational fishing will continue to play an important part among our coastal activities.

Major Federal Legislation and Programs Related to Fisheries

Many federal agencies have missions which are carried out within Florida's coastal areas and which affect various aspects of our fisheries. The U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Department of Commerce's Economic Development Administration, along with other federal agencies, have important responsibilities which concern fisheries habitats or development. The legislation and programs described in the following,

TABLE 9

FLORIDA FISH AND SHELLFISH PROCESSING ESTABLISHMENTS

Year	Average Employment - Year
1970	4675
1971	4745
1972	4722
1973	4812
1974	4150
1975	4073

TABLE 10

VALUE OF PROCESSED FISHERY PRODUCTS IN FLORIDA

Year	State Total - Millions of Dollars	
	Current Dollars	Real Dollars[1]
1970	111.8	85.3
1971	127.5	86.9
1972	132.0	74.7
1973	157.9	75.8
1974	135.3	64.7
1975	156.3	59.9

[1]A simple average of the wholesale price indices for frozen packaged fish and other seafood and fresh packed fish and other seafood was used to obtain real dollars; 1967 = 100.

directly address fisheries, and are areas with which the FCMP must work closely in dealing with fishery issues.

The Magnuson Fishery Conservation and Management Act of 1976 (PL 95-265)

The U.S. Fishery Conservation and Management Act of 1976 is the most significant piece of federal legislation affecting marine fishery resources. It is designed to perpetuate the nation's fishery resources and to promote efficient utilization. The Act:

1. Sets forth "national standards" for the management of fisheries.

2. Establishes a 200 mile "fishery conservation zone", which extends from the boundary of state sovereignty out to a distance 200 nautical miles from the baseline from which the territorial sea is measured; and declares an exclusive national jurisdication over all fishery resources in that zone, including oceanic species that move into estuaries or rivers to spawn and fishery resources of the Continental shelf. The highly migratory tunas, skipjack, yellowfin, bigeye, and bluefin tunas and albacore, are excluded.

3. Declares that fishing by foreign vessels within the U.S. fishery conservation zone no longer will be allowed except under an international fishery agreement and with permits specific to each fishery in conformance with a fishery management plan.

4. Emphasizes regional development of fishery management plans by establishing eight regional fishery management councils. Voting members of each council include the principal fishery management official in each State in the region, the NMFS regional director, and individuals selected by the Secretary of Commerce from lists submitted by State Governors in the region. The councils, which are supported through the U.S. Department of Commerce, prepare fishery management plans for both domestic and foreign fishing in the fishery conservation zone.

   The regional fishery management councils have the authority and funding to set up their own staffs and also to draw upon the services and facilities of the National Marine Fisheries Service and other federal agencies to organize, develop, and evaluate information on the development of management plans. Florida is a member of two councils: the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council.

Saltonstall - Kennedy Act

The United States had a fisheries trade deficit of $2.2 billion in 1978. The National Advisory Committee on Oceans and Atmosphere reported in 1979 that with a potential of perhaps 20% of the world catch, but with a current actual share of only 4%, United States

fisheries generally can be considered an underutilized resource. Fisheries thus are an appropriate area for the investment of public funds in programs promising good returns to the nation.

The Saltonstall - Kennedy Act established a reserve fund to further the development of the fishing industry in the United States. Funded on a competitive basis, any person or group, including state and local governments, may propose projects and apply for funding.

Coastal Zone Management Act

President Carter, in his second Environmental Message (August 2, 1979), set out the Administration's concern for fisheries within the context of coastal management: "Nearly half of our multibillion dolla fishing industry depends directly on nearshore waters where fish spawr and feed". The President said that more than 50% of the Atlantic shellfish beds alone have been closed by contamination. Florida's shellfish areas also have suffered from pollution.

Protection of fisheries habitat and the proper siting of water dependent facilities such as fishing facilities are among the national purposes of the federal Coastal Zone Management Act (Knecht, April 19, 1979 and September 17, 1979). State coastal management programs are encouraged by the Act to manage or guide land and water uses "... seaward to the outer limit of the United States territorial sea" (Section 304). State coastal management agencies are given an opportunity to participate in decisions affecting inshore and offshore fisheries and their utilization.

As a part of its funding to state coastal programs, the federal Office of Coastal Zone Management provides support to states. The goa of the N.O.A.A. Federal/State Fisheries Program is to help states meet the purpose of the CZMA as it applies specifically to living marine resources in the territorial sea and to shoreside facilities.

The Florida Coastal Management Program will not develop a separat fisheries expertise, but will work with the Florida Department of Natural Resources, the Florida Game and Fresh Water Fish Commission, and other agencies having fishery responsibilities, in the development and implementation of a comprehensive management program for living resources.

National Marine Fisheries Service

The National Marine Fisheries Service is the marine resources arm of the National Oceanic and Atmospheric Administration in the Department of Commerce. The agency is responsible for implementing the Fishery Conservation and Management Act, law enforcement, fishery statistics, marine recreation surveys, habitat protection, and marine mammals and endangered species management.

State Legislation and Responsibilities

A major part of the nation's overall ocean resources lie within the territorial sea under state jurisdiction. As steward for these national resources, states have a responsibility to look after the well being of the commercial and recreational fishing industries. The following factors underscore the vital role of the state to protect and encourage the proper development of marine resources.

- Florida's onshore areas support many activities which are necessary for commercial and recreational fishing. Ports and fishery processing facilities, transportation facilities, and support services must be located on or close to the shore. Decent recreational fishing depends on adequate access to fishing areas.

- The state's coastal wetlands and adjacent estuarine areas provide habitat for fish and shellfish. The health of estuarine areas is important to all the important finfish and shellfish industries (see also discussion and recommendations in "Estuaries" included in the Issues of Special Focus).

- The nearshore and offshore waters of the state provide fish habitat and are important to the activities of the commercial and recreational fishermen.

Florida manages its marine fisheries primarily through the implementation of Chapter 370, F.S., Saltwater Fisheries. The law is administered by the Department of Natural Resources, Division of Marine Resources and the Law Enforcement division. For the most part, the state manages its fisheries (primarily commercial fisheries) by a variety of regulations which restrict user access and efficiency. These include size limits, seasonal closures, gear restrictions and limitations, area closures, and requirements for permits or licenses under certain conditions or in particular areas. In addition to the primary state authority affecting fisheries, numerous special acts of the legislature regulate harvesting of fish within county boundaries.

Chapter 370 directly affects fisheries and the users of the resource. Less apparent, but no less significant, are state and local laws which indirectly affect fisheries. Water resources and pollution control laws (Chapter 376 and Chapter 403, F.S.) and laws authorizing the management of publicly owned lands (Chapter 253, F.S.) are important to insure the quality of aquatic and wetland habitats and to oversee the use of estuarine and bay bottoms. These laws are strong management and regulatory instruments clearly affecting nearshore and shoreline areas where they protect important fish and shellfish habitats.

In 1980, the legislature created the Saltwater Fisheries Study and Advisory Council whose 13 members represent commercial, recreational, environmental, and consumer interests, as well as both houses of the Legislature. The Council is directed to recommend to the

Legislature, by February 1, 1982, a comprehensive saltwater fishery conservation and management policy for the saltwaters of the state.

Upon adoption of the policy, the Council will develop recommendations that, at the minimum, include:

1. State standards to be used in managing and conserving the saltwater fisheries consistent with the policy.

2. Recommendations for new legislation or amendments to existing legislation. Such recommendations shall address existing general acts and special acts relating to saltwater fisheries, and delegation of rulemaking authority to the executive branch to carry out the policy.

3. Recommendations as to appropriate administration of the policy, including appropriate agency or agencies under the executive branch to be charged with administering the policy and appropriat funding of the agency or agencies.

4. Recommendations providing for the appropriate funding of the policy. Such recommendations shall address permitting of all fishing activity in the state territorial waters, and fees for inspection and supervision of quality control of saltwater products.

5. Recommendations for enforcement of the policy, and funding for enforcement efforts.

6. Recommendations on marina habitat improvement and fish propagatio to increase the abundance of fish.

7. Recommendations on marine fisheries research programs.

8. Recommendations on a salt and fresh water boundary for enforcemen purposes.

9. Recommendations of procedures for continuing review and update of the policy.

Commercial and Recreational Fisheries Issues

The problems confronting Florida's commercial and recreational fishermen are not simple. They are embedded in such paramount coastal issues as loss of access to the shore, pollution, and loss of habitat. As Florida's population grows, and as the demands placed on its resources and competition for valuable shoreline space intensify, the state's fishermen will be among the first to feel the impacts.

Protection Of Fisheries Habitat

Most fish and shellfish are dependent on the state's sheltered estuaries and bays and other nearshore areas during all or part of

their life cycles. National Marine Fisheries Service landing statistics indicate that in 1976, about 1,757 million pounds of fish and shellfish valued at nearly $390 million were taken from the Gulf of Mexico and northern Gulf estuaries. Of these totals, about 89% of the catch and 92% of the value of commercial fisheries were species considered to be dependent on estuaries for the completion of all or part of their life cycles (Diener, 1979; Sykes, 1967). Moreover, approximately 70% of the recreational fishery is estuarine-dependent (Lindall and Saloman, 1977).

Some saltwater animals spend their life in estuaries, while most spawn offshore and the young move into estuaries to feed, avoid predators, and find cover and suitable growth conditions. Tarpon, snook, sea bass, seatrout, menhaden, gag and red grouper, bluefish, cobia, shrimp, jacks, pompano, snappers, bay scallops, mackerels, sheepshead, and drum - to name a few - use estuaries as nursery areas. In addition to providing habitat for saltwater animals of recreational and commercial importance, marshes, mangroves, and seagrass beds function naturally in filtering run-off, storing water, recycling nutrients, and controlling erosion (for additional discussion, see "Estuaries" in this section).

Florida has extensive estuaries, bays, and other coastal areas with emergent vegetation such as seagrasses. There are about 395,000 acres of mangroves and an estimated 502,000 acres of submerged vegetation in Florida (Lindall and Sykes, 1972; Lindall and Saloman, 1977). Nevertheless, there has been a steady decline in fishery habitats which has reduced the capacity of the natural system to sustain the most desirable species.

Some of the worst examples of estuarine pollution, dredge and fill, diversion of fresh water from estuaries, and other environmentally degrading activities are found in Florida's nearshore waters. These events have led to loss of productive vegetation and cover, loss of open bay areas, alteration of freshwater flow patterns, and other changes affecting the health of fishery stocks.

It was not until the late 1960's that research conducted at the Department of Natural Resources laboratory in St. Petersburg and other similar centers in the southeast produced enough data to convince even the most reluctant persons that laws were needed to protect fishery habitats. (As a result of this research, the DNR began an artificial fishing reef construction program in Florida's nearshore and coastal waters. A number of large man-made artificial reefs provide valuable habitat for commercial and recreational species of fish. The reefs also provide hiding places for smaller fish -- the food supply for the species important to fishermen.) Since the initiation of protection, the rate of habitat loss has been reduced greatly. However, many remaining habitats are constantly stressed and the long-term survival of many ecosystems is by no means assured. Moreover, even the untouched ecosystems yield only a finite amount of resources which is being divided among growing numbers of fishermen.

Problems from growing numbers of fishermen and from a decrease i the amount and quality of habitat have been noted by the Gulf of Mexi Fishery Management Council. "There are diverse user groups dependent on shrimp of differing sizes in the Gulf area. ... the conflict between interest groups is often acute in the states' internal waters ... This problem will not be easy to solve since the number of recreational and commercial shrimpers is apparently increasing" (Gulf of Mexico Fishery Management Council, 1979).

In sum, individual catches, whether recreational or commercial, tend to decline in spite of increased effort and efficiency. This contributes to a major fisheries problem: competition between groups for a limited resource.

Fishing Ports and Seafood Processing Facilities

The commercial fishing industry is separated into two distinct, yet interdependent groups: fishermen and fish processors. Fishing ports often concentrate on a few species. Thus, one port or region will deal primarily in shrimp, another in mackerel, grouper and snapper, and still another in menhaden. Often, because of the operations associated with the type of catch or the need for expansion associated with the market for the catch, fishermen and processors at one port will experience different environmental and other problems from those in a port in an adjacent region.

As shorefront land soars in value and environmental concerns are accommodated, most water dependent users have more trouble finding developable, affordable waterfront space. The problem does not appear to be short term, nor does it appear to be one which will improve. Some of the commercial fishing industry may feel this squeeze more acutely than other water-dependent but less dispersed industries. Thus, fishermen and processors located in high growth areas and dependent on harvesting a particular fishery from their region may be hard pressed in the competition for usable shorefront land.

Like ports handling a greater diversity of products, fishing port require adequate channel depths, access to public water and sewer lines, and shoreside transportation facilities. The Florida Coastal Management Program has addressed the general concerns of ports and alsc has included a specific section on dredged material disposal in other sections of this document.

Fisheries Management and Federal/State Relations

State and federal levels of government are becoming involved in the issues confronting commercial and recreational fishermen. An array of new federal authorities is being applied to manage marine resources and activities from the shore to beyond the outer Continental Shelf. In a few years, laws have been passed, or major amendments have been made to older laws, in response to the perception that the oceans contain significant nutritional resources, contain minerals which may replace dwindling land-based deposits, and can fill some of

the nation's energy needs. Thus, the Marine Protection, Research, and Sanctuaries Act, the Clean Water Act, the Outer Continental Shelf Lands Act amendments, and the Fishery Conservation and Management Act were passed in the 1970s. Now, as the implementation of these laws is becoming a reality, fishermen, other users of marine resources, and governmental agencies are finding themselves faced with several concerns:

1. Because of the fragmented federal system, it is difficult to know when one program's policies take precedence over or guide those of another program;

2. The potential for inefficiency is increased;

3. It is not clear whether, as the separate missions are pursued, state and user concerns will be adequately considered;

4. In many cases, the states will not be prepared to deal with the changes generated by the federal programs.

Interactions Between Outer Continental Shelf Oil and Gas Operations and Fisheries

Illustrating the conflicts arising between federal programs and fisheries are potential interactions between outer Continental Shelf (OCS) oil and gas development and fisheries. Federal energy initiatives under the OCS Lands Act present possible conflicts with the purposes of the Fishery conservation and Management Act, other fishery related legislation, concerns of the state, and activities of the fishing industry.

The use of prime fishing areas by oil and gas operations has created several issues: (1) pre-emption of fishing grounds by drilling rigs, platforms, pipelines, subsea completions, and the safety zones which surround these structures, (2) debris from platforms, drilling rigs and service vessels obstructing trawler operations; (3) offshore oil and gas maritime traffic which can affect or be affected by slower and less maneuverable fishing vessels; and (4) the environmental impact of oil and gas exploration and development.

The Development of the Fishing Industry

The benefits of the Fishery Conservation and Management Act are beginning to be felt around the nation's coastline. Although its influence on Florida's commercial and recreational fishing industries is not yet clear, American fishermen have responded vigorously to the protection the law gives them.

Total U.S. fish catches have risen steadily since the enactment of the FCMA. In 1978, commercial fishermen landed a record 6.1 billion pounds of seafood with a dockside value of $1.9 billion. Domestically, the FCMA has resulted in more investment in the industry.

Several regions of the U.S. are experiencing a rebirth of the shipbuilding industry, and significant sums are being invested in processing plants, and fishing gear.

The point is that "Within the next decade, it is likely we will see a very different fish industry emerge than we currently have" (Carlin, 1978). Other areas of the south are investigating the centralization of seafood processing and marketing operations in order t facilitate regulatory approvals, strengthen local markets for seafood provide by-product disposal on a cost sharing basis, and foster more efficient use of capital resources.

Florida should be prepared to respond in a coordinated and affirmative way when faced with the requirements for siting new facilities or for significantly improving existing ones. Whether fror the regulatory, planning, or funding perspective, public agencies should be informed about the requirements of fisheries facilities and should have the capability to play a constructive role in working witl changes in the fishing industry.

As discussed earlier, the Fishery Conservation and Management Act (FCMA) requires regional fishery councils to prepare fishery management plans. While the FCMA addressed many issues associated with fisheries in federally controlled waters beyond the territorial sea (state waters), the management of fisheries within waters of coastal states is still, with some exceptions, under state jurisdiction. Fish of course, are mobile and move not only into and out of the territoria sea, but from waters in one state's jurisdiction to those of an adjacent state. Clearly, to reap the full benefits of the FCMA, it is desirable to assure coordination among the various state fisheries management councils.

Coordination between the regional fishery management councils, National Marine Fisheries Service, U.S. Fish and Wildlife Service, and state efforts is being fairly well achieved. As more management plans are implemented, and as enforcement of these plans is stepped up, the state must maintain effective participation in decisions that affect its commercial and recreational fishermen and environmental quality.

Recommendations

The Florida Coastal Management Program must address ways to maintain, promote, and enhance the Florida commercial and recreational fishing industries in a fashion that is consistent with the long-term productivity of our living marine resources.

Several problems involving the siting of fishery-related facilities and constructing and maintaining channel depths are discussed in the issues and recommendations in the Ports and Dredged Material Disposal sections. These sections should be read in conjunction with this section.

1. The Florida Coastal Management Program should use the Interagency Management Committee to fulfill the following objectives:

- Help refine a comprehensive approach to the management of living marine resources with emphasis on nearshore habitats.

- Bring State and Federal coastal zone management and fisheries management objectives and operation closer together.

- Provide better information for well informed decision-making about living marine resources.

- Improve management of fish stocks.

The FCMP can address many of the issues identified in this section. Some of the specific problems and research needs which can be answered by this program include:

a. Complete data on the landings of each fishery species. The major source of information, commercial landings, may represent as little as 15-20% of the total catch of species which are shared by sport and commercial fishermen. For species which are illegal to sell, there are no landings data. Proper fishery management and allocation of the resource, require accurate total landings data.

b. Establish the basic biology; especially for far-ranging migratory species. This type of research requires long-term involvement (5-10 years) by several researchers under a coordinated and permanent research program. The establishment of natural mortality levels and age growth dynamics similarly requires long-term effort and cannot be achieved without accurate and complete records of fishing mortality. These are among the major areas in which knowledge of the resourses is lacking.

It should be noted that the FCMP is not intended to fund random research proposals; but, only those projects that are essential to making the next advance in improved and unified management. Each project must be clearly tied to the overall fisheries management effort and to the maximum extent coordinate with other relevant state programs, i.e., water quality, state lands, aquatic preserves, etc.

2. The Florida Coastal Management Program should assist the Department of Natural Resources to establish or maintain an information program directed to fishermen and consumers.

Individual catches are declining and competition and conflict is increasing between sport and commercial fishermen. Research results and the efforts being made to address the problems must be communicated to concerned and affected interests. An information or education program is an important element

to resolve conflicts occurring between recreational and commercial fishermen and in heading off future problems.

3. The Florida Coastal Management Program should promote the integration of fishery concerns into the restoration or creation of habitat.

Two state programs which are involved in restoring or creating new habitat are the Water Resources Restoration and Preservation Program administered by the Department of Environmental Regulation and the Florida Artificial Fishing Reef Program administrated by the Department of Natural Resources.

Under rules established pursuant to Chapter 403, F.S., Water Resources Restoration and Preservation, funds are available to governments if the action has promise of long-term effectiveness. The rules outline selection process for projects and the allocation of funds. Included among the criteria are considerations for access to water bodies and the ecological values of the water body.

The Artificial Fishing Reef Program provides funds to local governments for reef design, transportation, and other costs. This program is supported by state funds, the Florida Sea Grant College, and the Department of Natural Resources.

4. The Florida Coastal Management Program will assist with maintaining a working relationship between the various public and private sector groups with responsibilities in commercial and recreational fisheries.

The National Marine Fisheries Service (NMFS), the Florida Department of Natural Resources, the Regional Fishery Management Councils, Florida Sea Grant, and others have established long-term working relationships. Some of the actions include the organization of the Habitat and Environmental Protection Committee under the Gulf of Mexico Fishery Management Council and the creation of federal teams to work with states on habitat protection. The FCMP can insure that affected state agencies are involved in fisheries issues through the Interagency Management Committee. In addition, many of the areas in which the FCMP is involved such as Aquatic Preserves, minimum estuarine inflows, and outer Continental Shelf oil and gas development, touch fishery concerns.

5. The Florida Coastal Management Program through the Interagency Management Committee will assist with addressing the waterfront siting issues of fishing ports.

As discussed in this section, the facility requirements of the commercial fishing industry are changing. The state should be prepared to meet these new requirements and market conditions with a clear indications of management process and with effective

coordination among state and local agencies. The FCMP can help by refining environmental, economic and social analyses and developing implementation strategies which preserve state, local, and industry responsibilities for maintaining and developing living marine resources.

COASTAL RECREATION; ACCESS; AND THE URBAN WATERFRONT

> "... That sun-drenched, shimmering, glorious expanse of land and water that is Florida.... Our job is to protect it, to use it wisely and enjoy it, to ensure that those of the generations to follow may be as blessed as we." (Simonds, 1980)

These words capture the extraordinary lure of Florida's coast to millions of people; a lure so powerful that the state's population is projected to reach more than eleven and a half million residents by 1990. Our full time residents and the tourist population will increase steadily and will continue to place pressure on state and local governments to provide quality opportunities for the enjoyment of Florida's natural resources.

The heavy demand for coastal-oriented recreation is documented in surveys by the Florida Department of Natural Resources, Division of Recreation and Parks. The Department estimates that in 1979 more than 115 million visits were paid to Florida's saltwater beaches. During the same year saltwater fishing accounted for nearly 24 million visits to the shore and coastal waters. There is little doubt, given present coastal development, that the state will be faced with a tremendous challenge to maintain its present level of recreational and shoreline access opportunities.

State and local governments cannot just maintain, but must increase the quality of recreational benefits, especially near urban areas. Tourism is the largest industry in the coastal area. In 1978, 32.3 million visitors to the state spent more than $12.9 billion thus providing the cornerstone of Florida's economy and generating sizeable sales tax revenues to Florida. The challenge to provide opportunities for high quality recreational experiences must be met for economic reasons, if for no other.

Local, State, and Federal Participation in Recreation and Access

The primary responsibility for providing local recreation opportunities within the state lies with cities and counties whose efforts rely on supplemental recreation and acquisition assistance from the state and federal governments. State government assumes the responsibility for promoting and coordinating outdoor recreation efforts. To accomplish this, it must bridge the gap between the national parks and recreation areas administered by the federal government, and the neighborhood and community playgrounds and recreational facilities

traditionally provided by local government. The Florida Department of Natural Resources bridges this gap in several ways, two of which involve: developing state parks, wilderness areas, and trails, and acquiring land under the Conservation and Recreation Lands Program; and coordinating public and private programs which affect recreation and access.

Policies and programs affecting the provision of outdoor recreation opportunities are dispersed among local, state and federal agencies and private agencies. These are summarized in Tables 11 and 12. Obviously, because of the variety of governmental actions which affect recreation, coordination is a critical factor to assure that public needs are met efficiently and effectively. To the extent that these governmental programs - state, federal, and local - contribute to an overall statewide recreation program, the state must assume the responsibility for the necessary coordination.

The Florida Department of Natural Resources conducts the primary responsibilities for recreation planning under Chapter 375, Florida Statutes (see Outdoor Recreation and Conservation). The Department of Natural Resources, Division of Recreation and Parks prepares Florida's Outdoor Recreation Plan to provide comprehensive statewide guidance for recreation programming and to influence the decisions of potential recreation suppliers. This plan measures resource supply, anticipates public demands and needs, and guides the way funds are used to satisfy recreation needs, identifies the major issues which affect outdoor recreation, and proposes a range of options for resolution of the issues.

Recreation and Access Issues

The theme of recreational and access issues can be traced throughout the Florida Coastal Management Program in sections covering marinas, recreational fishing, and barrier islands. The following discussion covers only a small part of a large and complex area, and thus only partially covers the issues.

Coastal recreation is a growing, healthy enterprise. Public interest in, and demand for, recreational opportunities in coastal areas is growing, as old uses and new compete for the limited shoreline resources available in Florida. Out of approximately 1160 miles (DNR, 1971) of saltwater beach, only about 272 miles (DNR, 1979) is in federal, state, or local government ownership. Some of this - such as lands on a military base - is not always accessible to the public; however, several Air Force bases in Florida provide extensive opportunities for public use under agreements with the state (see Coastal Shorefront Areas section).

The health and growth of coastal recreation is not happenstance. Much public and private effort goes into sustaining outdoor recreation. Nonetheless, the status of recreational use of the shore and coastal waters is not secure because of the conflicting demands which are made upon this area. There are other uses for the shoreline which

TABLE 13

FEDERAL AND STATE ASSISTANCE PROGRAMS

AVAILABLE TO FEDERAL, STATE AND LOCAL AGENCIES

FOR PROVIDING PUBLIC RECREATION OPPORTUNITIES IN FLORIDA

		LAND ACQUISITION	DEVELOPMENT OF AREAS & FACILITIES	TECHNICAL & ADVISORY SERVICE	CONSUMER EDUCATION	PLANNING	RESEARCH
FEDERAL	HERITAGE CONSERVATION AND RECREATION SERVICE	FSL	FSL	FSL	FSL	FSL	F
	NATIONAL PARK SERVICE	F	F	SL		F	F
	U.S. FISH AND WILDLIFE SERVICE	F	F	SL	FSL	F	F
	U.S. FOREST SERVICE	F	F	FSL	FSL	FSL	F
	U.S. SOIL CONSERVATION SERVICE	L	L	L	L	L	
	U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT	L	L	L		L	
	U.S. ARMY CORPS OF ENGINEERS	FSL	FSL*	FSL	SL	FSL	FS
STATE	DEPARTMENT OF ADMINISTRATION			SL		S	S
	DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES	S	SL	L	SL	S	S
	DEPARTMENT OF COMMERCE			SL	SL	S	SL
	DEPARTMENT OF COMMUNITY AFFAIRS	L	L*	S L		L	
	DEPARTMENT OF EDUCATION	SL	SL	SL	SL		SL
	DEPARTMENT OF ENVIRONMENTAL REGULATION		SL*	SL	SL	SL	SL
	GAME & FRESH WATER FISH COMMISSION	S	SL	SL	SL	S	SL
	DEPARTMENT OF HEALTH & REHABILITATIVE SERVICES	S	SL	SL	SL	S	
	DEPARTMENT OF HIGHWAY SAFETY & MOTOR VEHICLES			SL*	L		
	DEPARTMENT OF NATURAL RESOURCES	SL	SL*	SL	S L	SL	SL
	DEPARTMENT OF STATE	SL*	SL*	SL	SL	SL	SL
	DEPARTMENT OF TRANSPORTATION	SL	SL	SL	SL	SL	S

F» Program Operational at the Federal Level
S» Program Operational at the State Level
L» Program Operational at the Local Level
*» Agency has a Regulatory Program that can Affect Recreation Opportunities

Updated from Outdoor Recreation In Florida - 1976 Florida Department of Natural Resources.

TABLE 14

FEDERAL AND STATE ASSISTANCE

IN PROVIDING PRIVATE OUTDOOR RECREATION OPPORTUNITIES

		LOANS AND CREDIT ASSISTANCE	PROMOTIONAL ASSISTANCE	TECHNICAL & ADVISORY SERVICE	CONSUMER EDUCATION	PLANNING	RESEARCH
FEDERAL	Heritage Conservation and Recreation Service		X	X	X	X	X
	NATIONAL PARK SERVICE				X		
	U.S. FISH AND WILDLIFE SERVICE				X		
	U.S. FOREST SERVICE			X	X		
	U.S. SOIL CONSERVATION SERVICE			X	X		
	U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			X			
	U.S. ARMY CORPS OF ENGINEERS			X	X		
STATE	DEPARTMENT OF ADMINISTRATION			X	X	X	
	DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES			X	X		X
	DEPARTMENT OF COMMERCE		X	X	X		X
	DEPARTMENT OF COMMUNITY AFFAIRS			X	X		
	DEPARTMENT OF EDUCATION			X	X	X	X
	DEPARTMENT OF ENVIRONMENTAL REGULATION			X	X	X	X
	GAME & FRESH WATER FISH COMMISSION			X	X		X
	DEPARTMENT OF HEALTH & REHABILITATIVE SERVICES			X	X		
	DEPARTMENT OF HIGHWAY SAFETY & MOTOR VEHICLES				X		
	DEPARTMENT OF NATURAL RESOURCES		X	X	X	X	X
	DEPARTMENT OF STATE	X	X	X	X	X	X
	DEPARTMENT OF TRANSPORTATION			X			

X = Program in operation

Updated from Outdoor Recreation In Florida - 1976 Florida Department of Natural Resources.

minimize opportunities for public recreation such as housing, development of highways and parking lots, and port facilities.

Often, outside factors are not the only ones responsible for recreational conflicts. Recreational demands are competing among themselves. Thus, recreational values clash over the provision of a social beach or the solitude of wilderness; water-skiing or fishing; surfing or swimming - the list goes on. Comprehensive coastal management approaches reach across the issues to help resolve the conflicts among recreational uses and to minimize conflicts between recreation and other activities.

As a part of its comprehensive recreation planning process, the Florida Department of Natural Resources, Division of Recreation and Parks conducted an intensive survey of the residents of Florida in 1978 through 1979. In addition to asking about participation in recreational activities, the Division asked residents what they felt were the major recreational problems in Florida.

The following issues surfaced in response to the survey and also were expressed in public workshops. They are not ranked in order of priority, and are not exclusive, but they are examples of common perceptions of problems.

* Access opportunities to the coast for recreation are in short supply. Water and beach recreational resources cannot be fully utilized because of shrinking access opportunities.

* Valuable recreational resources, especially beaches and other natural areas, are threatened by development.

* There are too few recreation areas and facilities. Overcrowding was frequently cited at shoreline facilities. Marine users also see congestion as a threat to the enjoyment of boat-based recreation.

* Various types of environmental problems adversely affect the quality of outdoor recreation. For example, in some areas, swimming and fishing are affected by poor water quality; water-borne debris, and shoreline litter prevent enjoyable recreational experiences.

* Broad information about recreation, natural and cultural resources, and access are not available. Sound decisions which produce the best conservation practices and the best use of resources cannot be made without adequate information.

* Federal, state, regional, and local land use and environmental management programs are not coordinated to maximize the recreational values of Florida's resources.

* Improvements are needed at existing facilities. For instance, a Florida Department of Commerce study found that half of the public boat ramps surveyed had one or more deficiencies that would discourage use (Florida Department of Commerce, 1979).

Urban Waterfront Issues

Several coastal cities which either were or still are key links in trade and transport have felt the impacts of changes in commerce, technology, and living patterns. In earlier days, waterfronts in these areas were hubs of leisure and commercial activity. Over time, in many places, the public gradually lost its access to the urban shore as it deteriorated or became walled off. Finally, in many areas, the urban waterfront has become only a fragment of the metropolitan whole, enjoyed, if appreciated at all, by a few, and lost to the total community.

Several factors discourage a community's ability to make full and efficient use of the urban edge. Among these, transportation barriers, inefficient land use, water pollution, and blight, prevent the community from fully realizing the benefits of this valuable area.

Recommendations

The state Coastal Management Program, through the Department of Natural Resources' Florida Outdoor Recreation Plan and the activities of other state and local agencies, can pursue several avenues that address recreation and access. Recreation and access are more than narrow, local issues. They must be recognized as general statewide concerns and basic ingredients of the "Florida quality of life".

1. The Florida Coastal Management Program will utilize the Interagency Management Committee to examine access issues, including those addressed in the Florida Outdoor Recreation Plan, and make recommendations for coordinating the activities of public agencies which affect access and recreation.

The state is realizing that demands on the coast are increasing rapidly, while opportunities to obtain access for swimming, fishing, boating, and the general enjoyment of the coast are diminishing. The Department of Natural Resources is pursuing an access and recreation program as a part of its statutory responsibility under Chapter 375, F.S.; however, the activities of other agencies, federal, state, and local, also affect recreational access, as well as recreation itself. Governmental activities in the fields of transportation, economic development, pollution control, and hurricane preparedness, are intertwined with recreation and with access. Solutions to access and recreation problems, like many other issues, can be achieved best with more coordinated management of public resources and programs.

Interagency strategies for supplying public access to beaches must be developed and adopted to help the public to attain its right to access to the portion of the coastal shoreline over which the State has sovereignty. These strategies must address the need for access corridors to beaches and other coastal areas where high demand for private waterfront ownership would otherwise seal off access.

A great deal of work remains. Tasks involve identifying new ways to reach the shore; creating new state and local techniques to address access problems; locating funds to purchase, improve, and maintain accessways; resolving legal difficulties; assigning agency responsibilities; administering accessways; and encouraging private sector participation. The latter can be accomplished through a clarification and strengthening of the state landowner liability limitation law (Chapter 375.251, F.S.) and by distributing information on the law to major landowners and to local governments.

A number of beach access acquisition mechanisms could be exploited by local governments if the mechanisms were better understood in the context of state law and the needs of Florida communities. Consequently, the coastal program will assist DNR in examining alternative acquisition tools such as prescriptive easement, dedication of access lots, dedication of roads providing access, and provision of access through urban redevelopment.

This recommendation is compatible with the interagency agreement between the Office of Coastal Zone Management (U.S. Department of Commerce) and the Heritage Conservation and Recreation Service (U.S. Department of the Interior) which is designed to:

> (1) Coordinate the planning assistance activities of the Office of Coastal Zone Management (OCZM) and the Heritage Conservation and Recreation Service (HCRS) in accordance with the Administration's objectives; (2) encourage interagency coordination of implementation activities within and between Federal, State, and local levels of government; and (3) provide for coordinated delivery of OCZM's and HCRS's financial support resources.

The agreement is designed to achieve compatibility between state coastal management, outdoor recreation, and historic preservation programs. Agencies with responsibilities for these programs should jointly explore opportunities to address shoreline issues in ways which improve the coordination of land and water development and historic preservation; promote a better understanding of coastal management, outdoor recreation, and historic preservation; and improve federal, state, regional, and local capabilities to deal with impacts of energy-related developments.

2. <u>The Florida Coastal Management Program will encourage redevelopment and revitalization of urban waterfronts for recreation, access, increasing the utilization of urban land, and economic development</u>.

Since the intensity of the access issue is often related to the number of people desiring such access, it is clear that a major focus for access planning in coastal management will be in and around urban areas. Urban waterfronts represent a significant area of the coastline where a variety of economic and cultural activities can flourish and where these activities can be actively promoted within the state coastal management program.

The Florida Coastal Management Program (FCMP) will join with other state efforts to augment current policies and programs to conserve existing communities. Thus, the FCMP will coordinate with those urban areas carrying out mass transportation programs affecting coastal use. The Program could promote the creation of regional waterfront development commissions similar to the San Francisco Bay Area Conservation and Development Commission in order to foster public and private participation in the revitalization of local waterfront areas. Such bodies could serve as clearinghouses for information on area redevelopment and rehabilitation, could coordinate the promotion, planning, and funding of local redevelopment projects, and could increase compliance with established waterfront land use and access policies.

COASTAL STORMS: HAZARD AND PROTECTION ISSUES

A result of technological progress is a decrease in respect for the power of nature. This fact is most apparent in the recent trend to develop in coastal high hazard flood prone areas. Until 50 years ago, man built with respect for nature, as shown by the stilt houses in Everglades City and homes built on Indian mounds or fossil dunes on Marco Island. Through the early 1900's, coastal settlers carefully designed and constructed their residential structures to avoid the hazards of flooding and erosion. The trend reversed with the post-World-War-II building boom. Man began to try to adapt the environment - barrier island or coastal marsh, bay bottom or floodplain - to fit his plans for development, rather than to plan developments in harmony with nature. Out of ignorance or arrogance, a legal, financial and technical climate was established which promoted development in flood prone areas.

Reasons for development in flood hazard areas were primarily related to the demand for property on or near a waterfront. While many flood hazard areas were not intrinsically suitable for development, modern technology allowed the land to be reshaped by dredging and filling, and sold as waterfront homesites. Little, if any, consideration was given to the potentially destructive natural forces of floods and hurricanes.

Having created hazards with technology such as large scale landfilling, dredging and earth moving, solutions frequently relied upon still more technology - riprap, seawalls, dams and drainage canals. These solutions are costly, energy consumptive, and environmentally destructive. They frequently are short-term and create their own set of problems, and provide a false sense of security and entice new development where it should not occur.

HISTORICAL PERSPECTIVE

Background

Contrary to popular opinion, coastal storms and floods are not abnormal processes. They are natural phenomena which occur periodically

in the same areas. Damage occurs when man-made structures are in flood prone areas.

Coastal storms develop from a variety of tropical weather disturbances and pass through several increasingly intense phases - tropical depressions (with winds less than 40 mph), tropical storms (with winds between 40 and 73 mph), and finally, hurricanes (with winds over 73 mph). Coastal storm hazards are created by one or a combination of natural phenomena including:

1. Wind - This is the element the public associates most commonly with storms. Highest wind speeds occur in a narrow ring usually extending 20-30 miles from the center of a hurricane. In a major hurricane, gusts between 73 and 120 mph may extend 40-100 miles from the center. Minor damage begins with winds of approximately 50 mph. Moderate damage, such as broken windows begins with winds of about 80 mph, while major structural destruction begins when wind speeds reach 100 mph.

2. Tidal Surge - About 90% of storm deaths near the coast are caused, not by wind, but by storm surge - the rise of water above mean sea level. The height of storm surge along the open coast depends on a number of factors which include wind speed and direction, depth of water, tidal stage, storm trajectory, and speed of the storm. Although the maximum surge usually affects only a short length of coastline, combined storm surge and wave action may have damaging effects for 100 miles in either direction.

3. Heavy Rainfall - Rainfall often accompanies storms and can cause severe inland flooding. The amount of rainfall depends on many factors including forward speed of the storm and topography.

4. Wind-Driven Waves - These waves form on top of the storm surge. Wave run-up floods areas not reached by the surge itself. The battering action of waves transmits tremendous damaging force, and exerts considerable erosive power.

No part of the Gulf or Atlantic coasts is immune to storms, but storms have hit some areas more frequently than others. Parts of Texas, Louisiana, and Florida are especially susceptible. (Figure 10 shows annual probabilities of two magnitudes of hurricanes for the entire Gulf and Atlantic coasts.)

Figure 11 illustrates a national trend toward fewer deaths from hurricanes since the turn of the century. Since 1940, however, the average annual hurricane fatality figure for the nation has more or less stabilized. The main reason for the reduction in deaths is related primarily to a better warning system. But the potential still exists for catastrophes. As coastal population continues to grow, and as more reliance is placed on structural and technological protection, the possibility of catastrophic losses grows. While loss of life has decreased,

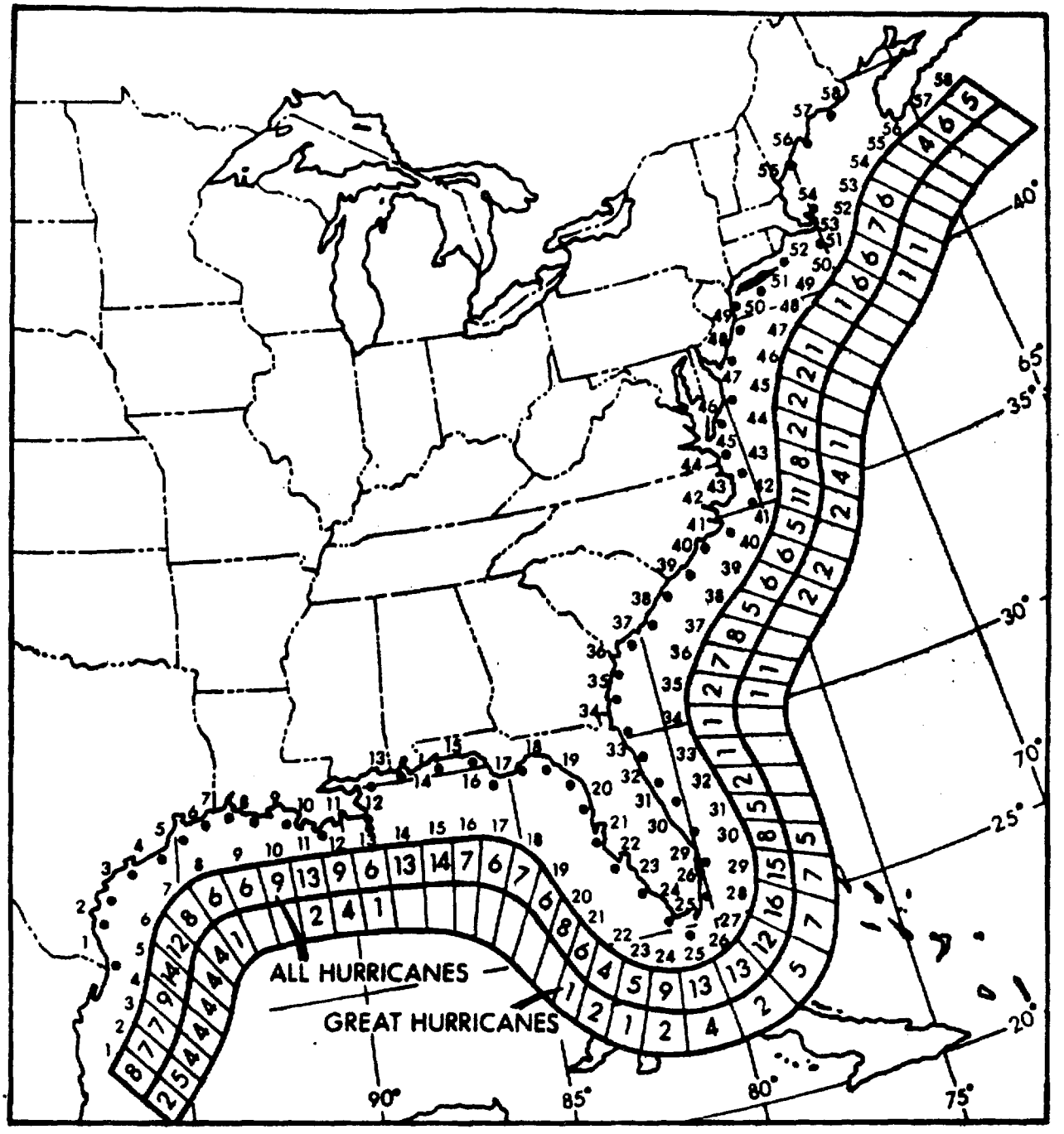


FIGURE 10
HURRICANE PROBABILITY MAP

PROBABILITY (PERCENTAGE) THAT A HURRICANE (WINDS EXCEEDING 73 mph) OR GREAT HURRICANE (WINDS IN EXCESS OF 125 mph) WILL OCCUR IN ANY ONE YEAR IN A 50-MILE SEGMENT OF THE UNITED STATES COASTLINE (after Simpson and Lawrence, 1971)

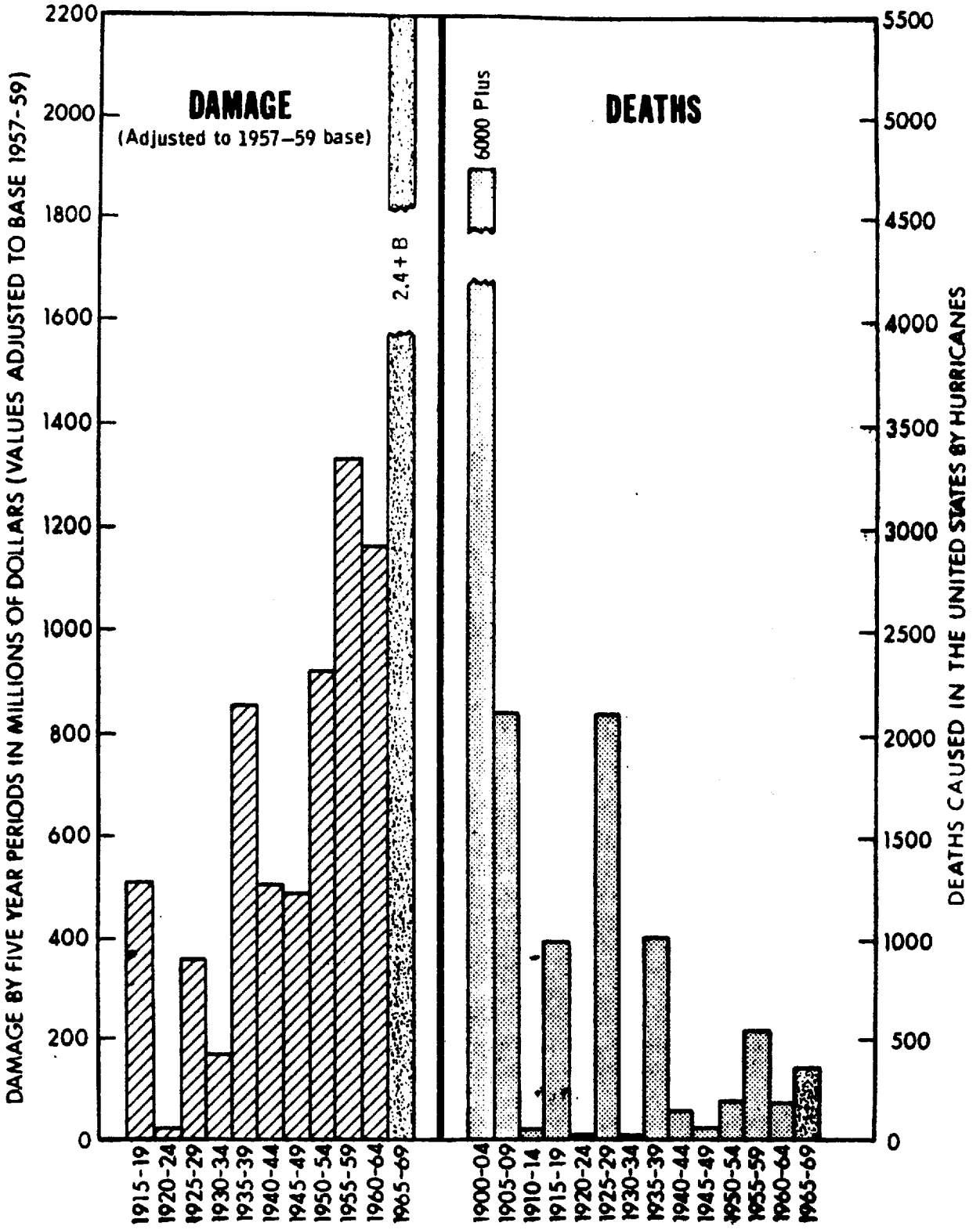


FIGURE 11

DEATHS AND DAMAGES FROM HURRICANES IN THE UNITED STATES
(National Oceanic and Atmospheric Administration, 1972)

property damages have increased exponentially. The damage results primarily from storm surge flooding, but also from erosion and wind. The average loss from a hurricane is approximately one-half billion dollars, but it could range from four million to four billion.

The Florida Experience

Florida perhaps faces a greater potential for the occurrence of natural hazards than any other state. Florida ranks first in hurricane occurrence, first in severe thunderstorm occurrence, sixth in tornado occurrence and seventh in river and flash flood occurrence among the states. Of these natural hazards, Florida is most vulnerable to the devastating effects resulting from coastal storms. A recent report (John W. Lewis, June 15, 1979) prepared by the Natural Resources Committee of the Florida House of Representatives states that "If a major hurricane hit a major population area, probably more than 6,000 people would be killed". The report also states that Florida's existing situation in respect to hurricanes is "embarrassing". The report continues:

> "The state has allowed development in low and coastal areas which may result in catastrophic losses if a major storm were to occur. Loss of life would be high, as only one county (Lee) has a sufficient and practicable evacuation plan. In short, the state has taken far too little interest in preparing for and safeguarding against the inevitable next major hurricane."

Several factors influencing the severity of hurricane impacts combine to make the state a highly vulnerable area. It is located in an area with a high probability of storms. It has low-lying coastal areas, which offer little protection from the danger associated with a hurricane. And, most of Florida's population has chosen to live on its coastline. More than seventy-nine percent of the state's nine-plus million people live in coastal counties. With the exception of the rapidly developing central Florida area, much of the state's economic base also is located within coastal counties.

At least 45 hurricanes have hit Florida since 1900. Between 1926 and 1975, Florida hurricanes killed 2,650 persons and caused $1.4 billion in property damage. In 1979, two major hurricanes struck Florida. Hurricane David claimed 1200 lives in the Caribbean and property and crop damages exceeded $1.5 billion. When it arrived in the U.S., it had lost power fury but swept the entire Atlantic coast from Florida to Maine, claiming 19 lives and causing more than $500 million in damages. Hurricane Frederick was one of the most devastating hurricanes to hit the Gulf Coast in this decade. It killed 17 persons and caused more than $1.5 billion in damages. Dauphin Island in Alabama was breached in two places. No buildings were left intact. More than half a million people were evacuated in West Florida, Alabama, and Mississippi.

Pressures to develop the state's coastal areas will continue for the foreseeable future. A report by E. J. Baker of Florida State

stated that between 1960 and 1970, the Fort Walton Beach area population grew 220%; Pasco County's population grew 250%; the Charlotte, Lee, and Collier County area population grew 131%; the Broward - Palm Beach County area population grew 140% and the Brevard County population grew 106%. These communities all are highly susceptible to hurricane damage because of low elevation and coastal location. Also, the potential for loss of life and property will increase as population increases.

PUBLIC AGENCIES: ROLES AND RESPONSIBILITIES

Federal Roles and Responsibilities

The role of the federal government in relation to coastal hazards often has been contradictory. Beginning with the New Deal, the federal government began aiding disaster victims and protecting life and property from flooding. In the 1950's, the United States initiated improvements in its hurricane warning system, leading to establishment of the National Hurricane Center. In 1968, Congress initiated the first major effort aimed at mitigating flood damages by passing PL 90-448 - The National Flood Insurance Act. While these efforts play a significant role in protecting life and property from flood and storm damages, the FIA program has contributed to encouraging development in flood hazard areas through subsidized flood insurance. The federal government also indirectly encourages development in flood prone areas through federal subsidies for roads, bridges, and sewage treatment facilities. By locating these facilities in flood-prone areas, the government has indirectly encouraged development in floodplains.

Federal Emergency Programs

New Deal social programs initiated a system of piecemeal federal assistance to natural disaster victims. A patchwork of agencies, departments, and councils subsequently was established, including the Civil Defense Preparedness Agency (Department of Defense), the Federal Disaster Assistance Administration (HUD), the Federal Preparedness Agency (General Services Administration), and the National Weather Service Community Preparedness Program (Commerce).

States found it very difficult to respond to disasters when they have had to coordinate with several federal agencies, each with its own mandate and restrictions. In response, the Federal Emergency Management Agency (FEMA) was created in 1979. This agency includes the other agencies as well as the Federal Insurance Administration (FIA). The goal of FEMA is to establish a comprehensive emergency management system. Under this system, government agencies will take necessary steps in a coordinated fashion to warn the public of impending disasters, prepare for and respond to these disasters, and minimize and discourage new permanent construction of public and private structures in high hazard areas.

One of the new initiatives proposed by FEMA is in response to Hurricane Frederick. The policy proposes that the FEMA will minimize the recurring costs of reconstruction, and encourage actions that will allow the natural processes common to barrier islands to occur.

Federal Flood Insurance Program

The Federal Flood Insurance Program administered by FEMA, offers incentives for local communities to impose construction standards for facilities or otherwise regulate floodplain development. This program was intended as a substitute and eventual replacement for Federal flood disaster relief. Property owners are encouraged to purchase subsidized flood insurance; new structures built in flood plains are required to meet minimum construction standards and to carry flood insurance at actuarial rates; and local governments are encouraged to adopt and administer floodplain regulations. Failure of a local government to participate in the program makes it ineligible for Federal disaster relief or Federal grants, loans or other aid in flood-prone areas.

Recent Federal Initiatives

In May, 1977, President Carter issued Executive Order 11988, Floodplain Management, which requires Federal agencies to avoid both direct and indirect support of floodplain development wherever there is a practical alternative. The President also issued Executive Order 11990, Protection of Wetlands which requires Federal agencies to avoid support for new construction in wetlands whenever there is a practicable alternative.

The President's Second Environmental Message in 1979 directed the U.S. Secretary of Commerce to conduct a systematic review of Federal Programs that significantly affect coastal resources. This review will be the basis for recommendations to improve Federal actions affecting coastal areas. A major aspect of this project is related to reviewing and making recommendations on flood insurance, infrastructure, and credit assistance programs which provide development subsidies and reconstruction assistance in coastal hazard areas. The draft report has been completed.

State Roles and Responsibilities

Florida's authority to deal with natural disasters is found in Chapter 252, F.S. The legislation is designed to provide a planned response capability for disaster situations in which efforts of local, state, and federal authorities are coordinated. The State's Natural Disaster Plan establishes the framework under which the State prepares for and responds to natural disasters. Under the plan, the lowest possible level of government bears the primary responsibility for handling disasters. Relief from a higher level of government is requested only when an agency's resources are incapable of coping with the disaster. The Plan was adopted in 1977. The Governor has issued an Executive Order to implement the Plan which outlines state and

local agency responsibilities during emergencies and requires local governments to prepare and test their own emergency plans and procedures.

In addition to the authorities in Chapter 252, the State also has regulatory measures dealing with coastal areas. Chapter 161, F.S. deals with coastal construction and regulates the construction of structures on sandy beaches adjacent to the Gulf of Mexico and the Atlantic Ocean. The purpose is to protect the beach and dune system as well as structures constructed adjacent to the beach areas. The State also requires that all mobile homes be firmly anchored to the ground (Chapter 320.8325, F.S.).

Local Initiatives

Many local governments in the State of Florida have developed and implemented programs to protect lives and property from coastal storms.

The City of Sanibel, which is located on a barrier island, has developed a process which integrates growth-management policies with evacuation planning procedures to minimize potential hurricane evacuation problems. The City recognizes the futility of trying to evacuate a growing population and is trying to head the problem off. The program is motivated both by a desire to preserve environmental quality and to mitigate hurricane risks. Sanibel estimated the maximum number of persons which could be evacuated from the island, given a "typical" hurricane, and decided to limit the population to that number. The limit was set at 3800 new dwelling units, a 90% increase over the number existing at the time of the plan. Buildings cannot exceed 45 feet in height, and results of a recent referendum dictated that new construction will be phased in at a rate of no more than 180 units a year.

Hurricane evacuation plans for most Florida coastal counties are procedural schedules indicating who is responsible for which actions, where the low-lying areas are, and which structures will be used for shelter. The missing critical element is an assessment of evacuation potential to determine when relocation should begin.

The absence of these data does not reflect an oversight by disaster preparedness authorities, but shows a lack of funds and perhaps the expertise to perform the assessments. Through federal Corps of Engineers funding, an assessment of this type was conducted for Lee County by the Southwest Florida Regional Planning Council. Regional evacuation plans also are being developed by the Southwest and Tampa Bay regional planning councils with financial assistance from the Sea Grant Program, federal Office of Coastal Zone Management and the U.S. Army Corps of Engineers.

Problems and Issues

1. Development in the floodplain subjects both individuals and property to hazards.

-- Development in coastal areas already is extensive and continu to increase rapidly. Between 1960 and 1970, population in Florida's coastal "census subdivisions" increased by more than 75%.

-- Nationally, the trend in fatalities from coastal storms has decreased. Warning lead time and forecasts of land-fall locatio now are at a plateau and major improvements are not expected soo Because of the increasing population in coastal areas served by very few roads leading inland, the need for early evacuation is critical.

-- Coastal counties in Florida (like the rest of the nation) hav hurricane evacuation plans which are only procedural schedules f coping with flood emergency situations. The missing element is evacuation plan which would specify both the evacuation route an the necessary lead time.

-- Recent evidence suggest that if coastal residents know their personal risk, they are more likely to respond to flood evacuation warnings. This type of information is not available to residents of the State.

2. New development occurring in coastal areas is often constructed with minimum concern for natural hazards.

-- The most effective means of minimizing risk from hazards is through proper location of development in relation to flood hazards. State law places growth management with local governments and requires, through the Local Government Comprehensive Planning Act (LGCPA), that each locality develop a comprehensive plan to guide growth and development. However, the LGCPA places little emphasis on including flood protection in plan elements, and makes the safety element optional.

-- Florida's building codes typically are deficient. The main problems are related to adequate structural anchorage and the ability to withstand the gusts, sustained winds, storm waves and storm surges encountered in a major hurricane. (Note: Draft regulations developed by the Florida DNR pursuant to Chapter 161, F.S. do address the problem in regards to new structures located directly on beach areas.)

-- Monitoring of existing building codes is inadequate. Existing standards for hazard protection often are not enforced. Some builders reportedly have removed steel reinforcements subsequent to inspection to be reused in other buildings.

3. Governmental spending may contribute to uneconomic or environmentally unsound development in flood-prone coastal areas.

-- Overreliance upon public investment to solve individual hazard problems is a growing national tendency. This trend has

developed from overreliance upon the Flood Control Act of 1936 and subsequent legislation, and has led to the construction of many structural solutions such as dams, and drainage canals intended to minimize hazards. Federal tax dollars are available to local governments for structural control measures while little, if any, assistance is available for improving local floodplain management.

-- Subsidized public facility projects such as roads, sewage treatment plants, and water distribution systems, impact coastal resources by affecting the type and location of development in coastal areas. These public facility programs stimulate growth and offer public subsidies for development in coastal hazard areas.

-- Government programs support both construction and reconstruction in coastal hazard areas through direct development assistance and through reconstruction funds. Preliminary studies indicate that the National Flood Insurance Program encourages construction of private structures in coastal hazard areas. Funds are available to local governments to reconstruct public facilities damaged by coastal storms.

4. Narrow government management and regulatory programs typically do not take hazard protection into account.

-- Government land acquisition programs for the protection of environmentally sensitive lands (such as Florida's Environmentally Endangered Lands Program) typically do not consider hazard mitigation as a criterion for selecting parcels for purchase.

-- State permitting programs for protection of wetlands and water quality do not consider hazard mitigation during evaluation of permit requests. The absence of this type of review is especially critical, since any development which occurs in or adjacent to these wetland areas is subject to flooding.

Recommendations

1. The State of Florida should utilize the Interagency Management Committee to develop a comprehensive program to minimize loss of life and property due to coastal storms.

In order for this recommendation to be implemented the State must use its existing authorities to minimize losses in both developed and undeveloped hazard areas. The primary means of implementing this recommendation for areas which are presently developed include:

a. the development of coordinated evacuation plans for each region of the state; and

b. the development of a coastal storm hazard awareness programs for property owners on hurricane survival, location of

flood-prone areas, evacuation routes and shelters, and advance preparation for hurricanes.

While these actions will prevent losses associated with existing development, the state also must take positive steps to minimize losses to future development. This effort will involve reviewing existing state agency rules and policies which can be used to minimize storm losses. This process would include*:

a. identification of each state agency program and activity which could increase or decrease losses from coastal storms such as road and sewage facility construction, wetlands permitting, and environmentally endangered lands purchase;

b. identification of the impacts of each program and activity on the state's policy to minimize loss of life and property; and

c. development of recommendations identifying needed changes to the existing programs and activities.

*NOTE: The Interagency Management Committee began working on such an effort in early 1980. For a further discussion of this effort see Part II, Section Two.E.

While Florida can reduce future losses from coastal storms by coordinating implementation of its existing authority, some new authority also may be necessary to more fully protect lives and property. Necessary new legislation must be based upon consideration of the amount of protection offered and the increased cost. Potential areas for new legislation include:

a. amendments to existing building codes to provide more protection from wind and storm surge;

b. measures to ensure that buildings located in hazard areas <u>are</u> constructed to meet safety code requirements; and

c. requiring a natural hazards disclosure statement before selling property in coastal hazard areas.

2. <u>The State of Florida acting through the state's regional planning councils should assist local governments to develop and implement local comprehensive plans which address the hazards associated with coastal storms</u>.

The most direct approach to hazard mitigation requires the integration of land use, growth management, and evacuation planning policies. This process should be directed towards minimizing potential losses to public and private property, keeping hazardous evacuation situations from developing, and keeping

existing difficult evacuation situations from deteriorating further. While the State can assist in these efforts indirectly, the lead role must be taken by local governments.

The State should encourage these efforts by:

a. providing legal, financial and technical assistance to local governments (through regional planning councils);

b. identify research needs related to hazard mitigation and ensuring that state universities give priority to these needs;

c. working with local governments to educate the public about coastal storms.

As a corollary recommendation, the State should consider legislation which requires local governments to include a safety element in the local government comprehensive plan. This requirement should be implemented only after consideration of its total impacts and only if the state will provide funds and technical assistance.

E. COASTAL MANAGEMENT COORDINATION AND IMPLEMENTATION

INTRODUCTION

The importance of the Florida coast to commerce and economic development, for tourism and recreation, as a residential center, and as an unique ecological resource has made it a center of population. In order to manage competing demands on these resources, the 1978 Florida Legislature passed the Florida Coastal Management Act stating that "the coastal zone is rich in variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources of immediate and potential value to the present and future well-being of the residents of this state which will be irretrievably lost or damaged if not properly managed." The Act establishes a coastal management program, based on existing laws and authority, to protect, maintain, and develop these resources, and calls for coordination among state, regional and local officials and agencies to meet this challenge (see Authorities discussion).

To accomplish the Act's objectives, the FCMP uses a combination of management techniques as outlined in Federal Regulation 15 CFR 923.42 and 43. Largely administered by state agencies (Technique B), several statutes allow delegation of responsibilities to local government subject to state administrative review and enforcement of compliance (Technique A).

As such, state agencies, water management districts, regional and local agencies and citizens have a role in the implementation of Florida's Coastal Management Program. Both formal and informal methods of coordination are needed to achieve the goals and objectives of the Program. A management program designed to effect needed coordination among state agencies and which provides for the necessary citizen involvement, is discussed in the following chapters of this section. It summarizes the relevant administrative and regulatory organizations, and outlines their roles in the implementation of the Florida Coastal Management Program.

MANAGEMENT FRAMEWORK FOR STATE AGENCY COORDINATION

The key to an effective coastal management program in Florida is coordination between the state agencies which are charged to administer the laws and programs discussed in Part II, Section Two.B.

Resolution of the pressing coastal issues in Florida will require intergovernmental cooperation. The issues are complex; coastal storm hazards, dredged material disposal, estuarine water quality, fishery habitat protection and other concerns involve broad economic, social, and environmental considerations, which cut across the responsibilities of more than one agency or level of government.

Complex issues which involve several agencies often are associated with the following problems:

1. It is difficult to assess the many interests and benefits (e.g. recreation, commerce, energy) involved with coastal issues. Inadequate knowledge often results in ineffective decisions which fail to reach the goals of resource protection and growth.

2. It is difficult to balance economic, environmental, and social benefits in the coast. In making decisions, state, regional and local agencies weigh the benefits and costs in different ways according to each agency's authorities and resources.

3. The responsibility for managing broad coastal issues is diffused among many state, regional, and local agencies, leading to fragmented and inefficient decisionmaking. Coordinated long-range planning frequently is deficient, resulting in a lack of predictability over the use and conservation of coastal resources.

The Florida Coastal Management Act of 1978 directed the Department of Environmental Regulation to develop a coastal program based on existing statutes and rules. Because several agencies carry out programs under these statutes, the state coastal program is based on concurrent administrative responsibilities.

The coastal program gives the state the mechanisms and resources to focus various agency responsibilities on broad issues and provides unified mutually supportive ways to head off conflicts and solve problems. Thus, one of the major efforts of the coastal management program will be to address issues that are affected by the allocation of authority among different agencies. These issues are most effectively dealt with through coordinated interagency actions.

The coastal management program provides the framework to shape a less fragmented, more rational and predictable management scheme. Two elements provide the primary means to coordinate and unify state agency activities - the Interagency Management Committee and the coastal program's improvement of routine procedural cooperation between state agencies. These elements have been formalized by two joint resolutions issued by the Governor and Cabinet, and four memoranda of understanding between various state agencies and the Governor's Office. The enforceability of these instruments is discussed in detail in Generic Response one in Part VI of this document.

ROLE OF THE INTERAGENCY MANAGEMENT COMMITTEE

One way to solve these complex coastal problems is through an organizational innovation which increases joint efforts between agencies. An effective way to do this without altering existing statutory arrangements is through a collegial body; a partnership of state agencies which can reach consensus on multi-jurisdictional

issues. Such a body will insure that agency heads act in concert when joint decisions must be made, and when the most effective pooling of other allocation of agency resources must be made.

In August, 1980, the Governor and Cabinet issued a Joint Resolution (see Addendum) establishing the Interagency Management Committee (IMC). As provided for in the joint resolution, the IMC consists of the Secretaries of the Departments of Commerce, Environmental Regulation, Transportation Health and Rehabilitative Services and Veteran and Community Affairs, the Director of the Division of Archives, History and Records Management in the Department of State, the Director of Forestry in the Department of Agriculture and Consumer Services, the Executive Directors of the Department of Natural Resources and the Game and Freshwater Fish Commission, and the Director of the Governor's Office of Planning and Budgeting. An opinion rendered by the Florida Attorney General on July 7, 1981 (see Addendum), however, concluded that, absent specific statutory authority, the Governor may not by executive order give binding directions to any of the State executive departments concerning implementation of the Florida Coastal Management Plan. In response to this opinion, which questioned the basic enforceability of the August 1980 Joint Resolution on the IMC, the member agencies of the IMC listed above have signed an additional memorandum of understanding (the "IMC MOU") in which the heads of each agency bind themselves to the original provisions of the Joint Resolution. The adoption of the IMC MOU ensures the enforceability of the principal organizational element of the FCMP.

Through the first year of Federal approval, the Joint Resolution directs that the IMC will be chaired by the Department of Environmental Regulation (DER). Subsequently, the chair will rotate among the DER, DNR, and DVCA on a yearly basis. A proposal to amend the Joint Resolution has been made which, if adopted, would provide that the Lieutenant Governor serve as permanent chairperson of the IMC. The DER will provide staff support under the Office of Coastal Management for IMC activities.

The IMC is an advisory body which serves several purposes, each one requiring a special emphasis on mutual decisionmaking and joint actions.

1. The IMC will serve as a central mechanism for carrying out a coordinated interagency coastal management program. In this role, it will focus its efforts on addressing the coastal program's "Issues of Special Focus".

2. The IMC will identify problems and develop joint problem-solving ventures.

3. The IMC will develop better ways to resolve conflicts and inconsistencies in the implementation of laws and funding programs.

The IMC provides a forum in which state agencies address pertinent multi-jurisdictional issues. The IMC is not a regulatory body. It is to make recommendations to the Governor and the Cabinet, including new legislation, memoranda of understanding, rulemaking, etc. If necessary, final actions on IMC recommendations will be taken by the Governor and Cabinet and/or the Legislature. Although all state agencies are not included on the IMC, their assistance in meeting IMC and coastal program goals is provided by the Joint Resolution on the IMC.

The DER Office of Coastal Management will provide staff support to the IMC. In this capacity, the staff will:

1. Provide the IMC with recommendations for projects which address "Issues of Special Focus".

2. Provide FCMP budgets and 306 grant applications to the IMC for review.

3. Provide the IMC with issue papers defining problems and outlining approaches to solutions.

4. Assist member agencies to design projects, including developing project objectives and methodologies. Coordinate activities of other participants, such as federal agencies, local governments, and others.

5. Assist the IMC with its review of projects by monitoring progress and evaluating reports prepared by member agencies or others.

6. Upon completion of projects, prepare final reports and provide recommendations to carry out agency initiatives.

7. Help member agencies develop memoranda of understanding, new legislation, rules, etc.

8. Advise the IMC on administrative matters to be resolved between agencies, and FCMP activities on behalf of agencies.

Member agencies of the IMC were selected because of the importance of each agency's program to coastal management and to other resource management programs in the state. Each agency administers one or more programs which have a clear impact on resource management issues.

- The Department of Commerce is the state's chief economic development agency. The Department is headed by a Secretary appointed by the Governor. Its economic development programs impact upon the resource management responsibilities of the other IMC members.

- The DOT also is headed by a Secretary appointed by the Governor and is responsible for developing and maintaining a balanced and efficient transportation system.

- Included in the responsibilities of the Department of Health and Rehabilitative Services are a variety of public health issues, programs related to radiation control (important in phosphate mining areas) and arthropod control, along with significant responsibility for public drinking water supplies and for individual sewage disposal systems. The DHRS is headed by a Secretary appointed by the Governor.

- The Department of Veteran and Community Affairs is headed by a Secretary appointed by the Governor. The Department is responsible for administration of the Developments of Regional Impact, Areas of Critical State Concern, the Coastal Energy Impact Program, state efforts related to the Local Government Comprehensive Planning Act, and for disaster preparedness.

- The Game and Fresh Water Fish Commission is one of the few state agencies established by the Florida Constitution. The head of the agency is a five-member commission appointed by the Governor. The Commission exercises the state's exclusive jurisdiction over fresh water fish, birds, and both upland game and non-game animals, including endangered species.

- In addition to its role in preparation of the state's biennial budget for the Office of the Governor, the Governor's Office of Planning and Budgeting also plays an important role in the development of the State Comprehensive Plan required by Chapter 23, Florida Statutes.

- The Division of Archives, History and Records Management, Department of State, is headed by the Secretary of State who appoints the Division Director. The division is chiefly responsible for the location of, identification, and preservation of historical and archaeological materials and sites.

- The Division of Forestry of the Department of Agriculture and Consumer Services administers the state's forestry programs and the state forest system. The Division Director is appointed by the Commissioner of Agriculture, a member of the Florida Cabinet.

- The Department of Natural Resources is headed by the Governor and Cabinet, and is run by an Executive Director. The Department administers all programs relating to salt water fisheries, programs relating to coastal protection and erosion control, and operates the state lands programs which include the state's aquatic preserves system as well as its Environmentally Endangered Lands programs. The DNR conducts the State's comprehensive outdoor recreational planning programs.

- The Department of Environmental Regulation administers the major programs relating to air and water pollution, solid and hazardous waste management, water resources, and wetlands.

A complete description of the laws under which the DER and the other agencies operate is found in Part II, Section Two.B.

PROCEDURAL COORDINATION BETWEEN KEY STATE AGENCIES

The Florida Coastal Management Act of 1978, directed the Department of Environmental Regulation (DER) to prepare a coastal management program based on existing statutes and administrative rules. Because the program is based on the laws and procedures distributed among several agencies, the existing responsibilities of these agencies must be coordinated for effective implementation to take place. These agencies, in addition to the DER, will play key roles in the implementation of the Florida Coastal Management Program.

Coordination between state agencies takes place on two levels. The first level will occur through the activities of the Interagency Management Committee. The second level consists of the routine procedural elements of coastal management and will reduce conflict between programs, reduce duplication of agency efforts, and provide for unifie management decisions.

The bulk of the day-to-day implementation will fall upon three agencies which administer key state coastal resource management programs - the Department of Environmental Regulation, the Department of Natural Resources, and the Department of Veteran and Community Affairs. Working arrangements and formal agreements concerning particular tasks will be established in the future between all of the agencies involved in the coastal program. However, because of the central importance of these three agencies, current program efforts are directed at coordinating their roles and responsibilities. The following statutory authorities and responsibilities of these agencies are essential to the development and implementation of the FCMP.

1. The Department of Environmental Regulation (DER) administers most of the state's environmental permitting programs, including:

   a. Sources of air and water pollution, statewide; Chapter 403, F.S.
   b. Dredging and filling on submerged lands, waters of the state and wetlands; Chapter 253 and 403, F.S.
   c. Electrical Power Plant Siting, Transmission Line Siting, and Industrial Siting, Chapters 288 and 403, F.S.
   d. Water Wells; Chapter 373, F.S.
   e. State Water Use Plan related to the regulation and control of water resources throughout the state; Chapter 373, F.S.

   In addition, the DER, pursuant to Section 380.22, F.S., of the Florida Coastal Zone Management Act of 1978, must develop and administer the state's annual Section 306 grant pursuant to the federal Coastal Zone Management Act of 1972. With an approved program, the DER, as lead agency, will have the responsibility to

insure that participating state agency actions comply with the provisions, policies and work objectives presented in the state coastal management program.

2. The Department of Natural Resources (DNR) manages most of the state's natural resources, including the following program areas:

   a. Management of all state-owned lands including submerged sovereignty lands administered through the Board of Trustees of the Internal Improvement Trust Fund; Chapter 253, F.S.
   b. Management of recreation and conservation areas, aquatic preserves, state parks, wilderness areas, environmentally endangered lands, and recreational trails; Chapters 258, 259, 260, and 375, F.S.
   c. Shoreline use and protection; beach nourishment and erosion control projects; assurances of adequate beach access, establishment of coastal construction control lines; Chapter 161, F.S.

   d. The conservation and management of marine fishery resources; Chapter 370, F.S.
   e. Mineral resources, Chapters 253 and 377, F.S.

   The DNR also is the owner/administrator of the Apalachicola River and Bay and the Rookery Bay Estuarine Sanctuaries as well as the joint owner/administrator of the Key Largo and Looe Key Marine Sanctuaries developed as part of the Coastal Management Program.

3. The Department of Veteran and Community Affairs administers the following activities related to the coastal management program:

   a. Coordination of the state's responsibilities related to Developments of Regional Impact and Areas of Critical State Concern; Chapter 380, F.S.
   b. Primary agency for implementation of the Coastal Energy Impact Program (CEIP) under the Federal Coastal Zone Management Act, as amended; 16 U.S.C. 1451 et. seq..
   c. Implementation of a state disaster preparedness program to reduce vulnerability to damage, injury and loss of life and property from natural or manmade hazards; Chapter 252, F.S.
   d. Reviews 10-year siting plans for Florida electrical utilities under Chapter 23, F.S.

In order to formalize the working relationships between these three agencies, a principle coordination memorandum of understanding has been signed by DER, DVCA, and DNR (see Addendum). This memorandum outlines the responsibilities of each of the three agencies and identifies the procedural steps that the agencies will use to ensure a coordinated state agency approach to address specific programmatic issues utilizing both Section 306 and 308 funds provided under the Federal CZMA.

INITIAL IMC ACTIONS REGARDING STORM HAZARD MITIGATION

The primary purpose of the IMC is institutional. It will focus the attention of the appropriate state agencies on broad coastal issues, and will coordinate the agency programs to address these issues. Operating primarily through funding and technical assistance provided by the FCMP, the Interagency Management Committee will addres pressing coastal issues outlined in the "Issues of Special Focus" section of the program. Special IMC attention will be placed on several issues: more efficient and effective administration of the laws which make up the FCMP, balancing the conservation of natural resources with the needs of an expanding economy, storm hazard management, and funding practices which create conflicts with natural resource management policies.

The Committee already has been charged by the Governor and Cabinet to pursue improved storm hazard management, and has started several efforts which already have resulted in a joint resolution, two memoranda of agreement, revision of several rules, and more effective coordination mechanisms for mitigating hazards. Although the three central agencies - DER, DNR, and DVCA - in the coastal program played the major role in this initiative, the activities discussed below are not limited to these agencies.

An initial hazards MOU signed by the agencies and the Office of the Governor in July, 1980, outlined the following objectives for the State Hazards effort (see also text of MOU on Hazards in Addendum):

1. All agencies will expend state funds only in a manner consistent with state policies on coastal zone management and hazard mitigation.

2. All agencies will expend federal funds and develop new federal program applications only in ways consistent with state policies on coastal zone management and hazard mitigation.

3. All agencies involved in coastal zone management and hazard mitigation will cooperate in reviewing rules and processing permits involving those activities essential to effective coastal zone management, particularly the mitigation of coastal hazards.

The signatory agencies also were to review a study by the Federal Emergency Management Agency (FEMA) which, among other things, listed federal governmental programs and their relationship to coastal hazards. The Departments of Environmental Regulation and Veteran and Community Affairs, based on their review of the study and review by other agencies, were to prepare a report for the IMC containing the following information:

1. Add to the list of federal programs affecting coastal storm hazards any relevant programs (e.g. state) which may have been omitted.

2. Explain how the listed programs help or hinder the state's coastal hazard mitigation efforts.

3. Indicate ways to improve the effectiveness of these programs as coastal hazard mitigation tools through rule changes, internal and interagency policy changes, statutory changes, and/or funding changes.

4. Establish priorities for implementing those program changes which will improve the effectiveness of coastal hazard mitigation in Florida.

Based on the work undertaken pursuant to the Hazards MOU, a Joint Resolution on Hazards was issued by the Governor and Cabinet on December 16, 1980. This joint resolution formally identified a number of state programs which should be reviewed concerning their impact on hazard mitigation. The programs and actions completed or currently under review are: (1) location of wastewater management facilities - DER is finalizing Chapter 17-6, F.A.C. to reflect consideration of storm hazards (see draft rule, Addendum); (2) bridge access to undeveloped barrier islands - DOT, DER, and Governor's Office signed a memorandum of understanding on January 6, 1981 which prohibits the approval of road or bridge projects involving the expenditure of federal or state funds to provide new access to undeveloped barrier islands unless an overwhelming public interest can be demonstrated (see Addendum); (3) beach renourishment projects - DNR has addressed storm hazards as a part of Chapter 16B-33; (4) public works projects - DER's public works rule, Chapter 17-26 F.A.C., incorporates consideration of storm hazards (see Addendum); and (5) purchase of conservation and recreation lands - the Conservation and Recreational Lands Program provides for purchase of high hazard and flood prone areas.

Under existing law (Chapter 252, F.S.), the Department of Veteran and Community Affairs is establishing a procedure to coordinate hazard management. Through the resolution the Departments of Environmental Regulation, Health and Rehabilitative Services, Natural Resources, and Transportation have agreed to report pending actions (including developing rules) which might impact on the state's hazard mitigation policy to the Department of Veteran and Community Affairs (DVCA). DVCA will review pending actions and make recommendations and comments to the agencies which will incorporate these comments before affecting pending actions. In addition, DVCA and DER are preparing a report which will include an analysis of agency actions and hazard problems and contain recommendations to be presented to the IMC and the Governor and Cabinet. The work begun under these institutional improvements will result in a more integrated and rational approach to reducing the loss of life and property and will also result in more expedited governmental decisionmaking.

REGIONAL AND LOCAL AGENCIES

WATER MANAGEMENT DISTRICTS

The state is divided into five water management districts (WMD), the South Florida Water Management District, the Southwest Florida Water Management District, the Northwest Florida Water Management District, the Suwannee River Water Management District, and the St. Johns River Water Management District; Chapter 373, F.S. Each is headed by a nine-member board appointed by the Governor for four year terms. Each has the authority to levy ad valorem taxes to support its programs. In addition, operating funds may be provided by the Legislature from the general revenue fund.

Water Management Districts will be involved in the implementation of the coastal management program through Chapter 373, F.S. Each District has authority to regulate the use, transfer and consumption of water through the regulatory authority delegated by the Department of Environmental Regulation under Chapter 373, F.S. The most important role of the WMDs will relate to their authority to manage the ground and surface waters of the state. For a discussion of these responsibilities, see the section on Program Authorities of this document.

REGIONAL PLANNING COUNCILS

The state is divided into eleven regional planning councils. Each council is headed by a governing body which is made up of representatives appointed by local governments and the Governor. Each council has the authority to fix and collect membership dues to support its work. In addition, operating funds may be provided by the Legislature.

Based upon legislation passed in 1980, each council must develop and adopt comprehensive regional policy plans. These plans must be consistent with Chapters 373 and 403, F.S. and they shall be used to review developments of regional impact, local government comprehensive plans and federally assisted projects. Regional planning councils will be involved in the implementation of the coastal management program based upon Chapters 160 and 380, F.S.

Councils have had a formal role in reviewing developments of regional impact (DRI's) for a number of years. This role was augmented and strengthened with the passage of the Regional Planning Council Act of 1980. Thus, one role of the councils will be to develop and implement rules for reviewing DRI's. In addition to this formal role, the support and assistance of councils will be needed to address certain issues of special focus. In some cases, a council may have an informal role while in other cases, they may utilize coastal management funds to address a specific coastal issue. For example, the support and active participation of councils will be crucial to the development of effective hurricane evacuation plans. Finally, the councils will be requested to continue to assist the Department with

meeting its public participation obligations. Further explanation of this role can be found in the succeeding discussion on public participation.

LOCAL AGENCIES

A comprehensive Coastal Management Program must include regional and local agencies, including county and municipal governments, soil and water conservation districts, ports, beach and shore preservation districts, and mosquito control districts.

While the specific involvement of each local agency will vary widely, the general types of opportunities and responsibilities of these agencies in program implementation will be similar. For instance, local agencies have both formal and informal roles related to the authorities of the program. Local governments must approve the deposition of fill onto submerged lands, and ports are responsible for preparing both port plans and spoil disposal plans. Thus, these agencies have and will continue to have roles in implementing existing statutues upon which the program is based. In addition to these existing roles, local agency support and assistance will be needed to address many of the issues of special focus. In some cases, these agencies will play an informal role and may be asked to provide information and review proposed state agency activities. In other cases, these agencies will have a more formal role and will utilize coastal management funds to address a coastal issue. For example, local government action will be crucial to addressing new initiatives related to urban waterfronts and shoreline access. Further discussion of the roles of these agencies on this program can be found in the sections on Program Policies and Authorities, Issues of Special Focus, and Program Funding.

PUBLIC PARTICIPATION AND CITIZEN INVOLVEMENT

The Florida Coastal Management Program, as it develops, will involve and have an impact upon a large number of persons and groups. Public participation and citizen involvement is an important element in the program during its development as well as after implementation. Public participation is incorporated through a State Coastal Resources Advisory Committee as well as through the requirements of a number of state statutes.

COASTAL RESOURCES ADVISORY COMMITTEE

The Governor has established a State Coastal Resources Advisory Committee to assist with the implementation of the coastal management program. This committee is comprised of persons representing government, industry and environmental interests, as well as various regions of the state. Members will serve for two years. Further tenure will be subject to reappointment by the Governor. While committee membership will be kept small, the committee will be encouraged to draw upon experts and interested parties within the state when dealing with coastal issues.

The state advisory committee will advise both the DER and the Interagency Management Committee on the coastal management program. The functions of the committee are to:

1. Review and recommend priorities concerning the issues of special focus and other coastal issues. The analysis and recommendation of the committee would be forwarded to the Governor for action or referral to the Interagency Management Committee.

2. Review priorities for allocating coastal management funds and technical assistance;

3. Review and comment on Department rules related to coastal management and

4. Suggest new or additional legislation necessary to better implement the Florida Coastal Management Program.

The DER, with the assistance of coastal regional planning councils may also reestablish the Regional Coastal Advisory Committees. These Committees may constitute a subcommittee of the region's Citizens Advisory Committee or they may be a separate entity altogether. Although the involvement of these Regional CAC's in the recent development of the FCMP has been reduced because of lack of funding, the committees may be reestablished as a means of regional input into the program. A representative of these regional bodies will sit on the state CAC.

CITIZEN PARTICIPATION - STATE STATUTES

Citizen participation in the implementation of the Coastal Management Program is guaranteed by Chapters 119, 120, and 403, F.S. Participation occurs in three ways: access to public information, participation in rule making (standards and procedures), and participation in adjudications (licensing and enforcement).

Access to Public Information

A number of statutes guarantee the public access to public information.

1. Chapter 119, F.S., makes the vast majority of tapes, photographs, books, maps, letters, recordings, and other documents and materials in the possession of state and local governmental units open to public inspection and copying.

2. Chapter 120, F.S., the State Administrative Procedures Act, requires agency activities, actions and procedures to be accessible to the public.

Finally, Section 286.011, F.S. requires that all meetings, and decisions, of state or local government boards or commissions be held, and made, in public at a time and place for which reasonable notice has been given.

Rulemaking

Section 120.54, F.S., prescribes the minimum procedures to be followed by agencies in the adoption of rules. In addition to rule adoption proceedings initiated by an agency, any person regulated by an agency or having a substantial interest in any agency rule may petition an agency to adopt, amend, or repeal a rule, s. 120.54(5), F.S. Prior to adopting a rule, the agency must give public notice of its intended action, setting forth the purpose and effect of the proposed rule, a summary of the proposed rule, the specific legal authority under which its adoption is authorized, and a summary of the estimated economic impact of the proposed rule on all persons affected, s. 120.54(1), F.S.

Adjudications

Section 120.57, F.S., prescribes the procedures to be followed in proceedings in which the substantial interests of a party are determined by an agency. Usually, such proceedings involve the issuance or denial of a license or an administrative enforcement proceeding for the violation of a rule or license.

Three types of proceedings are provided: formal, trial-type hearings where there is a dispute over a material fact; informal proceedings; and informal disposition by stipulation, agreed settlement, or consent order. In addition to license applicants and respondents to administrative enforcement actions, third persons may intervene in or initiate proceedings, if they have a substantial interest which will be affected by the proposed agency action or are granted standing to intervene by some other provisions of the Constitution, statute, agency rule or decision; s. 120.52(10), F.S.

Section 403.412(5), F.S., accords standing to any citizen of the state to intervene in any administrative, licensing, or other proceedings authorized by law for the protection of the air, water, or other natural resources of the state from pollution, impairment, or destruction. Intervention under this section must be predicated upon the filing of a verified pleading asserting that the activity, conduct, or product to be licensed or permitted has, or will have, the effect of impairing, polluting, or otherwise injuring the air, water, or other natural resources of the state.

Enforcement

In addition to the enforcement provisions provided in the various substantive resource management statutes, two general citizen enforcement provisions are found in Chapters 120 and 403, F.S. Under Section 120.69, F.S., a regulating agency or any substantially interested person who is a resident of the state may file a petition for enforcement in the circuit court where the subject matter of the enforcement is located. Petitions for enforcement filed by residents must be preceded by giving notice of the violation to the affected agency, the attorney general, and the alleged violator at least sixty days prior

to the filing of the petition with the circuit court. In the discretion of the court, the prevailing party may be awarded all or part of the costs of litigation and reasonable attorney's fees and expert witness fees.

Section 403.412, F.S., the Environmental Protection Act of 1971, authorizes the Department of Legal Affairs (Attorney General) any political subdivision or municipality of the state, or citizen of the state to institute an action for injunctive relief against the regulatory agency or the alleged violator to enforce by injunction the laws, rules and regulations for the protection of the air, water and natural resources of the state. Such suit may not be commenced unless a verified complaint setting forth the facts upon which the complaint is based has been filed with the regulating agency at least thirty day prior to the filing of the suit. The prevailing party or parties shal be entitled to costs and attorney's fees. In addition, the court may require the plaintiff to post bond or cash where the plaintiff's solvency or ability to pay any cost or judgement which might be rendered against him is in doubt.

PROGRAM FUNDING

INTRODUCTION AND FEDERAL GUIDELINES

A major incentive provided to states by Congress under the Coastal Zone Management Act has been financial assistance. This assistance has been available to states since 1975 on a voluntary basis both to develop and to implement a state coastal management program. The assistance provides an incentive to states to look at their coastline and develop a program to manage this area in a coordinated and comprehensive fashion.

The Federal Coastal Zone Management Act, provides for assistance in a variety of areas. Each of the major types of assistance are summarized as follows:

1. Program Development (Section 305)

   Congress authorized $20 million annually for states to develop management programs. This funding was authorized through 1979 and Congress recently chose not to extend the funding authorization for program development. The State of Florida's current efforts are funded under this provision of the Act. Since its initial grant in 1975, Florida has received approximately $3.5 million under this section of the CZMA.

2. Program Administration (Section 306)

   After a state has developed a program which meets its needs and is consistent with the requirements of the federal act, it is eligible to apply for funds to implement its program. Currently,

$48 million annually is authorized through 1985. Further discussion related to program administration can be found in subsequent portions of the program funding section.

3. Resource Management Improvement (Section 306 A)

As a part of its recent reauthorization of the Coastal Zone Management Act, Congress established a new section to provide financial assistance for (1) acquisition of public access to beach and shoreline areas, (2) the redevelopment of deteriorating and underutilized urban waterfronts and ports in designated geographic areas of particular concern (GAPC), and (3) preservation and restoration projects in designated areas for preservation and restoration (APR). Congress authorized $20 million annually for resource management improvement grants.

4. Coastal Energy Impact Program (CEIP)(Section 308)

Congress authorized $800 million through 1985 to meet the needs associated with energy development in coastal states. Loans and grants are provided primarily to local governments to a) plan for energy related impacts, b) provide new or improved public facilities and c) compensate and/or restore valuable environmental resources unavoidably lost from energy facilities development. To date, Florida has been allotted over $3 million in Federal grants, loans, and credit assistance, with substantially greater amounts available if oil is found off or landed on Florida's coast. This program is currently being administered by the Florida Department of Veteran and Community Affairs.

5. Estuarine Sanctuaries and Island Preservation (Section 315)

This section of the Act is geared to the acquisition of public lands. Congress authorized $9 million annually for 1) acquisition, development and operation of estuarine sanctuaries and 2) island preservation. The State of Florida is the only state to have two such sanctuaries: Apalachicola Bay and Rookery Bay. Designation of these two sanctuaries has provided Florida with $4 million for land acquisition and management.

In general, a state must be participating in the federal CZM program (i.e. program development or administration) in order to receive funds under any of these sections. This requirement is particularly important since the continued funding of both state and local CEIP projects is dependent upon the eventual approval and implementation of Florida's coastal management program. While the Department of Environmental Regulation is the recipient of 306 funding, the CZM Act does not preclude the passage of funds to other state and local government agencies.

PROGRAM IMPLEMENTATION FUNDS (Section 306 and 306A)

The annual amount of funding available under Sections 306 and 306A will be determined through a yearly grant application process.

It is estimated that Florida would receive approximately $2.5 million per year under section 306. Section 306A funds will be allocated as they become available. This funding will vary based upon the number o states participating in the program, and the amount of funding appropriated by Congress.

Federal CZM funds which are allocated to Florida must be matched at a federal to state ratio of 4:1. This matching share can be comprised of either cash or in-kind services. If the state were to receive $2.5 million from OCZM, it would have to contribute $625,000 in cash and/or in-kind services. The remainder of the matching share requirement which will have to be met by the Department and state, regional or local agencies receiving pass-through funds. DER is currently finalizing the CZM funding rule contained in the Addendum.

1. Eligible Activities and Recipients

The activities which are eligible for funding will be based upon both federal and state program objectives. The recent reauthorization of the federal act brought about a number of changes related to federal funding. First, Congress authorized substantially increased funds for construction and acquisition projects under Section 306A of the Act. Grants which meet the federal regulations for this section may be used for 1) land acquisition, 2) low-cost construction projects, 3) urban waterfront and port rehabilitation projects, 4) engineering and design studies and 5) educational and management costs. Second, Congress required that coastal states expend an increasing proportion of each Section 306 grant to meet national coastal management objectives. These objectives are:

1. the protection of natural resources,
2. the management of development to minimize loss of life and property,
3. priority consideration for the siting of coastal dependent facilities,
4. provision of public access to coastal areas,
5. redevelopment of deteriorating urban waterfronts and ports,
6. the coordination and simplification of decision-making procedures,
7. continued consultation and coordination with Federal agencies,
8. continued public participation in coastal management decision-making, and
9. assistance and support for the management and conservation of living marine resources.

It appears that many of the national coastal management concerns are also Florida concerns and, therefore, will be routinely addressed in the state program. Consequently, program funds will be utilized to meet the state coastal management goals, by funding projects and tasks which address issues and activities in coastal areas.

a. To provide for coordinated intergovernmental approach for the management of coastal areas.

(1) Eligible Activities:

The coordinated management of Florida's coast involves a number of different agencies and it embodies numerous aspects of the coordination process. The agencies involved include those at the federal, state, regional and local levels. It also involves some special purpose government agencies such as port authorities. The actual techniques utilized to carry out this coordination include the provision of information and technical assistance, the development of intergovernmental management plans, the establishment of administrative processes to resolve conflicts between agencies and the administration of the State Interagency Management Committee. The implementation of this goal is a priority when directly related to state program policies. Specific activities which would be eligible for funding under the coastal management program include:

(a) The efforts of the Florida Interagency Management Committee (IMC) as it addresses the "issues of special focus" for the coastal area.

(b) The development by state agencies of reports, studies and implementing procedures associated with carrying out of recommendations adopted by the IMC.

(c) State agency efforts related to the review of projects and activities for consistency with state policies. Priority would be given to state agencies specifically implementing the federal consistency provisions of the CZMA.

(d) Administrative support for the Coastal Advisory Committee.

(e) The obligations of the Department (DER) as it carries out its lead agency functions as assigned by the Legislature.

(2) Primary Eligible Agencies:

Lead State Agency
State Agencies
Water Management Districts

b. To implement a management program for the protection and development of coastal resources by improving the implementation and enforcement of existing state programs affecting key coastal uses and areas.

(1) Eligible Activities:

The coastal management program of the State of Florida derives its basic authority from a number of existing state statutes. Therefore improved implementation of the basic authorities of the state is a high priority for the Florida Coastal Management Program. As discussed previously, these statutes include:

Chap. 161 - Beachfront Construction
Chap. 252 - Disaster Preparedness
Chap. 253 - State Lands Management
Chap. 258 - Aquatic Preserves
Chap. 267 - Historic Preservation
Chap. 370 - Fisheries
Chap. 373 - Water Resources
Chap. 380 - Land and Water Management
Chap. 403 - Air and Water Pollution Control

While these existing state statutes are currently implemented by state and local agencies, many agencies can benefit from increased funding for program implementation and enforcement. While many activities are eligible for funding, those activities which closely relate to the "issues of special focus" or the "geographic areas of particular concern" will receive priority for funding. Some specific examples consist of:

(a) Development of a special element of the State Disaster Preparedness Plan for barrier islands and other coastal high hazard areas.

(b) Development of resource inventories, management plans and rules for state aquatic preserves.

(c) Enhancement of existing waterfront historical sites.

(d) Designation of minimum flow rates for major river systems by water management districts.

(e) Improved management of areas identified as (1) "geographic areas of particular concern", and (2) resource planning and management areas pursuant to Chapter 380.045.

(f) Development of maintenance dredging plans for port harbors pursuant to Chapter 403.061.

It should be noted that these are only a few of the different types of activities which could receive funding. While these federal funds can be utilized for implementing existing state programs these funds cannot be substituted for current state funding.

(2) Primary Eligible Recipients:

State Agencies
Water Management Districts

c. To improve local government capabilities in addressing key coastal management issues.

(1) Eligible Activities:

Local government activities eligible for funding fall into four categories: resource management improvement projects, local implementation of state policies, regional planning activities and demonstration projects.

(a) Resource Management Improvement Projects

Recent amendments to the Federal Coastal Zone Management act established a new category of federal grants. These Section 306 A grants can be used for 1) preservation or restoration projects, 2) the redevelopment of underutilized urban waterfronts and ports that are designated as areas of particular concern and 3) the provision of public access to beaches and coastal areas.

Eligible activities include:

(i) land acquisition,
(ii) low-cost construction projects;
(iii) rehabilitation and shoreline stabilization measures related to the redevelopment of urban waterfronts and ports,
(iv) engineering and design studies, and
(v) educational, interpretive and management costs.

It should be noted that 306 A funds may be used to meet matching share requirements of other Federal grants spent for these projects.

(b) Local Implementation of State Policy

Several state statutes provide for the local implementation of state policy subject to state administrative review and enforcement. In these instances local government is specifically assisting the state implement its policies and therefore is eligible to receive funding under the coastal management program.

Eligible activities include:

(i) Local administration of the coastal construction control line pursuant to Chap. 161, F.S.

(ii) Local administration of new or improved pollution control programs certified under Chap. 403, F.S.

(iii) The development and implementation of local regulations for areas designated as areas of Critical State Concern pursuant to Chap. 380, F.S. and

(iv) Planning for water restoration projects and enhancement of public access carried out under Chap. 403.0615, F.S. Funds for additional activities such as revegetation and detailed architectural and engineering work would be available subject to designation as an "Area For Preservation and Restoration" (see Part II, Section Two.C.).

(c) Regional planning activities

As discussed in the section of this report on program organization, full implementation of the state's coastal management program will require the assistance of the regional planning councils (RPC). Recent legislation requires that regional planning councils adopt comprehensive policy plans consistent with Chapter 373 and 403 F.S. The new statute also encourages councils to cooperate with state and federal agencies in planning for disaster preparedness. This recent legislation will be the basis for participation and funding of the RPC's as follows:

(i) The <u>implementation</u> of regional comprehensive policy plans, particularly those sections dealing with the management of natural resources. Implementation would include the

development of rules for the review of Developments of Regional Impact pursuant to Chapter 380, F.S.

(ii) Non-regulatory activities related to issues of special focus including the development and implementation of regional hurricane evacuation plans.

(iii) Public participation activities related to citizens advisory committees.

(d) Demonstration Projects

The Florida Coastal Management Program will encourage the development of new and innovative approaches to improve the management of the state's coastal resources. Therefore, the state intends to provide funds to local governments to address coastal management issues on an innovative basis.

While the range of eligible activities is very broad, priority will be given to those projects which relate to the state "issues of special focus." In addition, to receive consideration a project

(i) should deal with an issue or problem of interest to other coastal communities and the results of the project should also apply to other coastal communities.

(ii) should not duplicate other projects which have been either recently started or completed within the state.

(iii) should be designed to implement adopted comprehensive plans.

(2) <u>Eligible Recipients</u>:

Local governments and Regional Planning Councils.

2. <u>Priorities and Guidelines for Project Funding</u>:

The Department will utilize this section as a basis for adopting a rule on the allocation of funds pursuant to Section 380.22(3). A copy of this draft rule is in the Addendum.

a. Project Priorities

Previous sections of the document indicate the three types projects (categories a, b, c) eligible for funding under th FCMP. While available funds can be utilized for these projects, limited funds necessitate setting priorities for project selection. Therefore, the following general priorit system will be utilized in reviewing projects. More specif: priorities for actual project selection will be established on a yearly basis by the Department after review and comment by the Interagency Management Committee and the State Coast Advisory Committee.

Priority 1 - This class of eligible projects includes activities for improving the implementation and enforcement of state programs. All projects listed in categories "a" ar "b" are included within this class. Also, local and regiona implementation of delegated state programs as listed in category "c" would be first priority projects.

Priority 2 - This second class of eligible activities consists of projects which address "issues of special focus" and which are not covered in the first priority. This class includes non-regulatory projects related to hurricane evacuation planning and urban waterfront restoration. It also includes demonstration and educational projects related to the issues of special focus.

Priority 3 - This class includes all eligible low priority projects that would be funded only after all eligible class and class 2 projects have been funded. It would include all demonstration and educational projects concerning relevant coastal issues that do not address issues of special focus.

b. Project Guidelines

Each applicant will be required to provide 20% matching fund in the form of cash or in-kind services. All state agencies water management districts, and regional planning councils are eligible to receive funds. Local governments which abut the Gulf of Mexico, the Atlantic Ocean or include or are contiguous to waters where marine species of vegetation constitute the dominant plant community are also eligible to receive funds (see Table 13). In addition to this requirement, local applicants must demonstrate that their project proposal is consistent with their adopted local comprehensive plan.

TABLE 13

COUNTIES AND CITIES ELIGIBLE FOR
COASTAL MANAGEMENT FUNDS

BAY COUNTY

Bayview
Callaway
Lynn Haven
Mexico Beach
Panama City
Panama City Beach
Parker
Springfield

BREVARD COUNTY

Cape Canaveral
Cocoa
Cocoa Beach
Indialantic
Indian Harbor Beach
Malabar
Melbourne
Melbourne Beach
Palm Bay
Palm Shores
Rockledge
Satellite Beach
Titusville

BROWARD COUNTY

Dania
Deerfield Beach
Fort Lauderdale
Hallandale
Hillsboro Beach
Hollywood
Lauderdale-by-the-Sea
Lighthouse Park
Oakland Park
Pompano Beach
Sea Ranch Lakes
Wiltons Manor

CHARLOTTE COUNTY

Punta Gorda

CITRUS COUNTY

(no cities)

COLLIER COUNTY

Everglades City
Naples

DADE COUNTY

Bal Harbour Village
Bay Harbour Islands
Coral Gables
El Portal
Golden Beach
Indian Creek Village
Islandia
Miami
Miami Beach
Miami Shores
North Bay
North Miami
North Miami Beach
Surfside

DIXIE COUNTY

Horseshoe Beach

DUVAL COUNTY

Atlantic Beach
Jacksonville
Jacksonville Beach
Neptune Beach

ESCAMBIA COUNTY

Pensacola

FLAGLER COUNTY

Beverly Beach
Flagler Beach
Marineland (part)
Painters Hill

FRANKLIN COUNTY

Apalachicola
Carrabelle

GULF COUNTY

Port St. Joe

HERNANDO COUNTY

(no cities)

HILLSBOROUGH COUNTY

Tampa

INDIAN RIVER COUNTY

Indian River Shores
Orchid
Sebastian
Vero Beach

JEFFERSON COUNTY

(no cities)

LEE COUNTY

Cape Coral
Ft. Myers
Sanibel

LEVY COUNTY

Cedar Key
Yankeetown

MANATEE COUNTY

Anna Maria
Bradenton
Bradenton Beach
Longboat Key (part)
Holmes Beach
Palmetto

TABLE 13
(Continued)

MARTIN COUNTY

Jupiter Island
Ocean Breeze Park
Sewall's Point
Stuart

MONROE COUNTY

Key Colony Beach
Key West
Layton
Munson Island

NASSAU COUNTY

Fernandina Beach

OKALOOSA COUNTY

Cinco Bayou
Fort Walton Beach
Mary Esther
Niceville
Shalimar
Valparaiso

PALM BEACH COUNTY

Boca Raton
Boynton Beach
Briny Breezes
Delray Beach
Gulfstream
Highland Beach
Hypoluxo
Juno Beach
Jupiter
Jupiter Inlet Coloney
Lake Park
Lantana
Manalapan
North Palm Beach
Ocean Ridge
Palm Beach
Palm Beach Gardens
Palm Beach Shores
Riviera Beach
South Palm Beach
Tequesta
West Palm Beach

PASCO COUNTY

New Port Richey
Port Richey

PINELLAS COUNTY

Belleair
Belleair Beach
Belleair Bluffs
Belleair Shores
Clearwater
Dunedin
Gulfport
Indian Rocks Beach
Indian Shores
Largo
Madiera Beach
North Redington Beach
Oldsmar
Redington Beach
Redington Shores
Safety Harbour
St. Petersburg
St. Petersburg Beach
Seminole
South Pasadena
Tarpon Springs
Treasure Island

ST. JOHNS COUNTY

Marineland (part)
St. Augustine
St. Augustine Beach

ST. LUCIE COUNTY

Fort Pierce
Port St. Lucie
St. Lucie Village

SANTA ROSA COUNTY

Gulf Breeze

SARASOTA COUNTY

Longboat Key (part)
North Port
Sarasota
Venice

TAYLOR COUNTY

(no cities)

VOLUSIA COUNTY

Daytona Beach
Daytona Beach Shores
Edgewater
Holly Hill
New Smyrna Beach
Oak Hill
Ormond Beach
Ponce Inlet
Port Oragne
South Daytona

WAKULLA COUNTY

St. Marks

WALTON COUNTY

(no cities)

3. Application and Review Process

The Department of Environmental Regulation will conduct this process consistent with Chapter 120, F.S. - Administrative Procedures. The Department shall issue a notice that coastal management funds are available in the Florida Administrative Weekly. Subsequently, the Department will conduct an initial review of the projects based upon criteria established in the funding rule and input from the Interagency Management Committee and the State Coastal Advisory Committee. Projects which receive preliminary approval will be included as part of the Department's grant request to the Federal Office of Coastal Zone Management (OCZM) and will also be transmitted to the appropriate A-95 Clearinghouses. Final project approval will be subject to review and approval by OCZM.

4. Project Reporting

Each project recipient will be responsible for preparing periodic reports in relation to their project. In addition to these regular progress reports, each recipient will be required to prepare a final report on the project. This final report should be completed in sufficient number to permit distribution to other interested parties.

Subsequent to completion of the final report, the Department (DER) will conduct an evaluation of the project. This evaluation will focus on the applicant's success in meeting the original project goals and objectives. These evaluations will assist the state and OCZM in reviewing and evaluating future funding applications and they will assist the applicant in both remedying any shortcomings in the existing project and preparing future project applications.

COASTAL ENERGY IMPACT PROGRAM (Section 308)

One of the major elements of the Federal Coastal Zone Management Act is the Coastal Energy Impact Program (CEIP). The CEIP is a federally funded assistance program designed to help local governments which are being affected, or anticipate being affected by the siting, construction, expansion, or operation of energy facilities in coastal areas or on the Outer Continental Shelf. Local governments may use CEIP grants and loans to plan for, and provide new or expanded public facilities and services which may be needed as a result of coastal energy activity. Assistance is also available to prevent or mitigate unavoidable losses of environmental or recreational resources which may be threatened by coastal energy activity.

Federal CEIP assistance is provided through the Department of Veteran and Community Affairs in the form of grants and loans which are distributed according to the provisions of the CEIP Allocation Strategy Plan (CASP). The CASP forms the basis for all CEIP awards

and is comprised of two components: (1) Evaluative Criteria for determining the relative merits of each submittal requesting CEIP assistance; and, (2) a Needs Assessment component for selecting needed projects. All CEIP assistance proposals are evaluated in terms of criteria reflecting policies and needs of the state as well as CEIP goals and objectives. The Needs Assessment component determines the relative merits of each proposal in terms of those geographic areas of the state that are being, or are expected to be, most significantly affected by coastal energy or outer continental shelf energy facilities activities.

An important aspect of the CEIP Allocation procedure is intergovernmental coordination. Goals, objectives and programs of government agencies at all levels are considered in the review of all CEIP assistance proposals. CEIP efforts are directed toward those areas which are most in need of CEIP assistance and seeks to fund projects which best meet the intent of the program and the needs of the state.

F. USES OF REGIONAL BENEFIT

INTRODUCTION

The CZMA requires that the state through its coastal management program assure that local government regulations do not unreasonably restrict or exclude land and water uses of regional benefit. Section 306(e) states:

> Prior to granting approval, the Secretary shall also find that the program provides: (2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

Furthermore, 15 CFR s. 923.12 requires the state to identify what constitutes uses of regional benefit and to identify and utilize methods to assure that local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit.

DEFINITION OF TERMS

Based upon the language of the Federal regulations, activities are considered to be of regional benefit in Florida if they:

1) are activities which have a direct and significant impact on coastal waters, and

2) result in a multi-county environmental, economic, social or cultural benefit.

An unreasonable local restriction of an activity is that which is abritrary or capricious. An unreasonable restriction would not be based upon rational or legal considerations and would exclude a facility to the detriment of the region.

USES OF REGIONAL BENEFIT

In the process of identifying potential uses of regional benefit a number of different types of facilities have been considered. Many public services (i.e. sewage treatment, landfills) are provided by local governments and these local governments have not exhibited a trend toward excluding these types of public service facilities. Therefore these types of facilities will not be designated as uses of regional benefit. Instead the coastal management program will focus on coastal land and water uses which, by their nature, might require extension through more than one county or which meet a clearly recognized need, not only for the particular region but for the State as a whole. Therefore the following activities are designated as uses of regional benefit:

1) Natural gas or petroleum pipelines;

2) State or federal highways;

3) State parks;

4) Ports; and

5) Electrical generating plants and electric transmission lines.

MANAGEMENT AUTHORITY

The State of Florida will rely on a number of existing authorit: to address uses of regional benefit. These authorities include land acquisition powers and specific powers related to electrical generati plants and transmission lines.

Land Acquisition

The power to acquire lands by negotiated purchase or eminent domain i a primary means by which the state can assure that sites are availabl for various uses of regional benefit.

1. Pipelines - Companies operating natural gas pipelines have the right of eminent domain to survey and construct pipelines and accessory works on any public or private land as necessary for t. most advantageous route. These companies also have the authorit; to construct pipelines across, over, under or along any stream, canal, bay, lake, road, railroad and transmission line. (Chap. 361.05, F.S.)

   Companies operating petroleum pipelines also have the right to eminent domain and all other rights granted to natural gas companies for the purpose of acquisition of rights-of-ways. However, their eminent domain authority is limited to private property. Yet, they have the right to all necessary permits to install and operate pipelines on public property subject to only reasonable regulations.

2. Highways - The Florida Department of Transportation has the power of eminent domain to condemn all necessary lands for the purpose of securing rights-of-way, borrow pits and drainage ditches for existing, proposed or anticipated roads in the State Highway System. (Chap. 337.27, F.S.)

3. State parks - The Division of Recreation and Parks of the Florida DNR is authorized to acquire private property for both state parks and rights-of-way for state parks. Use of eminent domain procedures is authorized, but such use may require legislative approval. (Chap. 258.007(1), and 258.021)

4. Ports - Both port districts and port authorities created under general or special law are authorized to acquire property by purchase, grant, gift, lease or by the exercise of the right of eminent domain. (Chap. 315.03).

Electrical Generating Plants and Transmission Line Siting

As described in the Authorities discussion, the siting of steam or solar electrical power plants of 50 megawatts in capacity or greater is governed by the Florida Electrical Power Plant Siting Act, Part II Chapter 403 F.S. Siting licenses are issued by the Governor and Cabinet and constitute the sole license required in the state for the construction and operation of the facility. As a part of the siting process the proposed plant is reviewed for consistency with the local land use plan and zoning ordinance. If the plant is found to be consistent with these local regulations, the responsible local agencies are prohibited from changing their regulations. A finding that the proposed plant is inconsistent with local regulations requires the applicant to seek a rezoning. A denial of this rezoning request can be overriden by the Governor and Cabinet if it is determined to be in the public interest to override the local regulations.

The siting of electrical transmission lines of 230 kilovolts or more which cross county lines is governed by the Transmission Line Siting Act (Chap. 403.521 F.S.) This Act provides for a six month centralized licensing process closely based upon the procedures followed in the Power Plant Siting Act. The Act supersedes all other state and local laws in regard to the siting of transmission lines.

G. NATIONAL INTEREST

The Coastal Zone Management Act imposes extensive obligations on the state to coordinate the development of its coastal program with all affected federal agencies. In addition to providing opportunities for participation in all formal reviews by interested federal agencies, the Act requires that the U.S. Secretary of Commerce not approve any state program which does not provide for

> ... adequate consideration of the national interest involved in planning for, and in the siting of, facilities ... which are necessary to meet requirements which are other than local in nature ... (Section 306(c)(8)).

A balance must be provided when planning for and siting facilities between the national interest and conservation and protection of coastal resources.

The rules and regulations for development and approval of state coastal management programs are very specific about consideration of the national interest in coastal management planning. To meet the requirements of the Coastal Zone Management Act, Florida must:

1. Describe the national interest in the planning for and siting of facilities considered during program development.

2. Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

3. Indicate how and where the consideration of the national interest is reflected in the substance of the management program.

4. Describe the process for continued consideration of the national interest in the planning for and siting of facilities during program implementation.

Because of these explicit requirements, Florida has sought to identify the national interest in its coastal zone primarily through meetings and correspondence with federal agencies, review of other states' coastal management programs, review of the President's Executive Orders on Wetlands and Floodplain Management, and the review of regulations issued by the Office of Coastal Zone Management. Additional input on national interests will be received during the remaining months of program development through formal public hearings and, most importantly, through intensified coordination with individual federal agencies.

Identification of the national interest began early in the program development when Florida developed mechanisms to coordinate, consult with, and include the participation of federal agencies. As a

part of this participation, affected federal agencies were asked to identify activities and considerations in the national interest from their own perspectives. During the reviews of the Status Report (1976 and the Workshop and Legislative drafts of the Coastal Management Program (1977 and 1978), they were again asked to review and comment upon how adequately the national interests had been considered and to identify areas where greater consideration was needed.

Based on these meetings and requests, a strong national interest in Florida's coastal zone was identified for the following kinds of activities and associated facilities.

Uses	Associated Facilities
1. National Defense and Aerospace	Military bases and installations; defense manufacturing facilities; aerospace facilities.
2. Energy Production and Transmission	Oil and gas rigs, refineries, storage, distribution and transmission facilities; power plants; deep water ports; LNG facilities; geothermal facilities; coal mining facilities.
3. Recreation	National seashores, parks, forests.
4. Transportation	Interstate highways, railroads, airports, ports.

Given the extensive interstate nature of the Florida economy, its rapidly growing population, its strategic location from a national defense standpoint, and its sensitive environment, the state's interest is generally indistinguishable from the national interest. The state is confronted with the same types of policy conflicts and choices as the federal government; i.e. resource conservation versus resource utilization.

NATIONAL DEFENSE AND AEROSPACE

To determine the national interest in national defense and aerospace, the department consulted the Department of the Air Force, the Department of the Navy, the U.S. Army Corps of Engineers, the National Aeronautics and Space Administration, and the U.S. Coast Guard.

The State has determined that the national interest in national defense and aerospace is to ensure the sovereignty of the nation and

protect its citizens against physical harm or expropriation, and to establish and maintain the facilities necessary to carry out this mission.

The State recognizes the importance of national defense facilities to ensure the nation's sovereignty and to protect its citizens. Obviously, strategically located defense facilities are necessary to achieve these ends.

Ten major military installations are located in Florida - Homestead Air Force Base (Dade County), Eglin Air Force Base (Okaloosa, Santa Rosa and Walton Counties), Tyndall Air Force Base (Bay County), MacDill Air Force Base (Hillsborough County), Patrick Air Force Base (Brevard County), Jacksonville Naval Air Station (Duval County), Key West Naval Air Station (Monroe County), Pensacola Naval Air Station (Escambia County), Mayport Naval Station (Duval County), and the Key West Naval Base (Monroe County). Also, a major aerospace installation, the John F. Kennedy Space Center, is in Brevard County. In addition, there are a number of Coast Guard stations along Florida's coast. A more complete list of defense installations is provided in Table 14.

As shown by the large number of defense facilities in the State, Florida has cooperated with federal agencies in providing for the national defense. This cooperative effort will continue as Florida implements its coastal management program through federal-state consultation. The state will exclude these and other federal facilities from the state's coastal zone as required by sections 305(b)(1) and 304(1) of the CZMA.

ENERGY PRODUCTION AND TRANSMISSION

To determine the national interest in activities related to energy production and transmission, the following legislation, documents, and federal agencies were consulted:

1. National Energy Plan;

2. Department of Energy Reorganization Act;

3. Outer Continental Shelf Lands Act;

4. U.S. Department of Energy;

5. Bureau of Land Management;

6. U.S. Geological Survey;

7. U.S. Department of Transportation; and

8. U.S. Nuclear Regulatory Commission.

TABLE 14

INVENTORY OF FEDERAL LANDS IN FLORIDA'S COASTAL ZONE

NAME	COUNTY	ACRES
NATIONAL FOREST SERVICE		
Apalachicola National Forest	Franklin, Liberty, Wakulla	83,680.00
U.S. DEPARTMENT OF INTERIOR		
Gulf Islands National Seashore	Santa Rosa, Escambia Okaloosa	33,713.98
Rookery Bay Bureau Land Management Lands	Collier	311.26
Everglades National Park	Monroe, Collier, Dade	1,301,349.00
De Soto National Memorial	Manatee	30.00
Fort Jefferson National Monument	Monroe	47,125.00
Biscayne National Park	Dade	174,701.00
Fort Matanzas National Monument	St. Johns	298.51
Castillo De San Marcos National Monument	St. Johns	20.36
Fort Caroline National Monument	Duval	128.37
Scattered Islands in Gulf, Bureau of Land Management	Collier	38.40
Pine Island South Bureau of Land Management	Lee	592.21

NAME	COUNTY	ACRES
Hollywood Indian Reservation	Broward	40.00
Canaveral National Seashore	Volusia, Brevard	67,500.00
Mar-A-Lago National Historic Site	Palm Beach	17.70
St. Vincent National Wildlife Refuge	Gulf, Franklin	12,490.00
St. Marks National Wildlife Refuge	Wakulla, Jefferson, Taylor	64,082.00
Cedar Keys National Wildlife Refuge	Levy	379.00
Chassahowitzka National Wildlife Refuge	Citrus, Hernando	30,143.00
NOT USED		
Pinellas National Wildlife Refuge	Pinellas	377.00
Egmont Key National Wildlife Refuge	Hillsborough	328.00
Passage Key National Wildlife Refuge	Manatee	36.00
Island Bay National Wildlife Refuge	Charlotte	20.00
Matlacha Pass National Wildlife Refuge	Lee	10.00
J. N. "Ding" Darling National Wildlife Refuge	Lee	4,786.00
Charlotte Harbor Bureau of Land Management	Charlotte	1.29
Caloosahatchee National Wildlife Refuge	Lee	40.00

NAME	COUNTY	ACRES
Pine Island National Wildlife Refuge	Lee	31.00
National Key Deer Refuge	Monroe	4,384.00
Great White Heron National Wildlife Refuge	Monroe	4,122.00
Key West National Wildlife Refuge	Monroe	2,019.00
Big Cypress National Preserve	Monroe, Collier	168,320.00
Hobe Sound National Wildlife Refuge	Martin	1,228.00
Pelican Island National Wildlife Refuge	Indian River	4,358.00
Merritt Island National Wildlife Refuge	Brevard, Volusia	139,305.00
U.S. DEPARTMENT OF THE ARMY AND U.S. DEPARTMENT OF THE AIR FORCE		
U.S. Army Reserve Center, Pensacola	Escambia	5.00
Eglin Air Force Base Air Force Systems Command	Santa Rosa	65,497.45
" " "	Okaloosa	247.209.13
" " "	Walton	152.783.91
Eglin Air Force Auxiliary Field #10 Air Force Systems Command	Santa Rosa	Included on Main Base
Eglin AF Auxiliary Field #2 Air Force Systems Command	Okaloosa	Included on Main Base

NAME	COUNTY	ACRES
Eglin AF Auxiliary Field #3 Air Force Systems Command	Okaloosa	Included on Main Base
Eglin AF Auxiliary Field #6 Air Force Systems Command	Okaloosa	Included on Main Base
Eglin AF Auxiliary Field #9 Air Force Systems Command	Okaloosa	Included on Main Base
Clausen Missile Tracking Annex Air Force Systems Command	Okaloosa	3.00
Moreno Point Military Reservation	Okaloosa	12.70
Bowman Bayou Radio Relay Annex #D1A Air Force Systems Command	Walton	1.00
Lynn Haven AG P01 Retail Dist. Station Air Force Logistics Command	Bay	203.44
Panama City Radio Relay Annex #01B Air Force Systems Command	Bay	2.00
Springfield RR Siding Annex (Tyndall Air Force Base) Aerospace Defense Command	Bay	7.55
U.S. Army Reserve Center, Panama City	Bay	4.42
Cove Gardens Family Housing Annex Aerospace Defense Command	Bay	33.21
Tyndall Air Force Base	Bay	28,824.00

NAME	COUNTY	ACRES
Apalachicola Radio Relay Annex Aerospace Defense Command	Franklin	7.00
Ft. Rucker Helicopter Weapons Testing Site	Franklin	6.42
Carrabelle Missile Tracking Annex Aerospace Defense Command	Franklin	36.30
St. George Missile Tracking Annex	Franklin	1.00
Cape San Blas Missile Tracking Annex #D3 Air Force Systems Command	Gulf	520.60
Anclote Missile Tracking Annex #D4 Air Force Systems Command	Pasco	49.65
U.S. Army Reserve Center, Clearwater	Pinellas	4.25
Pinellas District Plant of A.E.C.	Pinellas	98.59
Jacksonville IAP, ING	Duval	158.00
U.S. Army Reserve Center St. Petersburg	Pinellas	7.54
U.S. Army Reserve Center, (Drew Field)	Hillsborough	14.19
MacDill Air Force Base Tactical Air Command	Hillsborough	5,744.56
MacDill ILS Middle Marker Annex Tactical Air Command	Hillsborough	.29
Avon Park Auxiliary Airfield	Highlands	5,181.00
Cudjoe Key Air Force Station Aerospace Defense Command	Monroe	68.50

NAME	COUNTY	ACRES
Big Coppitt Key Communications Facility Aerospace Defense Command	Monroe	5.59
Key West Defense Area KW10	Monroe	75.59
Key West Defense Area KW65	Monroe	90.77
Key West Defense Area KW80	Monroe	38.98
ADC Fighter Dispersal Facilities	Monroe	176.04
Key West Defense Area KW95	Monroe	10.95
Key West Defense Area KW24	Monroe	43.61
Homestead-Miami Defense Area Site #HM40	Monroe	339.82
Avon Park Air Force Range	Polk, Highlands	101,029.00
Ft. Lonesome Radar Site	Manatee	.70
MacDill AFB ILS Middle Marker Site	Hillsborough	.50
Homestead-Miami Defense Area Site #HM69	Dade	697.10
Homestead-Miami Defense Area Site #HM59	Dade	59.25
Homestead ILS Outer Marker Annex Tactical Air Command	Dade	1.19
Homestead-Miami Defense Area Site #HM39	Dade	58.79

NAME	COUNTY	ACRES
Homestead Survival Training Annex Tactical Air Command	Dade	2.75
Homestead Communications (Transmitter) Annex Tactical Air Command	Dade	20.00
Homestead Air Force Base Tactical Air Command	Dade	3,284.27
Homestead ILS Middle Marker Annex Tactical Air Command	Dade	1.00
Homestead-Miami Defense Area Site #HM12	Dade	60.20
Cutler Ridge Pararescue Drop Area	Dade	20.00
Richmond Air Force Station Z210 Aerospace Defense Command	Dade	143.04
U.S. Army Reserve Outdoor Training Facility Richmond	Dade	161.12
Homestead-Miami Defense Area Site #HM01	Dade	5.68
Homestead Helicopter Annex Tactical Air Command	Dade	.99
Homestead Dock Annex Tactical Air Command	Dade	6.44
U.S. Army Reserve Center, Miami	Dade	3.04
NOT USED		
NOT USED		
NOT USED		

NAME	COUNTY	ACRES
U.S. Army Reserve CTP Center, Ft. Lauderdale	Broward	4.56
U.S. Army Reserve Center, West Palm Beach	Palm Beach	6.01
Palm Beach Army Reserve Center	Palm Beach	3.10
Jupiter Missile Data Collection Annex Air Force Systems Command	Palm Beach	31.99
Vero Beach Tracking Annex Air Force Systems Command	Indian River	8.23
Malabar Transmitter Annex Air Force Systems Command	Brevard	640.00
Melbourne Beach Optical Tracking Annex Air Force Systems Command	Brevard	1.87
OLF Choctaw	Santa Rosa	172.00
U.S. Armed Forces Reserve Center Eau-Gallie	Brevard	7.44
Patrick Air Force Base Air Force Systems Command	Brevard	2,378.61
Cocoa Beach Communications Annex #1 Air Force Systems Command	Brevard	.24
Cocoa Beach Communications Annex #2 Air Force Systems Command	Brevard	.30
Cocoa Ocean Beach Tracking Annex Air Force Systems Command	Brevard	3.00
Port Canaveral Dock Facility Air Force Systems Command	Brevard	20.57

NAME	COUNTY	ACRES
Port Canaveral Cable Terminal Annex	Brevard	1.18
Cape Canaveral Air Force Station Air Force Systems Command	Brevard	16,239.08
Ponce De Leon Data Collection Annex Air Force Systems Command	Volusia	2.61
U.S. Army Reserve Center, Palatka	Putnam	3.42
Jacksonville Air Force Station (Z114) Aerospace Defense Command	Duval	44.49
U.S. Army Reserve Center, Jacksonville	Duval	4.72
Jacksonville Communications Facility Annex Aerospace Defense Command	Clay	1.60
U.S. Army Reserve Center, Jacksonville	Duval	5.98
U.S. DEPARTMENT OF THE NAVY		
Naval Reserve Center Gainesville	Leon	4.22
Naval Reserve Center, Miami	Dade	3.26
Naval and Marine Corps Reserve Center, Orlando	Orange	10.60
Naval Reserve Center, St. Petersburg	Pinellas	.72

NAME	COUNTY	ACRES
Naval and Marine Corps Reserve Center, Tallahassee	Leon	13.00
Naval Reserve Center, Tampa	Hillsborough	2.18
Naval Air Station, Key West	Monroe	18,477.52
Navy Regional Medical Clinic, Key West	Monroe	13.67
Naval Communications Unit, Key West	Monroe	614.96
Naval Surface Weapons Center, Detachment, Ft. Lauderdale	Broward	29.51
Naval Security Group Activity, Homestead	Dade	814.94
Naval Observatory Time Service Station, Richmone	Dade	76.67
Naval Air Station, Jacksonville Complex, Jacksonville	Duval	3,801.63
Naval Air Station, Jacksonville Complex, Fleming Island Beacon	Clay	1.60
Naval Air Station, Jacksonville Complex, Camp Blanding Rifle Range	Clay	50.00
Naval Air Station, Jacksonville Complex Lake George Bomb Target	Volusia	.46
Naval Air Station, Jacksonville Complex Pinecastle Impact Range	Marion	5,824.26
Naval Air Station, Jacksonville Complex Rodman Bomb Target	Putnam Marion	2,692.51

NAME	COUNTY	ACRES
Naval Air Station, Jacksonville Complex Stevens Lake Bomb Target	Clay	2,554.20
Navy Regional Medical Center, Jacksonville	Duval	74.63
Navy Fuel Depot Jacksonville	Duval	180.37
Naval Air Station, Cecil Field Complex NAS Cecil Field	Duval	16,641.06
Naval Air Station, Cecil Field Complex Auxiliary Landing Field, White House	Duval	2,492.04
Naval Air Station, Cecil Field Complex Jacksonville Heights	Duval	1,038.65
Naval Station, Mayport	Duval	3,208.15
Naval Training Center, Orlando	Orange	1,217.46
Naval Training Equipment Center, McCoy Annex, Orlando	Orange	875.18
Naval Air Station, Pensacola Complex NAS Pensacola	Escambia	5,637.36
Naval Air Station, Pensacola Complex Auxiliary Landing Field Bronson	Escambia	1,097.58
Naval Air Station, Pensacola Complex Auxiliary Landing Field Choctaw	Santa Rosa	800.00
Navy Aerospace and Regional Medical Center, Pensacola	Escambia	78.42

NAME	COUNTY	ACRES
Naval Education and Training Program Development Center, Saufley Field	Escambia	944.18
Naval Technical Training Center Detachment, Corry Station	Escambia	431.50
Naval Coastal Systems Laboratory, Panama City	Bay	670.80
Naval Air Station, Whiting Field Complex NAS Whiting Field	Santa Rosa	3,946.99
Naval Air Station, Whiting Field Complex UHF OMNI-Range Facility	Santa Rosa	240.01
Naval Air Station, Whiting Field Complex Auxiliary Landing Field, Harold	Santa Rosa	573.30
Naval Air Station, Whiting Field Complex Auxiliary Land Field, Holley	Santa Rosa	697.56
Naval Air Station, Whiting Field Complex Auxiliary Landing Field, Pace	Santa Rosa	206.56
Naval Air Station, Whiting Field Complex Auxiliary Landing Field, Santa Rosa	Santa Rosa	737.75
Naval Air Station, Whiting Field Complex Auxiliary Landing Field, Spencer	Santa Rosa	640.00
Naval Air Station, Whiting Field Complex Auxiliary Landing Field, Site 6	Escambia	239.57

NAME	COUNTY	ACRES
Naval Air Station, Whiting Field Complex Auxiliary Landing Field Site 8A	Escambia	640.00
Naval Air Station, Whiting Field Complex Low Frequency Radio Range	Santa Rosa	2.54
Marine Corps Reserve Center, West Palm Beach	Palm Beach	7.76
Marine Corps Reserve Center, Tampa	Hillsborough	37.01
Marine Corps Reserve Center, Miami	Dade	5.19
Marine Corps Reserve Center, Jacksonville	Duval	110.50
U.S. ARMY CORPS OF ENGINEERS		
Anclote River Turning Basin	Pinellas	9.62
Baker's Haulover Inlet	Dade	46.05
Canaveral Harbor Project	Brevard	2,623.85
Cedar Key Harbor	Levy	257.99
Cross Florida Barge Canal		8,473.00
Daytona Beach Side Channel	Volusia	4.68
Eau-Gallie Harbor	Brevard	16.66
Everglades Harbor	Collier	40.65
Fernandina Harbor	Nassau	495.71
Ft. Pierce Harbor	St. Lucie	174.23

NAME	COUNTY	ACRES
Gulf Coast Shrimp Boat Harbor Fort Myers Beach	Lee	179.03
Horseshoe Cove	Dixie	289.44
Indian River Courtenay Channel	Brevard	65.84
ICW CR-AR West Coast		15,876.01
ICW Cumberland Sound to St. Johns River		1,806.44
ICW Jacksonville to Miami East Coast		50,264.57
Jacksonville Dredge Depot	Duval	3.50
Jacksonville Harbor Project	Duval	7,610.27
Johns Pass	Pinellas	394.38
Key West Harbor Project	Monroe	827.75
Little Pass, Clearwater	Pinellas	235.93
Melbourne Harbor	Brevard	7.43
Miami Beach Engineer Sub-Office	Dade	39.29
Miami Harbor Project	Dade	896.90
Naples to Big Marco Pass Channel Improvement	Collier	157.80
Okeechobee Waterway		26,450.73
Palm Beach Harbor Project	Palm Beach	312.18
Pass-a-Grille	Pinellas	775.01
Port Everglades Harbor Project	Broward	150.76

NAME	COUNTY	ACRES
Rice Creek	Putnam	147.54
St. Augustine Harbor	St. Johns	399.91
St. Augustine Seawall	St. Johns	
St. Johns River Channel Improvement Jacksonville to Lake Harvey		258.28
St. Lucie Inlet	Martin	52.13
Suwannee River	Dixie Levy	66.08
Tampa Harbor Project	Pinellas, Hillsborough	2,422.29
Treasure Island Beach Restoration	Pinellas	543.56
Virginia Key-Key Biscayne Beach Beach Restoration	Dade	996.69
Key Largo Sound	Monroe	74.78
New Pass - Sarasota	Sarasota	274.80
Mullet Key Beach Restoration	Pinellas	341.44
Withlacoochee River Channel Improvement	Levy, Citrus	378.85
Biscayne National Monument	Dade	95,022.39
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION		
John F. Kennedy Space Center	Brevard	84,030.95
U.S. DEPARTMENT OF TRANSPORTATION		
USCG Air Station, Miami, Opa Locka	Dade	50.9

NAME	COUNTY	ACRES
USCG Air Station, Clearwater	Pinellas	41.20
USCG Base Mayport	Duval	3.10
USCG Base, Miami Beach	Dade	11.40
USCG Station, Clearwater (Proposed)	Pinellas	
USCG Station, Bradenton, Cortez	Manatee	1.10
USCG Station, Fort Lauderdale, Dania	Broward	7.80
USCG Station, Port Canaveral	Brevard	9.80
USCG Station, Fort Myers Beach	Lee	.70
USCG Station, Fort Pierce	St. Lucie	13.00
USCG Station, Islamorada	Monroe	2.20
USCG Station, Key West (existing)	Monroe	11.40
USCG Station, Key West (old site)	Monroe	4.60
USCG Station, Marathon	Monroe	5.70
USCG Station, Ponce de Leon, New Smyrna Beach	Volusia	94.00
USCG Station, Lake Worth Rivera Beach (existing)	Palm Beach	3.40
USCG Station, Lake Worth, West Palm Beach (proposed)	Palm Beach	4.40
USCG Station, St. Petersburg	Pinellas	22.10

NAME	COUNTY	ACRES
USCG Station, Yankeetown	Levy	1.10
USCG Light Station Dry Tortugas, Loggerhead Key, Fort Jefferson National Monument		42.00
USCG Light Station, Egmont Key	Hillsborough	387.50
USCG Loran Station A, Venice	Sarasota	24.40
USCG Radio Station, Miami	Dade	231.00
USCG Marine Safety Office, Tampa	Hillsborough	.70
USCG Reserve Training Center, Jacksonville	Duval	3.40
USCG Family Housing, Miami	Dade	53.20
USCG Family Housing, Ft. Myers	Lee	1.70
USCG Family Housing, Islamorada, Tavernies	Monroe	1.10
USCG Family Housing, Marathon, Duck Key	Monroe	.60
Radar Microwave Link Repeater FAA	Broward	1.80
Outer Market (part of Instrument Landing System) FAA	Dade	.30
International Flight Service Transmitter Station FAA	Dade	311.30
Air Route Traffic Control Center FAA	Dade	16.80
Homer (Non-Directional Radio Beacon) FAA	Escambia	.90

NAME	COUNTY	ACRES
U.S. Coast Guard Loran Station C	Gulf	6.00
Outer Marker (part of Instrument Landing System) FAA	Hillsborough	.30
Homer (Non-Directional Radio Beacon) FAA	Monroe	.70
Air Route Traffic Control Center FAA	Nassau	29.20
Radar Microwave Link Repeater FAA	Palm Beach	5.80
U.S. DEPARTMENT OF COMMERCE		
Southeast Fisheries Center	Dade	
Panama City Laboratory National Marine Fisheries Service	Bay	
VETERANS ADMINISTRATION		
Veterans Administration Hospital	Pinellas	
Veterans Administration Hospital	Hillsborough	
Veterans Administration Hospital	Dade	

TOTAL ACREAGE: 2,638,379.13

NOTE: Canaveral National Seashore, Merritt Island National Wildlife Refuge, and the John F. Kennedy Space Center have overlapping acreage. The greatest acreage figure, for the Wildlife Refuge, was the only one used in the total acreage county. The Corps of Engineers acreage for the Biscayne National Monument maintenance project is another case of overlapping acreage and has not been included in the total acreage figure. March, 1978.

According to the National Energy Plan, there are a number of major national interests in energy.

1. It is in the national interest to reduce dependence on foreign oil and vulnerability to supply interruptions.

2. It is in the national interest to maintain U.S. oil imports low enough to weather the period when world oil production approaches its capacity limitation.

3. It is in the national interest to develop renewable and virtually inexhaustible energy sources for sustained economic growth.

The national interest in energy has been incorporated into the Coastal Management Program in several ways:

1. The Legislature specifically identified energy facilities as important coastal resources in the intent section of the Florida Coastal Management Act (Section 380.21, F.S.).

2. The program includes the state's authority and policy for the siting of electrical power plants and electric transmission lines. Factors which govern the siting of these facilities include the present and future need for electrical generating capacity, proximity to transportation systems and accessibility to transmission corridors.

3. The program includes the state's authority and policy for oil and gas production. It is the state's policy to encourage the development of oil and gas resources and the products made therefrom.

4. Electric power plants, transmission lines and oil and gas pipelines are identified as uses of regional benefit. This designation ensures that local government regulations will not arbitrarily or unreasonably restrict the siting of these facilities.

5. Water related energy facilities are identified as an "issue of special focus". This designation ensures that the state will strive to improve the process for siting these facilities in the implementation of its coastal management program.

RECREATION

To determine the national interest in recreation, the following documents, legislation, and federal agencies were consulted:

1. Statewide Comprehensive Outdoor Recreation Plan;

2. Heritage Conservation and Recreation Service;

3. National Park Service;

4. Fish and Wildlife Service;

5. Historic Preservation Act; and

6. Land and Water Conservation Fund Act.

The State has determined the national interests in recreation are:

1. High quality recreation opportunities for all citizens consistent with environmental protection.

2. Increased public recreational opportunities in high density areas.

3. Protecting existing recreation areas from adverse adjacent uses.

The national interest has been incorporated into the Florida Coastal Management Program in several ways:

1. The state's basic authorities and policies related to recreational facilities are included within the program, including Chapters 253, 258, 259, 260, 372, and 375, F.S. They show the state's commitment to provide varied recreational opportunities throughout the state.

2. Major recreational facilities are designated as uses of regional benefit. This designation ensures that local government regulations will not arbitrarily or unreasonably restrict siting of these facilities.

3. Aquatic preserves, wilderness areas and environmentally endangered lands are designated as areas of special management. Each of these types of areas has the potential for recreational use. This designation ensures that the State will focus special attention on these areas during the implementation of the coastal management program.

4. Coastal recreation is identified as an "issue of special focus" in the program. Therefore, the program will assist in providing recreational opportunities for the citizens of Florida through increased coordination of state programs.

TRANSPORTATION

To determine the national interest in transportation, ports, and navigation, the following legislation and federal agencies were consulted:

1. Department of Transportation Act;

2. U.S. Coast Guard;

3. Federal Aviation Administration;

4. Maritime Administration;

5. U.S. Army Corps of Engineers; and

6. Interstate Commerce Commission.

The State determined that the national interests in transportation are:

1. To provide fast, safe, efficient and convenient access via one or more modes of transportation for people, goods and services within the State; and

2. To provide for a balanced national transportation system including all modes of transportation.

The national interest in transportation has been incorporated into the Coastal Management Program through:

1. The stated policy of the State that the development of a balanced and efficient transportation system, adequate to meet the current and future transportation of the state, is essential to the commercial life and general welfare of the people of the state and to the national defense. This policy embodies the major objectives of the national interest in transportation.

2. Major highways and ports are designated as uses of regional benefit. This designation ensures that local government regulations will not arbitrarily or unreasonably restrict the siting of these facilities.

3. Port development is identified as an "issue of special focus" in the program. This consideration means that increased emphasis will be given to meeting the needs of the ports during the implementation of the coastal management program.

CONSIDERATION OF THE NATIONAL INTEREST DURING PROGRAM IMPLEMENTATION

During program implementation, Florida will continue to consider the national interest in the planning for and siting of facilities which are necessary to meet requirements which are other than local in nature. As a part of these processes, the State will also consider certain other state and national resource concerns including air, water, wetlands, endangered species, historic and cultural resources and living marine resources.

FACILITY PLANNING

The State has a number of planning processes which relate to the siting of recreational, energy or transportation facilities. For instance, the State Comprehensive Outdoor Recreation Plan (SCORP) is the basis for the development of recreational facilities within the state. This plan was developed in close coordination with the Heritage Conservation and Recreation Service (HCRS). The plan is updated on a regular basis consistent with the guidelines of HCRS. The highways of the State are constructed in accordance with the Florida

Department of Transportation (FDOT) five year construction plan. The development of this plan is coordinated with the federal Department of Transportation. Also, each Metropolitan Planning Organization (MPO) must have a comprehensive transportation plan developed with the assistance of the FDOT. The federal DOT must be given an opportunity to participate in any hearings held related to this comprehensive plan. The State also requires ten year site plans from each of the electric utilities. These plans estimate its power-generating needs and the general location of its proposed power plant sites. In reviewing these plans, the Florida Department of Veteran and Community Affairs considers the views of appropriate federal agencies.

FACILITY SITING

The State has several decisionmaking processes which deal with the siting of major energy, recreation or transportation facilities. Through implementation of the Federal Clean Air and Clean Water Acts, incorporated through the requirements of Chapter 403, F.S., the national interest in maintaining or improving air and water quality standards are provided for. Particularly through federally approved Section 401 certification and the provisions of the National Pollution Discharge Elimination System under the Clean Water Act, permit decisionmaking incorporates the national interest in resource use and conservation.

Federal participation in the development of both the State recreation and transportation plans, which serve as the basis for siting and funding decisions, ensure consideration of the national interest throughout the planning and siting processes.

The Department of Environmental Regulation is responsible for reviewing requests for dredge and fill activities in submerged lands under Chapter 253, F.S. The DER also administers the certification of sites of electrical power plants and transmission lines (Chapter 403, Part II, F.S.).

The siting of any major new oil and gas facility large enough to require consideration of the national interest will, in all probability, require the securing of a state dredge and fill permit under Chapter 253, F.S. as the construction of such new or expanded facilities would necessitate pipelines, piers, docks, or some type of port expansion affecting submerged lands. Consideration of the national interest would occur under Chapter 253, F.S., which requires that the public interest be considered by the Board in making permit decisions. While the discussion of the public interest in Section II.B.5. indicates that it is weighted in favor of the conservation of resources, the case illustrations indicate that the State employs a balancing test of the type envisioned in the federal program approval regulations, 15 CFR 923.52.

Major new power plants are often facilities in the national interest. Provisions in the Transmission Line Siting Act (Chapter 403.520, F.S.), and Public Utilities Act (Chapter 366, F.S.) authorize the Public Service Commission to determine the public need for power plants and electrical transmission lines. In making its determination

of need, the Commission will hold a hearing on each siting proposal and take into consideration electric system reliability and integrity. Proceedings on the determination of public need also consider conservation, cost effectiveness, and the need for reasonably priced electricity, all of which are a means by which the range of national interests considerations are expressed. The Commission's determination of the need for a transmission line is binding on all parties to a certification under the 1980 Transmission Line Siting Act. Under the Public Utilities Act, the Commission's determination of need for a power plant creates a presumption of public need and necessity.

The Florida Public Service Commission regulates public utilities with respect to rates, service and the issuance and sale of their securities. It also has jurisdiction over the planning, development and maintenance of a coordinated electric power grid throughout Florida, Chapter 366.04(1) and(3), F.S. In exercising this jurisdiction and in order to "promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto", the Commission may "require repairs, improvements, additions and extensions to the plant and equipment of any public utility", including requiring new generating plants and transmission facilities, Chapter 366.05(1) and (8), F.S.

Aside from serving the national interest in providing adequate and reliable electricity to the public, as discussed above, the functions of the Commission are constantly exposed to the national interest. The Commission is directed by statute to maintain a continuous liaison with all other appropriate state and federal agencies whose policy decisions and rulemaking authority affect those utilities which the Commission regulates. This liaison must be conducted at both the policy and operational levels. Active participation in other agencies' public hearings is encouraged to transmit the Commission's policy positions and information requirements. This liaison function will continue to provide national interest input during program implementation, Chapter 366.015, F.S.

H. FEDERAL CONSISTENCY

INTRODUCTION

One of the benefits to the State of Florida for participation in the federal coastal management program will be the close coordination between federal and state activities. A number of Federal programs regularly affect activities on Florida's coastline and in its offshore waters. Federal agency permits or licenses affecting the coastline include such activities as dredging, construction of power plants, and exploration and development of the Outer Continental Shelf. Federal agencies also manage financial assistance programs, which include grants for watershed protection, and shoreline erosion; and development projects such as national parks, and highway construction.

The Federal Coastal Zone Management Act (CZMA) establishes several broad categories of federal actions which must be evaluated for consistency with a state Coastal Management Program. Section 307 (c)(1) and (2) of the CZMA requires that federal activities and development projects in or directly affecting the coastal area must be consistent (to the maximum extent practicable) with the state coastal management program. Sections 307(c)(3)(A) and 307 (c)(3)(B) require that federally licensed and permitted activities affecting the coastal zone, including those which are described in detail in outer Continental Shelf plans prepared by industry, to be consistent with the state program. Section 307(d) requires federal assistance to state and local governments for projects affecting the coastal zone to be consistent with a state coastal management program.

The consistency provisions offer Florida an opportunity to take a more effective role in the management of coastal resources. The state also will have the opportunity to improve coordination and cooperation among all levels of government. The state will implement these provisions without creating burdensome administrative requirements for federal agencies, or for applicants for federal permits or assistance.

GENERAL PROCEDURES FOR CONSISTENCY REVIEWS

Federal agencies with responsibilities in or affecting the Florida coastal area are required to act in conformance with Section 307 of the CZMA and NOAA implementing regulations (15 CFR Part 930). Table 15 summarizes the federal actions covered, the notification procedures, and related administrative matters.

When a proposed federal activity, a federally permitted activity, or federal assistance would occur within the jurisdiction of a state agency, consistency reviews will be conducted by the agency or agencies with appropriate jurisdiction. The Department of Environmental Regulation, as the lead agency for the coastal management program (380.22(1), F.S.), will coordinate consistency review and will issue the formal state response to the appropriate party. The department will use

TABLE 15

FEDERAL CONSISTENCY PROCEDURES

	307(c)(1)&(2)	CZMA Section 307(c)(3)(A)	307(c)(3)(B)	307(d)
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 government
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	Department of the Interior	A-95 clearinghouse receiving state or local government application for federal assistance
Notification procedure	Consistency determination	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

TABLE 15 (Continued)

FEDERAL CONSISTENCY PROCEDURES

	307(c)(1)&(2)	CZMA Section 307(c)(3)(A)	307(c)(3)(B)	307(d)
State agency action	Agree or disagree; submission of recommended alternatives in the event of disagreement	Concur or object explain basis of objection	Concur or object explain basis of objection	Concur or object explain basis of objection
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	Voluntary mediation by the Secretary of the U. S. Department of Commerce	Appeal to or voluntary mediation by the Secretary of the U. S. Department of Commerce by applicant or indepen- review by Secretary of Commerce	Appeal to the Secretary of the U. S. Department of Commerce by person or independent Secretarial review	Appeal to or voluntary mediation by the Secretary of the U. S. Department of Commerce

Source of procedures: 15 CFR 930, 44 Federal Register 37142, (June 25, 1979)

existing review processes to the maximum extent, such as agreements between state and federal agencies, and the OMB Circular A-95, to expedite state responses. The DER also will be the repository of material documenting federal consistency decisions.

Where federal licenses, permits, activities, and assistance projects are subject to federal consistency review and are seaward of the jurisdiction of the state, or where there is no single state agency with jurisdiction, the Department of Environmental Regulation is responsible for consistency review and determination. The Department can not make a determination that the license, permit, activity, or project is consistent if any other state agency with significant analogous responsibility makes a determination of inconsistency. Conflicts between State agencies may be appealed to the Governor and Cabinet (380.23(2), F.S.).

To be consistent, the federal activities, licensing decisions, etc. must comply with the Florida laws which form the state's coastal management program - the existing state policies, statutes, and administrative rules selected and included in the Florida program (See: Part II, Section II, and the Appendix). Federal agencies, and applicants for federal licenses and permits and federal assistance, will use the state requirements to determine the consistency of their proposed actions. The DER will work with federal agencies toward the development of memoranda of understanding, general consistency determinations, and more specific procedures governing the processing of consistency determinations during the first year of program implementation.

FEDERAL DEVELOPMENT PROJECTS AND ACTIVITIES

The Federal Act requires that federal activities directly affecting the coastal zone and federal development projects which are located in or directly affecting the coastal area must be consistent "to the maximum extent practicable" with the FCMP. This requirement is reflected in the Florida Coastal Management Act which requires consistency review of federal development projects and activities "...which significantly affect the coastal waters and the adjacent shorelands of the state." (380.23(3)(a), F.S.). These projects and activities are reviewable on a statewide basis with no distinction between interior and coastal counties.

A federal agency proposing an action must determine whether its activity directly affects the coastal zone. The FCMP recommends that agencies consider potential impacts on the following resources and uses:

- Coastal waters: including water quality, quantity, flow rates, hydroperiod, seasonal fluctuations, circulation, and mixing of fresh and salt water.

- Air quality (in coastal areas).

- Coastal living resources: including productivity, diversity, dynamics, and important features such as

habitat, feeding grounds, nursery areas, spawning grounds, nesting sites, and migratory routes.

- Coastal uses: including recreation, aesthetics, water-dependent uses and patterns of use.

- Coastal socio-economic characteristics: including population growth and distribution, provision of services and facilities, employment, tax base, economic diversity, and energy use and conservation.

- The limitations the action would impose on future alternatives or options in the coastal area.

Certain federal activities and development projects are presumed to directly affect coastal waters and adjacent shorelands. Examples include:

<u>Department of Defense</u>	
Army Corps of Engineers	Proposed project authorization or dredging, spoil disposal, channel works, breakwaters, other navigation works, erosion control structures, reservoirs, dams, and beach nourishment.
Air Force, Army, and Navy	Location, acquisition, and design of new or enlarged defense installations. Actions conducted on federal excluded land which may have an impact on non-federal coastal lands and waters.
<u>Department of Commerce</u>	
National Marine Fisheries Service	Fisheries management programs.
<u>Department of Interior</u>	
Bureau of Land Management	Actions conducted on federal lands with a potential impact on non-federal coastal lands and waters.
National Park Service	National Park and Seashore management and acquisition.
Fish and Wildlife Service	National Wildlife Refuges acquisition and management.
<u>Department of Transportation</u>	
Coast Guard	Location, acquisition, design, construction, operation, and

	abandonment of existing, expanded or new facilities.
Federal Highway Administration	Highway construction.
General Services Administration	Location, acquisition, design and disposal of federal government facilities, and disposal of surplus federal lands.

Consistency review should occur as early in the federal agency planning or development process as possible. After making the determination, the federal agency will inform the Department of Environmental Regulation (DER) of its review and conclusions. The agency should highlight problems it has identified, particularly any areas where it may not be feasible to be consistent. Federal agencies are encouraged to request a conference to advise the DER of an activity with consistency review problems. The request should be made to the

Federal Coordinator
Florida Department of Environmental Regulation
Division of Permitting
2600 Blair Stone Road
Tallahassee, Florida 32301

Florida will use established notification procedures, including the OMB Circular A-95 review, to monitor federal activities and development projects and to coordinate reviews of federal consistency determinations. Additional information may be required to determine whether projects will meet state requirements. The state agencies responsible for administering the state laws in the Florida coastal management program will conduct the consistency reviews. Each state agency will use the Florida procedures and standards under state law that it normally uses to evaluate permit applications, management programs, or applications for assistance.

The DER, using existing procedures as appropriate, will coordinate consistency reviews by other state agency(ies) and will notify the affected federal agency of the state response within 45 days after receipt of the consistency notification. The state may seek a 15 day extension (15 CFR 930.41, June 25, 1979). In some cases, federal agencies are already required by law to obtain permits from the state. These procedures will not change.

NON-FEDERAL ACTIVITIES WHICH REQUIRE FEDERAL LICENSES OR PERMITS

The federal consistency provisions of the CZMA require activities covered by federal licenses and permits to be certified by the applicant and approved by the state as consistent with its management program before the permits can be issued. The Florida Coastal Management Act lists federal permits and licenses which are subject to consistency certification (see Table 16). Licenses and permits which are listed are subject to a review for consistency only if they are for activities within, or seaward of, the jurisdiction of

TABLE 16

FEDERAL PERMITS REQUIRING A
STATE CONSISTENCY DETERMINATION
(From: Florida Coastal Management Act)

1. Permits required under ss. 10 and 11 of the River and Harbor Act of 1899, as amended.

2. Permits required under s. 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

3. Permits required under ss. 201, 402, 403, 404, and 405 of the Federal Water Pollution Control Act of 1972, as amended, unless such permitting activities pursuant to such sections have been delegated to the state pursuant to said act.

4. Permits required under the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C., ss. 1401, 1402, 1411-1421, and 1441-1444.

5. Permits for the construction of bridges and causeways in navigable waters required pursuant to 33 U.S.C., s. 401, as amended.

6. Permits relating to the transportation of hazardous substance materials or transportation and dumping which are issued pursuant to the Hazardous Materials Transportation Act, 49 U.S.C., ss. 1801-1812, as amended, or 33 U.S.C., s. 419, as amended.

7. Permits and licenses required under 43 U.S.C., s. 717 for construction and operation of interstate gas pipelines and storage facilities.

8. Permits required under 15 U.S.C., s. 717, as amended, for construction and operation of facilities needed to import and export natural gas.

9. Permits and licenses required for the siting and construction of any new electrical power plants as defined in s. 403.503(7), as amended.

10. Permits and licenses required for drilling and mining on public lands.

11. Permits for areas leased under the OCS Lands Act, as amended, including leases and approvals under 43 U.S.C., s. 1331, as amended, of exploration, development, and production plans.

12. Permits for pipeline rights of way for oil and gas transmissions.

13. Permits and licenses required for deep-water ports under 33 U.S.C., s. 1503, as amended.

local governments which abut the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters where marine species of vegetation constitute the dominant plant community (380.23(3)(c), F.S.) see list of local governments, Part II, Section Two.F., Table 15).

Under the FCMA, the issuance or renewal of a state license automatically constitutes the state's concurrence that the federally licensed or permitted activity or use is consistent with the state coastal management program. Conversely, the denial of a state license automatically constitutes the state's finding that the proposed activity or use is not consistent with the state's federally approved program. Where a state permit is issued, denied, renewed, or modified the federal consistency review conducted by the state pursuant to this program is not intended to add any additional review by any state agency. Public notice as required under 15 CFR Part 930.61 will be carried out as appropriate. The Department will also continue to implement its review and certification responsibilities under Section 401 of the Clean Water Act. Where a consistency review of a federal license or permit application is required, but where there is no analogous state license requirement, the consistency review shall be conducted in accordance with existing state statutes and/or regulations.

The information requirements for determining consistency and the consistency review criteria are included in existing state permitting procedures. The Department's Division of Permitting will coordinate federal consistency reviews and determinations with permitting and licensing decisions made by the Department of Natural Resources, and other affected state agencies. If the United States Secretary of Commerce determines that the activity or use is in the national interest in accordance with Subpart H of the Federal Consistency Regulations (15 CFR Part 930), the state's consistency determination (but not its permit decision) may be overturned (380.23(1), F.S.).

No state agency may make a federal consistency review of an application for a federally licensed or permitted activity, if the activity is vested, exempted, or excepted under that agency's regulatory authority (380.23(6), F.S.). Also, reviews may not be made of federally licensed or permitted activities for which permit applications are filed with the appropriate federal agency prior to federal approval of the state coastal management program (380.23(8), F.S.).

The U.S. Army Corps of Engineers is responsible for many federal permits which will be subject to consistency review. To minimize potential problems and unnecessary delay, the Corps, the Department of Environmental Regulation, and the Department of Natural Resources have developed a joint application for state and federal permits. In addition, the Corps and the Department of Environmental Regulation cooperate through joint public notices. Florida's coastal management consistency procedures will use these established cooperative programs for public notice and concurrence with consistency certifications.

State permits for activities with potential impacts on Florida waters usually are issued within 90 days after receipt of a completed application. This is compatible with the basic 3 month review period established under the federal consistency regulations 15 CFR 930.63(a) and (b). At times, the processing of state permits or licenses may be suspended by hearings or waivers (120.57, F.S.) and state permit action would thus exceed 90 days. In such situations, the state may extend its full 6 month consistency review period upon notification to the federal agency and applicant of the status of the matter and reason for delay. Where the processing of a state permit application has been suspended and exceeds 6 months, the Department of Environmental Regulation would object to the applicant's consistency certification prior to the end of the 6 month deadline pending the final decision on the state permit. Notification of the objection along with the reason for the objection (consistency determination rests on the approval or denial of a state permit), will be sent to the applicant, the federal agency, and the Assistant Administrator for coastal zone management (NOAA).

State law requires the Department of Environmental Regulation to review the federal licenses and permits listed in Table 18 to determine if, in certain circumstances, such activities would constitute minor permit activities. It then may establish, by rule, a program of general concurrence pursuant to applicable federal regulations which will allow similar kinds of minor activities in the same geographic area to proceed without Department review for federal consistency (380.23(7), F.S.). The Department also is required to adopt procedures for the expeditious handling of emergency repairs on existing facilities for which federal consistency reviews are required (380.23(4), F.S.).

OUTER CONTINENTAL SHELF ACTIVITIES THAT REQUIRE FEDERAL LICENSES AND PERMITS

The third consistency provision of the federal CZMA (Section 307(c)(3)(B)) states in part that:

> "...any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from any area which has been leased under the Outer Continental Shelf Land Act...and regulations under such Act shall...attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved (coastal) management program and will be carried out in a manner consistent with such program."

Thus, any entity submitting an OCS plan to the Interior Department must provide Interior with a consistency certification and must furnish the state, through the Department of the Interior, with a copy of the plan (excluding proprietary information) and the consistency certification. No federal license or permit for an activity which is described in detail in an OCS plan may be granted by a federal agency until: 1) the state concurs with the certification, 2) the state, for

failure to act within 6 months, is conclusively presumed to concur with the certification, or 3) the Secretary of Commerce finds that the OCS activities are necessary in the interest of the national security or consistent with the objectives or purposes of the federal CZMA, and overrules a state determination of inconsistency.

The Florida Coastal Management Act provides for state review and determination of the consistency of proposed federal license and permit activities described in detail in OCS plans. As noted in Table 18, state consistency review applies to "Permits for areas leased under the OCS Lands Act, as amended, including leases and approvals under 43 U.S.C. s. 1331, as amended, of exploration, development, and production plans"; (380.23(3)(c)11). Federal license and permit activities described in detail within OCS plans will be evaluated by the state for consistency with the legal authorities of the Florida coastal management program (Part II, Section Two, and the Appendix).

When lessees or operators are satisfied that the proposed activity described in detail in the OCS plan meets the federal consistency requirements, they shall declare, in a consistency certification to the Department of the Interior, the following statement:

> "The proposed activities described in detail in this plan comply with the approved Florida Coastal Management Program and will be conducted in a manner consistent with such program."

The Secretary of the Interior or his designee will transmit the consistency certification, plan, and supporting material to the

Federal Coordinator
Florida Department of Environmental Regulation
Division of Permitting
2600 Blair Stone Road
Twin Towers Office Building
Tallahassee, Florida 32301

In addition, the Secretary of the Interior or his designee will transmit the requisite number of plans and supporting material to the:

Office of the Governor
Office of Planning and Budgeting
Natural Resources Policy Unit
Carlton Building, Room 404
Tallahassee, FL 32301

The Governor's Office (Natural Resources Policy Unit) will distribute plans and supporting material to the state agencies responsible for reviewing OCS plans. The Natural Resources Policy Unit will coordinate the plan reviews of all agencies, including the DER

consistency review, through its administration of the Florida Outer Continental Shelf Advisory Committee (see attachment to this section).

This committee is the primary group for dealing with OCS matters, including the review of OCS plans. The OCS Advisory Committee is composed of state agency representatives and representatives of the petroleum industry and environmental organizations. Local government is also represented on the committee by a representative from the County Commissioners Association.

The DER, in making the consistency determination, will carry out its review and response through the OCS Advisory Committee and procedures established by the Governor's Office. The DER will notify the lessee or operator, the Secretary of the Interior or designee, and the Assistant Administrator for Coastal Zone Management (NOAA) of state concurrence with or objection to the consistency certification.

If the state issues a concurrence or is conclusively presumed to concur with the consistency certification, lessees or operators will not be required to submit additional certifications and supporting information for FCMP review when applications are filed for federal licenses and permits to which the concurrence applies (see 15 CFR 930.80(a), 6/25/79). However, copies of federal licenses and permit applications must be sent by the lessee or operator to the Governor's Office unless otherwise indicated.

FEDERAL GRANTS AND FINANCIAL ASSISTANCE

The fourth federal CZMA consistency provision involves applications from state and local governments for federal assistance which affects the coastal area. The FCMA provides that consistency reviews will be made to ensure that federal assistance projects which affect coastal waters and adjacent shorelands of the state are conducted in accordance with the state's coastal management program (380.23 (3)(b), F.S.). Federal assistance projects proposed by the state and local governments anywhere in the statewide coastal zone may be reviewed for federal consistency.

The Department of Environmental Regulation will use the Projects Notification and Review System of OMB Circular A-95 authorized under Title IV of the Intergovernmental Cooperation Act of 1968 to review assistance applications and to ensure consistency with the FCMP. Consistency review of an application for federal assistance will be performed by agencies participating in the A-95 process in accordance with the core legal authorities of the Florida coastal management program (Part II, Section Two and the Appendix).

The Governmental Support Unit, Intergovernmental Coordination section within the Governor's Office, which administers the A-95 process, will ensure that a consistency determination has been made

before approving a project affecting the coastal area. Information for applicants and procedures will be developed during the first year of program implementation by the Intergovernmental Coordination section and by the Department of Environmental Regulation to include the consistency review requirements within the existing A-95 process. The state A-95 Clearinghouse will notify the applicant and appropriate federal agencies.

STATE OF FLORIDA

Office of the Governor

THE CAPITOL

TALLAHASSEE 32301

BOB GRAHAM
GOVERNOR

October 13, 1980

Mr. Jacob D. Varn, Secretary
Department of Environmental Regulation
2600 Blair Stone Road
Tallahassee, Florida 32301

Dear Secretary Varn:

Recent actions by the federal government have greatly accelerated Outer Continental Shelf (OCS) oil and gas exploration. On June 18, 1980, Secretary of the Interior Cecil Andrus released a final five-year OCS oil and gas leasing schedule for the offshore waters of the United States. Of the 31 lease sales planned through May 1985, eleven are in the Gulf of Mexico and two are in the South Atlantic. Industry interest in the potential oil and gas resources off the Florida coast is very high, as shown by the amount of lease sale activity scheduled for this area. If marketable quantities of hydrocarbons are discovered in the OCS, the impact on the economic and environmental resources of Florida from both onshore and offshore activities would be significant.

Last year, the Department of the Interior (DOI) activated the OCS Intergovernmental Planning Program. This program should provide an effective means for the coastal states to express their interest and concerns relating to OCS matters. There is a definite need to strengthen the State's decision-making capability through coordination with the petroleum industry, local governments, and special interest groups. To achieve this objective and assist the Office of Planning and Budgeting (OPB), we are establishing a Florida OCS Advisory Committee. The Advisory Committee will be chaired by OPB and consist of representatives from the Departments of Commerce, Community Affairs, Environmental Regulation, Natural Resources, State, Transportation, the Governor's Energy Office, the Game and Fresh Water Fish Commission, the County Commissioners Association, the Florida Petroleum Council, and the Sierra Club. This membership represents the commitment of the State to provide an opportunity for expression of all concerns and interests.

Three federal laws provide for state response to the potential impacts of OCS development. The OCS Lands Act Amendments of 1978 establishes policies and procedures for managing OCS oil and gas resources. The Amendments also provide that those states affected by OCS activity be given assistance to comprehensively plan for and participate in OCS-related policy and management decisions. This gives states the opportunity to review and comment on federal OCS decisions, participate in organizational processes, and minimize or eliminate conflicts between the development activities and the environmental and economic resources of the state.

An Affirmative Action/Equal Opportunity Employer

The consistency provisions of the federal Coastal Zone Management Act as amended in 1976 require that the following OCS-related actions be conducted in a manner consistent with an approved State Coastal Management Program: 1) federal activities and projects which directly affect the coastal zone; and 2) federal license and permit activities regarding OCS Exploration, Development and Production Plans. The State coastal management program, working through the Advisory Committee, will employ the consistency requirements to ensure that State perspectives are brought into the OCS decision-making process at the earliest stages.

The National Environmental Policy Act of 1969 (NEPA) requires preparation of an environmental impact statement (EIS) for any major federal action which significantly affects the quality of human environment. Council of Environmental Quality guidelines, issued in 1973, address the preparation of the EIS. Through the A-95 review system, state clearinghouses provide a means of securing the views of state and local agencies. This process assists the Florida State Clearinghouse to develop an overall State response to the proposed federal action. This is one way the State has to express its concerns about specific leasing or development actions in the OCS. The OCS Advisory Committee will help develop State responses. However, it will also have additional responsibilities and functions.

The OCS Advisory Committee, operating out of the Governor's Office of Planning and Budgeting, will be a well-qualified vehicle for assisting in the preparation of the State's response to federal OCS activity. Under the authority established in Chapter 23 of the Florida Statutes, the Executive Office of the Governor is responsible for the coordination of planning among the federal, state, and local levels of government, with the Governor sitting as the chief planning officer of the State.

Among the major duties of the Executive Office of the Governor is the preparation and revision of the State Comprehensive Plan, which now includes the Coastal Zone Management Plan. Section 23.0114(4)(a), Florida Statutes, states that management of the coastal zone will require highly coordinated effort among state, regional and local officials and agencies. This effort can be met, in part, by the OCS Advisory Committee. Through the broad representation afforded by the OCS Advisory Committee, the State's concern for the energy, environmental, and economic needs and resources can be easily reflected in State policies and programs. In addition, these can also be transmitted to the federal government for consideration in the development of the OCS program.

The Advisory Committee will gather and analyze information and relate that data to Florida's OCS representatives. This will provide effective representation in both the Gulf of Mexico and South Atlantic Regional Technical Working Group (RTWG) Committees established by DOI's Intergovernmental Planning Program.

The Advisory Committee takes on added significance if there is a marketable find of hydrocarbons in the OCS. Then, the Advisory Committee will be the core of the Florida State Technical Working Group Subcommittee. Among the major responsibilities of this group will be the delineation of the potential transportation corridors for shipment of oil and gas from offshore production sites to onshore storage or refinery sites. The State Working Group also will serve as the primary source of information to agencies, interest groups, and private citizens on offshore development and onshore impacts.

Other duties of the Florida OCS Advisory Committee will include the review of federal leasing programs, industry Exploration Plans, OCS Regional Study Programs, and other documents which identify the various OCS actions affecting the State. The Advisory Committee will also assist in the development of OCS consistency determinations carried out under the Florida Coastal Management Program. By virtue of its role and structure, the Advisory Committee will balance the broad range of environmental, economic, and energy-related concerns affecting the State of Florida.

In formalizing the Florida OCS Advisory Committee, this Office is requesting you to appoint a representative(s) from your agency who has the expertise to contribute in the development of an effective Florida OCS program. In light of the world-wide energy situation, the State will support timely and rational solutions which help alleviate the national dependence on foreign oil. However, it is essential that offshore production of oil and gas does not occur at the expense of Florida's economic and environmental resources. The Florida OCS Advisory Committee will play a crucial role in seeing that the State's interests are well understood by the federal government, and will also cooperate with industry in their efforts.

We look forward to working with your appointed representative on the OCS Advisory Committee. Please direct any questions to Mr. Walt Kolb at (904) 488-5551.

Thank you very much for your time and consideration.

Sincerely,

John T. Herndon

John T. Herndon
Director
Office of Planning and Budgeting

JH/mew

I. ENERGY FACILITIES PLANNING

INTRODUCTION

In 1976, Congress added new provisions to the federal Coastal Zone Management Act (CZMA). Several significant changes involved elements of the program dealing with energy facilities: 1) the Coastal Energy Impact Program (CEIP); 2) federal consistency measures applying to outer Continental Shelf oil and gas exploration, production and development plans; and 3) a planning element for energy facility siting. Other parts of the FCMP have discussed the CEIP and OCS consistency determinations. The following discussion addresses the federal requirement that state coastal management programs include "...a planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities" (CZMA, s. 305(b)(8)).

Four guidelines are included in the requirements for fulfilling the energy facility planning process element (15 CFR 923.13(b).

1. Identification of energy facilities which are likely to locate in, or which may significantly affect, a state's coastal zone;

2. Procedures for assessing the suitability of sites for such facilities;

3. Articulation and identification of enforceable state policies, authorities and techniques for managing energy facilities and their impacts, including identification of conditions that may be attached to state energy facility planning and siting procedures; and

4. Identification of how interested and affected public and private parties may be involved in the planning process, identification of the organization, structure, and procedural means by which energy facility planning and siting decisions are carried out, address the roles and relationships of relevant state agencies, federal agencies, and local governments, and integration into the planning process the procedures by which the national interest is considered.

Florida has state policies, legal authorities, and programs (see Part II, Section Two.B.) which fulfill the requirements for energy facility planning. In addition to complying with the federal requirements, this section contains the background discussion and identification of concerns for the "Water Related Energy Facilities" issue of special focus (Part II, Section Two.D.), and complements the "National Interest" component located in Part II, Section Two.G.

IDENTIFICATION OF ENERGY FACILITIES

The CZMA affects a broad range of energy-related facilities and operations. However, for the coastal area of Florida, the terms apply to a much narrower range of energy operations. For all practical purposes, the energy facilities most likely to be located in, or significantly affect Florida's coastal area include: (1) electrical generating plants and associated transmission facilities; (2) oil and coal storage facilities; (3) transportation systems for oil, natural gas, and coal; and (4) Outer Continental Shelf (OCS) related oil and natural gas activities (including ancillary shoreline facilities). As the demand for energy increases, and new technology becomes available, the likelihood of energy facilities which are new to Florida's coast becomes more certain. Thus, the list of candidates does not preclude future consideration by the FCMP of Ocean Thermal Energy Conversion (OTEC) operations, or liquified natural gas facilities.

1. Power Plants: Energy Demand Forecasts and Fuel Requirements

Forecasts of energy demand and facility requirements have been summarized from the 1979 Ten-Year Site Plan prepared by the Florida Electric Power Coordinating Group. The reader is referred to the ten-year site plans for descriptions of facilities, projections of demand, facility needs, and locations for proposed generating and transmission facilities.

Florida energy use and peak demand is expected to increase more slowly than in the past. Table 17 shows the history of and the forecast of the seasonal peak demand and annual net energy for load (total consumption). (Note the decreasing "Average Annual Growth Rates" during the two ten-year periods for peak demand and total consumption). Table 18 and Figure 12 show the history of, and forecast energy use by type of consumer. Projections show energy use doubling every 16 years as compared to the doubling every 7.6 years prior to 1974. Again, note the "Average Annual Growth Rates" during the two ten-year periods.

Fuel requirements for electrical generating facilities are of interest because of the issues associated with the use of particular fuels. Figure 13 depicts the fuels needed to generate anticipated energy requirements. The use of nuclear energy is expected to increase through 1988. However, the percent contribution of nuclear energy to the state's total net system generation is expected to decrease from 20.2% in 1977 to 17.6% in 1988. Residual oil will remain an important source of energy throughout the next decade. Total needs for residual oil will range from a high of 52.7% in 1980 to a low of 37.2% in 1988. Even though Florida's reliance on oil will decline in percentage, the number of barrels of oil consumed will increase by at least 17% over the next ten years.

TABLE 17

1979 TEN-YEAR PLAN - STATE OF FLORIDA

HISTORY AND FORECAST OF SEASONAL PEAK DEMAND AND ANNUAL NET ENERGY FOR LOAD

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Summer Peak Demand Net MW			Load Factor		Winter Peak Demand Net MW	
YEAR	Interruptible	Total	Net Energy For Load - GWH	%	YEAR	Interruptible	Total
1969	316	9248	47163	58.2	1969-70	351	9736
1970	365	10485	53074	57.8	1970-71	320	10402
1971	466	11311	58232	58.8	1971-72	312	10216
1972	320	12845	65606	58.1	1972-73	346	12383
1973	319	14413	73743	58.4	1973-74	332	13213
1974	326	14855	73359	56.4	1974-75	335	12978
1975	337	14957	77208	58.9	1975-76	345	15614
1976	334	15907	79883	57.2	1976-77	555	17966
1977	443	16648	85766	58.8	1977-78	445	18139
1978	439	17326	90889	59.1	1978-79	501	19050*
AAGR**		7.2%	7.6%				7.7%
1979	501	18610	95553	58.6	1979-80	561	20375
1980	561	19785	100730	58.0	1980-81	567	21399
1981	567	21098	105329	57.0	1981-82	601	22472
1982	601	22086	109896	56.8	1982-83	629	23578
1983	629	23095	114977	56.8	1983-84	662	24708
1984	662	24150	120139	56.6	1984-85	685	25842
1985	685	25226	125370	56.7	1985-86	715	27039
1986	715	26327	130730	56.7	1986-87	742	28246
1987	742	27476	135770	56.4	1987-88	767	29481
1988	767	28641	141428	56.2	1988-89	760	30730
AAGR**		4.9%	4.5%				4.7%

*Forecast
**Average Annual Growth Rate

From Florida Electric Power Coordinating Group - Ten-Year Site Plan

TABLE 18

1979 TEN-YEAR PLAN - STATE OF FLORIDA

HISTORY AND FORECAST OF ENERGY USE BY TYPE OF CONSUMER-GWH

(1) Year	(2) Rural and Residential	(3) Commercial	(4) Industrial	(5) Street & Highway Lighting	(6) Other Sales to Ultimate Consumer	(7) Total Sales to Ultimate Consumer	(8) Sales for Resale	(9) Utility Use and Losses	(10) Net En for L
1969	19375	10895	8495	350	2387	41502	2242	3419	471
1970	22194	12229	9183	369	2418	46393	2636	4045	530
1971	24413	13804	9694	419	2617	50947	3025	4260	582
1972	27316	15647	10465	440	2828	56696	3648	5262	656
1973	31746	18470	11350	482	1925	63973	4310	5460	737
1974	30940	19498	11329	509	1252	63528	4550	5281	733
1975	31933	20893	11614	543	1328	66311	4956	5941	772
1976	32946	21485	12353	579	1357	68720	5381	5782	798
1977	35739	22843	13247	606	1415	73850	5838	6078	857
1978	38353	24345	13824	625	1514	78661	6349	5879	908
AGR	7.9%	9.3%	5.6%	6.7%	-4.9%	7.4%	12.3%	6.2%	
1979	39643	25196	14644	704	1569	81756	6802	6995	95
1980	41884	26860	15024	758	1629	86155	7062	7513	100
1981	43728	28331	15497	812	1678	90046	7425	7858	105
1982	45563	29692	15977	874	1726	93832	7884	8180	109
1983	47203	31498	16575	939	1774	97989	8622	8366	114
1984	48824	33119	17209	1012	1827	101991	9390	8758	120
1985	50625	34657	17862	1090	1885	106119	10260	8991	125
1986	52465	36128	18529	1179	1940	110241	11148	9341	130
1987	54089	37457	19185	1274	1998	114003	12092	9675	135
1988	55954	39016	19934	1377	2059	118340	13041	10047	141
AGR*	3.9%	5.0%	3.5%	7.7%	3.1%	3.1%	7.5%	4.1%	

From Florida Electric Power Coordinating Group - Ten-Year Site Plan

*Average Annual Growth Rate

FIGURE 12

1979 TEN-YEAR PLAN
STATE OF FLORIDA

HISTORY AND FORECAST OF ENERGY USE BY TYPE OF CUSTOMER

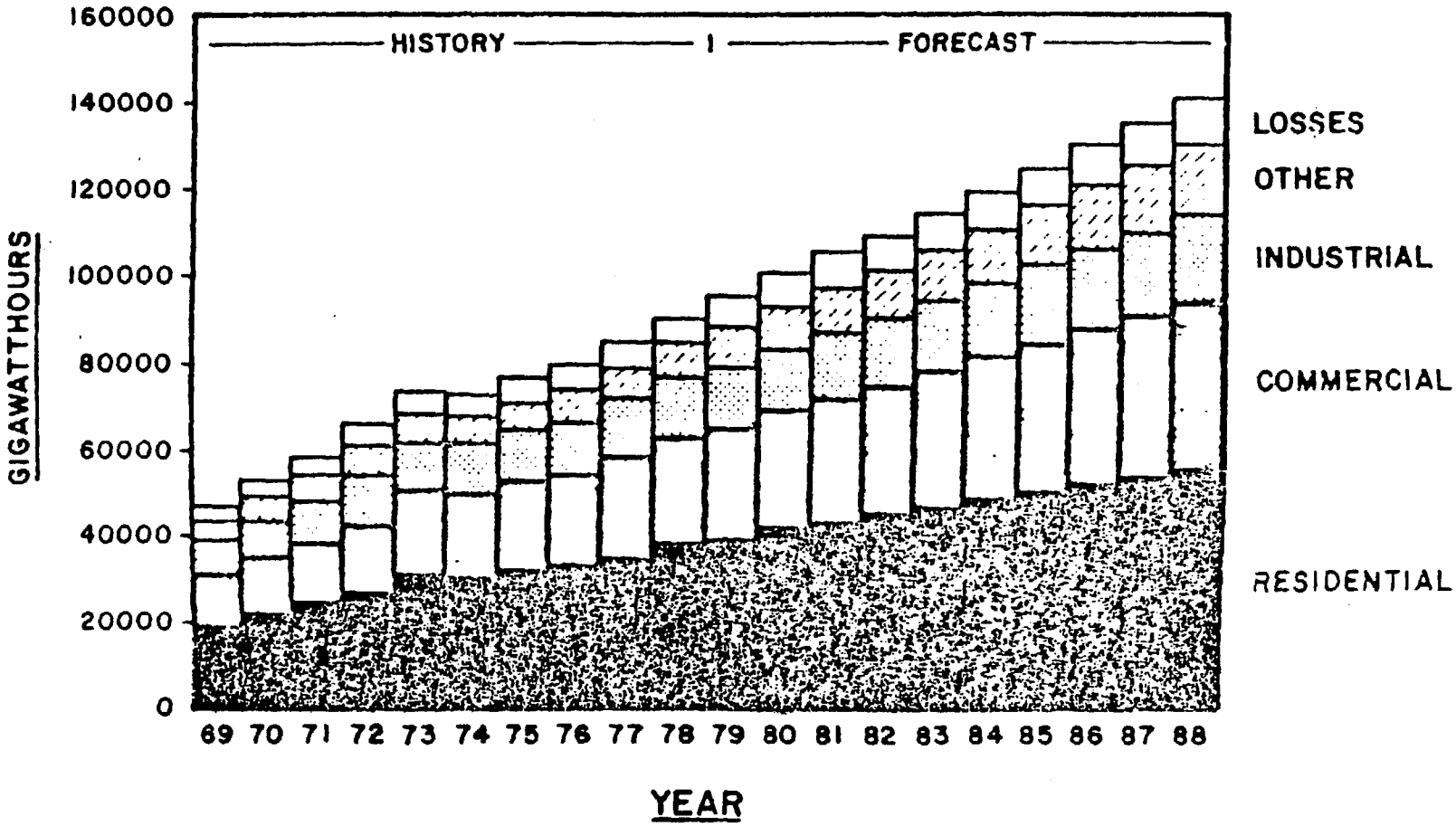
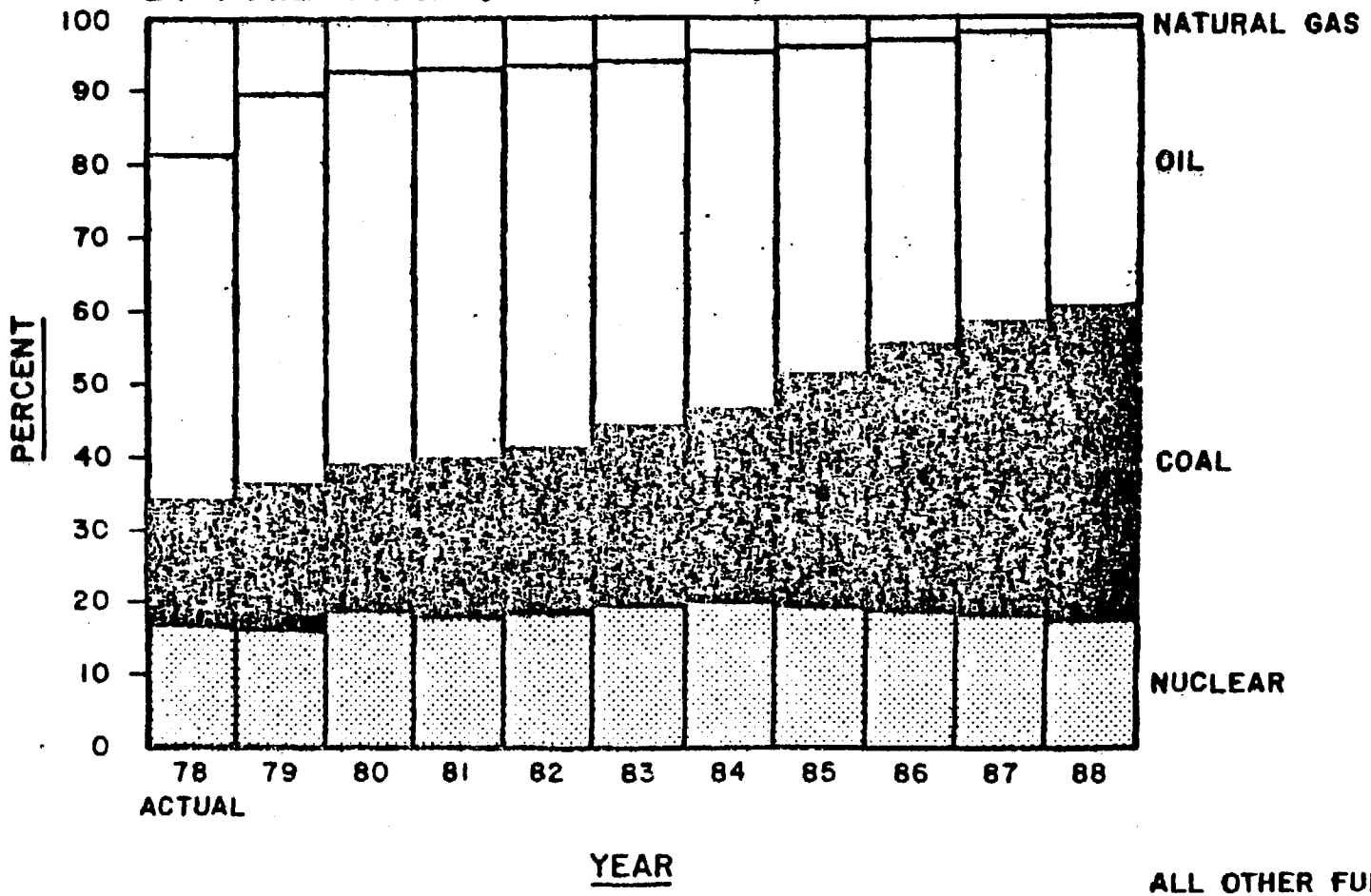


FIGURE 13

1979 TEN-YEAR PLAN
STATE OF FLORIDA

FORECAST OF NET SYSTEM GENERATION
BY FUEL TYPE (IN PERCENT)



ALL OTHER FUELS
CONTRIBUTE LESS THAN 0.5%

From Florida Electric Power Coordinating Group - Ten-Year Site Plan

The use of coal is different. Energy from coal will increase from 17.6% in 1977 to 42.5% of the total net system generation in 1988. The increased use of coal will result from new or expanded generating facilities, and from oil-to-coal conversions at existing facilities. Certainly, federal initiatives, such as the Powerplant and Industrial Fuel Use Act (42 U.S.C. s. 6211, et seq. (Suppl. 1978)) which limits the industry's use of natural gas and oil will pose new facility siting difficulties which must be anticipated to avoid jeopardizing future supplies of electrical energy.

Natural gas is the most convenient fuel and the one which is the least polluting. Because of dwindling reserves of natural gas, and marketing regulations, the future of natural gas is uncertain. Imports of natural gas and possible discovery of this fuel on the Outer Continental Shelf may maintain the use of this resource. However, the Federal Energy Regulatory Commission has determined that the longterm use of natural gas for generation of electrical power is a low priority use of this fuel. It is anticipated that natural gas, which produced 18.2% of the state's electrical power in 1978, will, by 1988, be producing just 1.1%.

2. Power Plants: Future Facilities

To promote an adequate and reliable supply of electricity, Florida utilities have developed coordinated generation expansion plans. The plans are aimed at achieving acceptable reserve margins using the most economical mix of generation types for base-, intermediate-, and peak-load operations. Ten-year planned and prospective generating facility additions, plus retirements and changes are found in Table 19.

Some plans include capacity interchanges between utilities, such as the agreements between Florida Power Corporation and the cities of Tallahassee, Gainesville, and Lakeland. These types of agreements allow utilities to enjoy economies of scale associated with units larger than would normally be installed if such interchange was not considered.

Coordinated generation expansion plans also promote joint ownership among investor-owned, municipal, and cooperative systems. Examples are the sale of 10% of the Crystal River #3 nuclear unit to several municipal and cooperative utilities, the jointly owned Lakeland/Orlando McIntosh #3 unit, the proposed joint Florida Power and Light Company and Jacksonville Electric Authority coal units, and the planned Gulf, Georgia, and Mississippi Power Company joint projects.

Several interconnections exist between state electric power systems and systems in other states. The Southeastern Electric Reliability Council, to which Florida utilities belong, addresses the potential problem of cascading tripouts (reliability) and provides sufficient generating capacity to meet aggregate peak

TABLE 19

ABBREVIATIONS

Utilities

FPC - Florida Power Corporation

FPL - Florida Power & Light Company

FTP - Fort Pierce Utilities Authority

GVL - Gainesville/Alachua County Regional Utilities Board

GPC - Gulf Power Company

HST - City of Homestead

JEA - Jacksonville Electric Authority

LWU - Lake Worth Utilities Authority

LAK - City of Lakeland

OUC - Orlando Utilities Commission

SEC - Seminole Electric Cooperative

SPA - Southeastern Power Administration

TAL - City of Tallahassee

TEC - Tampa Electric Company

VER - Vero Beach Municipal Utilities

TABLE 19

1979 TEN-YEAR PLAN - STATE OF FLORIDA

PLANNED AND PROSPECTIVE GENERATING FACILITY ADDITIONS, RETIREMENTS AND CHANGES

*Utility	Plant	Unit No.	Location	Unit Type	Fuel	In (Out) Service	Net Capability - MW Summer	Net Capability - MW Winter
FPC	Anclote	2	Pasco County	FS	HO	5/79	466	506
FPC	Crystal River	1	Citrus County	FS	C	5/79	383	383
JEA	Northside	3C	Duval County	FS	HO	5/79	58	58
TEC	Big Bend	2C	Hillsborough County	FS	C	5/79	24	24
FPC	Crystal River	3C	Citrus County	N	N	6/79	27	27
						TOTAL	958	998
VER	Municipal Plant	1- 6R	Vero Beach	D	LO	(1/80)	-15	-15
HST	G. W. Ivey	20-21	Dade County	D	LO	4/80	14	14
FPC	Crystal River	2C	Citrus County	FS	C	5/80	50	50
FPL	Martin	1	Martin County	FS	HO	/80	775	787
JEA	Kennedy	6	Duval County	CT	LO	5/80	54	54
FPC	Suwannee River	1- 3	Ellaville	CT	LO	10/80	153	195
FPL	Solid Waste	1- 2	Unknown	FS	SW	/80	40	40
						TOTAL	1071	1125
GVL	Deerhaven	2	Alachua County	FS	C	1/81	235	235
GVL	J. R. Kelly	6R	Alachua County	FS	HO	(1/81)	-14	-14
FPL	Martin	2	Martin County	FS	HO	/81	775	787
GPC	Daniel (1006p)	1- 2	Mississippi	FS	C	5/81	503	503
FPC	Simple Cycle	1- 3	Unknown	CT	LO	10/81	150	150
FPC	Suwannee River	4	Ellaville	CT	LO	10/81	51	65
LAK	McIntosh (334p)	3	Polk County	FS	C	10/81	200	200
OUC	McIntosh (334p)	3	Polk County	FS	C	10/81	134	134
						TOTAL	2034	2060
JEA	Kennedy 1/	1- 2	Duval County	CT	LO	1/82	25	26
JEA	Southside 1/	1- 2	Duval County	CT	LO	1/82	25	30
FPC	Crystal River	4	Citrus County	FS	C	12/82	640	640
OUC	Lake Highland	1- 3R	Orlando	FS	HO	(12/82)	-90	-93
						TOTAL	600	603

See List of Abbreviations.

TABLE 19

1979 TEN-YEAR PLAN - STATE OF FLORIDA

PLANNED AND PROSPECTIVE GENERATING FACILITY ADDITIONS, RETIREMENTS AND CHANGES

Utility	Plant	Unit No.	Location	Unit Type	Fuel	In (Out) Service	Net Capability - MW Summer	Net Capability - MW Winter
LAK	Larsen	4R	Polk County	FS	HO	(3/83)	-19	-19
TEC	Big Bend	4- 5	Hillsborough County	CT	LO	3/83	100	100
FPL	St. Lucie (802p)	2	St. Lucie County	N	N	/83	747	764
SEC	St. Lucie (802p)	2	St. Lucie County	N	N	/83	48	48
SEC	Seminole	1	Palatka	FS	C	5/83	600	600
JEA	Unknown	1- 3	Unknown	CT	LO	5/83	150	180
FPC	Simple Cycle	1	Unknown	CT	LO	10/83	100	100
FPC	Simple Cycle	1- 2	Unknown	CT	LO	10/83	100	100
FTP	H. D. King	5R	Fort Pierce	FS	HO	(12/83)	-7	-7
						TOTAL	1819	1866
TEC	Big Bend	6- 7	Hillsborough County	CT	LO	3/84	100	100
FPC	Crystal River	5	Citrus County	FS	C	4/84	640	640
TAL	Purdom	1- 4R	Wakulla County	FS	HO	(5/84)	-28	-32
						TOTAL	712	708
GPC	Scherer	3	Georgia	FS	C	2/85	216	216
TEC	Big Bend	4	Hillsborough County	FS	C	3/85	417	417
FPL	Martin Coal	3	Martin County	FS	C	/85	700	720
JEA	Unknown	4- 6	Unknown	CT	LO	5/85	150	180
SEC	Seminole	2	Palatka	FS	C	5/85	600	600
TAL	Hopkins	3	Leon County	CT	LO	5/85	50	50
FPC	Avon Park	2R	Highlands County	FS	HO	(6/85)	-42	-44
FPC	Fossil Coal	1	Unknown	FS	C	10/85	660	660
						TOTAL	2751	2799

TABLE 19

1979 TEN-YEAR PLAN — STATE OF FLORIDA

PLANNED AND PROSPECTIVE GENERATING FACILITY ADDITIONS, RETIREMENTS AND CHANGES

Utility	Plant	Unit No.	Location	Unit Type	Fuel	In (Out) Service	Net Capability - MW Summer	Winter
GPC	Crist	1R	Pensacola	FS	NG	(1/86)	-22	-22
LWU	Smith	1R	Lake Worth	FS	NG	(1/86)	-7	-8
FPC	Suwannee River	1- 2R	Ellaville	FS	HO	(6/86)	-67	-67
OUC	Lake Highland	A- BR	Orlando	CT	LO	(12/86)	-26	-32
						TOTAL	-122	-129
GPC	Scherer	4	Georgia	FS	C	2/87	216	216
TAL	Unknown (p)	1	Unknown	UN	UN	4/87	200	200
FPL	Martin Coal	4	Martin County	FS	C	/87	700	720
FPL	Coal (600p)	1	Unknown	FS	C	/87	300	300
JEA	Coal (600p)	1	Unknown	FS	C	/87	300	300
LAK	Unknown (p)		Unknown	FS	UN	5/87	150	150
OUC	Unknown (p)		Unknown	FS	C	5/87	150	150
FPC	Fossil/Coal	2	Unknown	FS	C	10/87	660	660
						TOTAL	2676	2696
LAK	Larsen	1- 3R	Polk County	CT	LO	(3/88)	-33	-39
LWU	Smith	2R	Lake Worth	FS	NG	(3/88)	-7	-8
FTP	H. D. King	6R	Fort Pierce	FS	HO	(12/88)	-18	-18
						TOTAL	-58	-65

1/ Reactivation

From Florida Electric Power Coordinating Group

loads of customers (adequacy). The adequacy and reliability of the bulk power supply system and the place that Florida utilities hold in that system are discussed under the National Interest section.

3. Coal: Water Related Coal Handling Facilities

A major increase in coal consumption in Florida is forecast for the next ten years. Transportation capacity must be improved to move this coal into and throughout the state. No single transportation mode can be used to meet projected coal delivery demand; a mix will be needed. This mix will be composed of coal transport modes already in use in Florida -- rail, barge, trucks and short-distance "coal-by-wire". It also may include coal slurry pipelines.

Florida has deep water ports which allow delivery of coal by ship and Gulf barges, as well as the smaller river-going barges. Transloader facilities may be required at these ports to transfer coal from ocean-going barges carrying 19,000 to 32,000 tons with 25 to 32 foot draft to river barges carrying 1,500 tons with a draft 9 to 11 feet in order to transport coal to inland facilities which have river or canal access.

Florida's electric generating plants now are consuming slightly more than 7 million tons of coal per year. The water carriers' market share for the movement of coal in Florida is expected to remain about the same for the next five years primarily because existing coal fired power plant sites are on navigable waters. In the longer run more competition will develop between transportation modes since some proposed coal-fired generating plants can be served in several different ways, or combinations.

More than 1 million tons of coal a year is barged from Myrtle Grove, Louisiana, south of New Orleans, to Florida Power Corporation's units at Crystal River. Tampa Electric Company receives coal by unit train and water. The TECO Gannon generating plant uses 1 million tons of coal per year, and recently started receiving coal by unit train at an annual rate of approximately 600 thousand tons, with the remainder transported over water. The Big Bend Plant in Hillsborough County uses 4.2 million tons of coal per year, all of which is transported over water.

Gulf Power has coal fired generating plants at Pensacola, Panama City, and Sneads. The Crist Plant at Pensacola uses 1.5 million tons of coal annually and the Smith Plant at Panama City annually uses 900 tons. These two facilities receive coal over water. Pensacola receives most of its coal from Southern Illinois. The coal is shipped down the Mississippi River in 25 to 40, 1,500-ton barges, per tow. At New Orleans, these barge tows

are broken apart into four barges per tow to navigate the narrower Gulf Intracoastal Waterway. A much smaller amount comes from two other sources. Western Kentucky coal is brought down the Mississippi and through the Gulf Intracoastal Waterway. Alabama coal is brought down the Black Warrior and Tom Bigbee to Mobile and the Gulf Intracoastal Waterway to Pensacola.

Panama City coal is from South Africa. Deep-draft vessels drawing approximately 45 feet are unloaded at Mobile. The coal is transferred to 1,500 ton barges made up into four barges per tow to be moved through the Gulf Intracoastal Waterway to Panama City. Gulf Power, at the Scholz generating plant located in Sneads, Florida, receives 200,000 tons of coal per year by the L & N railroad.

The water movement of coal into Florida has been seriously discussed in the past few years by U.S. firms representing U.S. coal and by U.S. firms representing both U.S. and foreign coal supplies. In addition, there have been visits to some of the Florida Port Authorities by representatives from South Africa, Australia, and Poland interested in selling quality coal to power plants and developing sites for transshipment. Most Florida ports can provide barge, rail or truck movement for short hauls to distribute coal within the state.

4. Petroleum Facilities

Florida is unique in its dependency on petroleum for energy. In 1978, the state depended on petroleum for 70.1% of its primary energy supply, while the nation as a whole used petroleum for 50% of its primary energy supply.

Nearly every port in Florida has petroleum storage facilities. Port Everglades, has 257 petroleum tanks on port property that have a capacity of 441 million gallons. The 23 petroleum product companies that operate from the port serve approximately 16 counties. Most of the other ports, although not as petroleum intensive, are important petroleum transshipment centers.

Florida has two small refineries. One, in Manatee County, primarily produces aviation fuel. A second, located in Wakulla County, produces asphalt. Other refineries have been proposed for Florida, but no firm developments have taken place.

Several port areas on the Florida Gulf coast have been used as temporary supply bases for outer Continental Shelf activities. Shell and Texaco used Port Manatee. Gulf Oil has operated out of private dockage in Pensacola. The Sun Oil Company leased dock space from the International Paper Company at Panama City, and Exxon used the facilities of the Port of Panama City.

A natural gas system owned by the Florida Gas Transmission Company (FGT) supplies natural gas to many areas in Florida. At present, this pipeline system consists of a 24-inch diameter

pipeline with 30-inch diameter pipeline looping much of the syste from eastern Louisiana to southern Florida. Pending the outcome of current Federal Energy Regulatory Commission (FERC) proceeding in Docket No. CP74-192, portions of the existing mainline may be abandoned from gas service and converted to a petroleum products pipeline.

ENERGY FACILITIES: SITE SUITABILITY AND STATE MANAGEMENT PROGRAMS

This part of the "Energy Facilities Planning" element focuses on electric generating plants, transmission lines, and outer Continental Shelf (OCS) activities and related shoreline facilities.

1. The Requirements and Impacts of Power Plants, Transmission Lines, and OCS Related Facilities

A general discussion of the requirements and impacts of power plants, transmission lines, and OCS related facilities has been provided under Part II, Section Two.D., "Issues of Special Focus".

2. Identification Of State Policies, Authorities, and Techniques

The state has facility siting laws and programs (Chapters 23, 253, 403, 288, 377, 376, 380, et. al.) which affect energy facilities. The FCMP will rely on these existing state statutory authorities and programs to manage the significant impacts of energy facilities. Refer to Part II, Section Two.B., for the identification and description of state policies, authorities, and techniques included in the program.

The electric generating utilities' Ten-Year Site Plan submitted to DVCA pursuant to 23.019, F.S. is the basic source document for electric power peak demand, energy use, fuel requirements, and future facility requirements. As explained in Section Two and Appendix One, the ten-year site plan is a companion program to power plant site certification under Chapter 403, F.S. Unlike the site certification process, the ten-year site plan is not a permitting program, but is a process for providing planning information. By providing an intermediate-range look at power plant siting alternatives and providing state agencies with an opportunity to comment on alternative sites, it provides guidance to electric utilities for their planning, it assists the Department of Environmental Regulation in its certification of power plant sites, and it assists the Division of Local Resource Management (Department of Veteran and Community Affairs) carry out its responsibilities as the primary state land-planning agency.

Power plant site certification under the Florida Electrical Power Plant Siting Act (Chapter 403, Part II, F.S.) is described in Section Two and the Appendix. Under this Act, the "Application For Certification Of Proposed Electrical Power Generating Plant Site" (DER Form #17-1.122 (72), 1/10/79) brings a broad

range of environmental, economic, and social effects into licensing considerations for siting power plants. Another important statute related to the siting of energy facilities is the Transmission Line Siting Act (Chapter 403, Part II F.S.). This Act, similar to the "Power Plant Siting Act", centralizes and coordinates a permitting process for the location and maintenance of transmission line corridors and the construction of transmission lines. The Transmission Line Siting Act thus creates a state certification of transmission lines and transmission line corridors (see Part II, Section Two.B.).

As noted in the National Interest section (Part II, Section Two.G.), the Public Service Commission is authorized under Chapter 366, Part II, F.S. to determine the need for power plants and transmission lines. In making its determination, the Commission will take into consideration electric system reliability and integrity, the need for reasonably priced electricity, and other factors.

OCS and other oil and gas related facilities are affected by several laws presented in Tables 20; 21; and 22. These tables identify two categories of management under which the state carries out its energy related statutory responsibilities: (1) Direct laws which are "use" specific in their authority and clearly define the types of energy facilities which they manage; (2) Indirect laws which manage energy facilities which are not "use" specific but nevertheless address impacts which might result from the facility itself or from some related facility. For instance, the approval of a consumptive use permit for water under the Water Resources Act (Chapter 373, F.S.) for an energy facility which requires water to operate illustrates how an indirect law has potential management applications.

PUBLIC AND PRIVATE INVOLVEMENT IN ENERGY FACILITY PLANNING AND SITING

Key public participation opportunities are provided under the Administrative Procedure Act (Chapter 120, F.S.), the Environmental Protection Act (Chapter 403, F.S.) and other laws discussed in Part II, Section Two.B. of the FCMP.

Public hearings are required under the Florida Electrical Power Plant Siting Act. The first hearing is a land use hearing conducted for the sole purpose of determining if the proposed site is consistent with existing land use plans and zoning ordinances. The second hearing is a certification hearing on all issues relevant to the application. Parties to a proceeding are the Public Service Commission, the Department of Veteran and Community Affairs, affected water management districts, the applicant and the Department of Environmental Regulation. Other parties may include other state agencies, agencies whose properties or works are affected, and representatives from commercial, health, environmental and consumer groups. The Transmission Line Siting Act has similar procedures for its certification hearing.

The impacts of OCS activities affect two major jurisdictions: the federally "owned" area beyond the territorial sea and the state "owned" territorial sea and its coastal onshore area. Clearly, many activities occurring on the continental shelf, i.e., in federal waters, concern the citizens of Florida. These concerns are connected with such things as: (1) OCS offshore operations that may affect commercial and sport fisheries; (2) OCS activities that require coasta staging, processing, and transportation facilities; (3) possible oil well blowouts and oil spills that may affect fishing, recreation and vulnerable natural areas; (4) increased economic activity; and (5) decreased dependency on foreign oil.

Generally, the Outer Continental Shelf Lands Act, which codified United States jurisdiction over the continental shelf, established the submerged lands of the shelf seaward of the territorial sea limit as an exclusive Federal domain. This legislation, and other key federal statutes which bear upon marine areas and activities, recognizes the interests of the state and points toward involvement of the state in OCS decisions. The following major federal statutes provide opportunities for state involvement in the OCS decision-making process: (1) National Environmental Policy Act; (2) Outer Continental Shelf Lands Act; and (3) Coastal Zone Management Act (federal consistency provisions).

TABLE 20

DIRECT LAWS MANAGING OIL AND GAS RELATED FACILITIES IN THE COASTAL ZONE

F.S. CHAPTER	TITLE/PART	SECTIONS	DESCRIPTION	ADMINISTERING BODY	ENERGY FACILITIES MANAGED
376	Pollutant Spill Prevention and Control	376.011 thru 376.21	Operation of terminal facilities (used for transfer of petroleum products) requires certification	DNR	Terminal Facilities (water) used for storage transfer, etc., of petroleum products
377	Energy Resources Part I: Regulation of Oil and Gas	377.01 thru 377.40	Permits for oil and gas exploration within state jurisdiction	DNR	Oil and gas exploration and production equipment
380	Environmental Land and Water Management	380.012 thru 380.12	Provides for Areas of Critical State Concern and Developments of Regional Impact	DCA	ACSC and DRI's have the potential to manage all facilities[1]
253	Land Acquisition Trust Fund	253.01 thru 253.75	Provides for the regulation of state-owned lands and the leasing of oil and gas rights	DNR/ BTIITF[2]	Oil and gas exploration and production in state jurisdiction and activities on state owned lands

TABLE 20

F.S. CHAPTER	TITLE/PART	SECTIONS	DESCRIPTION	ADMINISTERING BODY	ENERGY FACILITIES MANAGED
288	Florida Industrial Siting Act	288.501 thru 288.518	Requires Procedures to coordinate and facilitate state decisions relating to industrial plant siting and other facilities	DER	Eligible oil and gas related onshore facilities
704	Easements	704.01 thru 704.05	Provides that state interest for easements preempt other rights of entry	BTIITF[2]	Facilities of any type which require an easement

Adopted from Weiss and Nix, 1978

[1]"Development of regional impact", means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety or welfare of citizens of more than one county (Chapter 380.06, F.S.)

[2]Board of Trustees of the Internal Improvement Trust Fund

TABLE 21

INDIRECT LAWS WHICH MANAGE OIL AND GAS RELATED FACILITIES IN THE COASTAL ZONE

F.S. CHAPTER	TITLE/PART	SECTIONS	DESCRIPTION	ADMINISTERING BODY	ENERGY FACILITIES MANAGED
403	Environmental Control, Part I: Pollution Control	403.21 thru 403.131	Permits for air/ water pollution	DER	Potential to manage all which require permits
373	Water Resource, Part I: State Water Resource Plan	373.012 thru 373.1962	Requires a State Water Use Plan	DER/WMD	Potential to manage all which have some dependence on water
373	Water Resource, Part II: Permitting of Consumptive Uses	373.203 thru 373.249	Permits for con sumptive uses of water	DER/WMD	Potential to manage all which require consumption of water
23	Miscellaneous Executive Functions, Part I: Comprehensive Planning	23.011 thru 23.019	Calls for the preparation of a State Comprehensive Plan. Calls for the coordination of local, state and federal programming through A95 review	Office of the Governor	Has the potential to manage most energy facilities which are likely to locate in the Coastal Zone

TABLE 21

F.S. CHAPTER	TITLE/PART	SECTIONS	DESCRIPTION	ADMINISTERING BODY	E TIES
161	Beach & Shore Preservation Part I: Regulation of Construction	161-011 thru 161-211	Permits for Coastal Construction and Established Coastal Setback Line	DNR	Po al ti li
163	Intergovernmental Programs	163.160 thru 163.3191	Directs each general purpose local government to develop a comprehensive plan	Local Governments	Potential to manage all energy facilities which are likely to locate in the Coastal Zone
258	State Parks & Preserves	258.08 thru 258.46	Designates and protects environmentally sensitive areas of Florida	DNR	All energy facilities proposed for designated areas
372	Game and Fresh Water Fish	372.001 thru 372.9905	Energy facilities located in or near freshwaters must employ precautionary measures to prevent pollution	GFWFC	All energy facilities which are potential polluters to freshwaters are subject to regulation

TABLE 21

F.S. CHAPTER	TITLE/PART	SECTIONS	DESCRIPTION	ADMINISTERING BODY	ENERGY FACILITIES MANAGED
589	Forestry	589.01 thru 589.34	Division of Forestry empowered to make recommendations to BTIITF for electric, oil and gas pipeline/transmission easements	Dept. of Agriculture and Consumer Services	Electrical transmission lines, and oil and gas pipe lines
267	Archives and History	267.031, 267.061, and 276.11	Provides for a permitting process to protect publicly designated archaeological sites	Dept. of State	Once designated as an archaeological site, no person may conduct field investigations without a permit

Adapted from Weiss and Nix, 1978

TABLE 22

EXISTING LAWS WHICH MAY BE USED TO MANAGE OIL AND GAS RELATED FACILITIES IN THE COASTAL ZONE

ENERGY FACILITIES	DIRECT MANAGEMENT LAWS						INDIRECT MANAGEMENT LAWS								
	F.S. 376 Oil Spill Presv.	F.S. 377 Energy Resources	F.S. 380 Envir. Land/Water Mgt.	F.S. 253 State Lands	F.S. 704 Easements		F.S. 23 SCP Clearinghouse	F.S. 161 Beach/ Shore Presv.	F.S. 163, Inter-gov. Programs (LGCPA)	F.S. 258 Aquatic Preserves	F.S. 267 Archives/History	F.S. 372 Game/ Freshwater	F.S. 373 Water Resources	F.S. 403, Pt. I Water/Air Pollution	F.S. 589 Forestry Easements
Drilling and Development Operations in State jurisdiction	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Facilities to Separate Oil, Water and Gas	X		X				X	X	X	X	X	X	X	X	
Petroleum/Gas Refineries			X				X	X	X	X	X	X	X	X	
Petroleum Storage (Tank Farms and Related Facilities)	X		X				X		X		X	X		X	
Pipelines (Gas or Oil)	X		X	X	X		X	X	X	X	X	X		X	X
Water Ports (Service Bases)			X	X			X	X	X	X	X		X	X	
Terminals Relating to Energy Resources	X		X	X			X	X	X	X	X			X	
Miscellaneous Facilities Relating to Offshore Energy Facilities (Repair Yards, Pipecoating)			X	X			X		X	X	X		X	X	

Adapted from Weiss and Nix, 1978

J. COASTAL SHOREFRONT AREAS

SHOREFRONT ACCESS AND PROTECTION

The coastline is one of Florida's most distinctive features. It is without a doubt one of the major reasons for the growth in the state's permanent and temporary populations. Residents as well as visitors cite climate and beaches as the lures which drew them to Florida. But despite the tremendously long coastline, useable shoreline space is becoming scarce as competition between types of coastal land use increases. A result is that available public beach area is decreasing, rather than increasing with the population and demand. Coastal land is expensive. Its price often is beyond the reach of local governments working alone.

The federal CZMA requires each state to include a planning process for the protection of, and access to, public beaches and other coastal areas (Section 305(b)(7)). The purpose of the "Shorefront Access and Protection" element "...is to provide public beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value with special management attention within the purview of the state's management program" (CFR 923.24(b), Vol. 44, No. 61, March 28, 1979).

Three requirements must be included:

1. A procedure for assessing public beaches and other public areas, including state-owned lands, tidelands, and bottom lands, which require access or protection, and a description of appropriate types of access and protection.

2. A definition of the term "beach" and an identification of public areas meeting that definition.

3. An identification and description of enforceable policies, legal authorities, funding programs, and other techniques that will be used to provide such shoreline access and protection that the state planning process indicates is necessary.

Each element will be discussed in turn.

1. Assessing public beaches and areas; description of types of access and protection

Two major recreational planning efforts by the Department of Natural Resources are included in the state's program to assess needs for coastal public beaches and other public areas.

The Outdoor Recreation and Conservation Act of 1963 (Chapter 375, Florida Statutes) charges the DNR to develop and execute a comprehensive multi-purpose outdoor recreation and conservation plan for the state. The Department also is responsible for developing a state recreation plan - the State Comprehensive

Outdoor Recreation Plan (SCORP) - under the federal Land and Wat Conservation Fund program, P.L. 88-578, as amended. The plan - Outdoor Recreation in Florida - is a product of both these requirements.

The plan assesses the overall needs of the state for outdoo recreation, but because of the state's unusual relationship with the coastline, and the high preference among residents and visitors for coastal recreation such as swimming, fishing and boatin significant portions are devoted to coastal resources. The plan includes assessments of the need for public beaches - including increased access - as well as the need for other shoreline recreational facilities - camping, fishing, boating, nature study, an aesthetics. The plan shows a growing and continuing demand for improved shoreline recreational facilities, particularly beaches.

Other coastal land resource planning and acquisition programs include state wilderness areas under Chapter 258 and the state aquatic preserve system under the same chapter. The Department also administers programs to assist local governments assess their need for, and to acquire, waterfront property.

2. <u>Definition of "beach"; identification of public areas meeting the definition</u>

"Beach" is not defined in the Florida Statutes. Article X, Section 11, of the Florida Constitution provides that "The title to lands under navigable waters...which have not been alienated, including beaches below mean high water lines, is held by the state, by virtue of its sovereignty, in trust for all the people...". The Department of Natural Resources in 16B-33, F.A.C., developed for the Coastal Construction Control Line permi program under Chapter 161, Florida Statutes, defines "'beach' as the zone of unconsolidated material that extends landward from th mean low water line to the place where there is marked change in material or physiographic form, or the line of permanent vegetation (usually the effective limit of storm waves). Unless otherwise specified, the seaward limit of a beach is the mean low water line. Beach is alternatively termed the 'shore'".

Under this definition of beach, only the so-called "wet sand beach (the beach below mean high water) is almost universally a "public area" (little, if any, ocean or gulf-front "beach" has been sold by the state). Other "public areas" which would fall under the definition include those "dry sand" areas which have been purchased by governmental agencies - by the state for use as a park, as a portion of an aquatic preserve, a wildlife refuge, environmentally endangered land, or other public recreational use or a local government for the same or similar uses.

The definition excludes marsh or wetland areas. Many of these are in public ownership, either through purchase or because the areas lie below the mean high water line.

Court decisions citing common law doctrines for use of beaches may, on occasion, expand the concept of "public areas". However, the utility of the doctrines of "preoccupation", "custom", and "dedication" seems destined to be limited to a case-by-case situation. Thus far, Florida courts have taken a very restrictive application of these doctrines.

3. Identification and description of policies, legal authorities, funding programs and other techniques

The Land Acquisition Trust Fund established by s. 375.041, Florida Statutes, provides state funding for purchase of land and water areas identified under the state's comprehensive recreation plan. The fund may be used to purchase all recreational lands, including beaches, water access sites, boating and navigation channels, and submerged lands. Other funds available to the DNR for recreational lands - specifically including beaches - are through the Conservation and Recreational Lands Trust Fund established by s. 253.023, Florida Statutes. Federal Land and Water Conservation funds also are administered by the DNR. The policies and more detailed descriptions of these laws and their programs are provided in Part II, Section II.B.

Section 375.031(6) authorizes the Department to acquire rights of way for access "which may be reasonably necessary for the use and enjoyment of public waterways". Subsection (10) of the same section authorizes the DNR to provide local governments with up to 50 percent of the funds needed to acquire rights of way to beaches.

The Department also administers the Environmentally Endangered Lands program under Chapter 259, Florida Statutes. Funds are available to purchase "any beaches or beach areas within the state which have been eroded or destroyed by natural forces or which are threatened or potentially threatened by erosion by natural forces"; s. 259.03(2)(c). Other lands which may be purchased under the Environmentally Endangered Lands program include "areas of ecological significance, the development of which, by private or public works, would cause the destruction of submerged lands, inland or coastal waters, marshes...". The Department is required by s. 253.023, Florida Statutes, to give a high priority to acquiring lands near urban areas.

Under Chapter 258, Florida Statutes, relating to state parks and preserves, the State Park Trust Fund is available for the maintenance, preservation and acquisition of state park areas, including beach and waterfront areas.

Section 375.065, Florida Statutes, authorizes the DNR to grant, or loan, funds to local governments to acquire public beach areas, or to acquire the waterfront property itself. The Department is "urged" in subsection (4) to "give priority to applications (for funds from local governments) relating to the

acquisition of public beaches in urban areas". Section 371.65 (3), Florida Statutes, earmarks a portion of the registration fee for motorboats for distribution to local governments for boating related activities, including boat launching facilities.

The DNR exercises regulatory control over beaches under Chapter 161, Florida Statutes. The policies and more detailed descriptions of this law are presented in Part II, Section II.B. Discussions of the Coastal Construction Control Lines also are discussed in the "Issues of Special Focus" in Part II, Part II.D.

The Department's authority to require permits for construction of shore protection structures below the mean high water line, s. 161.041, F.S., and for construction seaward of the Coastal Construction Control Line, s. 161.053(4), F.S. represents a significant degree of protection for state beach areas, whether they are publicly or privately owned (wet or dry-sand) beaches. The department has the responsibility to require the removal of any structure which is constructed seaward of the Coastal Construction Control Line without a permit.

Chapter 161 also establishes the Erosion Control Trust Fund, s. 161.091, F.S., which is used by the DNR in a "statewide plan for erosion control, beach preservation, and hurricane protection...". The fund may be used to pay up to 75 percent of the costs of erosion control projects "including biological monitoring costs, revegetation costs, and costs of monitoring post-construction shoreline changes...".

Local interests are required to pay a share of the costs. In addition, "for an area to qualify for state funding...local interests shall...provide permanent public access to project areas at approximately one-half mile intervals, including adequate vehicle parking areas...no public funds shall be spent restoring any beach where adequate public access to and use of the restored beach is not available", s. 161.091(1)(e), F.S.

The DNR also enforces s. 370.041, Florida Statutes, which prohibits the cutting or harvesting of sea oats or sea grapes on public or private lands, "to protect the beaches and shores of this state from erosion by preserving natural vegetative cover to bind the sand".

Under the Water Resources Restoration and Preservation Act (s. 403.0615, F.S.) and the powers and duties of the Department of Environmental Regulation (s. 403.061, F.S.), the enhancement of public access is a part of the state program for restoring and preserving water bodies. In addition, the statutory criteria governing the allocation of restoration and preservation funds (s. 403.0615(3)(c)) include consideration of the "...public uses which can be made of the subject waters."

As has been noted elsewhere in this document, a considerable portion of Florida's coastal lands are owned by the Department of Defense and are used as military installations. Much of this land is off limits to the general public. However, under the federal "Sykes Act", P.L. 86-797, passed in 1960, the military services are encouraged to enter into recreation and access agreements with the U.S. Department of the Interior and appropriate local agencies.

Nearly 400,000 acres of military lands have been opened up to the public for recreational purposes in Florida under Sykes Act provisions. Activities allowed on these lands include hunting, camping, swimming, fishing, non-power boating, nature study, etc. The lands include several beach areas. Military bases in which a portion of the lands have been opened to public recreational access include (not all have beach areas): Homestead AFB - 81 acres; Patrick AFB - 2,108 acres; Eglin AFB - 290,000 acres; Avon Park AF Bombing Range - 80,000 acres; Tyndall AFB - 20,000 acres. The state has a clear opportunity to use the provisions of the Sykes Act to the fullest through making similar arrangements with other military installations throughout the state.

SHORELINE EROSION AND MITIGATION

FEDERAL GUIDELINES

Section 305(b)(9) of the CZMA requires each state to address the issue of shoreline erosion. Specifically, it states that the management program for each coastal state shall include "A planning process for (a) assessing the effects of shoreline erosion (however caused), and (b) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion". Furthermore, Section 923.25 of the federal regulations for program approval requires that:

1. the management program must provide a method for assessing the effects of shoreline erosion and evaluating techniques for mitigating, controlling or restoring areas adversely affected by erosion; and

2. the program must identify and describe the authorities, policies and funding techniques that will be utilized to manage the effects of erosion.

Beach and shoreline erosion has long been a matter of concern in Florida. Such erosion has on numerous occasions resulted in severe damage or destruction of commercial and residential structures, transportation systems and recreational beaches. Social and economic impacts caused by erosion have resulted in greatly increased interest by state government and the academic community in understanding the extent and causes of shoreline erosion and in developing mechanisms for dealing with the problem.

Investigations to date indicate that beach and shoreline erosion in Florida is a natural process which is exacerbated by development activities. While some erosional problems exist elsewhere, the primary concern in Florida focuses on the sandy beaches fronting on the Gulf of Mexico and the Atlantic Ocean. Here, the combination of man's actions and natural processes have resulted in about 210 miles of a total 782 miles of beach being in a "critical" state of erosion, meaning there is a potential threat and endangerment to coastal buildings and public property. Another 325 miles of beach are in a non-critical state of erosion. Only about 250 miles of Florida beaches can be considered in good shape. The extent of beach erosion in Florida is indicated on Table 23.

State Policy

The State's policy on erosion is described in Chapter 161, F.S. and in the duties of the Department of Natural Resources Division of Marine Resources. Section 161.141, F.S. provides that

> Beach erosion being a serious menace to the economy and general welfare of the people of this state and having advanced to emergency proportions, it is hereby declared to be in the public interest that the Legislature make provision for publicly financed beach nourishment and restoration and erosion control projects and establish and clarify the property right of the State and private upland owners arising from or created by such projects....

Duties of the Division of Marine Resources

The Division of Marine Resources of the Department of Natural Resources has the responsibility for administering, coordinating, enforcing and carrying out the state's program related to beach and shore erosion. Specific duties of the Division as described in Chapter 370.02, F.S. include:

1. To administer, coordinate and enforce the provisions of Chapter 161, F.S.

2. To conduct, direct, encourage, coordinate, and organize a continuing program of research into problems of beach erosion, shoreline deterioration and hurricane protection.

3. To prepare a comprehensive and a long-range statewide plan for erosion control, beach preservation and hurricane protection.

4. To make recommendations to the department (DNR) concerning the use of funds in the erosion control account.

5. To review all plans and activity pertinent to erosion control, beach and hurricane protection and to provide coordination in these fields among the various levels of government.

TABLE 23

FLORIDA'S EROSION PROBLEM AT A GLANCE

(figures in statute miles)

County	Beach Length	*Critical Erosion	Non-Critical Erosion
Nassau	13.3	2.5	4.0
Duval	16.0	10.0	0
St. Johns	41.3	5.0	36.3
Flagler	18.0	3.0	12.0
Volusia	49.0	.5	10.0
Brevard	72.0	23.0	0
Indian River	22.0	6.0	16.0
St. Lucie	22.0	1.3	20.7
Martin	21.0	6.0	15.0
Palm Beach	44.9	28.4	16.5
Broward	24.0	8.9	15.1
Dade	34.8	19.5	1.3
Collier	35.0	4.0	16.0
Lee	44.0	12.4	0
Charlotte	14.0	5.0	6.0
Sarasota	35.0	4.4	0
Manatee	14.0	6.7	2.0
Pinellas	35.4	13.0	22.4
Franklin	54.6	18.3	30.3
Gulf	26.4	6.4	11.6
Bay	44.6	21.5	17.3
Walton	25.2	0	25.2
Okaloosa	24.5	0	14.2
Santa Rosa	3.1	0	3.1
Escambia	40.8	3.0	37.8

*The term "critical" applies only to developed shoreline areas where buildings and public facilities may be utlimately threatened. It does not refer to the rate of erosion. Non-critical erosion applies to relatively undeveloped areas. In some cases, the erosion rate may be greater in areas designated as "non-critical".
Source: State Department of Natural Resources

6. To promote sound planning and development of shoreline upland by devising standards and working with local government agencies.

7. To insure the proper regulation of shoreline alteration and development by investigating proposed work and making recommendations to the Department.

STATE PROGRAMS

Florida has several programs to address shoreline erosion concerns:

Comprehensive Planning

The Department of Natural Resources, Division of Marine Resources has the responsibility to prepare a long-range statewide plan for erosion control, beach preservation and hurricane protection. Recently, the DNR signed a contract with the University of West Florid to prepare such a plan. The first phase of the plan was completed in January, 1981. This phase will provide overall direction to the state's erosion control effort. Subsequently, individual management plans for erosion control will be developed for each county.

Coastal Construction Permits

Prior to enactment of state legislation controlling coastal construction, local governments and private property owners often sought to remedy their shoreline erosion problems through construction of groins, jetties, breakwaters and other such structures, many times with inadequate understanding of the potential effectiveness or results. Frequently such well-intended efforts not only proved futile but actually induced or accelerated undesirable shoreline changes. In response to this situation, Chapter 161.041, F.S. now provides that no erosion control structure shall be installed, constructed, operated, maintained, expanded or modified without a valid permit from the Department of Natural Resources. Implementation of this authority provides for improved effectiveness of local and private erosion mitigation efforts and greatly reduces the potential for inducing harmful shoreline changes.

Coastal Construction Setback and Control Lines

Improper beachfront construction practices have been one of the primary causes of beach erosion in Florida. Destruction of dune vegetation, construction of vertical seawalls, and other such modifications of shorefront areas along the beach often interfere with natural shoreline dynamics, and in turn trigger erosion of the beach itself. To address this problem as well as to aid in reducing hazards to beachfront development, new beachfront construction now is subject to state regulation under Chapters 161.052 and 161.053, F.S., as well as Chapter 16B-33, F.A.C. The Department of Natural Resources, after comprehensive engineering studies and public hearings, may establish construction control lines along the sandy beaches on a county by

county basis. Subsequently, no development may take place seaward of the established lines without specific state approval. (See Part II, Section II.B.)

Criteria for Establishment

Provisions of Chapter 161, F.S. pertaining to coastal construction control lines apply only to those open sandy beaches fronting on the Gulf of Mexico or Atlantic Ocean. The setback requirements do not apply to mangrove, marsh or other types of coastal shorefront areas or to the shorefronts of inland waters. Pending formal establishment of individual county control lines, Chapter 161, F.S. establishes an automatic setback line of 50 feet from the line of mean high water. Subsequent specific location of coastal construction control lines is based upon detailed engineering studies which consider a variety of factors, including:

1. Ground elevation in relation to historical storm and hurricane tides;

2. Predicted maximum wave uprush;

3. Beach and offshore ground profiles;

4. The vegetation line;

5. Erosion trends;

6. The dune or bluff line; and

7. Existing upland development.

Process for Establishment

There are seven basic steps to establish coastal construction control lines: 1) a study is made of a county's shoreline; 2) the need for a line in that county is determined; 3) a location for the line is proposed; 4) public hearings are held on the proposed control location; 5) the proposed location of the line is restudied, with possible changes being made; 6) the recommended control line is submitted to the Governor and Cabinet for approval; and 7) a description of the approved control line is recorded in all affected localities and with the clerk of the circuit court in the county.

Control lines are subject to state review at five year intervals from the time of establishment or upon written request of affected counties or municipalities. As of June, 1980, control lines have been established and recorded for 22 of the 24 counties involved. These control lines were established as a result of comprehensive engineering studies, a topographic survey and the required public hearings. While these lines do vary throughout the state, they are generally one hundred to one hundred and fifty feet landward of the mean high water line. In all cases, the control lines were established at least fifty

idward of the mean high water line. Three areas of the Broward County, Dade County, and portions of Franklin County - have adopted control lines. In these areas, the interim oot setback from mean high water is the controlling line of jurisdiction.

Erosion Control Trust Fund

In order to provide reliable and efficient funding to carry out the state responsibilities in a comprehensive, long-range statewide plan for erosion control, beach preservation, and hurricane protection, Chapter 161.091, F.S., creates an account in the state treasury known as the "Erosion Control Trust Fund Account". Funds from this account are disbursed by the Department of Natural Resources to carry out shoreline erosion planning and mitigation programs.

Proposed projects which anticipate receipt of federal funds usually are incorporated into the state public works program through a interagency screening process. Priority projects resulting from this selection process, as well as non-federally funded projects, are subject to final state approval under provisions of Chapter 161, F.S.

Selection Criteria

In order to qualify for funding, projects must meet the following general criteria: 1) the area must be one where severe beach erosion has occurred; 2) the status of the area should be such that if a publicly financed program of beach nourishment or restoration would no be undertaken, the beach would be destroyed in the near future; and 3) the project must include provisions for adequate public access to and/or use of the area. Additionally, project sponsors must meet specific requirements, including provision of:

1. Permanent public access to the project area at approximately 1/2 mile intervals;

2. Adequate vehicular parking;

3. All necessary lands, right-of-ways or easements;

4. Assurances of continued public use and/or ownership of the area; and

5. An environmental assessment, and when required, an environmental impact statement.

Funding Approval Process

Beach nourishment and restoration projects which receive approval for state funding will be designated as "Areas for Preservation and Restoration" under the Coastal Management Program. The general proces for approval is:

1. An application is submitted to DNR by the local sponsor with the following information:

   a. a resolution declaring the public need and description of the project;

   b. a legal survey with appropriate information, including the delineation of the coastal construction setback line;

   c. the initial construction costs of the project;

   d. the state funds requested;

   e. ownership data, including information on the erosion control line (which determines those lands of state sovereignty);

   f. the environmental report; and

   g. the complete project proposal including all plans and specifications.

2. The application is processed by DNR to determine if it meets all requirements;

3. If acceptable, the application is submitted, along with the recommendations of the Executive Director of DNR, to the Governor and Cabinet (sitting as the head of DNR);

4. Within ten days after the Governor and Cabinet takes action, the applicant is notified; and

5. Allocated funds for the approved project are then disbursed.

Funds from the erosion control account may be utilized to pay up to 75 percent of the non-federal construction costs of most erosion control projects, with local government being responsible for providing the remaining 25 percent. On certain specified types of non-federal projects and under certain conditions, the Department of Natural Resources is authorized to pay the entire project cost. Specific information on the use and allocation of Erosion Control Trust Fund monies is contained in Chapter 161.091, F.S.

Continuing Program Refinement and Implementation

Implementation of Florida's programs for shoreline erosion/mitigation planning has created an awareness of the need for continuing research, policy review and program refinement. As a result, continuing coastal research is conducted by federal and state agencies as well as several state universities. In addition, periodic revision of administrative rules is conducted to reflect additional knowledge and changing conditions.

K. PROGRAM COORDINATION AND PUBLIC INVOLVEMENT

Congress, in enacting the Coastal Zone Management Act, envisioned a state-level planning and management program that, through coordination and participation, would involve all interested governmental agencies and the public in the planning and management process. These excerpts clearly demonstrate the intent of Congress:

> The Congress finds and declares that it is the national policy ... (d) to encourage the participation of the public, of Federal, state, and local governments, and of regional agencies in the development of coastal zone management programs. (Section 303, CZMA)

> Coordination with governmental agencies having interests and responsibilities affecting the coastal zone, and involvement of interest groups as well as the general public are essential elements in the development and administration of a coastal management program. (15 CFR, Part 923.50)

The strong federal coordination and public involvement requirements are reinforced by Florida legislation. Chapter 370.0211, F.S., which preceded the federal Act by some two years, provided for "... a coordinated effort of interested federal, state, and local agencies of government..." and for public dissemination of coastal zone information. In 1977, the Florida Legislature again emphasized coordination by stating "... management of the state's coastal zone will require a highly coordinated effort among state, regional, and local officials and agencies" (Ch. 23.0114, F.S.). This legislation also declared that participation by Florida citizens should be an important factor in the coastal planning process.

The program coordination and public involvement effort to date has been a significant consideration in the development of the Florida Coastal Management Program. A summary of the progress made is provided in the discussions that follow.

PROGRAM COORDINATION

There are five major reasons for intergovernmental coordination in the coastal management program.

1. To identify interested and affected governmental entities, to inform them of the progress of the Coastal Management Program, and to solicit and respond to their comments on proposed program elements;

2. To identify specific programmatic responsibilities of governmental agencies within Florida's coastal zone;

3. To evaluate governmental authorities that could be used to best achieve the purposes of coastal management;

4. To propose how governmental authorities could best work togethe to implement of a coastal management program; and

5. To identify governmental sources of information and technical d useful to Florida's coastal planning and management program and obtain, where possible, this information and data.

Coordination has been achieved at all levels of government. A summary of the effort at the various levels is provided in the material that follows:

STATE LEVEL COORDINATION

The CZMA and its implementing regulations places the major responsibility to achieve sound coastal management squarely upon the shoulders of state government using one or more of three management techniques. The FCMP relies largely on state agencies for implementation, therefore, the establishment and maintenance of state agency coordination has been and remains, of highest priority.

The coordination relationships with state agencies began in 1971 when a letter from the Chairman of the Coastal Coordinating Council w sent to each state agency that was involved in coastal zone activitie asking that they name a liaison person for coastal zone planning. Communication with the persons designated was established on a one-on-one basis.

The State Interagency Advisory Committee on Coastal Zone Management (IAC) was established in 1975 as a more formal means of securing state agency input into the coastal management planning process. The Committee, made up of representatives from all affected state agencies, initiated its work in October, 1975. It has provided a great deal of assistance to the coastal planning effort, especially in the area of policy development. The Committee also reviewed, and discussed at length, other elements of the proposed program such as boundaries, geographic areas of particular concern, and program implementation alternatives.

In addition to the IAC, Governor Graham in October of 1979, established the Interagency Management Committee (IMC) which consists of the heads of agencies involved in the implementation of the state coastal management program. In designating the Committee, Governor Graham directed it to meet at least quarterly, and charged it with the prime responsibility to identify problems and to develop better means of resolving conflicts and inconsistencies in the implementation of th laws and funding programs under the purview of the member agencies. Staff of the Office of Coastal Management (DER) and staff of the IAC member agencies were directed to provide administrative support to the IMC.

Other state-level coordination activities include the following:

- Prior to 1975, participation in permit meetings of the Trustees of the Internal Improvement Trust Fund and the Department of Pollution Control for projects proposed within the coastal zone;

- Participation in the A-95 Clearinghouse review process and weekly A-95 Clearinghouse meetings;

- Participation on the Interagency Planning Committee for Environmentally Endangered Lands;

- Participation on the Interagency Committee for State Wilderness Areas;

- Review of coastal management projects of other state agencies;

- Provision of information and technical data assistance, upon request, to various state agencies and legislative committees;

- Participation on advisory committees and provision of review and comment on draft elements of the State Comprehensive Plan;

- Cooperation with the Division of State Planning and the Department of Veteran and Community Affairs in providing planning assistance relevant to the Local Government Comprehensive Planning Act; and

- Providing of information and data to the Governor's Task Force on Coastal Zone Management (1976), the select Subcommittee on Coastal Zone Management of the House Government Operations Committee (1977), and the Governor's Resource Management Task Force (October, 1979) related to the management of coastal resources.

Additional linkages necessary to effectively manage the state's coastal resources are discussed in Part II, Section II.D. of this document. Informal coordination with interested and affected agencies will continue through one-on-one communication, the functions of the IAC, and on a more formal basis through the activities of the IMC procedures set forth in memoranda of understanding.

REGIONAL AGENCY COORDINATION

Coordination and interaction with regional entities, especially Regional Planning Councils, has been an important activity of the state coastal planning effort. As extensions of local government, the coastal Regional Planning Councils (RPC's) serve as sources of professional planning expertise and provide a direct link to local governmental bodies.

Beginning in October 1974, contracts were initiated with the RPC's within the coastal zone. Since that time, the RPC's have been involved continually in coastal planning activities, including:

1. Establishment of regional Coastal Zone Management Citizens Advisory Committees (CAC's). Each RPC was obligated to establish a citizens advisory committee representing the various coastal interests within their region (a discussion of the work of the CAC's and further information concerning their make-up is included in the section on citizen involvement);

2. Collection and analysis of baseline coastal management data. During the first two contract years, the RPC's collected and analyzed a great deal of coastal baseline data. Working in partnership with the then Bureau of Coastal Zone Planning, the regions gathered information regarding population, economics, support services, land use, land ownership, legal structure, deepwater ports, and onshore impacts of offshore oil exploration and exploitation. This data has been beneficial to the OCM and the RPC's, as well as to units of local government;

3. Local government assistance. One of the benefits derived from RPC involvement in the coastal planning program has been the development of regional coastal management expertise. Contractual arrangements between the Department and the RPC's strongly encourage the regions to use this expertise to assist local governments with coastal management problems. This expertise also is of benefit to other regional programs, such as DRI and A-95 reviews of projects in the coastal region;

4. Response and comment to elements of the proposed coastal management program. RPC members, representing local governments, and staff have been asked to comment on proposed elements of the coastal management program, providing assistance in the development of the program; and

5. Public information programs. One of the tasks undertaken by the RPC's has been to conduct public information programs on coastal management. These have included countywide public meetings, workshops, presentations to county commissions, and presentations to private interest groups and citizens organizations. During the last half of 1977, the RPC's assisted with developing and publicizing the regional workshops held by DER.

All of the RPC's have specific program activities which have been recognized and incorporated into Florida's Coastal Management Program. Some of the activities that bear directly on coastal management include: DRI review and comment; local government planning assistance and review; and regional A-95 Clearinghouse coordination and review. Discussion on the role of RPC's in implementation of the Florida Coastal Management Program is included in Part II, Section II.D. of this document.

Other regional governmental entities with management responsibilities and authorities within coastal regions, such as the Water Management Districts, must be incorporated into a coordinated coastal management program. Coordination with the Water Management Districts has been initiated, but the interaction will need to be increased if the important water resource management authorities are to be effective.

LOCAL GOVERNMENT COORDINATION

Florida's local governments exercise a number of resource management authorities (except in areas specifically preempted by state statute). Additionally, the Local Government Comprehensive Planning Act provides local governments with the opportunity to become actively involved in coastal resource management. County and municipal governments often are in the best position to judge local resource management goals and objectives, and it is anticipated that the coastal protection elements developed as part of local comprehensive plans will reflect the environmental and economic needs of the local citizenry.

Because of the large number of local governments and because the coastal planning staff has been small, it has not been possible to work with all local governments on a direct and regular basis. The Office of Coastal Management has, however, made direct contact with a great many county commissions and city councils. These have been made through coastal management presentations, provision of technical data and special planning assistance, and through the organizations representing city and county government (Florida League of Cities, Florida Association of County Commissioners). A current list of special assistance funding provided to regional/local government is included on page II-387 of this section.

Regional Planning Council staff members have kept local governments informed on the progress of the coastal management program as a part of their contractual responsibilities with the Department. A number of regions have established Technical Advisory Committees for Coastal Zone Management made up of staff members from city and county planning departments. These committees have provided the Office of Coastal Management and the RPC's with assistance since 1975. Another part of the RPC contractual agreements has involved dissemination of coastal planning materials to local government. As an example, RPC's in 1977, were requested to provide all local governments within their region with copies of the Florida Coastal Management Program Workshop Draft. Comments on the material presented in the workshop draft were received from a great many local governmental officials, and the comments assisted DER in the revision of the program in preparation for submission to the 1978 Legislature.

Other local governmental and quasi-governmental bodies, such as port authorities, must also be integrated into the overall coastal management process. The Bureau of Coastal Zone Planning initiated contacts with the governing bodies and staff members of all of Florida's deepwater ports in 1976. Regular communication with the port

authorities has been maintained since that time. The important role ports and other similar facilities play in maintaining Florida's economic well-being is well recognized and it was felt essential that they be provided an opportunity for full participation in the plannin process.

FEDERAL AGENCY COORDINATION

The federal CZMA and regulations (Section 306(c)(1); Section 307(b); CFR 15923.51), formally established the requirement for federal/state interaction during both the development (Section 305) and the implementation (Section 306) of a state's coastal management program. The Congressional call for substantive federal participatio in the development of a state's program was preceded in Florida by th coordination provisions of Chapter 370.0211, F.S.

During the period between 1971 and the initial participation in the federal coastal zone program in 1974, coordination was conducted with some twenty-three federal agencies. Copies of all publications generated by the coastal planning program were sent to Congressional and federal agency contacts for review and comment.

In October 1974, Florida's coastal planning program began formal participation in the federal program. Involvement in this federal program brought not only additional funds for coastal planning but som specific coordination requirements as well.

The federal rules and regulations promulgated pursuant to the CZM specify four elements that necessarily involve extensive state/federal interaction. They address:

1. "excluded federal lands" and the consistency of federal actions within these areas relative to an approved coastal management program;

2. "federal consistency" relative to permitting and funding activities of federal agencies;

3. consideration of the "national interest" in facilities siting when the impact is of greater than local concern; and

4. strengthened coordinating mechanisms for state/federal consultation in areas of key mutual concern, such as air and water quality, endangered species (critical habitat), wetlands, and the hurricane flood zone.

The subjects of excluded federal lands, federal consistency, and national interest in the siting of energy facilities, are discussed in other sections of this Document. The Department of Environmental Regulation has been working with federal agencies to develop coordinatng mechanisms for state/federal coordination in areas of mutual concern. The effort will be continued and expanded and coastal management considerations will be added to the factors included in any

coordinating agreements. The agreements between DER and EPA and the joint permitting procedure that was developed with the U.S. Army Corps of Engineers are examples of coordination efforts within DER.

Many federal agencies conduct their activities in concert with or through one or more state agencies (i.e. U.S. DOT/Fla. DOT). Therefore, the coordination of federal and state agencies and programs is essential to the success of the state coastal management program. Specifically, coordination has been established between state agencies, the O.C.Z.M., and the Heritage Conservation and Recreation Service to address coastal issues involving cultural and recreational concerns (see page II-398 of this section). The Suwannee River is included in the National Wild and Scenic Rivers System and the Loxahatchee and Myakka Rivers have been designated as study rivers under the National Wild and Scenic Rivers Act. In addition, thirty Florida rivers have been listed in the Nationwide Rivers Inventory by the Heritage Conservation and Recreation Service. The Nationwide Rivers Inventory is a preliminary screening process conducted by the Heritage Conservation and Recreation Service to identify future additions to the National Wild and Scenic Rivers System. Because of the special consideration which must be given to these rivers, the Florida Coastal Management Program will consult with agencies involved with the National Wild and Scenic Rivers System prior to undertaking actions which may affect rivers designated for protection or undergoing review for future designation.

The location and utilization of data and information has been a continuous process since the initiation of coastal planning in Florida. Data provided by the U.S. Geological Survey and the U.S. Department of Agriculture's Soil Conservation Service has been of considerable assistance in the development of the coastal management data base.

Since 1974, liaison has been established with approximately 100 federal agency contacts in some 30 federal agencies. These federal agencies have been asked to provide information necessary to list the federally controlled lands that are to be excluded from the coastal region and to provide to the Office of Coastal Management their concerns over "national interest" considerations. All materials prepared by the Office for distribution have been sent to federal agency contacts for review and comment. Forty-two letters of comment were received from federal agencies in response to the workshop draft of the proposed program. Federal comments have been accommodated where possible in the revision process.

Presentations on the emerging coastal management program have been made to the Federal Regional Council (southeast region), to the U.S. Department of Agriculture Soil Conservation Service (Florida staff), and to the staff of the U.S. Army Corps of Engineers, Jacksonville District, and to other federal agency groups. The coastal planning staff has worked with federal officials on a one-on-one basis in reviewing specific projects or plans.

In summation, state/federal coordination in Florida's Coastal Management Program has been continuing since 1971. Such coordination and interaction is not only a legal requirement, but a practical requirement that must be relied upon throughout both program development and implementation if Florida is to have an effective coastal resource management program.

COORDINATION OF THE FLORIDA COASTAL MANAGEMENT PROGRAM WITH OTHER PLANS

Since the inception of the Florida Coastal Management Program, th staff has coordinated the program with local, regional, and state agencies as required under Section 306(c)(2)(A) and 15 CFR 923.56 of the federal CZMA and regulations. Coordination has included (1) revie and comment on plans developed by other agencies, (2) providing coasta program documents to other agencies for review and comment, and (3) incorporating portions of other plans into the state program.

LOCAL GOVERNMENT PLANS

Florida law requires each local government to develop and implement a comprehensive plan. It also requires that each local agency submit these plans to state agencies for review. The DER, through the Office of Intergovernmental Coordination, has reviewed and commented o: these plans as they have been submitted.

In addition to reviewing local plans, the Department has sent its coastal management program documents to coastal communities, as well as regional planning councils and state agencies, for review and comment.

REGIONAL PLANNING AGENCY PLANS

The Department has either assisted or reviewed plans developed by the state's eleven regional planning councils. Five of the regional planning councils are designated 208 agencies whose planning activities have received financial assistance from the Department. In addition, a number of councils used coastal management funds to develop and adopt their coastal policy plans. While councils had previously approached comprehensive planning individually, each council now must adopt a comprehensive policy plan in accordance with Chapter 160, F.S. Therefore, future coordination efforts between the councils and the Department will be essential to ensure compatibility between state and regional efforts.

STATE AGENCY PLANS

During the development of the coastal management program, the Department has coordinated the program with many agencies, including:

1. The Department of Natural Resources (DNR) - The Department of Environmental Regulation (DER) has participated in the development of the DNR State Lands Management Plan and the State Comprehensive Outdoor Recreation Plan. Both plans were used in the development of the coastal management program.

2. The Department of Veteran and Community Affairs (DCA) - The DER participated in the development of the State Comprehensive Plan. The Department is also a member of the DVCA's "701" Technical Advisory Committee.

3. The Department of Transportation - The DER reviews and comments on the siting and designing of major roads located throughout the state.

4. The Department of State - This agency provided the DER with much of the information utilized in preparing sections of the document related to archaeological and historical sites.

5. Other DER Programs - Many other important state plans have been, or are being prepared by the Department of Environmental Regulation. The coastal management program staff has worked with the Department in reviewing "201" facilities plans, "208" water quality management plans, and the State Water Use Plan.

In addition to these state agencies, the Department has also coordinated its program development activities with both the Gulf of Mexico and South Atlantic Fishery Management Councils and the Coastal Plains Regional Commission.

CITIZEN INVOLVEMENT

One of the requirements of the CZMA (Section 306(c)(1); Section 306(c)(3) and 15 CFR 923.58) and of Florida's 1970 coastal planning legislation was to provide a clearing service for coastal zone matters by collecting, processing, and disseminating pertinent information and promoting public involvement. In response to this legislative directive, public information programs and efforts to involve the public in Florida's coastal planning program were initiated shortly after the program was established. An expanded public participation program was initiated in 1974 to fulfill the extensive public involvement requirements of the federal CZMA. The public involvement effort was expanded and accelerated in 1977 following passage of Chapter 77-306, Laws of Florida, which re-emphasized the need for substantial public participation.

PUBLIC INFORMATION AND INFORMAL PUBLIC PARTICIPATION

Beginning in November, 1970, a monthly newsletter was published that provided information on coastal planning and management activities in the state, in other states, and at the federal level. The first issue of the newsletter solicited reader response to the material and asked for ideas and comments on coastal planning activities. Requests for response from readers were continued throughout the life of the newsletter.

Using both the newsletter and direct mailings to individuals and organizations, public input was requested on a number of specific subjects, including a request for suggestions on estuarine areas suitable for nomination as estuaring sanctuaries; a request for

suggested "unique environmental features" for inclusion on the coastal zone maps; a questionnaire sent to more than 500 citizens of Monroe County covering coastal management problems in the Florida Keys; a request for comments and suggestions on a policy for residential canal development; and a request for a response to the nomination of Rookery Bay as an estuarine sanctuary. Excellent response was received on all of these requests.

Presentations on the planning methodology and other aspects of the coastal planning program were initiated by the coastal planning staff in 1971. Every presentation made emphasized the point that suggestions and recommendations would be welcomed and considered in the development of the coastal management program. Since the inception of the coastal planning effort, well over 300 presentations have been made to a variety of audiences including conservation groups, real estate appraisers and developers, petroleum and power plant interest groups, chambers of commerce, planning associations, and local government agencies.

More than 25 publications have been published and distributed by the coastal planning agency in the last seven years. These with few exceptions, were distributed free of charge upon request. Private, for-profit organizations were charged on a cost basis for copies of the Atlas. All of the materials have been placed in public and university libraries for referral and use by citizens of Florida. Some of the publications which have received a great deal of comment and response are listed below, accompanied by the number of copies that have been distributed:

- Coastal Zone Management in Florida - 1971 (and subsequent annual reports). 5000 copies of each report.

- Florida Coastal Zone Management Atlas (1972). 750 copies.

- Recommendations for Development Activities in Florida's Coastal Zone (1973). 5000 copies.

- Florida Keys Coastal Zone Management Study (1974). 500 copies.

- Florida Regional Coastal Zone Management Atlas (9 volumes) and accompanying textual material (1976). 2400 regional volumes have been distributed.

- Florida Coastal Zone Management Program (Section 305): Status Report to the Governor and Cabinet (Jan. 1977). 1500 copies.

- Florida Coastal Zone Management Program: What, Why, How, Who (July 1977 brochure). 100,000 copies.

- Florida Coastal Management Program: Workshop Draft (Nov. 1977). 7000 copies.

- Florida Coastal Management Program: Legislative Draft (March 1978). 7000 copies.

- Florida Coastal Management Program: Threshold Draft (October, 1978). 400 copies.

- Coastal Management Issue Scoping Paper (August, 1979). 300 copies.

A form letter asking for comments and/or questions on the material in the publication often was included as part of the mail-out. Public response has provided assistance to the planning effort. This section contains a bibliography of all publications issued during the development of the FCMP.

THE FORMAL PUBLIC PARTICIPATION PROGRAM

In 1974, following receipt of the first federal grant, part of the public involvement effort became more formalized. Each regional planning council participating in the program was asked to establish a Citizens Advisory Committee for Coastal Management (CAC) made up of representatives from (at a minimum) the following interest groups:

Commercial/sport fishing
Tourism and motel/hotel interests
Construction/home building
Conservation organizations
Science/education
Industry
Business/commerce
City and county government
General public

The CAC's began meeting on a regular basis early in 1975 and have been actively involved in the planning process up until recently when funding limitations and work on the program document resulted in less activity. In some regions, county CAC's were established in addition to the regional group. The CAC's provided assistance to the developing coastal management program by reviewing and commenting on proposed program elements and by developing coastal management policies which reflected the needs of the regions. Well over 800 people have been involved in this portion of the citizen participation effort.

The CAC's will be reestablished later this year and will play an important role through refinement and support of regional policies in the implementation of the Florida Coastal Management Program. This section contains material indicating the make-up of the regional CAC's and a record of their meetings.

Regional Planning Council members and staff have, in addition to establishing and providing support to the CAC's assisted in the public information/participation effort by publicizing coastal management

materials in their newsletters and annual reports; encouraging media coverage of CAC meetings and coastal planning developments; respondi to requests for coastal management information; and assisting to arrange and publicize the regional public workshops in December, 197 Financial support for these tasks was provided by CZMA funds passed through to the RPC's by the Bureau of Coastal Zone Planning.

A statewide citizens advisory committee also was established in the fall of 1977. This committee, appointed by the Secretary of DER, assisted the Department in developing a program that would represent the concerns of all affected interest groups. It reviewed in detail major issues such as the program boundaries, policies, and implementation authorities and has proven to be an excellent source of commen and suggestions for revisions to elements of the program. The state CAC will also be reestablished later this year.

Following the publication of the Florida Coastal Management Program Workshop Draft, twelve regional workshops were held during December, 1977. These workshops were widely advertised, and more tha 1200 interested citizens participated. Many valuable comments and suggestions were received at the workshops and well over 250 letters were received following the workshops. All of the comments were considered in the revisions made to the proposed program previous to submission of the Legislative Draft.

Finally, the submission of the Legislative Draft and proposed implementing legislation to the Florida Legislature in 1978 led to extensive public discussion, formal legislative hearings and debate. The Florida Coastal Management Act of 1978 was a compromise bill resulting from those discussions.

SUMMARY

As this material indicates, the public's right to know about and participate in the planning process has been a major consideration since the beginning of coastal planning in Florida. Based on the assumption that an informed public will be a concerned public, a great deal of time and money has been expended to provide information on the developing program to the citizens of the state and to actively solici their input. The program as presented in this proposed draft continue public involvement through the solicitation of comments on the draft material.

CONTINUING CONSULTATION

The success of the Florida Coastal Management Program will depend heavily upon the ability of the State and the Department to address coastal issues. Proper response to coastal issues will require a working consultation program. While the federal regulations on program consultation (15 CFR 923.57) primarily concern consultation with local governments, an effective coastal management program must have ongoing consultation with local, regional, state and federal agencies as well as the citizens of the State.

Florida's approach to consultation will be to rely on existing coordination programs and to utilize the new processes in the coastal management program as a catalyst to augment the existing programs and to develop new processes where necessary. The specific methods for program consultation include the following:

1. The Interagency Management Committee (IMC) is the principal agent to ensure continuing consultation between state agencies. The IMC will meet regularly to address coastal issues. In addition, consultation on the state level will be enhanced by regular meetings of the Interagency Advisory Committee.

2. The Department will use the federal consistency process as a new consultation mechanism between state and federal agencies. This process requires decisions regarding federal projects, licenses and permits to be consistent with the state's coastal management program. The Department will use this process to foster improved coordination between state and federal agencies. In addition to federal consistency, the State will continue to utilize existing joint consultation and coordiantion procedures including those for dredge and fill permitting, protection of endangered species, civil works projects, erosion control projects, highway projects, and archaeological and historic sites.

3. The Department will follow the provisions of Chapter 120, F.S. to ensure that its rulemaking activities are given adequate public notice. See Part II, Section II.E(4) for a discussion of Chapter 120.

4. The Department will continue to review all major federal, state and regional projects through existing state clearinghouse and A-95 review procedures.

5. The Citizens Coastal Advisory Committee will include representatives of local government, regional agencies and public and private interest groups. This Committee will assist the Department as it implements the coastal management program and will ensure continued consultation between the Department, local and regional agencies, and relevant interest groups.

6. The Department will continue to review local government plans developed under the Local Government Comprehensive Planning Act. While many local plans already have been completed and reviewed, they also must be reviewed and reassessed at least once every five years. These reassessments must be sent to both the local governing body and to the state land planning agency.

'INATION AND PUBLIC INVOLVEMENT:

ATTACHMENTS

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STATE INTERAGENCY MANAGEMENT COMMITTEE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

- Division of Forestry

DEPARTMENT OF COMMERCE

- Secretary

DEPARTMENT OF COMMUNITY AFFAIRS

- Secretary

DEPARTMENT OF ENVIRONMENTAL REGULATION

- Secretary

GAME AND FRESHWATER FISH COMMISSION

- Executive Director

OFFICE OF THE GOVERNOR

- Director of Planning and Budgeting

DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

- Secretary

DEPARTMENT OF NATURAL RESOURCES

- Executive Director

DEPARTMENT OF STATE

- Division of Archives, History and Records Management

DEPARTMENT OF TRANSPORTATION

- Secretary

STATE INTERAGENCY MANAGEMENT COMMITTEE: DATES AND AGENCY ATTENDANCE

MEETING DATES / AGENCY	Dept. of Agriculture and Consumer Services	Dept. of Commerce	Dept. of Community Affairs	Dept. of Environmental Regulation	Game and Fresh Water Fish Commission	Office of the Governor	Dept. of Health and Rehabilitative Services	Dept. of Natural Resources	Dept. of State	Dept. of Transportation
3/11/80	+	+	+	+	+	+	+	+	+	+
12/3/79		+	+	+	+	+	+	+		+
12/8/80	+	+	+	+	+	+	+	+	+	+

STATE INTERAGENCY ADVISORY COMMITTEE ON COASTAL ZONE MANAGEMENT

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

- Division of Forestry
- Soil and Water Conservation

DEPARTMENT OF COMMERCE

- Division of Economic Development

DEPARTMENT OF COMMUNITY AFFAIRS

- Bureau of Disaster Preparedness
- Division of Local Resource Management

GAME AND FRESHWATER FISH COMMISSION

- Environmental Protection Section

OFFICE OF THE GOVERNOR

- Energy Office

DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

- Office of Entomology
- Environmental Health Program
- Office of Licensure and Certification

LEGISLATURE

- House of Representatives Natural Resources Committee

DEPARTMENT OF NATURAL RESOURCES

- Division of State Lands
- Division of Marine Resources
- Division of Resource Management

DEPARTMENT OF STATE

- Division of Archives, History, and Records Management

STATE UNIVERSITY SYSTEM

- Institute of Oceanography
- Institute of Food and Agricultural Sciences (University of Florida)

DEPARTMENT OF TRANSPORTATION

- Division of Planning and Budgeting

STATE INTERAGENCY ADVISORY COMMITTEE FOR COASTAL ZONE MANAGEMENT: DATES AND AGENCY ATTENDANCE

MEETING DATES / AGENCY	Dept. of Natural Resources	Dept. of Transportation	Dept. of Environmental Regulation	Dept. of Administration	Dept. of Community Affairs	Dept. of Agriculture and Consumer Services	Dept. of Health and Rehabilitative Services	Dept. of Commerce	Dept. of Business Regulation	Dept. of State	Dept. of Game and Freshwater Fish Commission	State University System, Insti. of Oceanography	House of Rep.	Governor's Office	Insti. of Food and Agricultural Sciences (U. of F.)
10/8/79	+	+	+			+	+			+	+			+	
2/19/78	+	+	+	+	+	+	+				+	+	+		
12/2/77	+	+	+	+	+	+	+				+	+			+
12/21/76	+	+	+	+	+	+	+	+					+		
11/16/76	+	+	+	+	+									+	
10/26/76	+	+	+	+	+	+	+				+				+
9/28/76	+	+	+		+	+	+	+	+		+	+	+		
8/24/76	+	+	+	+		+		+	+	+	+		+	+	
7/16/76	+	+	+	+	+	+	+			+	+	+	+		
5/25/76	+	+	+	+	+	+	+	+	+		+	+	+		
4/27/76	+	+	+	+	+	+	+		+	+	+	+	+		
3/23/76	+	+	+	+	+	+	+	+	+	+	+	+	+		
2/17/76	+	+	+	+	+	+	+	+	+		+				
1/20/76	+	+	+	+	+	+		+	+			+	+		
12/2/75	+	+	+	+	+	+	+	+	+		+	+	+		
10/8/75	+	+	+	+	+	+	+	+	+	+	+	+	+		

REGIONAL/LOCAL ASSISTANCE EFFORTS

1971-72: Pilot study of Escambia-Santa Rosa County area resulted in three reports of direct application to local government planning efforts (at no cost to local government):

(a) Escarosa: A Preliminary Study of Coastal Zone Management Problems and Opportunities in Escambia and Santa Rosa Counties, Florida;

(b) A Plan and Program for Amenities and Aesthetics in the Escarosa Pilot Area; and

(c) Coastal Zone Management in Florida - 1971.

1972: Funded and guided a project to test the validity of the state biophysical assessment techniques for regional planning purposes (Tampa Bay Region) resulting in a report which has influenced the form and content of the regional plan:

A Preliminary Investigation of the Use of Natural Resources in the Tampa Bay Region as a Basis for Future Developmental Policy.

1972: Funded and provided guidance to City of Clearwater for development of a local coastal zone management plan (the first such plan in the U.S.).

1973: Funded and guided a project with the South Florida Regional Planning Council to assess the development suitability of land in South Florida (including everything south of Lake Okeechobee) resulting in a report and Maps:

An Assessment of the Development Suitability of Land in South Florida.

1973: Provided direct technical assistance to development of the Palm Beach County Land Use Plan.

1973: Provided direct technical assistance and coordination services to the City of Titusville Shoreline Authority.

1974: Florida Keys Coastal Zone Management Study: provided Monroe County with practically all the necessary information to develop a comprehensive plan for the Keys.

1974: Provided technical assistance to City of St. Petersburg in assessing the suitability of the proposed "Gateway" projects.

1975: Provided technical assistance to Port of Panama City to facilitate development of enlarged deepwater port facilities.

1975: Provided funding to Monroe County to develop a Keys coastal management program (contract cancelled for non-performance c part of the County).

1975: Panacea Harbor Project - provided technical and coordination assistance to make possible needed harbor improvements. Efforts involved creation of an artificial marsh island in Class II waters where spoil deposition would not normally be permitted.

1976: Provided technical and legal assistance to Franklin County regarding DRI reviews, local planning, and development of subdivision regulations (focused on St. George Island).

1976: Demonstration Project with Duval County involving a heavy industry site location study.

1976: Demonstration Project with Dade County involving the develop ment of a shoreline management strategy for Biscayne Bay.

1976: Development of the Florida Regional Coastal Zone Management Atlas (9 volumes) in partnership with Regional Planning Councils and local government.

1977: Provided technical assistance to Escambia County for development of a management plan for Santa Rosa Island.

1978-79: See Attached (p. II-378)

REGIONAL/LOCAL ASSISTANCE EFFORTS (CON'T.)

AGENCY	PROJECT/DESCRIPTION
Suwannee River Water Management District	Suwannee River Estuarine Project - environmental impact of consumptive use withdrawals from river
Withlacoochee Regional Planning Council	Cedar Key Study - prepare comprehensive plan of small waterfront community- address hazards mitigation, protection of marine resources, historical preservation
Southwest Florida Regional Planning Council	Development of a regional hurricane evacuation plan
Apalachee Regional Planning Council	Development of Land Use/ Coastal Protection Elements for Franklin County
Sarasota	Development of urban waterfront plan
Indian River County	Management Plan for Spoil Islands
Metro-Dade	Urban waterfront study - North Biscayne Bay - define use priorities/ design guidelines for North Biscayne Bay - develop program to improve physical/visual access to Biscayne Bay
Florida Institute of Technology	Endangered species - protection of manatee by local government
St. Augustine - St. Johns County	Local government efforts to protection of Class II Shellfish Waters
Northwest Florida Water Management District	Preliminary Environmental Assessment - Choctawhatchee Bay

REGIONAL CITIZENS ADVISORY COMMITTEES ON COASTAL ZONE MANAGEMENT

WEST FLORIDA REGION

Interests Distribution

Commercial/sport fishing	3
Tourism/hotel/motel	1
Construction/home building	1
Conservation organizations	4
Science/education	1
Industry	2
Business/commerce	1
City/county government (including elected officials)	8
General public	10
Military	1
Ports	1

County Distribution

Escambia	20
Santa Rosa	6
Okaloosa	7

Number of Meetings (between 1/1/75 and 2/28/78): 20

NORTHWEST FLORIDA REGION*

Interests Distribution

Commercial/sport fishing	2
Tourism/hotel/motel	1
Construction/home building	1
Conservation organizations	2
Science/education/planning	1
Industry	1
Business/commerce	2
City/county government (including elected officials)	5
General public	2
Forestry/agriculture	3
Regional agencies	3

County Distribution

Walton	1
Bay	TBA
Gulf	2
Franklin	6
Wakulla	5
Jefferson	1
Leon	4
Liberty	1
Jackson	1
Gadsden	1
Calhoun	1

Number of Meetings: 2*

*Represents the CAC recently established by the Apalachee Regional Planning Council. The previous CAC for this region was established and administered by the defunct Northwest Florida Planning and Advisory Council. That CAC represented coastal counties only and met approximately 12 times between 1/1/75 and 12/30/76.

NORTH CENTRAL REGION

Interests Distribution

Commercial/sport fishing	3
Tourism/hotel/motel	1
Construction/home building	2
Conservation organizations	1
Science/education	1
Industry	1
Business/commerce	3
City/county government (including elected officials)	2
General public	5
Agriculture/forestry	4

County Distribution

Dixie	10
Taylor	11

Number of Meetings (between 1/1/75 and 2/28/78): 20

WITHLACOOCHEE REGION

Interests Distribution

Commercial/sport fishing	3
Tourism/hotel/motel	2
Construction/home building	2
Conservation organizations	2
Science/education	2
Industry	1
Business/commerce	1
City/county government (including elected officials)	1

County Distribution

Hernando	5
Citrus	5
Levy	4

Number of Meetings (between 1/1/75 and 2/28/78): 20

TAMPA BAY REGION*

Interests Distribution

Commercial/sport fishing	3
Tourism/motel/hotel	2
Construction/home building	3
Conservation organizations	3
Science/education	4
Industry	2
Business/commerce	3
City/county government	**
General public	10

County Distribution

Pasco	4
Pinellas	15
Hillsborough	8
Manatee	3

Number of Meetings (between 1/1/75 and 2/28/78): 25

*A CAC was established in each of the four counties. Interest distribution was approximately the same as the regional CAC. Each county committee had 20-25 members.

**City and county interests were represented by a Technical Advisory Committee made up of staff members from city and county planning departments who advised the CAC. In the case of Tampa Bay, all CAC recommendations were presented to the Regional Planning Council which acted on them. This also provided city and county representation.

SOUTHWEST FLORIDA REGION

Interests Distribution

Commercial/sport fishing	[illegible]
Tourism/motel/hotel	[illegible]
Construction/home building	[illegible]
Conservation organizations	[illegible]
Science/education	[illegible]
Industry	[illegible]
Business/commerce	[illegible]
City/county government (including elected officials)	6
General public	5

County Distribution

Charlotte	7
Sarasota	8
Lee	8
Collier	8
Glades	2
Hendry	2

Number of Meetings (between 1/1/75 and 2/28/78): 24

SOUTH FLORIDA REGION

Interests Distribution

Commercial/sport fishing	5
Tourism/hotel/motel	5
Construction/home building	10
Conservation organizations	25
Science/education	15
Industry	10
Business/commerce	20
City/county government (including elected officials)	20
General public	72*
Military	3
Ports	5

County Distribution

Monroe	10
Dade	103
Broward	77

Number of Meetings (between 1/1/75 and 2/28/78): 27

*some may represent interest groups, but OCM has no interest group breakdown for all members.

TREASURE COAST REGION

Interests Distribution

Commercial/sport fishing	3
Tourism/hotel/motel	3
Construction/home building	8
Conservation organizations	3
Science/education	7
Industry/business/commerce	9
City/county government	6
General public	6

County Distribution

Palm Beach	18
Martin	9
St. Lucie	9
Indian River	9

Number of Meetings since establishment in May, 1977: 10

EAST CENTRAL FLORIDA REGION

Interests Distribution

Commercial/sport fishing	1
Tourism/hotel/motel	1
Construction/home building	1
Conservation organizations	2
Science/education	1
Industry	1
Business/commerce	2
City/county government (including elected officials)	4
General public	4

County Distribution

Brevard	9
Volusia	8

Number of Meetings (between 1/1/75 and 2/28/78): 22

NORTHEAST FLORIDA REGION*

Interests Distribution

Commercial/sport fishing	2
Tourism/hotel/motel	2
Construction/home building	4
Conservation organizations	3
Science/education	4
Industry	2
Business/commerce	2
City/county government (including elected officials)	4
General public	2
Military	1
Forestry/agriculture	2

County Distribution

Duval	10
Putnam	3
Nassau	7
Flagler	2
St. Johns	4
Clay	2

Number of Meetings (between 1/1/75 and 2/28/78): 23

*Established and administered by the Jacksonville Area Planning Board.

FEDERAL COASTAL MANAGEMENT CONTACTS

Numbers following agency indicate number of copies of materials required to be sent.

U. S. DEPARTMENT OF AGRICULTURE

Soil Conservation Service (Washington, D.C.): 2
Forest Service (Washington, D.C.): 1
Forest Service (Regional): 6
S.E. Regional Representative: 2
State and Assistant State Conservationists (Fla.): 2
Florida Association of Soil and Water Conservation Districts: 1

U. S. DEPARTMENT OF COMMERCE

Office of Coastal Zone Management: 6
Office of Habitat Protection (Washington, D.C.): 1
National Marine Fisheries Service - Panama City Lab: 1
- S.E. Regional Office: 1
Maritime Administration - Washington, D.C.: 1
- Eastern Region: 1
- Central Region: 1
Economic Development Administration (Washington, D.C.): 1
Economic Development Administration (Southeastern Region): 4
Secretarial Representative (Southeastern Region): 30
South Atlantic Fishery Management Council: 1
Gulf of Mexico Fishery Management Council: 1

U. S. DEPARTMENT OF DEFENSE

Washington, D.C.: 2

ARMY

Corps of Engineers, Jacksonville District: 1
Corps of Engineers, Mobile District: 1
Natural Resources and Civil Works (Washington, D.C.): 2

NAVY

Intergovernmental Planning and Environmental Affairs (Washington, D.C.): 2
Admiral and Commandant, Sixth Naval District (Charleston): 2
Engineering Command (Charleston): 3
Naval Coastal Systems Laboratory (Panama City): 1

AIR FORCE

HQ-USAF/PREV (Washington, D.C.): 1
Eastern Region HG-USAF (Atlanta): 3
Florida AF Bases: 6

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development (Washington, D.C.): 1
CZM Coordinator (Atlanta): 1
Planning and Relocation Branch (Jacksonville): 1
Federal Insurance Administration - Flood Insurance (Atlanta): 1

HEALTH; EDUCATION AND WELFARE

Planning Systems (Washington, D.C.): 2

U. S. DEPARTMENT OF THE INTERIOR

Office of Policy Analysis (Washington, D.C.): 2
Office of Secretary (Atlanta): 3
Fish and Wildlife Service - S.E. Regional Director: 3
- Panama City Branch: 3
U.S. Geological Survey - Eastern Division: 6
- Water Resources Division (Atlanta): 1
- District Supervisor: 1
- Tallahassee District Office: 1
- RALI Program: 1
- Oil, Gas, and Shale Resources (Washington D.C.): 1
- Office of Siting (Washington): 1
- Resource Application (Washington, D.C.):
National Park Service - Cooperative Services Division: 1
- Director, S.E. Regional Office: 3
- Superintendent, Everglades National Park:
- Superintendent, Gulf Islands National Seashore: 1
- Superintendent, Biscayne National Park: 1
- CZM Coordinator (Washington, D.C.): 1
Bureau of Mines - Washington, D.C.: 3
- Alabama: 1
- Pennsylvania: 1
Bureau of Land Management - Eastern States Office: 1
- Gulf of Mexico Outer Continental Shelf Office: 3
Bureau of Indian Affairs (Southeast Agencies): 1
Heritage Conservation and Recreation Service - Washington: 1
- Atlanta: 1

U. S. DEPARTMENT OF JUSTICE

Land and Natural Resources Division: 1

DEPARTMENT OF ENERGY

Regional Office (Atlanta): 1
Federal Energy Administration
U.S. Energy Research and Development Administration -
- Division of Biomedical and Environmental Research: 1
- Oak Ridge Operations Office: 1

Federal Energy Regulatory Commission -
- Southeast Regional Engineer: 1
- Office of Energy Systems (Washington): 1

U. S. ENVIRONMENTAL PROTECTION AGENCY

Offices of Federal Activities and Environmental Review (Washington, D.C.): 2
Ecological Review Branch (Region IV): 5
208 Coastal Zone Liaison (Atlanta): 1

EXECUTIVE OFFICE OF THE PRESIDENT

Council on Environmental Quality: 2

GENERAL SERVICES ADMINISTRATION

Region IV Administrator: 1

MARINE MAMMAL COMMISSION: 1

U. S. DEPARTMENT OF TRANSPORTATION

Southeastern Regional Secretarial Representative: 12
Distributes to: U.S. Coast Guard; Federal Highway Administration
Mass Transportation Section; Airports Section

NUCLEAR REGULATORY COMMISSION: 3

FEDERAL REGIONAL COUNCIL OFFICE (Southeast Region): 1

DEPARTMENT OF LABOR: 1

COORDINATION OF COASTAL MANAGEMENT AND HERITAGE CONSERVATION AND RECREATION SERVICE PROGRAMS

Section 307(a) of the Coastal Zone Management Act of 1972 (P Law 92-588 as amended) requires the Secretary of the Department o Commerce to cooperate with other federal agencies in the implemen of this act. In accordance with this requirement, as well as the National Historic Preservation Act of 1966 (P.L. 89-665, as amend and Executive Order 11593, an interagency agreement was drawn-up between the Office of Coastal Zone Management (Department of Comme and the Heritage Conservation and Recreation Service (Department c Interior). The purpose of this 1978 agreement is stated as follow

1. To provide mutual assurances that a State's Coastal Zone Management, Outdoor Recreation and Historic Preservation Prog are compatible and consistent, that planning objectives are i agreement, and that any duplication of program efforts is avo or minimized, the Office of Coastal Zone Management and the Heritage Conservation and Recreation Service will develop procedures that provide for the following:

   a. Review of and comment on the State Comprehensive Outdoor Recreation Plan, (SCORP), Land and Water Conservation Fun planning grant applications, and L&WCF acquisition and development grant applications by the State agency respon sible for preparing the Coastal Zone Management program;

   b. Review and comment on Annual State Historic Preservation Plans, including review of the work program components of that plan listing specific survey and planning activities acquisition and development projects for each fiscal year, the State agency responsible for preparing the Coastal Zon Management program;

   c. Review of and comment on the Coastal Zone Management progr (306 plan), the Coastal Zone Management program developmen grant (305) applications, and Coastal Zone Management impl mentation grant applications by the State agency responsib for preparing the Annual State Historic Preservation Plan; and

   d. Agreement between OCZM and HCRS to facilitate discussions c mutual problems, issues and disputes relating to planning f or development of State coastal areas and state recreationa and cultural resources in the Coastal Zone on a periodic, sustained basis. Maximum use of the A-95 process will be made to identify projects and provide advisory comments pursuant to this section.

2. Both agencies will complete the specific implementing procedures cited above, and will develop the necessary agency guidelines to

foster the interagency and intergovernmental cooperation and coordination purposes of this agreement. These procedures will be developed in accordance with regulations governing OCZM and HCRS.

3. All OCZM, L&WCF and NHPA assisted State agencies will be encouraged to use common data bases, analytic techniques, and consistent criteria in their planning wherever appropriate.

4. To further the purpose of this agreement, both agencies will explore opportunities such as joint demonstration projects which will improve the coordination of Land and Water development and historic preservation in the coastal zone; promote a better understanding of Coastal Zone Management, outdoor recreation and historic preservation policies and programs; and to improve Federal, State, areawide or local capabilities to deal with impacts of energy related developments.

PROGRAM PUBLICATIONS

FOR PUBLIC DISSEMINATION

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nent in Florida - 1972

nagement in Florida - 1973

Zone Management in Florida - 1974

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6. Florida Keys Coastal Zone Management Study. (1974)

7. Florida Regional Coastal Zone Management Atlas*. (1976)

8. Escarosa: A Preliminary Study of Coastal Zone Management Problems and Opportunities in Escambia and Santa Rosa Counties, Florida. (1971)

9. Unofficial Composite: General Permitting Procedures for Coastal Zone Activities in Florida. (1971)

10. Newsletter (CCC). (November 1970-June 1975)

11. A Selected Bibliography on: Thermal Pollution; Thermal Effluents; and Electric Power Plants, Their Effects, Planning, and Siting. (1971)

12. _____. 1972 Supplement.

13. Florida Coastal Zone Applied Research Needs. (1972)

14. Marine Environmental Studies of Florida's Gulf Coast: Summary and Selected Bibliography. (1973)

15. Recommendations for Development Activities in Florida's Coastal Zone. (1973). (Companion volume to Florida CZM Atlas).

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24. The Florida Coastal Management Program: Legislative Draft. (March, 1978)

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Biophysical Analysis Methodology Appendix to Florida Regional Coastal Zone Management Atlas.

Land Ownership Analysis (accompanies maps in Atlas).

Land Ownership Inventory.

Land Use Analysis (accompanies maps in Atlas).

Support Services Analysis (accompanies maps in Atlas)

Economic Analysis

Population Analysis

Existing Legal Authorities

Environmental Quality Assessment (accompanies maps in Atlas)

CONTRACT PUBLICATIONS

1. Coastal Zone Resources Corporation. A Plan and Program for Amenities and Aesthetics in the Escarosa Pilot Area. (Dec. 1971

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3. Hopkins, Thomas S. Marine Ecology in Escarosa. (Sept. 1973)

4. Livingston, Robert J. The Ecological Impact of Pulp Mill Effluents on Aquatic Flora and Fauna of North Florida: Comparison of a Polluted Drainage System (Fenholloway) with an Unpolluted One (Econfina). (Dec. 1972)

5. Martin-Marietta Corporation. Florida Coastal Zone Land Use and Ownership Atlas (1971).

6. Milo Smith and Associates. Planning Inventory: Florida's Coastal Areas. (Dec. 1972)

7. Northwest Florida Development Council and Economic Development District. Commercial Tourism Land Absorption Study. (Dec. 1972)

8. O'Connor, Dennis M. Legal Aspects of Coastal Zone Management in Escambia and Santa Rosa Counties, Florida. (March 1972)

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21. Withlacoochee Regional Planning Council. Outer Continental Shelf Socio-economic Impact Planning Project. (Sept. 1976)

22. East Central Florida Regional Planning Council. Region 6 Socio-economic Overview of Port Canaveral. (Sept. 1977)

23. Jacksonville Area Planning Board. Region 4 Socio-economic Overview of the Port of Fernandina Beach and the Port of Jacksonville. (Sept. 1977)

24. Northwest Florida Planning and Advisory Council. Region 2 Socio-economic Overview of the Port of Panama City and the Port of St. Joe. (Sept. 1977)

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30. St. Johns County/St. Augustine. Protection of Water Quality and Shellfish Resources. (May, 1980)

31. Florida Institute of Technology. Center for Coastal Zone Research. A Local Government Manatee Preservation Program. (May, 1980)

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PART III

ALTERNATIVES TO THE PROPOSED ACTION

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ALTERNATIVES TO THE PROPOSED ACTION

Given the nature of the proposed action, which is approval of the Florida Coastal Management Program pursuant to section 306 of the CZMA, all Federal alternatives involve a decision to delay or deny approval. To delay or deny approval could be based on failure of the Florida Program to meet any one of the requirements of the CZMA. In approving a CZM Program, affirmative findings must be made by the Assistant Administrator for Coastal Zone Management on more than twenty requirements.

As noted in Part I of this document, the development of the FCMP has been very controversial and has required the resolution of numerous complex issues, many of which could have resulted in a program deficient with respect to the requirements of the CZMA. The Assistant Administrator for Coastal Zone Management has made a preliminary determination that any such deficiencies have been addressed and that Florida has met the requirements for program approval under Section 306 of the CZMA.

However, in order to elicit public and agency comment and assure that the Assistant Administrator's initial determination is correct, this section identifies a number of issue areas where there may be possible deficiencies and considers the alternatives of delaying or denying approval based upon each issue area.

Before examining the alternatives, the following section identifies the generalized impacts that would result from delay or denial on any basis.

1. Loss of Federal Funds to Administer the Program

Under Section 306, Florida would receive approximately $2.5 million dollars per year to administer its coastal management program. The loss of Federal Section 306 funds would result in the inability of the State to provide adequate staffing and administrative support to coordinate and evaluate coastal actions, address issues of special focus, and assure that government agencies coordinate and operate consistently with coastal policies. Local governments would also be without the pass-through funds necessary to resolve local coastal resource issues as outlined in Part II, Section Two. State technical assistance to local governments, essential for the development of a more effective coastal management program, would also be curtailed due to limited funds. To deny approval of this program

would also make it difficult for the State to develop a number of critical non-regulatory aspects of the program, including the coordinated and expedited resolution of interagency issues such as hazards management through the Interagency Management Committee. Denial of approval would also jeopardize the eligibility of the State to receive Coastal Energy Impact Program (CEIP) funds pursuant to Section 308 of the CZMA.

The option of delaying approval would have the same general impacts noted above albeit of a shorter duration. The impact of delaying approval would nonetheless be severe due to the inability of the State to receive additional Section 305 program development funds from OCZM. This is due to the expiration of Congressional authorization for the Section 305 program at the end of FY 79 (September 30, 1979). Although the State has received Federal Section 305 funding to carry them through the end of March, 1981, program approval much beyond that point in time will result in a severe financial burden to the State and significantly hinder present efforts to improve government coordination and make Florida's management of its coastal resources more effective.

2. Loss of Consistency of Federal Action with Florida's Coastal Management Program and its Policies

Program approval would mean that Federal actions in or directly affecting the Florida coastal area would have to be consistent with the State's program under Section 307(c) of the CZMA. Loss of Federal consistency with the State's coastal program could have significant and adverse effects on the resources of the State's coastal area.

FEDERAL ALTERNATIVES

Alternative 1: The Assistant Administrator could delay or deny approval if the scope of the program authorities is not sufficient to meet the federal requirements.

Section 302 and 303 of the CZMA require management programs to provide for the management of those uses which have a direct and significant impact on coastal waters and to assure that there is appropriate protection of significant resources, such as wetlands, beaches and dunes, and barrier islands. Furthermore, the management program must provide for the management of coastal development, and the simplification of governmental processes.

The FCMP is based on existing state laws which provide broad and adequate authority to manage coastal resources and development. The proposed regulations promulgated under these laws provide the necessary specificity and predictability for approval. The FCMP also provides the necessary framework for the exercise of various management techniques (i.e., planning, regulating, funding, and coordinating) through various joint resolutions, MOU's, budget priorities and regulations.

Should the scope of the existing laws and existing or proposed regulations be insufficient to meet Federal requirements based on concerns raised as a result of the review of this document, the Assistant Administrator could deny or delay approval.

In response to such actions, the State could:

1. adopt new laws or regulations remedying the deficiencies, or

2. withdraw application for Federal approval of the FCMP.

Alternative 2: The Assistant Administrator could delay or deny approval if the State is not adequately organized to implement the Management Program.

Under Subsection 306(c)(5) and (6) and 15 CFR 923.48, the State must be organized to implement and administer the management program. Furthermore, there must be a state agency which is designated to receive and administer grants as well as monitor and evaluate the management of the State's coastal resources.

The FCMP describes the organization structure that Florida will use to implement and administer the management program. A number of state agencies will be implementing their regulatory, propriatory, and financial authority over activities which are proposed in or which affect the State's coastal zone. The IMC and a number of joint resolutions and MOUs will provide the basis for coordinating state actions. Furthermore, the Governor has designated DER as the Section 306 agency. DER has the fiscal and legal capability to accept and administer grant funds, and through the IMC, has the capability to monitor and evaluate the management of coastal resources by various agencies. Should the organizational structure prove to be inadequate as the result of the review of this document, the Assistant Administrator could deny or delay approval.

In response to such actions, the State could:

1. strengthen the organizational structure of the Program as developed to ensure effective implementation of the FCMP;

2. develop a coastal management program using a different management scheme; or

3. withdraw the application for Federal approval of the FCMP.

Alternative 3: The Assistant Administrator could delay or deny program approval if policies, rules and regulations, MOU's and Joint Resolutions, described in the FCMP are not enforceable.

Under Section 302 and 303 and regulations promulgated thereunder, it is required that sufficient policies be of an enforceable nature to ensure the implementation of, and adherence to, the management program. Although the statutory policies and rules and regulations which exist

in Florida are clearly enforceable, the policies included in propose rules included in the DEIS were not enforceable at the time of issua of that document. Similarly, an opinion by the Attorney General of State of Florida, necessary to determine the enforceability of the M and Joint Resolutions described in the DEIS had not been rendered.

If, for any reason, the proposed regulations have not been prom gated, or the MOUs and Joint Resolutions are found to be unenforceab OCZM would have to re-examine the approvability of the FCMP. If OCZ found that any one or more must be enforceable to ensure the implemer tation of an adherence to the FCMP, the Assistant Administrator coul delay or deny approval.

In response to such actions, the State could:

1. adopt new laws or regulations remedying the deficiencies, or

2. withdraw application for Federal approval of the FCMP.

PART IV

DESCRIPTION OF THE AFFECTED ENVIRONMENT

PART IV

DESCRIPTION OF THE AFFECTED ENVIRONMENT

GEOGRAPHICAL SETTING

Florida is an elongated peninsula with a total land area of over 58,560 square miles, including 4,424 square miles of open water (See Figure 14). The state stretches 450 miles from north to south and 470 miles from east to west. Its tidal shoreline (including islands with land area greater than 40 acres) is approximately 11,000 miles in length. Its size, and the length of its shoreline, makes Florida the second largest state, by area, east of the Mississippi River (Georgia being slightly larger), and the second longest coastline (next to Alaska) among the coastal states and territories of the United States. Because it is a peninsula, no point in the state is more than 70 miles from either the Gulf or Atlantic Coasts. To the north, Florida shares common boundaries with Georgia and Alabama.

GEOLOGY

The State of Florida occupies only about half of a larger geographic unit, the Florida Plateau. The plateau is a partly submerged platform nearly 500 miles long and from 250 to 400 miles wide. It separates the deep waters of the Atlantic Ocean from the deep waters of the Gulf of Mexico. The submerged portions of the plateau are called the continental shelf and extend out to a depth of about 300 feet. The plateau consists of a core of metamorphic rocks buried under a layer of sedimentary rocks (chiefly limestone) which varies in thickness from a little less than a mile to nearly four miles.

PHYSIOGRAPHY

Five physiographic regions are commonly identified in the state. They are the Western Highlands, the Marianna Lowlands, the Tallahassee Hills, the Central Highlands, and the Coastal Lowlands.

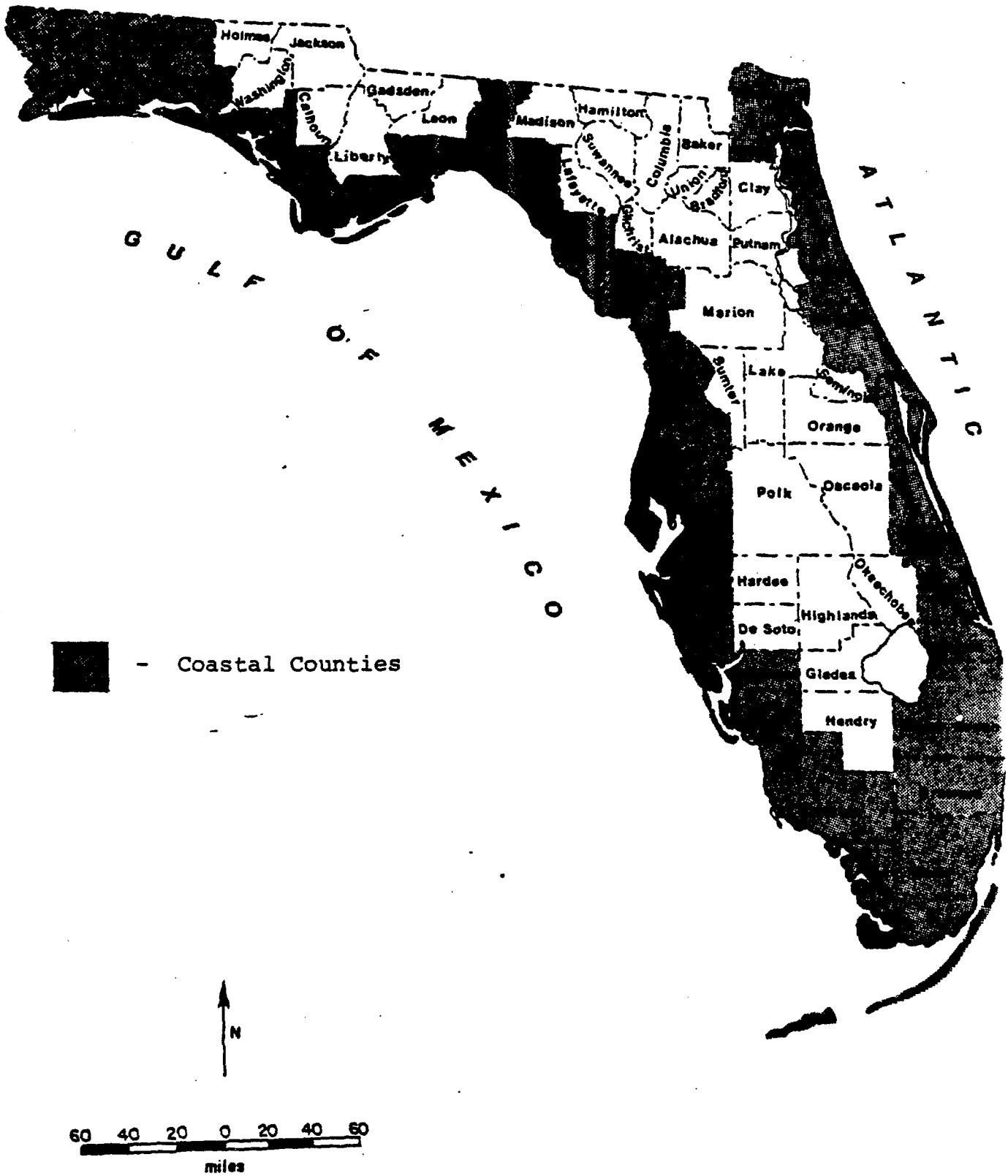
The Western Highlands include most of the Florida Panhandle between the Perdido and Apalachicola Rivers, north of the Coastal Lowlands. It is a plateau, sloping southward, hilly in the northern part, and trenched by narrow, steep-walled stream valleys. The higher hills in the north are over 300 feet in elevation and include the highest measured point in the state, 345 feet.

The Marianna Lowlands, west of the Apalachicola River, is a low, rolling hill and sinkhole region, with numerous small lakes. Its southern and western limits are marked by a rise to the Western Highlands caused by the increasing thickness of sand covering the limestone base that lies near the surface.

The Tallahassee Hills region, north of the Coastal Lowlands, stretches from the Apalachicola River to the northern Withlacoochee

FIGURE 14

STATE OF FLORIDA



River. It is approximately 25 miles wide by 100 miles in length and is characterized by long, gentle slopes with rounded summits.

The Central Highlands region reaches from the Tallahassee Hills and the Okefenokee Swamp in the north, almost to Lake Okeechobee in the south. It is about 250 miles long. The width tapers from 60 miles in the northern two-thirds, down to a blunt point at the southern boundary. Much of the northern part is a nearly level plain around 150 feet above sea level. The western part consists of hills and hollows interspersed with broad, low plains. This sub-region ranges in altitute from 200 feet to less than 40 feet above sea level. Adjoining this subregion to the east and extending southward to the end of the Central Highlands is a subregion known as the Lake Region. It is characterized by numerous lakes and high hills of up to 325 feet above sea level.

The Coastal Lowlands form the entire Florida coastline, including the Florida Keys, and reaches inland as much as sixty miles at some points. The inner edge generally lies at the 100-foot contour line. These lowlands were, in recent geological times, marine terraces during three or more successive inundations by higher seas.

CLIMATE

Florida lies completely within the temperate zone; yet its climate, particularly in the lower peninsula, is subtropical with wet, humid summers and relatively dry, cool winters. The influence of the waters of the Gulf of Mexico on the west and the Atlantic Ocean on the east tends to moderate temperature extremes. Most of the state enjoys a long, warm summer, relatively little seasonal transition, and a short, mild winter. The mean annual temperature ranges from the upper sixties in the northern portions of the state to the upper seventies in the south.

HYDROLOGY

More than four thousand square miles (7%) of Florida is land surface permanently covered by water. This area includes some seven thousand natural and man-made lakes larger than ten acres, as well as marshes and swamps and also includes streams and canals greater than one-eighth of a mile wide.

Most of the defined river systems in Florida are in the northern half of the state. South Florida's lack of these systems is due to its geologically younger age and flatter terrain. Drainage in South Florida occurs through broad, shallow channels, most of which have been altered significantly by man for reclamation and extensive water management.

A considerable amount of natural drainage in Florida goes into and through the underlying limestone rock and forms an underground reservoir. This underground reservoir, or aquifer, discharges tremendous quantities of fresh water to wells and to some of the world's

largest springs. Florida has twenty-two first magnitude springs, discharging more than 3 billion gallons of water per day. The cc bined flow of all the state's springs is estimated to be 5 billic gallons per day.

Between Florida's continental shelf waters and its inland fr waters are sheltered coastal waters generally referred to as estu aries. Estuaries are among Florida's most biologically productive waters, vital to the State's commercial and sports fisheries.

SOILS

Florida soils are predominantly sandy, derived from deep mari sands that were transported by currents and wave action and deposi on the Florida Plateau during ancient inundations by higher seas. Other materials forming Florida soils, either as admixtures to sanc by themselves, are: clay, present in loamy soils of the panhandle in poorly drained soils through the state; marl (a calcareous deposit), found in south Florida, especially near the coast; shell, whi sometimes occurs in thick beds in coastal counties; limestone, whic outcrops at various locations throughout the state, especially in Collier, Broward, Dade and Monroe Counties; and muck and peat (orga soils), which occur in scattered small locations throughout Florida and over large areas of the Everglades, the Lake Okeechobee floodpla and the upper St. Johns River floodplain.

Most Florida soils are young and are poor in natural productivity. This is somewhat compensated for by the climate, which allo a long growing season. The deep sandy soils are particularly low in plant nutrients, and tend to be excessively drained as well. In general, topography and soil texture determine drainage; thus upland soils are usually well drained, and lowland soils are poorly drained with seasonally high water tables. Both extremes present difficult conditions for plant growth.

Soil is vital to both natural and agricultural systems. It is the site of decomposition of organic materials, a process that return mineral elements to the soil where they can be used by plants. The soil is the substrate and the source of water and nutrients for plants, and it is inhabited by great numbers of animals.

Unfortunately, much of this valuable resource is being lost. The productive soils of the panhandle are endangered by erosion. Muck and peat soils, when water levels are drawn down to allow agriculture, are oxidized by exposure to air resulting in subsidence and eventual loss. Orgnaic soils are also susceptible to destruction by fire.

FLORA AND FAUNA

The flora of an area is a product of interaction between soil, water, temperature, light, atmosphere, fire, and biota. Rainfall, soil moisture, and fire are particularly important in Florida. Variations within each of the factors produces an infinite number of

different environments and different vegetative responses to them. These responses tend, however, to fall within several recognizable groups, or plant communities, with characteristic, though variable, assemblages of plant species.

The fauna of an area also is dependent on many factors, the most obvious being vegetation. Each plant community has a characteristic animal community; the combination of the two is termed a biological community. Several communities are named for their more abundant, or dominant species - usually a plant.

A few of these - sand pine scrub, tropical hammock, scrub cypress, and mangrove swamp - are rare or absent in the rest of the United States. A number of Florida's plant and animal species also are rare or absent in the rest of the country. Among them are the royal palm, mahogany tree, lignum vitae tree, bonefish, crocodile, short-tained hawk and Florida mouse.

Florida has a diversity of flora and fauna, owing to the presence of both North American and Caribbean biota. These plants and animals are valuable resources, even beyond the direct economic values contributed by commercial fishing, tree harvesting and tourist attraction. Vegetation has a number of environmental values, including: conversion of solar energy into plant growth, utilization of carbon dioxide and production of oxygen, absorption of wastes and maintenance of water quality, providing food and habitat for animals, moderation of climate (including storms), building of soil and prevention of soil erosion, sustaining outdoor recreation, and serving as the object of aesthetic appreciation.

The animal community plays a major role in the workings of Florida ecosystems and functions in many ways to maintain the complexity and stability of the system's interactions. The loss of certain species reduces the numbers and types of interactions and may reduce the ecological value of a system. A well known example of the influence of animals on the ecosystem is the alligator wallow hole, which holds water during dry periods. Other functions performed by the animal community include redistribution and recycling of nutrients, indicators of the general health of the environment, propagation of vegetation, objects of hunting, fishing, bird-watching and related forms of outdoor recreation, and providing aesthetic experiences.

SOCIO-ECONOMIC SETTING

In the last two decades, Florida has been subjected to extremely rapid growth pressures. There has been a transition from a primarily agricultural economy to a more urban economy, with tourism coming to the forefront as the major "industry" in the State.

POPULATION

From 1950 to 1970, Florida's population grew by four million, and during the early 1970's new residents were arriving at the rate of

more than 6,000 each week. This rate of growth slowed considerably the 1973-1976 recession but revived in 1977. Florida's population increased in 1977 by 1.9 percent, and total population at that time was estimated to be 8.7 million. Current estimates place Florida's population at 8.9 million with a 2.8 percent growth rate in 1978.

As mentioned in the statewide perspective discussion, the State of Florida has been subjected to extremely rapid growth pressures an the vast array of socio-economic as well as environmental impacts associated with such expansion. Population projections for the coastal regions of the state remain awesome when compared to the stat as a whole: 1980 - 7 million; 1985 - 8 million; and 1990 - 8.8 million. The Bureau of Census has projected that population growth i Florida for the next 21 years will show a total growth increase of 56 percent, or approximately 13 million residents by the year 2000. Based on past trends, the coastal region population for the year 2000 will approach 10 million.

These increases are a major source of economic growth (i.e., housing/construction industry) and are predicted to continue at steady-to-higher rates.

ECONOMIC ACTIVITIES

In recent years, all income-producing segments of the Florida economy experienced substantial growth. The per capita income of Florida residents in 1978 climbed to an estimated $6,021 (in 1976 dollars) up about $2,300 from the 1970 per capita figure reported in the U.S. Census. State figures for the four quarters of 1978 indicate that Florida's income gain continued at a healthy pace at 12.5%. Unfortunately, mounting inflationary pressures (an average of 12 percent) had a dampening effect on the increases in real income, and the current increases in consumer prices in the range of 1 percent per month tended to negate gains in annual personal income. The sources of income gains in Florida have traditionally been in the trade, service, and construction sectors, as well as better than average improvements in farm incomes.

Future economic conditions are dependent on future immigration and construction, and the attractiveness and availability of Florida to tourists. It is difficult to speculate on the future of the tourist industry, a vital part of Florida's economic base. Tourism in Florida and its economic implications are particularly sensitive to national economic and energy policies. The unsettled nature of responses to these problems causes uncertainty in forecasting tourism. However, it is predicted that tourist traffic to Florida will increase from an estimated arrival of 33.9 million tourists in 1979 to 35.2 million in 1980 and 36.2 million in 1981. But, with the increasing cost of vacation travel, tourism revenues could decrease somewhat, if tourists shorten their stays and spend less. Short of a severe national recession, however, tourists will continue to have a tremendous impact on Florida's economy and its cultural and natural resources

The construction industry, another major employment sector in the state, declined 24 percent in the 1974 economic slump which followed the 1972-73 building boom. Late in 1977, construction employment began a strong surge and by the end of 1978 posted an estimated 15.5 percent gain from the previous year. This was due in a large part to a resurge in population growth with a concurrent increase in single and multi-family construction activity. This rate of increase is expected to level off to an estiamted 7.4 percent during 1979 due to high interest charges on mortgage loans. There were 160,000 new housing starts in 1978, and 130,000 new units were estimated for 1979. Even with the expected slowdown in housing starts, there is expected to be an excess of housing units available, because the pace of new unit completions is ahead of demand from population growth.

PART V

ENVIRONMENTAL, ECONOMIC AND INSTITUTIONAL CONSEQUENCES OF FEDERAL APPROVAL

PART V

ENVIRONMENTAL, ECONOMIC AND INSTITUTIONAL CONSEQUENCES OF FEDERAL APPROVAL

INTRODUCTION

This part of the environmental impact statement examines the environmental, economic and institutional consequences of federal approval of the proposed Florida Coastal Management Program (FCMP). Approval places an obligation on the state to manage its resources in accordance with the laws, rules, policies, priorities, and processes described in the Program. Approval, in turn, activates federal consistency, enabling states to review federal activities, licenses and permits (including those described in detail in OCS plans), and assistance projects for consistency with the coastal program. Approval will influence the federal decision-making process as it relates to land and water use activities and funding in Florida.

Environmental impact statements traditionally are prepared for individual projects and examine the impacts of a single action on a specific area. However, the state coastal program covers a large and diverse area of land and water, and includes a large number of state laws and management systems. The impacts of the program will vary significantly from one location to another, depending on the type of activity. Therefore, the consequences of all these activities can only be discussed in general terms, since the number of combinations of possible individual actions is far too great to consider.

As required by the federal regulations for implementing the National Environmental Policy Act, this part discusses the general effects of the FCMP on the coastal area. It examines the effects of federal approval on the environment, including both direct effects such as preservation, conservation, and development of particular areas, and indirect effects, such as growth-inducing and economic impacts. In addition, the institutional effects are examined. These include increased cooperation between federal, state and local agencies and coordinated decision-making at the state level.

The criterion for assessing these impacts is the CZMA's declaration of policy that coastal programs should strive "to achieve wise use of land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and aesthetic values as well as to the needs for economic development" (CZMA s. 303). While management of coastal resources may be seen as beneficial to the human environment for many reasons, some essential activities that benefit the state economically may come at some environmental cost. Conversely, limitations on certain resource uses in the interest of natural resource conservation and long-term utility, may have adverse economic effects on certain individuals or interests.

The intent of the federal Coastal Zone Management Act (CZMA) is to promote the wise use of the nation's coasts. The CZMA encourages states to achieve this goal through better coordination of government actions, explicit recognition of the long-term consequences of development decisions, and the institution of a rational decision-making process. This objective, which could affect activities in the coasta area, will have a substantial environmental impact with federal appro val of the Florida Coastal Management Program (FCMP).

The FCMP is a comprehensive program which will be implemented over a period of many years. It is impossible to assess discrete impacts that will occur over this period, but a few points can be made. Resource inventories, designation of boundaries, permissible uses, areas of particular concern, areas to be preserved or restored and consideration of alternatives are all a part of the overall process associated with managing coastal resources in Florida. The purpose of this EIS is to determine if implementation of the FCMP wil meet the objectives set by the state and the broader national objectives of the CZMA.

The impacts associated with federal approval of the FCMP fall into two principal categories: (1) the direct effects of federal approval, and (2) indirect impacts, including the impacts of the implementation of the CZMA and the application of the state program authorities, policies, priorities, and processes to coastal resource management needs in Florida.

DIRECT EFFECTS OF FEDERAL APPROVAL

Although the FCMP could be implemented as a state coastal management program apart from participation under the CZMA, federal approval offers several advantages to the state and allows a more comprehensive and effective program. Federal approval of the Program will affect Florida's resources and its residents in four ways: (1) program funding; (2) federal consistency; (3) national interest consideration; and (4) eligibility for other coastal management assistance.

1. Program Funding

Under Section 306 of the CZMA, Florida will be eligible to receive approximately 2.5 million dollars. Federal approval will allow the U.S. Office of Coastal Zone Management to award these funds to the state to implement the coastal management program and will allow increased use of resource management personnel such as planners, scientists, and permit review and enforcement officials. The effect will be to improve resource management decisionmaking and to provide for refinement and better coordination of existing management systems in the coastal area. Section 306 grants also will be used to help administer, enforce and improve state, regional and local responsibilities under the FCMP. The FCMP will be employed to augment federal efforts in addressing coastal related issues. These funds will also help state, regional and local agencies satisfy information needs for

the following: coastal hazards; sites for energy, commercial, and transportation facilities; environmental, economic and social factors; and administrative systems.

The Florida Coastal Management Program has identified a number of activities which could use federal funds to assist implementation. These activities, whose impacts will be discussed later, represent efforts that could be undertaken only selectively, at a more limited scale, or not at all, without federal support.

2. Federal Consistency

Federal approval and state implementation of Florida's Coastal Management Program will have implications for federal agency actions. Approval of the state's program will lead to operation of the federal consistency provisions of the CZMA (Section 307(c) and (d)) which provisions are described in Appendix One.

The purpose of the federal consistency provisions is to allow closer cooperation and coordination among federal, state, and local government agencies involved in coastal activities and management. This desirable impact is one of the principal objectives of the CZMA.

The Florida Coastal Management Program has been developed with considerable assistance from the federal agencies responsible for activities in coastal areas. No federal activities are specifically excluded from the coastal area by the state program. However, federal activities may have to meet environmental standards in order to obtain coastal sites, or be located outside the coastal area if adverse environmental effects cannot be sufficiently mitigated.

When federal agencies undertake an activity, including development projects which directly affect the state's coastal zone, the agencies must notify the state. The state will review the proposed federal activity to ensure that the action is consistent with the state program. In the event of a serious disagreement between the state and a federal agency, either party may seek mediation by the Secretary of Commerce. The availability of early federal-state consultation and the mediation services of the Secretary of Commerce will increase the outlook for conflict resolution. The procedure will provide all parties an opportunity to balance environmental concerns with other national, state and local interests.

If the state finds a proposed federal license, permit or assistance activity, including licenses and permits outlined in detail in OCS plans, is inconsistent with the state or local coastal program, the federal agency must deny approval of the activity. A state objection must be based upon the substantive

requirements of the management program: the existing laws and rules. A state objection may require a federally regulated and assisted project to consider and locate at an alternative site; thereby causing adverse impacts in non-coastal areas. State objections may suggest ways that projects could be modified to achieve conformance with the management program.

In certain instances, after appeal, a state objection to a proposed federally licensed or assisted activity may be set asid by the Secretary of Commerce if the proposed activity is consistent with the objective of the CZMA or is in the interest of national security. In the former case, the Secretary must find that (1) the activity will not cause an adverse impact on the coastal zone sufficient to outweigh its contribution to the national interest; (2) there is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the management program; and (3) that the propose activity will not violate requirements of the Federal Clean Wate Act or the Clean Air Act. Even if state objections are set asid by the Secretary, the override will be dependent upon consideration of environmental protection needs. This procedure conform with NEPA's objective for incorporating environmental values in federal agency decision-making.

Where the state determines that a proposed federally regulated or assisted project is consistent with the requirements of the FCMP, the federal agency may approve the project; however, notwithstanding state approval the federal agency is not require to approve the license, permit or assistance application. The federal agency may disapprove the project based upon the Clean Water Act, Clean Air Act, NEPA, the Endangered Species Act, the Fish and Wildlife Coordination Act, or other overriding national interests where federal criteria are more stringent than the state's management program requirements.

3. National Interest

Federal approval of the state's program will also certify that the management program provides for adequate consideration of the national interest involved in planning for, and in the siting of facilities which are necessary to meet requirements which are other than local in nature. Such facilities might include energy production or transmission; recreation; interstat transportation; production of food and fiber; preservation of life and property; national defense; historic, cultural, aesthet or conservation values; and mineral resources - to the extent they are dependent on or relate to the coastal area.

This provision of the CZMA (Section 306(c)(8)) is to assure that national concerns related to facility siting are expressed and dealt with by the state's coastal management program. The requirement does not compel states to propose a program which accommodates certain types of facilities. It assures that such

national concerns are not arbitrarily excluded or unreasonably restricted.

The National Interest provision has two impacts. It insures that a state has a process and a program that does not prohibit or exclude any use or activity dependent on the coastal zone, and it leads to more deliberate and less fragmented decision-making concerning the siting of facilities in the coastal zone.

4. Other Coastal Management Assistance

Federal approval also will assure Florida of continued eligibility for funds under other coastal management assistance programs, including the Coastal Energy Impact Program (CZMA, Section 308), Interstate Grants (CZMA, Section 309), Estuarine Sanctuaries and Island Preservation (CZMA, Section 315). Eligibility for these programs will augment the capability of the state to address coastal problems. In particular, the Coastal Energy Impact Program will fill a major role by preparing the state and local governments for the impacts of Outer Continental Shelf related oil and gas activities.

INDIRECT EFFECTS OF FEDERAL APPROVAL

The proposed management program is founded on well-established state statutory authorities and regulatory and management programs. Federal approval of the FCMP will not create sudden changes. Rather, changes that began early in the 1970's with state and local government initiatives will accelerate under this program. Furthermore, the laws which form the core authority of the coastal management program will become more effective and better coordinated. Federal approval is a major step toward improving and preserving Florida's coastal amenities and to achieving administrative improvements.

The people of Florida have indicated repeatedly, both directly and through their legislators, that an improved resource management capability is clearly in the state's interest. The question that must be addressed by this DEIS is whether the proposed coastal management program, coupled with the other resource management programs in the state, addresses the specific problems in a manner that is effective and responsive to the social, economic, and the environmental needs of Florida.

The approval of the FCMP is not expected to cause adverse environmental impacts. It has been developed in accordance with the objectives of the federal Coastal Zone Management Act which emphasizes the protection of environmental values.

Florida's program aims toward reconciling the competing demands for environmental protection and economic development. Thus, economic quality and growth are essential if the program is to achieve its objectives. Generally, the FCMP will not add negative socio-economic impacts beyond those currently caused by existing programs. Coastal

management will support actions which both conserve valuable natura resources, and accommodate the needs of an expanding population and economy. In achieving this balance, some coastal program actions ma lead to environmental, economic, or social trade-offs.

Later in this section, the proposed activities of the program a related to potential adverse impacts, to the relationship between short-term uses of the environment and long-term productivity, and t any irreversible commitments of resources. However, some observatio can be made here about one of the overall impacts of the program.

As a result of the FCMP, a concentration of development may occ in those areas which are especially suited for development. In an area where new development is encouraged, some permanent reduction i environmental quality may result; air quality may be reduced, noise increased, and the area's visual qualities may be adversely affected The impacts from development in certain areas should be more than offset by corresponding increases in the protection of natural resources and the enhanced quality of life along the state's coast.

The 1980 amendments to the federal Coastal Zone Management Act contain several statements of national policy. In particular, sectic 303(2) states that it is the national policy to encourage and assist states to carry out their responsibilities in the coastal zone throug the development and implementation of management programs. The section provides nine national coastal management objectives to guide state program efforts.

FCMP objectives are parallel with those expressed in the federal Act. The FCMP will be engaged in activities (see "Issues of Special Focus") which, while addressing state needs, fulfill the national objectives. In the following pages, the activities and impacts of th FCMP are listed under the appropriate national objective. Because th coastal program will be implemented during a period of social, economic, and institutional change, it is impossible to describe the discrete impacts that may result from each program activity. This discussion will only highlight the major program efforts and give a general description of potential impacts.

<u>Objective</u> - "The protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone," (Section 303(2)(A), CZMA).

A considerable amount of material outlined in the "Issues of Special Focus" section of the FCMP deals directly with the protection of natural resources. Coral reef systems, estuaries, fishery habitats, barrier islands, beaches, dunes, and other resources have been singled out for attention by the FCMP.

Managing coastal resources in accordance with the FCMP and its core authorities will minimize many of the detrimental effects that

may be associated with coastal development. The coastal program will assist existing resource management systems with solutions to development problems in areas where important natural resources are involved. The solutions may alter private planning and design and may include adjustments in the timing of human use to protect wildlife and its habitat. Although the requirements to minimize adverse environmental impacts may result in higher development costs, they also can result in more attractive, desirable sites.

One of the important tasks to be undertaken by the FCMP relating to protecting natural resources will be assistance to the Aquatic Preserves Program (Chapter 258.35, F.S.). The FCMP will support data gathering, planning, coordination, and, ultimately, management in these "geographic areas of particular concern". Implementation of a management plan for the preserves will have several effects on environmental, economic, and social resources of national, as well as, state significance.

Management of Aquatic Preserves will directly affect the use, sale, lease, or transfer of interest in state lands within the Preserves. Positive environmental and social benefits which will accrue from the comprehensive protection of aquatic preserves will be habitat protection, maintenance of biological diversity, protection of wetlands, improved water quality, and continued public use for such activities as swimming, boating, and fishing. There will be long-term economic benefits from tourism, fishing, and recreational industries. Conflicts over locations for shoreline and marine activities may be reduced. There may be adverse economic impacts on activities which require dredging and filling, and on uses and activities which are not water dependent (See also discussion under following objective).

The FCMP will be involved in several other efforts which involve improvements of environmental management systems, particularly improved coordination of the core environmental management authorities of the FCMP for more consistent protection of natural resources. Several management systems, such as water quality permitting, saltwater fisheries, and state-owned submerged lands, deal with resource problems which are closely related. FCMP assistance with joint data gathering, long-term monitoring of programs, and administrative agreements will create more efficient governmental decisionmaking and unified protection of coastal resources.

<u>Objective</u> - "The management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of subsidence and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands," (Section 303(2)(B) CZMA).

An early effort of the Florida Coastal Management Program will be directed at minimizing the loss of life and property from natural

hazards, particularly from hurricanes. The FCMP effort is based on several state and national initiatives including the goals of the Federal Coastal Zone Management Act, the President's Executive Orders on Floodplains and Wetlands, Governor Graham's Policies and Priorities, and state law.

A primary goal of the program is to increase coordination among government agencies to more effectively implement state policies through the Interagency Management Committee. Two issues which specifically relate to hazard mitigation and which will be addressed by the Committee are undeveloped barrier islands and coastal storms.

The Committee will identify government actions which could either increase or minimize the potential for loss of life or property from natural hazards. The Committee also will make recommendations to reduce the risk associated with these hazards. Recommendations will be implemented through memoranda of understanding, executive orders, or other means, including direct action by state and local government, such as the development of hurricane evacuation plans, the purchase of high hazard areas, and the reduction of government spending for construction projects which either directly or indirectly encourage development in high hazard areas. The potential positive and negative impacts that may result from this effort are as follows:

Positive Impacts

1. The loss of life and property from natural hazards will be reduced. The potential for loss of life will be reduced, most dramatically through the development of hurricane evacuation plans. The reduction in loss of property will be related to land purchases and redirection of government spending to discourage the location of development in areas where the potential risk to life and property is high.

2. Public and private costs, such as funds expended on rescue and relief, rebuilding loans, and lost productivity will be substantially reduced.

3. Future development in highly sensitive areas such as barrier islands, and near wetlands, will be less dense. Reduction in density means that less environmental damage will occur to the islands and adjacent estuaries and wetlands. The islands will be able to attract both tourists and residents without need for costly beach renourishment projects. Adjacent estuaries will maintain their productivity and continue to provide the state with fishery resources, good water quality, and access to recreational opportunities.

4. State land purchases will provide a continuing source of needed recreational areas.

Negative Impacts

1. Some local governments may experience short-term economic changes as they undergo a redistribution of population out of high hazard areas to other less hazardous areas of the community.

2. Individual property owners in high hazard areas may find their property unsuitable for some types of development and may incur additional costs for development. As a consequence, property values may be adversely affected. (Note: A reduction of density on Sanibel Island had exactly the opposite effect. The reduction of potentially available residential units on both the beachfront and other areas of the island dramatically increased unit value by decreasing the amount of available units.)

Objective - "Priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists," (Section 303(2)(C) CZMA).

The FCMP will address the problems of limited waterfront space available for development, and will focus on the needs of water-dependent and water-related industries, including ports, energy facilities, marinas, and commercial and recreation fishing.

Because water-dependent activities receive priority attention in the FCMP: (1) economic opportunities will be increased for these developments; (2) uncertainty will be reduced as to the conditions under which development will proceed; (3) competition for limited waterfront space among conflicting uses will be reduced; and (4) procedures for federal and state permits will be simplified.

Possible negative impacts may result from implementation of the FCMP. Two are: economic opportunities for uses which would benefit from a waterfront location, but which are not dependent on the location, may be reduced; and activities associated with some water-dependent uses may impose special burdens on the areas in which they are located.

The FCMP will assist with the development of long-term spoil disposal management strategies. The strategies will involve administrative streamlining, increased predictability in obtaining economical spoil disposal sites, and more effective long-term resource protection. As a result of improved spoil disposal management, the maintenance of channels will be simplified and interruptions in the flow of commerce to and from Florida ports will be reduced.

Although the predictable negative effects of spoil disposal will be minimized by long-range management, the following negative impacts may result: (1) approval of spoil disposal sites may reduce habitat and affect the productivity of fish and wildlife; (2) may impede estuarine water circulation and disrupt other natural dynamics; and (3) may diminish opportunities for other development or impair aesthetic benefits.

The Coastal Energy Impact Program (CEIP) was created to help coastal communities plan for and ameliorate the impacts of new or expanding energy facilities or other energy activities. This grant program has been operational in Florida for several years, and will b continued as a result of approval of the coastal management program. Grant assistance from the CEIP will have many salutary effects: (1) adverse environmental, social, and economic effects of energy develop ment will be avoided or reduced; (2) certainty about the more suitabl sites for energy development will be increased; (3) certainty about how energy development proposals are evaluated will be increased; (4) energy facilities will be more compatible with adjacent land and water uses, which will reduce conflicts; (5) unnecessary public infrastructure systems will be avoided, thus preventing adverse economic impacts; and (6) consolidation of facilities may be encouraged to reduce sources of pollution, reduce the cost of public services, reduce the need for additional waterfront sites, and reduce conflicts with other uses.

Some negative effects may occur because of the CEIP, although none are anticipated that would be detrimental to the national interest in energy or would outweigh the positive impacts. Potential negative effects are: (1) the consolidation of facilities may reduce flexibility for industry and may increase initial capital outlay and risk; (2) land values may inflate with early identification of acceptable sites; (3) some areas may be eliminated from consideration as suitable energy sites; and (4) costs of energy developments may increase due to more stringent local standards.

<u>Objective</u> - "Public access to the coasts for recreation purposes," (Section 303(2)(D), CZMA).

Public access is addressed in several ways. Issues related to access extend beyond those usually considered, such as the public's use of beaches, and reach into several other areas of community life. Access is an integral part of planning along the urban waterfront and it is a consideration in multi-use decisions in natural resource management.

Implementation of the FCMP should result in more opportunities for public use and enjoyment of the coastline in a manner which is consistent with sound resource conservation practices and the constitutionally protected rights of property owners. The FCMP will assist state, local, and joint public and private efforts to increase coastal access. By working with state and local recreational, development, and resource management programs, the FCMP will help develop a

unified approach to determine the need and increase opportunities for access to the coastline.

Few adverse impacts are foreseeable as a result of an access initiative by the FCMP. However, designation of access areas may lead to increased use in the designated areas and in adjacent recreational areas which may reduce privacy and degrade the recreational resources. Also, designation and acquisition of access ways may later require that new recreation facilities and services be provided, involving increased public costs.

Objective - "Assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and aesthetic coastal features," (Section 303(2)(E), CZMA).

Several of Florida's urban waterfronts contain areas which are ripe for redevelopment, and which offer opportunities for increased public use and commercial diversity. Still other waterfront areas contain some of the state's most valuable historic and cultural resources. Assistance to redevelopment efforts and waterfront historic districts by the FCMP will: (1) increase the desirability of living, working, and shopping in downtown areas; (2) expand urban recreational opportunities; (3) increase the attractiveness of downtown areas to visitors; (4) reduce conflicts over the use of historic and other waterfront areas; (5) increase the utilization of and the economic benefits to waterfront property; and (6) increase the value of adjacent property.

Several costs may be associated with redevelopment of the urban waterfront and preservation of historical resources, including: (1) overuse and loss of privacy, jeopardizing the character of the waterfront area; (2) restrictions on the use of these areas may increase the costs of development; and (3) uses of these areas may be limited to those which are not incompatible with the waterfront values of the areas.

Objective - "The coordination and simplification of procedures in order to ensure expedited governmental decision-making for the management of coastal resources," (Section 303(2)(F), CZMA).

Florida's coastal management program is designed to work through existing programs, primarily at the state level; no changes in regulatory jurisdiction are required. However, some new institutional linkages will be forged for the following reasons: (1) Complex coastal issues that cross administrative or jurisdictional lines can be addressed only by close coordination of management systems; (2) FCMP resources can be applied more effectively and economically through joint activities; and (3) In order for the Governor's policies to be fully implemented, agencies must coordinate their activities.

The central implementing mechanism of the FCMP - the Interagency Management Committee (IMC) - has been established by joint resolution of the Governor and Florida Cabinet. The primary purpose of the IMC is institutional. It will focus the attention of the appropriate state agencies on broad coastal issues, and will coordinate governmental programs to address these issues. Special IMC attention will be placed on several issues: balancing the conservation of natural resources with the needs of an expanding economy, storm hazard management, funding practices which create conflicts with natural resource management policies, and more efficient and effective administration of the laws which make up the FCMP.

The IMC will improve management and coordination, and will allow private and public interests to make decisions more effectively and efficiently. The aim of the FCMP is to repay the overall cost of coordinating existing authority, regulations, and programs with reduced costs for operation. More effective administration of natural resource protection measures will yield net environmental, economic, and social benefits to the citizens of Florida.

Several benefits will result from the IMC:

(1) more consistent administration of programs;
(2) comprehensive rather than single-purpose, planning and management;
(3) reduction or resolution of conflicts between governmental agencies;
(4) improvement of public understanding and compliance because of greater predictability, clarity, and consistency in public programs; and
(5) coordination of data gathering efforts for impact assessment, planning, and management.

The Committee is charged by the Governor and Cabinet to pursue improved storm hazard management and has started several efforts which already have led to joint resolutions, memoranda of agreement, analyses of problems and objectives, and more effective mechanisms for mitigating hazards.

The IMC has developed a memorandum of understanding (MOU) for joint efforts between the affected agencies. In July, 1980, an MOU signed by the agencies and the Office of the Governor outlined the following guidelines;

1. All agencies will expend state funds only in a manner consistent with state policies on coastal zone management and hazard mitigation.
2. All agencies will expend federal funds and develop new federal program applications only in ways consistent with state policies on coastal zone management and hazard mitigation.
3. All agencies involved in coastal zone management and hazard mitigation will cooperate in reviewing

and processing permits involving those activities essential to effective coastal zone management, particularly the mitigation of coastal hazards.

The signatory agencies were to review a study by the Federal Emergency Management Agency (FEMA) which, among other things, listed federal governmental programs and their relationship to coastal hazards. The Departments of Environmental Regulation and Veteran and Community Affairs, based on their review of the study and review by other agencies, are to prepare a report for the IMC describing the state organizational structure and processes for coordinating hazards management. For example, each agency was directed to review the effectiveness of its program affecting hazard mitigation and to discuss program improvements (for detailed discussion and text of MOU, see "Coastal Management Coordination and Implementation").

Another consequence of the July, 1980 MOU was that specific management alternatives were and are being developed to prevent or reduce hazards associated with coastal storms. They include: (1) location of wastewater management facilities - DER revising Chapter 17-6 F.A.C. to reflect consideration of storm hazards; (2) limiting bridge access to undeveloped barrier islands and dridge design and construction - DOT, DER, and the Governor's Office have signed a Memoranda of Understanding; (3) beach renourishment projects - DNR has addressed storm hazards as a part of Chapter 16B-33; (4) public work projects - DER developing a public works rule incorporating consideration of storm hazards; and (5) purchase of conservation and recreation lands. The Conservation and Recreational Lands Program provides for purchase of high hazard and flood prone areas.

Under existing law, the Department of Veteran and Community Affairs must establish a procedure to coordinate hazard management. Augmenting existing law and the efforts of the IMC, a Joint Resolution by the Governor and Cabinet was developed which will improve the coordination of hazard management. The resolution requires the Departments of Environmental Regulation, Health and Rehabilitative Services, Natural Resources, and Transportation to report pending actions (including developing rules) which might impact on the state's hazard mitigation policy to the Department of Veteran and Community Affairs (DVCA). DVCA will make recommendations and comments to the agencies which will incorporate these comments before affecting pending actions. In addition, DVCA and DER shall prepare a report which will include an analysis of hazard problems and recommendations to be presented to the Governor and Cabinet. The work begun under these institutional improvements will result in a more integrated and rational approach to reducing the loss of life and property and will also result in more expedited governmental decisionmaking.

<u>Objective</u> - "Continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies," (303(2)(G), CZMA) and

Objective - "The giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decision-making," (303(2)(H), CZMA).

Implementation of the FCMP will affect the relationships and responsibilities of federal, state, and local governments. Because the coastal program rests on existing laws and rules, cooperation among all levels of government is required if the coastal program is to succeed.

As described in the section entitled "Direct Effects of Federal Approval", federal agencies conducting activities directly affecting coastal waters and adjacent shorelands must, to the maximum extent practicable, be consistent with the FCMP. In addition, federal agencies must coordinate their permit and licensing actions with state permit actions or the reviews of appropriate state agencies (Chapter 380.23, F.S.). The FCMP will use the consistency provisions of the federal CZMA in an affirmative way and will not add additional organizational layers of review or attempt to block actions, but will try to bring about earlier and more effective consultation with federal agencies.

Generally, existing procedures carried out under OMB Circular A-95 and the National Environmental Policy Act will be enhanced under FCMP consistency processes. However, adjustments to the new consistency processes may cause some temporary delays, but in the long run, coastal related regulatory and management decisions should be made with better coordination among state and federal agencies.

Public and local government participation in the activities of the program will continue to be an objective. An important feature of the FCMP is the establishment of a statewide Coastal Advisory Committee of representatives from local government, regional agencies, and public and private interest groups. This group will insure that citizens and interest groups will be able to participate effectively in decisions affecting coastal environmental, economic, and social resources. The integration of the Committee into the activities of the program will improve decisionmaking.

Objective - "Assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State fish and wildlife agencies," (Section 303(2)(I), CZMA).

Florida's extensive estuarine systems are important to many commercial and recreational fisheries. Seventy to ninety percent of the state's commercial and recreational fisheries are composed of species which, at least in their juvenile stages, are estuarine

dependent. Thus, one of the most valuable activities of the FCMP will be to help develop and carry out comprehensive living marine resource strategies, with emphasis on those which involve nearshore areas of the state. This will (1) provide a basis for improving decisionmaking regarding living marine resources and the activities impacting these resources (for example, protection of fishery habitat and fishery development); (2) increase state agency coordination on problems which affect living marine resources; (3) provide for improved decisions on the location and design of projects which are dependent on living marine resources; and (4) provide improved relations between state and federal coastal management and living marine resource agencies.

POSSIBLE CONFLICTS BETWEEN THE PROPOSED ACTION AND THE OBJECTIVES OF FEDERAL, REGIONAL, STATE, AND LOCAL LAND USE PLANS, POLICIES, AND CONTROLS FOR THE AREA CONCERNED

During program development, an extensive program of consultation and coordination was carried out. Government agencies at all levels, interest groups, and the general public were consulted to ensure compatibility between the program and existing governmental policies, plans, and controls applicable to the coastal area (Note: for complete discussion, see Part II, Section Two, "Program Coordination and Public Involvement").

Florida has a variety of local land and water use programs which affect the coastal area. Counties and cities have adopted comprehensive plans which include coastal protection elements and have passed ordinances protecting coastal amenities. Regional planning councils have developed policies on the conservation of coastal resources and growth.

To insure adequate coordination during program implementation, Florida's management program will include provisions for regional citizen's coastal advisory committees and a state coastal advisory committee.

Since the federal CZMA requires that all federal grant programs, permits, permits outlined in detail in OCS plans, and federal development projects affecting the coastal area must be consistent with this program, Florida recognizes the need to consult with federal agencies early in the federal decision-making process. This need will be discussed in detail during the development of the state consistency determination process (See Federal Consistency chapter).

Briefly, this process envisions a communication procedure among all affected Federal, State and local interests. After a coordinated State response is assembled, it shall then be forwarded from DER to the appropriate Federal agency, after which further consultation may be necessary. It is believed that all Federal interests and national needs will be properly considered and adequately protected by these consistency determination procedures.

PART VI

RESPONSES TO COMMENTS RECEIVED ON THE FLORIDA COASTAL MANAGEMENT PROGRAM AND DRAFT ENVIRONMENTAL IMPACT STATEMENT

PART VI: RESPONSES TO COMMENTS RECEIVED ON THE FLORIDA COASTAL MANAGEMENT PROGRAM AND DRAFT ENVIRONMENTAL IMPACT STATEMENT

This section summarizes the oral and written comments received on the Florida Coastal Management Program and Draft Environmental Impact Statement (DEIS) and provides the Office of Coastal Zone Management (OCZM) responses to these comments. Oral comments were received at five public hearings held on the DEIS in Fort Lauderdale on March 30, 1981, in Tampa on March 31, 1981, in Tallahassee on April 1, 1981, in Pensacola on April 1, 1981, and Daytona Beach on April 2, 1981. Generally, the responses have been made in one or more of the following ways:

(1) Revision of the Florida Coastal Management Program by the Office of Coastal Zone Management and the Florida Department of Environmental Regulation.

(2) Revision of the Draft Environmental Impact Statement by OCZM.

(3) Generic Responses to comments raised by several reviewers.

(4) Individual responses to the individual comments made by each reviewer.

Generic Response 1: Program Organization

Numerous reviewers of the FCMP/DEIS expressed concerns regarding the approvability and effectiveness of the organization of the FCMP. Several reviewers questioned whether a program which relies on more than twenty laws and coordination between numerous state agencies and the lead agency, the Department of Environmental Regulation, will work. Other reviewers questioned the enforceability of the various Joint Resolutions and Memoranda of Understanding, which formalize agency responsibilities under the Program. In addition, several reviewers questioned the extent to which DER or another state agency should have the authority to review the actions of other state agencies and ensure compliance with the FCMP should inconsistencies be found.

Both OCZM and Florida recognize the complexity of attempting to utilize such a broad array of authorities and agencies as proposed in the FCMP. Such an approach, however, is consistent with the Florida Coastal Management Act of 1978 and OCZM's program approval regulations (15 C.F.R., Part 923). Section 923.43(a)(2) of these regulations refers to this approach as "networking" and specifies a number of approval requirements which must be met by states that choose to use a number of pre-existing state authorities as the basis of their coastal programs. It should also be noted that OCZM has approved several programs which are similar to the proposed FCMP, e.g., Maine, Maryland, Massachusetts, and Wisconsin, and has had several years experience in evaluating the success of these programs under the provisions of Section 312 of the CZMA. This experience indicates that networked state programs are capable of providing a high degree of consistency and effectiveness in assuring implementation of their coastal policies.

The key to ensuring the effective implementation of the FCMP is clearly the full implementation of the interagency agreements set forth in the two Joint Resolutions and four Memoranda of Understanding included in the program. These instruments are included in the addendum and summarized in Section 2.E of the document. Section 923.43(c) of OCZM's program approval regulations requires three basic elements which must be found in the organizational structure of networked programs. First, each agency exercising authorities included in the program must be bound to conform with the relevant enforceable policies of the program through an executive order, joint resolution, administrative directive or a memorandum of understanding. Second, the management program must provide grounds for taking action to ensure compliance of networked agencies with the program. Either the Section 306 agency, the State Attorney General, another state agency, a local government, or a citizen must be able to act to ensure compliance. Finally, state agencies must be able to enforce the policies of the management program at the time of Section 306 program approval without first having to revise their operating rules and regulations.

The first issue which must be addressed is the extent to which the various state agencies are bound by the Joint Resolutions (JRs) and Memoranda of Understanding (MOUs) included in the program. To ensure that this issue was addressed thoroughly, the DER requested an opinion of the Florida Attorney General in January 1981 concerning the enforceability of such instruments in Florida. The Attorney General's Opinion on this subject was rendered on July 8, 1981. Although the Attorney General's Opinion concluded that agencies directed by the Governor and Cabinet, e.g., the Department of Natural Resources (DNR), may be bound by directives contained in a Joint Resolution by the Governor and Cabinet, it clearly indicates that DER, DVCA and other state agencies directed by Governor appointed secretaries can not be bound by Joint Resolutions or Executive Orders by the Governor, absent specific statutory authority. Although this opinion did not affect the enforceability of the Joint Resolution on Hazards because the affected agencies had bound themselves to this Joint Resolution by signing an attachment to the resolution, it did indicate that the Joint Resolution on the IMC did not bind the member agencies (other than DNR and other Cabinet Directed Agencies).

To rectify this deficiency, all of the member agencies of the IMC have signed a new Memorandum of Understanding, the "IMC MOU", which binds them to act consistently with the provisions of the JR on the IMC. The relevant state agencies clearly have the authority to bind themselves, either on the basis of express statutory authority (DER, DVCA, DOC) or implied authority (DOT, DHRS, Game and Fresh Water Fish Commission and the Division of Forestry). It has long been recognized in Florida that executive agencies can possess powers implied by their enabling statutes. State v. Atlantic Coastline R. Co., 56 Fla. 617, 47 So. 969 (1908). In summary, the relevant agencies affected by the Program's Joint Resolutions and MOUs are bound to conformance to these instruments based on either the authority of the Governor and Cabinet to give such agencies binding directives through Joint Resolutions or their own authority to bind themselves through Memoranda of Understanding with other state agencies.

The State of Florida will rely on several means of enforcing both the Joint Resolutions and Memoranda of Understanding. The principle means will be enforcement by the Governor and Cabinet. If for any reason, a state agency fails to carry out a provision of a Joint Resolution or Memorandum of Understanding, or there is a disagreement among agencies as to their respective responsibilities pursuant to such instruments, the state agency heads, DER (the 306 agency), or a citizen can bring such problems to the attention of the Governor or the Governor and Cabinet, depending on the agency(ies) involved. The Governor or the Governor and Cabinet will resolve the conflict or take action to ensure compliance with the JR or MOU. The provisions of Joint Resolutions and Memoranda of Understanding carried out by signatory agencies pursuant to their statutory authority may also be enforced by private citizens administratively under Chapter 120 F.S., which has been interpreted broadly to insure citizen access to the administrative process. Section 120.57 F.S. provides the right to a hearing in all proceedings in which a substantial interest of a party is determined by an agency. Final orders issued after a Section 120.57 proceeding are subject to review in the Florida District Courts of Appeal.

The implementation of the FCMP, including actions required by the Program's Joint Resolutions and MOUs, will also be reviewed during OCZM's annual Section 312 evaluation. Section 312 of the Coastal Zone Management Act provides for a "continuing review of the performance of coastal states with respect to coastal management." As part of the ongoing monitoring of the FCMP, yearly evaluations incorporating a review of all relevant available data, a site visit and a team assessment of all available information will assess the adherence of the State to its approved Program. This assessment will determine whether there are any unjustified deviations from the approved FCMP that warrant initiation of proceedings to withdraw Program approval and funding and the extent to which the implementation of the FCMP is achieving the national objectives set forth in Section 303 of the CZMA.

OCZM will conduct an evaluation of the FCMP approximately seven months after the award of the first Section 306 grant. Federal, state, and local officials as well as the public will be asked to comment on the FCMP in terms of its performance in meeting the objectives of both the CZMA and the FCMP. During the 312 evaluation, one or more public meetings will usually be held to gather information from the public.

The final issue that must be resolved concerns the need to ensure that the policies and procedures of the program's Joint Resolutions and Memoranda of Understanding are enforceable at the time of program approval. In order to answer this question, the policies and procedures of the various JRs and MOUs must be compared with the requirements of Florida's Administrative Procedures Act, Chapter 120, F.S.. The basic precept of Chapter 120 is that only those agency policies which are of general applicability and which affect the private interest or rights of individuals are required to be adopted as agency rules. Under this concept, agency policies and procedures regarding regulation of private actions, such as the DER policies used in reviewing dredge and fill permits, are promulgated as rules (in this case Chapter 17-4, F.A.C.), in accordance with specific rulemaking procedures contained in Chapter 120, while other actions such as internal agency guidance and the provision of public funds for projects that do not affect the private

rights of any person do not require agency rulemaking. A review of the Joint Resolution and MOUs indicates that these instruments prescribe, for the most part, procedures that state agencies will use to coordinate studies, rulemaking, preparation of CZM grants, and reporting to the IMC and the Governor and Cabinet. Although such procedures may eventually lead to actions which affect the private interests of persons (and which will require rulemaking), these coordination procedures do not, in and of themselves, require the promulgation of rules under Chapter 120.

The State's efforts regarding hazard mitigation serve to illustrate this point. Although most of the provisions of the Hazards Joint Resolution and MOUs do not affect the private interest of third parties, the State's efforts to incorporate hazard concerns into the review of public works and wastewater treatment plant siting have required that these new state policies be adopted through the formal rule revision process set forth in Chapter 120. A somewhat different situation exists regarding the policies set forth in the MOU on bridge and highway construction in coastal areas. This MOU, signed by the Florida Department of Transportation (FDOT), DER, and the Governor's office, discourages the use of Federal and State funds to provide new access to undeveloped barrier islands. Section 120.52(14)(c)1.F.S. specifically excludes the preparation for modification of agency budgets from the definition of rules, and therefore, the disbursement of funds does not require rulemaking. Since neither Chapter 120 or FDOT's organic legislature requires that FDOT develop funding rules for the disbursement of funds, the funding policies of the highway construction MOU are enforceable without promulgating rules. This conclusion is supported by the opinion of the Attorney General rendered July 8, 1981.

Generic Response 2: Role and Effectiveness of the Interagency Management Committee

Several commentators expressed concerns regarding the role and effectiveness of the Interagency Management Committee (IMC) in addressing the "issues of special focus" identified in Section 2.D of the DEIS. These comments ranged from general concerns over how the recommendations for each issue are to be addressed to more specific concerns regarding the ability of the IMC to assure implementation or adoption of the recommendations cited in the document.

Since the procedures that the IMC and DER will use to address the issues of special focus with the use of Section 306 funds are discussed in detail in Section 2.E of the document, OCZM believes the major concern of reviewers is the state's commitment to utilize the IMC and to actually address the issues identified in the program through the adoption of new laws, regulations, MOUs, or other means.

It is OCZM's belief that the executive level of government in Florida, i.e., the Governor and Cabinet and the heads of the relevant state agencies have made sufficient commitment in the form of both Joint Resolutions and Memoranda of Understanding to ensure that the IMC plays an effective role in addressing Florida's coastal resources issues. The August 26, 1980, Joint Resolution of the Governor and Cabinet, and the IMC MOU signed by all members of the IMC in the summer of 1981, which establish the IMC, clearly indicate

the executive branch's commitment to the FCMP and the IMC. These instruments charge the IMC with the primary responsibility to bring the efforts of several key agencies to bear on coastal-related problems. The head of each agency, representing a number of different concerns over coastal resources, is required to personally participate in the affairs of the Committee, and agency staffs are required to participate in the implementation of the coastal program. Both documents also require coordination and cooperation among state agencies including a clear directive to the IMC to develop a priority listing of tasks and a schedule for addressing them under the coastal program.

In addition, the three principal state agencies involved in coastal management (DER, DNR, and DVCA) further committed themselves to specific coordination procedures via a Memoranda of Understanding signed in the summer of 1981 (see addendum). The requirements in the Joint Resolution and the MOUs provide assurances that the FCMP will have the necessary interagency support to undertake tasks which lead to improvements in the administration of Florida's statutes for managing coastal resources.

Because the IMC is not a regulatory body, the actual implementation or adoption of changes to existing laws, regulations, or agency procedures will require action by either the Governor, the Governor and Cabinet, the Legislature or individual state agencies. The role of the IMC is to provide the forum whereby various Florida departments can discuss multi-jurisdictional issues and make recommendations to the relevant authorities, be it the Governor, the Governor and Cabinet or the Legislature.

As a result of the the Joint Resolution and MOU establishing the IMC, other, more detailed and product-specific instruments have been developed and will continue to evolve as the FCMP is implemented. As discussed in the "Coordination and Implementation" section of the Program and Generic Response Number One, a Joint Resolution and several Memoranda of Understanding have already been established detailing tasks and reciprocal responsibilities between agencies concerning storm hazard management. In summary, OCZM believes that the formal commitments made by the Governor and Cabinet and the heads of relevant state agencies in the form of the several Joint Resolutions and MOUs represent sufficient grounds for ensuring the effectiveness of the IMC.

Generic Response 3: Public Participation in Program Implementation

Several reviewers were concerned with the adequacy of public participation in program implementation activities to occur after Federal program approval. These concerns ranged from a general statement concerning this issue to more specific concerns regarding the means whereby the public, local governments, and regional groups can have input into the State coastal program.

The State is committed to involving the public in the implementation of its coastal program. This committment will include the establishment of state and possibly regional coastal advisory committees, in addition to the already existing procedures for public participation under Chapters 119, 120, and 403, F.S., concerning access to public information, participation in rule-making, and participation in adjudications.

Since issuance of the DEIS, the Governor has established the State Coastal Resources Advisory Committee to assist with the implementation of the Florida Coastal Management Program. This Committee is comprised of persons representing government, industry and environmental interests as well as the various regions of the State. While Committee membership is relatively small, the Committee will be encouraged to draw upon experts and interested parties within the State when dealing with coastal issues.

The State Advisory Committee will advise both the DER and the Interagency Management Committee on the coastal management program. The functions of the Committee are to:

1. Assist DER and the IMC in setting priorities concerning issues of special focus and other coastal issues. The analysis and recommendations of the Committee would be forwarded to the Governor for action or referral to the Interagency Management Committee;

2. Review priorities for allocating coastal management funds and providing technical assistance;

3. Review and comment on Department rules related to coastal management;

4. Review projects carried out under the coastal program and,

5. Suggest new or additional legislation necessary to better implement the Florida Coastal Management Program;

The DER, with the assistance of coastal regional planning councils may also reestablish the Regional Coastal Advisory Committees during the first year of implementation. Although the involvement of these Regional CACs in the recent development of the FCMP has been reduced because of lack of funding, the committees may be reestablished as a means of regional input into the program. RPC's also will be represented on the State Advisory Committee.

In addition, it should be noted that the IMC meetings will be open to the public and that specific projects and activities carried out with coastal management funds will include public participation elements to address the concerns of affected groups or individuals. Finally, the OCZM's periodic Section 312 review of program performance will include opportunities for public involvement, e.g., public meetings at which OCZM will seek input concerning the programs' effectiveness and priority needs. In summary, these mechanisms will provide effective means for public, local government, and regional involvement during program implementation.

Generic Response 4: Coastal Zone Boundary

Several reviewers requested clarification concerning the relationship between the statewide coastal zone boundary and the eligibility of local governments to receive financial assistance under the program and the application of the Federal consistency provisions of the CZMA. Specifically, several commentators questioned the rationale for the statewide coastal zone boundary while others requested clarification concerning why the eligibility of local governments to receive CZM funding and the application of certain aspects of

the Federal consistency provisions are limited to a smaller geographic area comprising only coastal counties. In response to these comments, the text of Sections 2.A and 2.H of the document, which discuss the boundary and Federal consistency, respectively, have been revised to clarify these relation ships.

The Florida coastal zone boundary as described in the text is a two-tiered boundary. This approach is consistent with the requirements of the CZMA and OCZM's implementing regulations (15 C.F.R. 923) and the Florida Coastal Management Act of 1978. As is further explained in Section 2.A, the State has chosen a statewide boundary for its coastal zone based on the unique bio-geographic conditions found in the State and the statewide applicability of the core statutes which comprise the program. This approach is consistent with Sections 923.30-31 of OCZM's regulations which provide states with discretion concerning the inland extent of their coastal zones in order to be responsive to each state's unique geological and hydrological conditions.

The Florida Coastal Management Act (FCMA), however, prescribes specific limitations which are based on recognition of the need to focus more intensive management on a narrower area limited to coastal counties. Section 380.24 of the FCMA specifically limits the eligibility of local units of governments, i.e., counties and cities, to receive financial assistance under the Program to those which abut the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the State where marine species of vegetation listed by rule pursuant to Section 403.817, F.S. constitute the dominant plant community. The local units of government eligible to receive funding under this provision are identified in table 13 of this document while Figure 14 illustrates this eligibility in geographic terms.

Section 380.23(3)(c) of the Florida Coastal Management Act limits Federal consistency review of Federally licensed or permitted actions pursuant to Section 307(c)(3) of the CZMA to those activities which are located in or seaward of the units of local government defined in Section 380.24, discussed above. It should be noted, however, that the State Federal consistency review process for federally licenced or permitted activities will not impose any additional review criteria. This is because the standards of review to be utilized are limited to those contained in the State statutes and rules incorporated in the FCMP and which are applicable state-wide. Federal activities and development projects, and assistance projects, however, will be reviewed for Federal consistency purposes throughout the statewide coastal zone, which is consistent with Section 380.23(3)(a) and (b) of the FCMA (see revised text, Section 2.H). OCZM finds the tiered approach utilized in the FCMP to be reasonable in that it focuses Federal Consistency review of federally licensed or permitted activities in coastal counties while providing the State with the flexibility to review major Federal activities and assistance projects which occur inland of coastal counties.

PARTIES WHO COMMENTED ON THE FLORIDA DEIS

1. U.S. NUCLEAR REGULATORY COMMISSION
2. U.S. ENVIRONMENTAL PROTECTION AGENCY
3. U.S. DEPARTMENT OF AGRICULTURE-FOREST SERVICE
4. U.S. DEPARTMENT OF AGRICULTURE - SOIL CONSERVATION SERVICE
5. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
6. FEDERAL ENERGY REGULATORY COMMISSION
7. MARINE MAMMAL COMMISSION
8. FEDERAL EMERGENCY MANAGEMENT AGENCY
9. U.S. DEPARTMENT OF TRANSPORTATION
10. U.S. DEPARTMENT OF THE INTERIOR
11. FLORIDA DEPARTMENT OF COMMERCE
12. BREVARD COUNTY BOARD OF COMMISSIONERS
13. BROWARD COUNTY PLANNING COUNCIL
14. BROWARD SOIL AND WATER CONSERVATION DISTRICT
15. CITY OF FORT LAUDERDALE
16. EAST CENTRAL FLORIDA REGIONAL PLANNING COUNCIL
17. NORTH CENTRAL FLORIDA REGIONAL PLANNING COUNCIL
18. NORTHEAST FLORIDA REGIONAL PLANNING COUNCIL
19. NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT
20. PASCO COUNTY
21. PINELLAS COUNTY
22. SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL
23. ST. JOHN RIVER WATER MANAGEMENT DISTRICT
24. TAMPA BAY REGIONAL PLANNING COUNCIL
25. VOLUSIA COUNTY
26. VOLUSIA COUNTY ENVIRONMENTAL COUNCIL

27. WEST FLORIDA REGIONAL PLANNING COUNCIL

28. COASTLINE GROWERS

29. COUNCIL OF ASSOCIATIONS OF NORTH PENINSULA

30. ECOSHORES, INC.

31. ENVIRONMENTAL COUNCIL OF VOLUSIA COUNTY

32. FLORIDA AUDUBON SOCIETY

33. FLORIDA ENGINEERING SOCIETY

34. FLORIDA INSTITUTE OF TECHNOLOGY - MURDAY

35. FLORIDA INSTITUTE OF TECHNOLOGY - SHIBLES

36. FLORIDA KEYS AND WEST COAST SEAFOOD

37. FLORIDA PETROLEUM COUNCIL

38. GULF POWER COMPANY

39. HILLSBOROUGH ENVIRONMENTAL COALITION

40. HOPPING, BOYD, GREEN AND SAMS

41. LEAGUE OF WOMEN VOTERS OF FLORIDA

42. LEAGUE OF WOMEN VOTERS OF HILLSBOROUGH COUNTY

43. MARTIN CONSERVATION ASSOCIATES

44. NATURAL RESOURCES DEFENSE COUNCIL

45. SIERRA CLUB-NATIONAL COASTAL COMMITTEE

46. TAMPA PORT AUTHORITY

47. BARRY APPLEBY

48. KEVIN L. ERWIN

49. LOUIS A. GAITANIS

50. PAUL A. HOWE

51. JACK W. HUNTER

52. ROY D. WILLIAMS

53. HOWARD WOLF

Summary of Comments Received on the Florida Draft Coastal Management Program and Environmental Impact Statement and Responses

Federal Agencies

1. U.S. NUCLEAR REGULATORY COMMISSION
Office of State Programs
Frank W. Young, Acting Assistant Director for Program Development
Washington, D.C.

A. Comment:
The proposed Florida Coastal Zone Management Program has no significant radiological health and safety impact and it will not adversely affect any activities subject to regulation by the U.S. Nuclear Regulatory Commission.

Response:
No response necessary.

2. U.S. ENVIRONMENTAL PROTECTION AGENCY
John E. Hagan III, Chief EIS Branch
Region IV - Atlanta, Georgia

A. Comment:
The DEIS adequately presents the existing State statutes which serve as the program's basis. If these statutes are enforced, the program's objectives should be met.

Response:
No response necessary.

B. Comment:
The plan identifies problems but can only "assist", "encourage" or suggest solutions through already established state programs. The effectiveness of the program beyond that of existing programs is marginal. If the existing state planning and permitting programs are adequately administered, then the CZM program can become an excellent vehicle for interagency coordination on coastal zone issues.

Response:
See Generic Responses 1 and 2.

3. U.S. DEPARTMENT OF AGRICULTURE
Robert D. Raisch, Area Director - Forest Service
Atlanta, Georgia

A. Comment:
The Division of Forestry has provided input to give the necessary recognition and consideration to the forestry aspects of the Florida CZM Program.

Response:
No response necessary.

B. Comment:
The Florida CZM Program is consistent with the objectives and policies of the CZMA. The Federal funds will help the State implement its program which should result in net positive environmental benefits.

Response:
No response necessary.

4. U.S. DEPARTMENT OF AGRICULTURE
Soil Conservation Service
Norman A. Berg, Chief

A. Comment:
There has been inadequate recognition given to the importance of protecting important farmland in the coastal counties. Approximately two-thirds of the 20 million acres of statewide important farmland in Florida are in coastal counties. This resource must be included in the program. For example, it would be appropiate for the program to discuss loss of soils from conversion to irreversible nonagricultural uses. It is estimated that 347,000 acres of Florida farmland are lost in this manner every year.

Response:
Florida recognizes the need to preserve important agricultural lands. At the present time State and Federal soil conservation programs and local governments are dealing with the problems of loss of prime agricultural lands. The FCMP includes Chapter 582, F.S., Soil and Water Conservation, and the Coastal Program will work closely with the State soil and water conservation program. Policies aimed at protecting agricultural lands are also included in Governor Graham's policies and priorities for state action and this subject has also been extensively addressed by the Governor's Resource Management Task Force. These latter initiatives may result in legislative action in the next session to provide a broader state approach toward addressing this issue. The results from this ongoing State effort will be incorporated into the coastal program as necessary.

B. Comment:
The program should include important farmland as an area that could undergo degradation as a site for disposal of dredged material. (Pages II-201 and II-203).

Response:
The harbors and other areas of Florida where significant spoil disposal problems exist are not proximate to large areas of valuable agricultural acreage. Transportation of spoil material to agricultural areas is not presently viable from an economic stand point; consequently, there is no clear threat from spoil disposal to important farmland. As the coastal program addresses spoil disposal problems, the intrinsic value of all candidate spoil areas will be considered.

5. U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
Frank S. Lisella, Ph.D.
Chief, Environmental Affairs Group
Environmental Health Services Division
Center for Environmental Health
U.S. Public Health Service
Atlanta, Georgia

A. Comment:
The significant environmental effects of the FCMP appear primarily beneficial.
Response:
No response necessary.

B. Comment:
The State of Florida does not have a comprehensive State policy for barrier island protection. Actions must be coordinated to prevent uncontrolled development on barrier islands including the secondary effects of new power transmission lines, airport and highway development projects, industrial development projects, FHA's mortgage insurance program, etc.

Response:
The State of Florida has begun to address the broad issues of barrier islan development through the interagency hazards initiative being undertaken by the IMC. This effort has resulted in the incorporation of hazard considera tions into the Public Works and Wastewater Treatment Plant rules, and the MOU between DOT, DVCA, and DER concerning bridges to barrier islands. Additional work tasks as specified in the attachment to the Hazards Joint Resolution will be undertaken during the first year of Federal funding.

C. Comment:
Every effort must be taken by the State to develop and coordinate effective evacuation plans for each region of the State with an emphasis on hazard risk and early lead time. An assessment should be conducted of the necessary lead time for evacuating hazardous coastal areas from a typical hurricane and the capability of local roads and other routes to allow safe evacuation within this lead time. Each region will be affected differently based on the number of roads, evacuation routes and shelters available, the population requiring evacuation, and the existence of a satisfactory evacuation plan. Development constraints may have to be considered for certain hazardous coastal areas that fail to allow safe evacuation of the affected populations.

Response:
The State will use CZM funds for the development of hurricane evacuation plans as part of its broader hazards initiative. The evacuation planning model established by the Southwest Florida Regional Planning Council will most likely be used. See also the "Issues of Special Focus - Coastal Storms: Hazard and Protection Issues" section of the document.

D. Comment:
The hazards associated with old structures that were not designed to meet existing safety code requirements during an extensive coastal storm should be further addressed. For example, could the destruction and movement of old structures adversely affect structures meeting current safety codes for coastal storms?

Response:
This is a recognized problem that is being addressed on storm hazard management and evacuation strategies prepared through the DVCA, Bureau of Disaster Preparedness.

E. Comment:
The EIS discusses the need for amendments to existing building codes. We agree that improved building codes are necessary to protect new structures from wind and storm surges in hazardous coastal areas and to prevent proliferation of onsite sewage treatment systems that adversely impact ground and surface waters, particularly public and private water supply sources.
Greater efforts are needed to regulate the construction of onsite sewage treatment systems, such as septic tank systems, where shallow ground water supplies are used for drinking water. Local building codes should be flexible enough to prohibit the issuance of building permits for construction of certain types of onsite sewage treatment systems in important recharge areas, particularly small barrier islands (i.e., Big Pine Key, Monroe County) where potable ground water supplies are limited and easily impacted.

Response:
The issues raised in the above comment are thoughtful and will be considered by the IMC during program implementation under the State hazards initiative.

6. FEDERAL ENERGY REGULATORY COMMISSION
Carl N. Shuster, Coastal Affairs Coordinator
Washington, D.C.

A. Comment:
The Florida CMP clearly recognizes the national interest in oil, gas and other energy sources and provides a comprehensive assessment of the State's responsibility in OCS energy-related matters.

Response:
No response necessary.

B. Comment:
Will the networking of pertinent Florida law and regulatory agencies provide a workable program?

Response:
See Generic Response 1.

C. Comment:
The Florida coastal zone boundary must be clarified prior to approval of the FCMP. On page II-10, the FCMP proposes that the entire State of Florida should be included within the coastal zone. But, for the purpose of review of Federal consistency pursuant to Section 307 of the CZMA, the inland boundary of the coastal zone is limited to coastal counties. This limitation should be stated on the referenced page and on page II-321 in the description of Federal consistency and the map of Florida and its coastal counties (page IV-2) should at least be referenced in the sections indicated above.

Response:
See Generic Response 4.

D. Comment:
The statement on page II-324, that "to be consistent, the Federal activities, licensing decisions, etc., must comply with the Florida laws which form the FCMP" is not consistent with Federal regulatory requirements. The Coastal Zone Management Act requires Federal actions consistent with an approved state CMP, but does not require that Federal mandates be subservient to ill-defined networks of state laws.

Response:
While you are correct in your statement that the Coastal Zone Management Act generally requires that Federal actions be consistent with an approved state CZMP, OCZM disagrees with the contention that the FCMP constitutes an "illdefined network of state law." To the contrary, OCZM believes that the FCMP meets the requirements for approval of state coastal programs set forth in 15 C.F.R. 923. Upon approval of the FCMP by NOAA, Federal actions must be conducted consistantly with the body of enforceable State law forming the FCMP, in accordance with the procedures set forth in 15 C.F.R. 930.

E. Comment:
The FCMP indicates on page II-327, that a consistency determination from Florida is required for Federal licenses and permits for the siting and construction of any new electrical powerplants as defined in Florida statute 403.503(7), as amended. Apparently, hydroelectric powerplants are not included in the definition of electrical powerplants contained by that Florida statute for the purpose of certification.

Response:
This is correct; the definition of "electrical power plant" which appears in 403.503(7) F.S. does not include non-federal hydroelectric power plants.

F. Comment:
The list of permits and statutory citations provided on page II-327 of the DEIS should be revised to clearly identify the specific agency having the licensing authority. In particular, if the State of Florida intends to require a consistency determination [certification] on non-Federal hydroelectric projects, the description of FERC's licensing authority (below) should be listed describing FERC responsibilities in the final FCMP.

- Licenses required for non-Federal hydroelectric projects and primary transmission lines under Section 3(11), 4(e), and 15 of the Federal Power Act (16 U.S.C. 796(11), 797(e), and 808).

- Orders interconnection of electric transmission facilities under Section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)).

- Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipelines and LNG terminal facilities under Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).

- o Permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

Response:
OCZM does not believe that is necessary to identify the specific federal agencies having the licensing authorities in the Federal Consistency Section since these agencies are well known. The State of Florida does not intend to require consistency determinations for FERC permits listed in the comment and therefore has not included them in this list because hydroelectric projects are not included in the definition of electrical power plants pursuant to Chapter 403.503(7) F.S. Consistency determinations will, however, be required on other Federal permits specified in the Federal Consistency Section (see table 16) when such permits are required for the construction of hydroelectric projects.

G. Comment:
On page II-348, the FCMP discusses existing and proposed petroleum facilities in the State. The final FCMP should include information on existing natural gas pipelines, since conversion to oil transport is possible:

> The Federal Energy Regulatory Commission (FERC) has jurisdiction over the natural gas system owned by Florida Gas Transmission Company (FGT). At present, this pipeline system consists of a 24-inch diameter pipeline with 30-inch diameter pipeline looping much of the system from eastern Louisiana to southern Florida. Pending the outcome of current FERC proceedings in Docket No. CP74-192, portions of the existing mainline may be abandoned from gas service and converted to a petroleum products pipeline.

Response:
This information has been added to the text.

H. Comment:
Hydroelectric powerplants are not identified in the energy facility planning process (page II-336) as energy facilities likely to locate in, or which may significantly affect the Florida coastal zone. If the FCMP requires consistency certification for hydroelectric projects, a planning process for hydroelectric powerplants should be presented in the FCMP in accordance with the requirements of 15 CFR 923.13.

Response:
As noted above, hydroelectric powerplants per se will not require consistency certifications; therefore their inclusion in the energy facility planning process is not necessary.

I. Comment:
There are two existing hydroelectric projects in Florida. One is the 30,000-kilowatt Jim Woodruff project on the Apalachicola River, owned by the Corps of Engineers; and the other is the 100-kilowatt project on Blue Springs Creek, owned by the Florida Public Utilities Company. In addition, there are many potential hydroelectric projects and retired hydroelectric powerplants in Florida. For example, the FERC has received many applications

from non-federal interest in Florida for preliminary permits pursuant to the Federal Power Act. The FERC has also received an application for a license for a proposed project which has an outstanding preliminary permit. (Data on FERC projects was submitted with the comment.)

Response:
Thank you for the information. The State of Florida will coordinate with the FERC Regional Office in Atlanta, Georgia.

7. MARINE MAMMAL COMMISSION
John R. Twiss, Jr.
Executive Director

A. Comment:
Recovery activities for the endangered West Indian Manatee are not discussed in the DEIS. It is not clear how the Florida CMP will help achieve the necessary protection of the West Indian Manatee which is one of the most endangered marine mammals in the United States. The draft MOU between DNR, the DVCA, and DER relative to the FCMP should be expanded to identify coordination needs relative to endangered and threatened species in Florida's coastal areas. Page II-265 of the DEIS should include the following:

> "e. Protection and management of fish and wildlife resources with particular attention to endangered and threatened species; Chapter 372 F.S."

Furthermore, the list of program responsibilities on pages II-268 and II-269 should include a new item e:

> "e. The coastal management program will assist the DNR to improve cooperative efforts to protect habitat for and encourage the recovery of endangered and threatened species."

The current item e on page II-269 should then become item f.

Response:
The Florida DNR is already implementing the Florida Manatee Sanctuaries Act and is actively regulating the capture, transport and handling of manatee as well as vessel traffic and speed in identified manatee sanctuaries. The areas of responsibility and coordination outlined under the Memorandum of Understanding do not reflect exclusive relationships with the FCMP. As noted in Section II-E, appropriate arrangements between the programs include, but are not limited to the list of program concerns; the FCMP will provide assistance to DNR concerning the protection of Florida's Manatee if this need is identified by the IMC.

8. FEDERAL EMERGENCY MANAGEMENT AGENCY
James Ross MacKay, Director
Regulatory Development Division
Office of Flood Plain Management
Federal Insurance Administration

A. Comment:
FEMA is greatly concerned about whether current mitigation and evacuation efforts are sufficient to significantly reduce the catastrophic losses that would result if a major hurricane hit a highly developed area such as Miami or Tampa. The statements made in the last paragraph in page II-242 of the DEIS appear seriously misleading and erroneous in this regard. It is stated that the average annual fatality figure has stabilized and that this reduction is primarily attributable to a better warning system, while in reality any stabilization primarily reflects the fact that Florida (especially the highly developed and populated areas) has not been hit by a major hurricane in over a decade. The increase in property damage figures also does not reflect the severity of any recent storms, but rather the increased development and higher property values of recent years. These figures are small compared to the damage that can be expected when a major hurricane hits a developed area.

Response:
These statements in the document are based on Nationwide data provided by the NOAA National Hurricane Center in Miami, Florida, and are not intended to apply solely to Florida. The FCMP clearly recognizes the potential for catastrophic losses if a major hurricane were to to hit a highly developed area in Florida and has indicated the severity of this issue in the document. We agree that increased development and higher property values have significantly contributed to an increased amount of property damage.

B. Comment:
Florida residents need to be made aware of the real danger they face and appreciate the devastation a major hurricane could inflict.

Response:
OCZM and the State of Florida agree that hurricane awareness programs are needed and will seek to develop first year implementation tasks addressing this issue.

C. Comment:
The statement is made on page II-246 that the Federal government has indirectly encouraged development in flood-prone areas, and admittedly, the Federal government may have unwittingly fostered contradictory policies in the flood plains previously. However, in recent years, FEMA and other Federal agencies have become increasingly aware of these conflicts and have been working together to avoid future problems. The Interagency Agreement for a cooperative approach to nonstructural flood hazard mitigation, initiated by the Office of Management and Budget and strongly supported by FEMA, has been a major step toward avoiding contradictory efforts by

Federal agencies in dealing with flood plain projects, disaster relief, loans, etc. FEMA's Region IV Office has also been working with Florida to identify such contradictory policies among the various Federal and State agencies and develop a united, complementary approach toward flood plain management and hazard mitigation.

Response:
OCZM and the State of Florida recognize the significant efforts that FEMA has made in recent years to address inconsistencies in Federal policy and look forward to working with FEMA in the future.

D. Comment:
We take exception to the statement on page II-246 that the FIA's flood program "has encouraged development in flood hazard areas through subsidized flood insurance." Florida is a fast-developing and strongly commercial State. As has been pointed out throughout the DEIS, Florida has always had many strong and competing demands for land use along its coastline. Insurance on new or substantially improved properties is not subsidized, and the actuarial premiums are becoming higher. Expansion occurs because the local communities fail to adopt and enforce stringent flood plain management policies. The National Flood Insurance Program depends entirely on the voluntary participation of communities and on the agreement by those communities to adopt the necessary ordinances to restrict unwise development and construction in flood hazard areas. Clearly, communities in high-hazard (V-zone) areas should adopt different measures to protect its residents and their properties than those in riverine areas not subject to the wave heights and forces of coastal storms. Florida's recognition of the NFIP regulations and incorporation of their intent in State policies and flood plain management criteria can prove to be a very positive force.

Response:
Although OCZM and the State of Florida disagree with FEMA concerning the extent to which the FIA program is a subsidy for new or substantially improved properties, the text has been changed by replacing the word "encourage" with the phrase "contributed to."

9. U.S. DEPARTMENT OF TRANSPORTATION - COAST GUARD
J.R. McDaniel
Assistant Regional Representative

A. Comment:
The inland boundary for the coastal zone must be delimited precisely for use as a regulatory instrument. Does the term "coastal county" mean all counties in Florida or only those adjacent to the Atlantic Ocean or the Gulf? Does Table 15 (page II-288) identify the coastal counties? It is recommended that at its greatest extent only coastal counties be included in the coastal zone. All federal and trust lands should be excluded.

Response:
See Generic Response 4. All lands owned, leased, held in trust or whose use is otherwise subject solely to the discretion of the Federal Government is excluded from the Florida Coastal Zone.

B. Comment:
It is recommended that a separate section under "National Interest" provide an expanded and detailed description of the Federal excluded lands concept.

Response:
Section 304(1) of the Federal CZMA requires that Federal lands be excluded from state coastal zones; this requirement is not related to the National Interest requirements which are found in Section 306(c)(8) of the CZMA.

C. Comment:
Page II-315, Table 16, Inventory of Federal Lands in Florida's Coastal Zone. The following U.S. Department of Transportation items should be corrected:

1) U.S. Coast Guard Radio Station, Richmond Heights, Dade, should be deleted. Previously listed as "USCG Radio Station, Miami, Dade, 231.00 acres."

2) Cape San Blas LORAN Station Site, Gulf, 6.00 acres, should be changed to, "USCG LORAN Station (C), Gulf, 6.00 acres.

3) Although lightships, large navigational buoys, daybeacons, radiobeacons, river, harbor and other lights, lighted buoys, unfixed aids and unlighted buoys are not included, a list of primary and secondary seacoast lights to be excluded from the coastal zone as Federal lands, in addition to those other aids to navigation was submitted.

Response:
Comment accepted; see changes in text.

D. Comment:
Because the entire State is included in the coastal zone and because so many State statutes, programs and agencies review and coordinate activities, many Federal actions may not be effectively coordinated. To insure that this problem does not occur, it is requested that one state government agency be designated and clear procedures developed to insure proper coordination of all Federal actions.

Response:
The Florida Department of Environmental Regulation is the designated state agency for purposes of administering the Federal consistency procedures and coordinating with Federal agencies on matters concerning the FCMP.

E. Comment:
The Federal consistency procedures on page II-322, Table 17 are unclear.

Response:
This chart is intended only to summarize NOAA's Federal consistency regulations (15 C.F.R. 930) promulgated pursuant to Section 307 of the CZMA. The State will develop more detailed guidance during the first year of program implementation.

F. Comment:
The statement on page II-324, "Conflicts may be appealed to the Governor and Cabinet," is unclear. Is a Federal agency required to appeal to the Governor and Cabinet? Clearly it is the responsibility of the State to resolve internal conflicts and not the Federal government.

Response:
The text has been revised to indicate that this section refers only to conflicts between state agencies.

G. Comment:
The statement, "To be consistent, the Federal activities, licensing decisions, etc. must comply with the Florida laws which form the State's coastal management program..." is inconsistent with judicial precedent of "Federal supremacy." In many cases, compliance is prohibited based upon the requirements of existing law applicable to the Federal agency's operations.

Response:
We disagree. The Federal Consistency provisions of the CZMA are firmly rooted in law, have undergone intensive Federal agency review prior to the issuance of final regulation in 1979, and have been upheld in the courts. The purpose of Federal consistency is to make various Federal actions subject to state law to the extent established by the standard of consistenc required for certain types of Federal action. This is, in effect, a partia waiver of the doctrine of "Federal Supremacy." The NOAA regulation for implementing Federal consistency (15 C.F.R. 930.32) clearly states that the standard " to the maximum extent practicable", means that direct Federal activities and development projects must be fully consistent with approved State CZM programs "unless compliance is prohibited based on requirements of existing law applicable to the Federal agency's operations" (emphasis added). The regulations also include methods of conflict resolution which may be used when the State and Federal agency disagree over the State's consistency decision. These include informal negotiation, mediation by the Secretary of Commerce, appeal to the Secretary of Commerce, and judicial action.

H. Comment:
The statement, "The DER will work with Federal agencies toward the development of ... more specific procedures governing the processing of consistency determination during the first year of program implementation," is not adequate. The procedures that Federal agencies must comply with should be developed prior to approval of the plan. Without clearly established procedures, the program will not function to prevent delays in Federal projects.

Response:
The statement to which you refer is an expression of the State's intention to further refine the processing of Federal consistency documentation beyond that which appears in the document and the Federal consistency regulations at 15 C.F.R. Part 930. "More specific procedures" for Federal consistency processing may include the implementation of joint State/Federal permitting procedures or joint public notice procedures which are not required by the Federal consistency regulations, but which result in improved

governmental decisionmaking. The first year Section 306 grant will include a task to refine the States consistency review procedures.

I. Comment:
The statement on page II-324, "The Federal Act requires that federal activities or development projects which are located in or directly affect the coastal area must be consistent to the maximum extent practicable with the FCMP," is significantly broader in interpretation than the intent of the Act. The terms: "federal activities", "development projects", "coastal area (zone)", and "consistent to the maximum extent practicable", should be defined. In addition, the definition of the coastal zone should include a statement of Federal excluded lands - 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.

Response:
The statement in text concerning Federal activities has been changed to read "The Federal Act requires that Federal activities including development projects directly affecting the coastal zone must be consistent to the maximum extent practicable with FCMP". The terms "Federal activities", "development projects", and "coastal area" (since changed to "coastal zone") are defined in the CZMA and the Federal consistency regulations (15 C.F.R. 930). These definitions are applicable to all coastal management programs and so it is not necessary to repeat them in the FCMP document. The Florida coastal zone and excluded Federal lands are defined in Part II, Section 2.A. of this document.

J. Comment:
It is recommended that the Assistant Administrator delay approval until the scope (authorities), coastal boundary, and Federal coordination procedures are sufficient to meet Federal requirements for program approval.

Response:
As indicated in the responses to the specific comments above and notwithstanding minor changes to the text, OCZM feels that the FCMP does meet the Federal requirements provided for under the CZMA and 15 C.F.R. 923.

10. U.S. DEPARTMENT OF THE INTERIOR
Heather Ross, Assistant Secretary for
Policy, Budget and Administration

A. Comment:
Certain program recommendations may not be implemented because of the extensive use of unenforceable phrases such as "should assist," "will encourage," "should promote," etc.

Response:
Every state coastal zone management program contains, in addition to its foundation of enforceable policies, a number of hortatory policies and recommendations encouraging various forms of cooperation, procedures and activities which are capable of somewhat expanding the programs coverage or its overall quality if carried out, but legally are not necessary for the

program to meet the approval requirements of the CZMA. The FCMP contains the mandatory, enforceable authorities required for program approval and provides an adequate organizational structure to implement the program. The State will certainly attempt to implement as many of the hortatory policies and recommendations as possible in order to enhance the quality of the program.

B. Comment:
Given the advisory role of the IMC, it is hard to see how substantial changes in the management of Florida's coastal resources will be achieved. What role will the IMC play in assuring implementation of the proposed recommendations? How will priorities be established and conflicts resolved How will the IMC reach a consensus on priorities given the divergent responsibilities of its representatives? In the absence of adequate enforcement capabilities, the IMC will be unable to secure adoption of many of the substantive recommendations contained in the program.

Response:
See Generic Responses 1 and 2.

C. Comment:
How will coastal hazard recommendations be implemented given the State's lack of substantive policy and legislation on hazard prevention and mitigation. The enforceability of MOU's must be discussed.

Response:
See Generic Response 1.

D. Comment:
A joint resolution on hazard management by the Governor and the Cabinet requires DVCA review of the activities of other State agencies (DOT, DER, DNR) which might impact the State's hazard mitigation policy. What assurances are there that recommendations made by DVCA will be implemented? What sanctions will be imposed by the program in the event of non-compliance with DVCA recommendations?

Response:
The regulations for program approval require that there be a means of enforcing the compliance of networked agencies with the coastal management program. Acceptable means of ensuring agency compliance include executive orders, administrative directives and memoranda of understanding. (15 C.F.R. 923.43(c) (2) and (3)). The Joint Resolution to which you refer requires the cooperation and coordination of several State agencies. In Florida, where agencies disagree over the interagency requirements imposed on them by a Joint Resolution, the agency heads will normally meet to resolve the issue. If this informal process fails, Joint Resolutions of the Governor and Cabinet are enforced in a manner similar to executive orders. That is, the authority of the Governor and Cabinet to appoint agency heads provides a direct control over the operation of those agencies. Program approval requires only that the means for enforcement of compliance exists. Failure of the Governor and Cabinet to enforce a Joint Resolution upon which a required element of the program is based would raise an issue to be dealt with during the continuing review of program performance required by Section 312(a) of the CZMA. See also Generic Response 1.

E. Comment:
The program should discuss the incentives that will be provided to local governments to develop comprehensive hazard management plans.

Response:
Such incentives are discussed in the Coastal Hazards Protection section of the document.

F. Comment.
It is not clear whether floodplain management is specifically excluded from the Florida Water Resources Act of 1972.

Response:
The Florida Water Resources Act of 1972 (Chap. 373 F.S.) specifically addresses the prevention of damage from flood in Section 373.016. Historically, the water management districts have been very active in implementing both structural and non-structural programs to minimize flood damage.

G. Comment:
This document, like previous drafts, does not provide evidence that the FCMP will promote responsible stewardship of mineral resources. The plan should include the following basic mineral information: mineral resources and reserves, existing mineral processing plants, future mineral needs, future mineral resources development potential and the management program's impact on development as well as general types of land open to mineral recovery and processing. Among the undiscussed geologic resources, phosphate and mineral bearing beach sands are particularly significant in light of Florida's dominant position as a producer. Peat mining in the Everglades, too, may also be significant. The mining of these resources may be of considerable importance to the coastal zone and should therefore be addressed in the proposed coastal management program.

Response:
The DER has made a concerted effort to identify and address the most cogent coastal issues. This effort was based upon substantial input from the public. Subsequent to this input the Department reviewed potential issues and decided to focus the efforts of the Program on ten issues (see Part II, Section 2D Issues of Special Focus). This effort to focus on a few issues was adopted for two reasons. First, limited staff and financial resources of the Program require focused efforts to ensure the development of meaningful products. Second, it is strongly believed throughout the State that the top coastal management priority is to improve the effectiveness of existing programs already in place, e.g. the completion of aquatic preserve plans, the development of spoil disposal plans for Florida's vital port industry, and efforts to address Florida's hazards problems. The mineral resources issues raised by this comment are either primarily inland, e.g., phosphate mining or emerging issues, e.g., peat mining. This is not to say that such issues will not be addressed as issues of special focus in the next few years. Both the State and OCZM will hold annual review of the FCMP's objectives and accomplishment and this review may result in additions or changes to the programs priorities.

H. Comment:
The IMC cannot provide assurances that recommendations for port planning will be implemented. County government planning departments and ports within counties should be provided funds to develop long-range spoil disposal plans. Many ports have central disposal sites that are rapidly being filled to

capacity. Many low areas exist that can legitimately receive fill because they are outside of the wetland boundaries. These areas are often filled when they are developed. County planning officials working with local ports and developers could coordinate developers' needs for fill and ports' needs for spoil disposal sites after maintenance dredging.

Response:
The Florida legislature, in the recent 1981 legislative session, passed CS/HB 490 which addresses a broad range of port development concerns related to the maintenance of existing deepwater navigation channels. This bill, refered to as the "Ports Bill", provides 1) that DER develop standards and criteria for waters used for deepwater shipping and where necessary develop a separate water quality classification for such waters, 2) that DER establish a permit system for the performance, for up to 25 years, of maintenance dredging for port facilities, and 3) directs that a priority acquisition and improvement program for spoil disposal sites, to be acquired by the State using interest from the Florida Coastal Protection Trust Fund, be developed by DNR; DER and the Ports. A sizable portion of the first year Section 306 grant will be used to implement the provisions of this bill, the text of which is included in the addendum of this document.

I. Comment:
Some areas of the counties, interior forested wetlands and low areas should be preserved as catch basins for urban and storm water runoff. Preservation of certain strategic areas can often save counties significant amounts of tax revenues that must otherwise be used to construct expensive cement storm reservoirs when interior wetland areas have all been filled and thus lose their ability to retain storm water.

Response:
See discussion in Part II, Section 2.B.5. The State of Florida finds validity in the concept presented above and will be working toward this type of response in its "Issues of Special Focus: Estuaries".

J. Comment:
There should be a discussion regarding the advisability of developing existing deep-water ports to their fullest before dredging new deep-water channels which are, in many instances, environmentally damaging and difficult to maintain. The port at Fort Pierce is an example where this policy might benefit the State and the Nation as a whole. Such a policy would help preserve the habitat, commercial fishery, tourist, and aesthetic values of that part of the Indian River, which is one of most outstanding natural estuarine lagoons in the United States.

Response:
Florida will work to assist existing deepwater ports in maintaining their existing channels through the implementation of CS/HB 490 (see response 10H).

K. Comment:
The deep Floridan aquifer is being used for disposal of fairly large quantities of industrial waste waters and sewage treatment plant effluent. Consideration of the use of water from the deep Floridan aquifer for powerplant cooling should include an assessment of the compatibility of the two uses, which in some situations could result in the release of previously disposed wastewaters to the human environment.

Response:
The characteristics of deep aquifer conditions will definitely be considered in pursuing any strategies for use of these areas under the FCMP.

L. Comment:
The State, by limiting the onshore area that is subject to consistency to the coastal counties, has apparently exempted Federal activities in the interior counties from review for consistency concurrence. This matter must be clarified on P. II-321.

Response:
The text of Part II, Section 2.H., Federal Consistency, has been amended to clarify the manner in which Federal projects and activities will be reviewed in both coastal and interior counties. Text has been added to clarify that Federal activities and development projects and Federal assistance projects which affect coastal waters and adjacent shorelands are reviewable on a statewide basis with no distinction between coastal and interior counties. Also see generic response 4.

M. Comment:
P. II-327, Table 18, Items 11 and 12 are somewhat misleading. Many OCS oil and gas related permits are described in detail in OCS plans. These plans will be reviewed for consistency by the State, but the individual permits described in the plans are not subject to review for consistency on an individual basis. Although the text acknowledges this, Table 18 should be modified to make it consistent with the text.

Response:
OCZM disagrees. Pursuant to subsection 307(c)(3)(B) of the CZMA, each OCS plan which contains activities which affect the coastal zone of a State with an approved CZMP must be accompanied by a certification that each such activity complies with the State's approved program. No Federal license or permit shall be granted for any such activity described in detail in the OCS plan until each State affected concurs with the certification. The procedure for State agency concurrence or objection is set forth in 15 C.F.R 930.79. Subpart(c) of that regulation provides that individual Federal licenses or permits described in detail in OCS plans may be the subject of an objection by the State.

N. Comment:
The word "as" in the first line of the consistency certification statement in the 2nd full paragraph on p. 330 quoted from 15 CFR 930.76(c) should be deleted. on p. II-330, 3rd full paragraph, 2nd line, the phrase, ". . . consistency certification plan . . .," should be changed to ". . . consistency certification, plan . . . . ".

Response:
Comment accepted; these typographical errors have been corrected.

O. Comment:
As indicated on p. II-10, Florida has proposed that the entire State be included within its coastal zone boundary. However, the State further proposed, for the purposes of Federal consistency, that the coastal zone boundary be limited to the coastal counties. The precise meaning of the latter proposal, with respect to the State consistency concurrence review process, requires clarification. Has the State decided that no Federal activities in the interior counties of the State affect any land use of any water use in the coastal zone? If so, a declaration of this nature must be made and clearly presented in the final document before Federal agencies can be certain that Federal activities on public lands in the interior counties are not subject to the Federal consistency procedures.

Response:
See response to comment 10 (L) above.

P. Comment:
The program should discuss what the designation of the Florida Keys as an area of critical concern by the legislature means. How has this controlled development, reduced wetland loss, managed water shortages or addressed other critical land and water management issues in the Keys?

Response:
Due to the length of the document and the fact that numerous other documents have provided such discussion, the Program does not discuss the experience with the Florida Keys as an Area of Critical State Concern. Although it is difficult to disaggregate the effects of the ACSC program from other state programs that affect the Florida Keys, e.g. water quality permitting under Chapter 403 F.S., it is generally agreed that these programs have stabilized development in the Keys and had a significant positive effect on the problems identified in the comment.

Q. Comment:
A draft MOU between DNR, DVCA and DER (page II-264) states that the FCMP will provide funding to DNR to assist in the development of aquatic preserve management plans and rules (page II-268). This is a worthwhile and legitimate investment of FCMP funds and resources. A vehicle should be developed for the input and consideration of Federal concerns where those interests could be affected. Federal agencies will comply with aquatic preserve management plans and rules through the Federal consistency provisions to the degree their activities directly affect the coastal zone of Florida.

The concerns, objectives, regulatory programs, and affected programs of Federal marine resource, wetland and water quality agencies should be given full and equal consideration prior to adoption of any final management plans and rules. A State-Federal aquatic preserves review committee should be considered as a part of the FCMP. All interested Federal coastal and marine resources agencies should be provided draft copies of all aquatic preserve management plan proposals and proposed rules, and comments from interested Federal agencies be solicited by DNR and DER prior to final adoption of any plans.

Response:
OCZM and Florida agree. Florida is committed to the concept that Federal agencies should be provided an opportunity to participate in the development of management plans and rules for aquatic preserves. Chapter 16Q-20 of the F.A.C. specifically requires coordination with Federal and state agencies concerning aquatic preserves.

R. Comment:
The description on pp. IV-3-4 of important aquifers of Florida is too oversimplified to be meaningful. The description should mention the hydrology and water-quality distinctions of the upper and lower zones of the Floridan aquifer, indicating any separating aquifers which may be significant at least locally in determining the respective impacts of their use and protection. It should mention any other aquifers that may be significant. The designation of the important Biscayne aquifer as a sole source aquifer should be significant in coastal zone management. The sand and gravel aquifer of northwest Florida also extends into the coastal zone.

Response:
The section of the text in question pertains to the "affected environment" section of the EIS portion of the document. This section is not intended to provide detailed technical data of the type used in making regulatory and planning decisions.

S. Comment:
Chapter 163 F.S. has been deleted from the program. This law addresses intergovernmental programs and contains within it a unique piece of State legislation popularly know as the Local Government Comprehensive Planning Act of 1975 (LGCPA). The act contains within it Section (163.3177(6), (9)) that is of interest because it requires coastal counties and municipalities to develop local coastal management elements as part of their comprehensive plans. As a result of Chapter 163, a large number of Florida coastal counties and municipalities have formulated and adopted such plans, including coastal management elements. This recognition, at the local level, of coastal resources management is a commendable and valuable asset to multi-agency resource planning for a variety of major projects potentially affecting coastal resources. Such local resource planning stimulates local awareness of resource values and establishes a desirable political environment for project planning where Federal, State and local government agencies are involved. Coastal resources planning generally involves Federal, State and local governments. Therefore, the FCMP should be modified to include provisions for local government coastal zone planning by appropriate inclusion of the Local Government Comprehensive Planning Act of 1975, Chapter 163 F.S. It is worth noting that Chapter 288 F.S. (Commercial Development and Capital Improvements) is apparently included as part of the FCMP. Section 288.505 of that chapter calls for local government approval of any proposed project. Projects must be in compliance with ". . . any local development ordiances, including, but not limited to, the local government comprehensive plans . . . ." Based on the above, it seems that the case for inclusion of Chapter 163 F.S. in the FCMP is quite strong.

Response:
Chapter 163 F.S. has been deleted because it does not provide for a uniform system of local participation in the FCMP when read in conjunction with Chapter 380 F.S. Section 380.24 F.S. requires coastal units of local government to develop a coastal zone protection element as part of their local comprehensive plans developed pursuant to 163.3177 F.S. Such units of local government are eligible for technical and financial assistance from the State for the development of their coastal zone protection elements. However, 380.24 F.S. also provides that "[l]ocal government participation in the coastal management program authorized by this Act shall be voluntary." (emphasis added). Voluntary local participation in the State program does not provide the basis for the statewide enforceable authorities as required by the CZMA and OCZM regulations for program approval (see 15 C.F.R. 923.42). Similarly, Chapter 163 F.S. does not provide a means of complying with this section of OCZM's regulations. Therefore, Florida has chosen to administer the FCMP at the state government level in accordance with Section 306(e)(1)(B) of the CZMA and 15 C.F.R. 923.43, with the exception of some state permitting responsibilities e.g., coastal construction control line permitting, (Chapter 161 F.S.) which may be delegated to local governments pursuant to State law.

T. Comment:
Has the existence of unconfined fresh water in barrier islands, beaches, and dunes been considered in the assessment of impacts of development (p. II-189191)? (See, for example: Urish, Daniel W., 1981, Fresh Water in a Barrier Beach: Maritimes, U. of Rhode Island: vol. 25, no. 1, p. 1-3)

Response:
This factor is often considered in barrier island planning and management. For example, this phenomenon was considered in the development of the Sanibel Island Plan.

U. Comment:
We recommend deleting any mention of an IPP State Technical Working Group Committee on page II-218, last paragraph. Current IPP policy is not to form State Technical Working Groups (STWG's) after commercial discoveries but to continue to work with the Regional Technical Working Groups.

Response:
It is Florida's understanding that the DOI has not formalized its decision to eliminate the STWG's. The State anticipates working with DOI in the development of necessary coordination mechanisms.

State, Regional & Local Agencies

11. STATE DEPARTMENT OF COMMERCE
Leonard T. Elzie
Division of Economic Development

A. Comment:
The Department of Commerce supports the implementation of the FCMP and hopes that Federal funds will be available for the project.

Response:
No response necessary.

B. Comment:
The Federal consistency provisions have the potential for creating additional procedural steps in gaining project approval. The Department takes seriously the pledge made on page V-14 that the program will bring about earlier and more effective consultation with Federal agencies.

Response:
No response necessary.

C. Comment:
Directing new development to compatible geographic areas is sensible and desirable. This must be done carefully so it does not influence the location of future development to impede job-creating projects which meet all State permitting requirements which may not meet the guidelines in the DEIS. For example, would the FCMP oppose a proposed manufacturing establishment in a predominantly rural North Florida county, which offered the prospect of needed permanent jobs, had met all permitting requirements and yet was to be located away from any existing development?

Response:
OCZM and the State of Florida agree with the first two sentences of the comment. The policies that will be used to review projects are limited to those which are enforcable under state law.

D. Comment:
MOU's and joint resolutions produced by the FCMP will have a substantial effect on the direction and impact of the program. All members of the IMC must be given adequate opportunity to comment on draft MOU's and joint resolutions regardless of which agency is a party to such agreements.

Response:
OCZM and the State of Florida agree.

E. Comment:
The distinction between project priority 1 and project priority 2 on page II-287 is unclear. Does priority 1 concern regulatory projects and priority 2 concern non-regulatory projects? Would projects dealing with the issues of special focus be included in priority 1, priority 2 or both? Are the project lists under "a" and "b" inclusive lists or merely examples?

Response:
The distinction between priority 1 and 2 projects is not based on regulatory issues. The projects dealing with issues of special focus are included in priority 1 and 2. Lists "a" and "b" are examples.

F. Comment:
The draft MOU on pages II-261 through II-271 appears to make substantial financial commitments to certain state programs. What is the relationship of such funding intentions to the formal procedure for State agency application for Federal funds (pp. II-280 through II-290 and Addendum J)?

Response:
The MOU identifies general areas requiring state agency work efforts. Specific tasks to be funded with Federal funds will be developed in accordance with the procedures in Addendum J: The CMP Funding Rule.

G. Comment:
There should be reference to the fact that certain coastal, yet predominately rural, Florida counties have per capita income levels among the lowest in the State: Citrus, Dixie, Franklin, Jefferson, Nassau, Wakulla, and Walton counties. With the exception of Citrus County, these counties feature neither a dependency on tourism nor a large population of retirees. Perhaps their economic problems could be addressed briefly in the DEIS.

Response:
Comment accepted. See revisions to Section 1: Introduction.

12. BREVARD COUNTY BOARD OF COMMISSIONERS
Robert A. Day, Biologist
Environmental Engineering
Merritt Island, Florida

A. Comment:
While the statutes and rules are quite good in their specific areas of jurisdiction, in many ways their scope is limited, affording little or no protection to many important areas of the coastal zone. All of the agencies responsible for enforcing the statutes and regulations are severely under staffed resulting in minor violations being ignored while many settlements of larger violations compromise environmental integrity.

Response:
See Generic Response 1. Federal Section 306 program implementation funds may be used to improve state agency monitoring and enforcement.

B. Comment:
The recommendations in the "Issues of Special Focus" section must be heeded in a timely manner with appropriate statutes and rules developed to implement these recommendations along with adequate field staff.

Response:
See Generic Responses 1 and 2.

13. BROWARD COUNTY PLANNING COUNCIL
Willard W. Wilson, Administrator
Fort Lauderdale, Florida

A. Comment:
The staff evaluation of this proposal is that the FCMP appears to be consistent with the Council's efforts.

Response:
No response necessary.

14. BROWARD SOIL AND WATER CONSERVATION DISTRICT
Collins Forman
Davie, Florida

A. Comment:
The District has been involved in the conservation of soil and water resources and various projects to reduce erosion due to wind and water and by human traffic. Because of this long history of involvement, the District should be included in the coastal zone management plan or as a recipient of any grant monies which might be available.

Response:
Chapter 582, F.S., Soil and Water Conservation, is included in the FCMP. The soil and water conservation coordinator, Soil and Water Conservation, Gainsville, Florida is a member of the Coastal Management Interagency Advisory Committee and will be involved in the discussions on implementating the FCMP.

15. CITY OF FORT LAUDERDALE
Jan Mink
Public Hearing Statement, 3/30/81

A. Comment:
There appears to be a bias against marinas in the State's existing rules and regulations. The recommendations for marinas do not provide for trade-offs between economic and environmental factors.

Response:
See the discussion under Issues of Special Focus section on Marina Siting. The IMC will address this issue and develop any necessary legislation to facilitate systematic balancing of environmental and economic factors on the permitting process.

B. Comment:
According to an April 1980 article by the Corps of Engineers' Jacksonville District Engineer, they are unable to do their Federally mandated work (maintenance dredging) because of delays caused by State permit review.

Response:
The FCMP addresses maintenance dredging in Section II.B.5. The DER, DNR, and the U.S. Army Corps of Engineers have established a joint permit application. Within 30 days of receipt of a permit application, the DER

must notify the applicant as to application completeness. The DER has 90 days after this to issue or deny a permit. Failure of the DER to act within the 90 days results in the issuance of a default permit.

16. EAST CENTRAL FLORIDA REGIONAL PLANNING COUNCIL
Cliff Guillet, Executive Director
Winter Park, Florida

A. Comment:
The Council strongly endorses the program and supports its approval. The program identifies resources, develops policies to manage these resources and identifies uses and geographic areas.

Response:
No response necessary.

B. Comment:
The program sets out a framework within which short-term economic benefits can be balanced with long-term resource productivity.

Response:
No response necessary.

17. NORTH CENTRAL FLORIDA REGIONAL PLANNING COUNCIL
Jeanne Martel, Program Review Coordinator
Gainesville, Florida

A. Comment:
The Clearinghouse Committee reviewed the document on March 1, 1981 and concurred with the findings based on an earlier review of the Plan.

Response:
No response necessary.

18. NORTHEAST FLORIDA REGIONAL PLANNING COUNCIL
R. Daniel Castle, AICP, Executive Director
Jacksonville, Florida

A. Comment:
The Interagency Management Committee should assume the role of settling disagreements concerning coastal resource management that arise between local, State and Federal agencies.

Response:
The role of the IMC will include the means to improve coordination and resolve conflicts that have arisen among state agencies. The issue of resolution of conficts is addressed in Section II-D. The IMC's responsibilities as explained in Section II-E, include making recommendations to the Governor including new legislation, MOU's, and rulemaking.

B. Comment:
A statewide ownership survey of submerged lands should be included as a priority item in the coastal management program.

Response:
The FCMP recognizes that the identification of state submerged lands in the most valuable coastal areas, i.e., aquatic preserves, is a priority item. This will be addressed in the first year of program implementation.

19. NORTHWEST FLORIDA WATER MANAGEMENT DISTRICT
Rick McWilliams, Director
Division of Program Development
Havana, Florida

A. Comment:
The Plan was well received by the District staff.

Response:
No response necessary.

20. PASCO COUNTY, FLORIDA
Richard W. Radacky, Administrator - Environmental Control

A. Comment:
The program is consistent with the CZMA. It should be approved and implemented without delay.

Response:
No response necessary.

B. Comment:
Interface down to and including the county, municipal, and citizen at large level must be a mandate of the program.

Response:
See Generic Response 3.

C. Comment:
While existing environmental regulations among the many State agencies serve as a vital control on activities with environmental impact, the approach and goal of the program should be for long-term coordinated preservation of
natural resources in easily definable ecological zones.

Response:
The principle goals of the FCMP are to balance economic and preservation goals to the long-term benefit of the State.

D. Comment:
Guidelines of the Federal government under Section 306 of the CZMA should be used for the minimum standard to be achieved by the lowest level of governmental activity.

Response:
OCZM's Program Approval Regulations provide guidance to the participating State as to how they should develop a program to manage their coastal resources in order to obtain Federal approval. Local governments in Florida will have roles in implementing existing statutes upon which the program is based, when such roles are clearly provided under State law.

21. PINELLAS COUNTY
Fred E. Marquis
County Administrator

Comment:
Pinellas County looks forward to the finalization and implementation of the Coastal Management Program as a means of protecting its extensive, ecologicallysignificant coastlines.

Response:
No response necessary.

22. SOUTHWEST FLORIDA REGIONAL PLANNING COUNCIL
Roland H. Eastwood, Executive Director
Fort Myers, Florida 33901

Comment:
It is recommended that the FCMP be considered consistent with adopted regional plans, programs, and development goals, objectives, and policies.

Response:
No response necessary.

23. ST. JOHN RIVER WATER MANAGEMENT DISTRICT
E.D. Vergara, Executive Director
Palatka, Florida

A. Comment:
The document is well written and adequate.

Response:
No response necessary.

B. Comment:
Many coastal aquatic systems in Florida are more properly described as lagoons, e.g., Banana River, Indian River and Mosquito Lagoon. They are lagoons rather than estuaries due to their lack of appreciable dilution of salinity by freshwater runoff and lack of natural connection with the sea. A definition of lagoons should be included in the document and the same protection measures be applied as given the estuaries.

Response:
Lagoons are technically a type of estuary. The lack of a specific definition of lagoons does not signify that the program will not address their protection.

24. TAMPA BAY REGIONAL PLANNING COUNCIL
Roger B. Anderson
Public Hearing Statement, 3/31/81

A. Comment:
The IMC should not be more concerned with development than with preservation.

Response:
The IMC is committed to finding a balance between development and preservation.

B. Comment:
Before the IMC makes decisions it should coordinate with municipalities, counties and regional agencies.

Response:
A state Coastal Resources Advisory Committee comprised of approximately fifteen persons representing government, industry and environmental interests will make recommendations to the Governor and IMC. See Generic Response 4.

C. Comment:
The management of aquatic preserves issue should reflect local concerns as well as state concerns.

Response:
The Coastal Program will assist the DNR in developing aquatic preserves management systems. As provided under Chapter 258 F.S. and the Aquatic Preserves Rule (Ch.16 Q-20), local governments will play a key role in the development and implementation of Aquatic Preserve Management Plans.

25. VOLUSIA COUNTY
Councilwoman Alice Cycler
Public Hearing Statement

A. Comment:
The program appears to be more of a State-wide land use plan than a coastal zone management plan. The legislative intent has been expanded to meet the interests of the staff.

Response:
OCZM and Florida disagree with this statement. The FCMP is a comprehensive management plan for coastal land and water use activities. The plan consists of numerous policies on diverse management issues which are administered under various existing state laws as mandated by the Florida Coastal Management Act of 1978 and is the culmination of several years of program development.

B. Comment:
What will it cost the Florida taxpayers to implement this plan? How much will Volusia County receive (in terms of dollars)?

Response:
The State will receive a first year 306 grant of $2.5 million dollars from the Federal Government and the State will contribute $625,000. Volusia County is eligible to receive funding under this program as per the CMP Funding Rule (see Addendum of this document) established pursuant to the Florida CMA of 1978.

C. Comment:
The State and Federal government ties the hands of counties with restrictions and regulations. Is the State going to override the County Council? How will this effect the local land use plan? How will this affect the rights of individual property owners?

Response:
Approval of this program, which is based on existing state laws and rules and will not result in an alteration of the existing legal relationships between the State and local government and will not change the existing rights of property owners.

26. VOLUSIA COUNTY ENVIRONMENTAL COUNCIL
R. P. Haviland
Public Hearing Statement, 4/2/81

A. Comment:
The document needs to address the relationship between man's machines and the coastal area, i.e., cars on the beach, motor boats in bird sanctuaries, and air boats in the everglades.

Response:
It is hoped that through increased public awareness as provided for by the FCMP these issues will be addressed.

B. Comment:
Flood insurance subsidies for building in hazard areas should be addressed by the program. Insurance money paid for flood damage should not be paid for rebuilding structures in hazard areas.

Response:
See discussion in Section II-D.3: Coastal Storms: Hazard Protection Issues.

27. WEST FLORIDA REGIONAL PLANNING COUNCIL
D.T. Raynor, 208 Project Director
Pensacola, Florida

A. Comment:
There is not enough emphasis on public involvement and implementation strategy.

Response:
See Generic Response 3.

B. Comment:
A discussion of who will be responsible for prioritizing recommendations listed in the document is necessary.

Response:
DER and the IMC, with the assistance of the state Coastal Resources Advisory Committee, are responsible for ranking recommendations.

C. Comment:
How will the recommendations on pages II-188, II-189, II-193 and II-194 be implemented?

Response:
See Generic Response 2.

D. Comment:
The document should discuss the proposed funding and staffing levels for program implementation.

Response:
See response 24(b) above concerning funding. Exact staffing levels will be established prior to Federal approval of the FCMP.

E. Comment:
The document should explain the public participation procedures as well as an explanation of the role of the Coastal Zone Management Citizens Advisory Committee.

Response:
See Generic Response 3.

Interest Groups

28. COASTLINE GROWERS
Paul Eaton
Public Hearing Statement, 4/2/81

Comment:
There is a major erosion problem that can be solved by planting dune vegetation on the beach.

Response:
The DNR Division of Marine Resources, which is responsible for administering, coordinating, and enforcing the State's program related to beach shore erosion as described in Chapter 370.02 F.S., is considering such solutions to the erosion problem.

29. COUNCIL OF ASSOCIATIONS OF NORTH PENINSULA
Leonard Wirsig
Public Hearing Statement, 4/2/81

A. Comment:
The barrier island section of the program is commendable, it should be required reading for local officials. It is smaller than the hearing draft. What was left out?

Response:
There have been no textual alterations to this section; the less lengthy appearance is due to a change in format.

B. Comment:
The Council submitted a proposal for government acquisition of barrier island property in Volusia County for the record.

Response:
Section 306 program implementation funds cannot be used for the acquisition of land.

30. ECOSHORES, INC.
Robert R. Bullard
Public Hearing Statement, 4/2/81

A. Comment:
The legislature threw out the original program after 100,000-200,000 person-hours of voluntary time, due to pressure from special interest groups.

Response:
The program that is now being reviewed is a culmination of several years of program development. Although the program has been extensively rewritten, the State has benefited greatly from the time spent by interested citizens throughout the process.

B. Comment:
Recent coastal construction building code guidelines could be a cornerstone in enforcement of the coastal construction control line program but it has been turned over to the local government because of special interest group pressure.

Response:
The delegation of the Chapter 161 permit program includes the development of building codes and zoning ordinances which must be approved by the State. This procedure provides adequate State agency review of local control line programs.

C. Comment:
The document is too general.

Response:
The State of Florida and OCZM have made every effort to make this document comprehensive, yet easy to read for all interested parties. More detailed information on the program's laws, regulations, and MOUs is found in the appendices.

31. ENVIRONMENTAL COUNCIL OF VOLUSIA COUNTY
Steve Hartman
Public Hearing Statement, 4/2/81

A. Comment:
Previous comments on hearing draft have been responded to on barrier islands but concerns about artificial reefs have not resulted in these areas being designated as an issue of special concern. Artificial reefs will probably replace in acreage our natural coral reefs over the next 20-30 years.

Response:
An artificial reef program has been developed by DNR with the assistance of the Sea Grant Program. The FCMP addresses artificial reefs in the Commercial and Recreational Fisheries Issue of Special Focus.

B. Comment:
Florida needs to take a hard look at developing a program independent of the Federal government.

Response:
This option always has been available but the State believes benefits of Federal involvement, e.g., Federal consistency, and financial support, are important to the State.

C. Comment:
The program says barrier islands need to be identified. How can the program work if barrier islands haven't been identified?

Response:
The first step in developing an approach to the wise use and protection of our barrier islands involves an identification of these areas and an

inventory of their characteristics. This may be undertaken during the first year of
program implementation.

D. Comment:
75% of the Federal funds should be spent on enforcing existing laws.

Response:
Enforcement of existing Florida statutes is a priority issue which the State is committed to address in the first year grant application for implementation funds.

E. Comment:
The loss of fish is the biggest concern in the coastal zone. Tourism and life styles depend on fish population. The decline of fish is related to increased growth of development and people in this area, development of estuaries, runoff, etc. Maintaining fish population should be an issue of special focus.

Response:
Maintaining the fish population is part of the Issues of Special Focus entitled "Commercial and Recreational Fisheries". In addition, fishery habitat is also discussed in the Estuaries Issues Section.

F. Comment:
The program will not survive unless there are Federal dollars to enforce it.

Response:
Federal dollars will assist in institutionalizing the FCMP.

G. Comment:
The document was not distributed in a timely fashion.

Response:
OCZM distributed this document pursuant to procedures established by the National Environmental Policy Act.

32. FLORIDA AUDUBON SOCIETY
Muriel Wagner for Shirley Gaedy
Public Hearing Statement, 4/1/81

A. Comment:
MOU's used for program implementation are easily changed, changing the thrust of the program.

Response:
Any changes must be agreed to by signatory agencies, the IMC and OCZM. OCZM's experience in other states with similar coastal programs does not indicate that the MOUs are easily changed. (See Generic Response 1.)

B. Comment:
There is a need for a commitment by the Legislature on the CZM program.

Response:
The Legislature has provided a mandate for the program through the Florida Coastal Management Act of 1978, and has provided funding on a yearly basis to develop the program. Based on these facts, OCZM feels that the Legislature is committed to the program.

C. Comment:
Some authorities are ambiguous.

Response:
There are several State laws and programs which are involved in any single coastal issue. The primary goal of the FCMP will be to provide more consistent decisions and compatibility among the management and regulatory programs.

D. Comment:
Estuarine beach setback areas are needed.

Response:
Florida agrees that this is an issue which may need legislation in the future. Please refer to the Issues of Special Focus: Barrier Islands, Beaches and Dunes.

E. Comment:
Flood regulations should be stronger.

Response:
Stronger flood regulations would require new statutory authority. The program has and will continue to address hazard mitigation through existing authorities as a major program effort.

F. Comment:
The program should address county variance policies. Some counties have more variances than others.

Response:
See Issues of Special Focus: Barrier Islands, Beaches and Dunes, for a discussion related to reviewing variances on a consistent basis.

G. Comment:
Why is "once-through" cooling allowed for power plants? Cogeneration should be considered.

Response:
"Once-through" cooling is an acceptable method only if design and siting concerns meet state standards for power plants. The effects of this technology are managed under rules and practices established under Chapters 23 and 403 F.S..

H. Comment:
More attention should be given to energy in the program.

Response:
The focus of the program is to manage coastal resources. The discussion of energy facility planning in Part II, Section 2.I meets the requirements for program approval found in 15 C.F.R. 923.13.

I. Comment:
Barrier islands should not be allowed to disappear under development. There should be a more aggressive program for dealing with local plans, especially for barrier islands.

Response:
A major effort of the program relates to barrier islands. Please refer to the Issues of Special Focus Section of the document. Also see Response 30.C.

J. Comment:
There should be refinement of the public awareness and participation process for nomination and selection of aquatic preserves, wilderness areas, and environmentally endangered lands.

Response:
There are processes for public participation in all three of these areas as explained in Part II, Section 2-C. Aquatic preserves will be a special area of work during the first year of program implementation.

K. Comment:
The coastal program could help in consolidating information on all regulatory activities for the program.

Response:
OCZM agrees and believes that the FCMP has begun, through this document, to consolidate this information.

L. Comment:
The Coastal Advisory Committee (CAC) should include more than government appointees. Regional groups need to be involved.

Response:
Representatives of regional bodies and local governments will sit on the State CAC. The DER, with the assistance of coastal regional planning councils may also reestablish the Regional Coastal Advisory Committees.

M. Comment:
All recommendations in the program should be summarized on one page.

Response:
Due to the scope and detail of the recommendations included in the program OCZM does not believe that it is useful to summarize them on one page.

N. Comment:
There should be new legislation to overcome the existing fragmented legislation.

Response:
The Florida Coastal Management Act of 1978 addresses this issue. It states that the FCMP must be created from existing statutory authority without the creation of any new regulatory authority. The State has

established the IMC as a mechanism to solve complex coastal problems by increasing joint efforts between agencies through a collegial body of agency heads.

33. FLORIDA ENGINEERING SOCIETY
Gerald M. Ward
Public Hearing Statement, 3/30/81

A. Comment:
Why is the State of Florida proceeding with Federal approval of the program if Federal assistance is being terminated?

Response:
OCZM, upon approval of the FCMP, intends to provide a first year Section 306 grant of $2.5 million to the State to assist in the implementation of this program. Congress has recently provided $ 33 million to be used in FY 82 and FY 83 for the purposes of funding approved coastal management programs; the priority use of such funds will be to assist the institutionalization of recently approved programs. Approval of the FCMP will also continue the State's eligibility to receive Coastal Energy Impact Funds under §308 of the CZMA. Aside from financial assistance, Federal approval will provide the State of Florida with the authority to implement the Federal consistency provisions of Section 307 of the CZMA.

B. Comment:
The application of Federal consistency to all of the laws attached to the program may inhibit development and lead to different interpretations of laws by various State agencies.

Response:
OCZM and Florida disagree that such results will occur. The Florida Coastal Management Act of 1978 mandated a program based on existing laws. The laws incorporated into the program include both development and environmentally oriented statutes, and these laws shall provide the basis of consistency decisions. The bulk of consistency decisions are straight-forward since the FCMA requires issuance of a Federal consistency certification upon issuance of all relevant State permits.

C. Comment:
The Florida legislature intended the coastal zone to be only those areas of marine species of vegetation listed by rule, Chapter 403.817, not the entire state.

Response:
See Generic Response 4.

D. Comment:
The list of excluded Federal lands on page II-298 is incorrect.

Response:
Changes have been made to this list according to comments received during the DEIS comment period.

E. Comment:
The document is too long (429 pages plus), and is in violation of NOAA regulations (1502.21). Section 1502.21 states that legal appendices should not recite and summarize existing laws.

Response:
The document is not too long because it contains both the environmental impact statement and the Florida Coastal Management Program, to which is appended a second volume containing the applicable State laws and regulations. The CEQ regulations to which you refer regulate only the length of environmental impact statements and the relevant portions of this document are well within the established length limits.

34. FLORIDA INSTITUTE OF TECHNOLOGY
Maylo Murday
Public Hearings Statement, 4/2/81

A. Comment:
The U.S. has made major developments in coastal management and has advised foreign nations in coastal zone management. It is strange that there is no comprehensive approach in Florida.

Response:
OCZM and the State of Florida disagree. The Florida CMP is a comprehensive management program for coastal land and water use activities.

B. Comment:
Counties and cities should work together to address coastal problems that they cannot solve alone.

Response:
Regional Planning Councils (RPC's) must develop and adopt comprehensive regional policy plans consistent with Chapters 373 and 403, F.S. The RPC's will be involved in the implementation of the FCMP based on Chapters 160 and 380, F.S. Each Coastal Advisory Committee will have local government representation.

C. Comment:
A book should be prepared explaining the scientific and administrative steps needed to construct a seawall, site sewage systems, etc. for laymen.

Response:
Florida will consider your suggestion.

D. Comment:
The public hearing format should allow time for questions and detailed explanations of the program. How can more people be brought together to discuss the program?

Response:
The public hearing format is in accordance with Federal regulations on workshops and hearings. Please refer to the section on Public Participation and Citizen Involvement. Also see Generic Response 3.

35. FLORIDA INSTITUTE OF TECHNOLOGY
Bruce N. Shibles
Public Hearing Statement

A. Comment:
Each local community was supposed to have a comprehensive land plan by mid-1979. Many areas have not started their plans. Is the Coastal Zone Program superceeding these requirements?

Response:
No. Adoption of the FCMP will not mean that the State will supercede local land use plans developed pursuant to Chapter 163 F.S.. Also see comment 10(s).

B. Comment:
A discussion of the maximum amount of development that will be allowed in an enclosed sanctuary should be included.

Response:
Such a discussion is included in the section on Issues of Special Focus: Estuaries.

C. Comment:
The only alternatives discussed were denial or approval of the program. Other alternatives should be discussed, i.e., new laws, and other types of agency coordination.

Response:
Throughout the development of the FCMP a variety of alternatives to specific elements of the program were considered. Input was received from involved local, state and Federal agencies and other interest groups. The record of the process of reviewing substantive alternatives which were considered consists of thousands of pages and any attempt of this EIS to consider all policy and programmatic alternatives would cause unnecessary bulk and delays in the EIS process. As a result of what is now termed the scoping process under NEPA, OCZM has tried to identify the major issues discussed during the Florida public review process. This review included publication of a state hearing document which was distributed for public review and comment in August 1980, and seven public workshops which were held in September 1980. OCZM's alternatives to approval are to delay or deny approval for a number of reasons. These are limited to those identified in the review process and those that OCZM feels are potentially valid reasons according to OCZM regulations.

D. Comment:
The recommendations say that the state "should" do certain things. How will these recommendations be enforced?

Response:
See Generic Response 2.

36. FLORIDA KEYS AND WEST COAST SEAFOOD
Jim Moriarty
Key Largo, Florida

A. Comment:
The document does not adequately address the Florida Keys. The Keys are 120 miles long with 500 miles of shoreline and there wasn't even a public hearing held there.

Response:
The Florida Program has worked extensively with the Keys. See Part II, Section 2-E-2 through 4. Hearings were held in 5 cities in Florida, including Miami. OCZM gave adequate opportunity to citizens to comment on the draft program during the 45 day review period.

B. Comment:
There should be daily air photos taken of the Keys so that anyone destroying the government-owned shoreline could be stopped at once.

Response:
This would be an expensive activity to be undertaken. However, your recommendation will be considered and perhaps modified.

37. FLORIDA PETROLEUM COUNCIL
Chris L. Jensen
Public Hearing Statement

A. Comment:
The attention paid to the concerns of industry is appreciated as is the expansion of the narrative to clarify other issues.

Response:
No response necessary.

B. Comment:
The petroleum industry looks forward to participating in the continuing development of the program.

Response:
No response necessary.

38. GULF POWER COMPANY
Vicky Douglas
Public Hearing Statement, 4/1/81

A. Comment:
The program should be approved.

Response:
No response necessary.

B. Comment:
How will the program affect the Gulf Power Company?

Response:
Activities of the Gulf Power Company which cause a direct and significant impact on coastal waters will be subject to regulation under the same set of regulatory authorities now governing the Company's activities. These authorities will, however, be exercised in a manner coordinated to advance the goals of coastal zone management through the FCMP.

C. Comment:
What force do the recommendations have?

Response:
They are recommended courses of action and will be reviewed by the IMC and proposed to the Governor for implementation through work tasks undertaken by state agencies, MOUs, or new statutes.

39. HILLSBOROUGH ENVIRONMENTAL COALITION
Keith Wold, FCMP Oversight Coordinator
Tampa, Florida

A. Comment:
The Coalition supports the FCMP. The forward reaching policies of the program must be implemented.

Response:
No response necessary.

B. Comment:
Citizen participation must continue into the implementation phase of the program.

Response:
See Generic Response 3.

C. Comment:
Governor Graham recently proposed that water quality and waste management receive a high budget priority. The Coalition is concerned that the rest of the FCMP be adequately funded.

Response:
DER and the Governor are working with the Legislature to insure adequate funding of all of the FCMP.

D. Comment:
The glossary should be expanded to make the technical language of the program easily understood by the first-time reader. Statutory and regulatory definitions should be included in the glossary with the source of the definition indicated, as well as a notation indicating the page in the text where the definition may be found.

Response:
The glossary is intended to be a "general" reference of terms common to coastal management. The DEIS is not a technical text on coastal management, rather a document emphasizing the proposed organization and objectives of the State coastal program.

E. Comment:
Longshore drift is primarily responsible for the deposition of sediment parallel to the shore. The interaction of the forces of accretion and erosion to form barrier islands needs to be discussed in the definition as well as, a description of the types of depositional environments in which barrier islands occur. Further, a definition of island should also be included.

Response:
New language has been added to the discussion of barrier islands in the issues of Special Focus section of the document. OCZM and Florida do not believe that a definition of an island is needed.

F. Comment:
A definition of deltaic environment needs to be included. Since both deltas and estuaries occur in the tidal zone, the term tidal zone requir definition.

Response:
See Response (5) D. above.

G. Comment:
How are the impacts of onshore facilities to support offshore oil and gas development (i.e., schools and housing) accounted for in the FCMP?

Response:
As described in Part I, approval of the FCMP will maintain the State's eligibility to receive Federal funds under the Coastal Energy Impact Program. Further, as outlined in the MOU between DER and DVCA (addendum, L-1), the coastal program staff will participate in the development of CEIP projects.

H. Comment:
At least two elements in the consideration of "public interest" are missing: (1) the evaluation of all available alternatives; and, (2) an evaluation of the local, regional, state, national, and international impacts.

Response:
OCZM and Florida believe that the definition of public interest is adequat to consider the alternatives and impacts of activities.

I. Comment:
Please explain the difference between "public interest" and "public benefit."

Response:
Determination of the "public interest" includes a weighing of the public benefits and losses. Because "public interest" is included in the Glossary, the entry for "public benefits and Losses" has been deleted from the Glossary.

J. Comment:
The following alternative definition is offered for use having direct and significant impact: Any use or activity which will or can reasonably be expected to: (1) directly alter in any way the physical, chemical, radiological, or biological properties of the coastal zone; (2) directly affect any use or activity in the coastal zone; (3) directly affect the public health safety or welfare; (4) result in any commitment of coastal resources. Unless it is determined that the above alterations, affects or results are insignificant.

For the purposes of consistency review: (1) there is no mandate to confine review to "land or water uses" or that the commitment of coastal resources be "irretrievable"; (2) the "significant" criteria does not appear in the consistency sections of the Federal CZMA; (3) no distinction has been suggested between positive or negative impacts in any statute or regulation.

Response:
OCZM and Florida have determined that the definition in the glossary is appropriate and parallel to the above definition.

K. Comment:
The definition of uses of regional benefit needs to conform with the definition of uses having a direct and significant impact.

Response:
Uses of regional benefit are defined by OCZM Federal regulation, 15 C.F.R. 923.12.

L. Comment:
These definitions should be included in the Glossary:

Vested Rights: Present fixed rights which can be regulated but cannot be taken without compensation.

Water Dependent: A use or activity that requires water. Adjacency is a factor but should not be necessary.

Water Related: A use or activity that is indirectly dependent on water. Adjacency is a factor but should not be necessary.

Response:
The above definitions are similar to those in the document and OCZM feels the definitions in the document are more explicit.

M. Comment:
Page II-2: Since the implementors of the FCMP are charged with delineating "program areas in which improvements are needed by setting out issues of special focus and suggesting possible approaches to resolve them", the comment in the prior paragraph that program emphasis will not be on "expansion" is misleading, untrue, and should be deleted as well as, the second sentence of the third paragraph of page II-10.

Response:
The purpose of the Issues of Special Focus Section and the recommendations found thereunder is to identify problem areas which require improvements in existing regulatory and management systems.

N. Comment:
How has the State of Florida demonstrated a commitment to raise the funds necessary to administer this program and enforce its laws?

Response:
The State of Florida will match available Federal funds on a 80% - 20% basis to implement the program as required by the CZMA.

O. Comment:
Page II-6: "Experience shows that the allocation of coastal resources often results in short-term economic benefits being favored over long-term resource productivity." What specific solutions does the FCMP propose for this problem?

Response:
See Generic Response 2.

P. Comment:
Page II-7: What is a "diversified balanced economic structure"? And how does the program prescribe its achievement?

Response:
See change in text. The achievement of diversified economic structure will be accomplished by the rational management of coastal resources.

Q. Comment:
Boundaries: There is no basis for the exclusion of non-coastal communities (per DER reg. 17-Cz.03 (1) and page II-10 paragraph 3) from participation in the FCMP. Based on the findings of the FCMP the drafters conclude: "The result is an inter-relationship between the land and coastal waters which makes it difficult, if not impossible, to establish a scientifically supportable boundary which would exclude inland areas having no significant effect on coastal waters." The mandate, that there must be a direct relationship between the programs and issues, the methods of solving them, and the legal and administrative basis of the program, requires less arbitrary boundaries.

Response:
Section 380.24 of the Florida Coastal Management Act of 1978, specifically limits the pass-through of funds to local governments in coastal communities. See Generic Response 4.

R. Comment:
What mechanisms does the program provide for amendments or for proposing new legislation as the need becomes apparent? Since the IMC recommends proposed legislation to the Governor, what mechanism is provided in the FCMP to assure public participation and notice of the proposed changes prior to receipt by the Governor.

Response:
See Generic Responses 1, 2 and 3.

S. Comment:
How does consistency apply to Federal activities on Federal land or alternatively in the coastal zone? Does the Federal CZMA prescribe who makes the determination of consistency in these instances?

Response:
If the activity is a direct Federal activity on Federal lands creating spillover effects which are found to directly affect the coastal zone, the Federal agency makes a determination of consistency which the State then concurs with or objects to. Similarly, with direct Federal activities in the coastal zone, Federal agencies make a determination which the State concurs with or objects to.

T. Comment:
Does the State of Florida waive its claim to areas enclosed by historic bays by failure to describe them in the FCMP boundaries?

Response:
No.

U. Comment:
Why aren't riparian rights defined in the glossary?

Response:
See Response to 38(D) above.

V. Comment:
There should be a maps section in the program so that boundaries can be compared.

Response:
See generic response 4.

W. Comment:
On which issues has the State of Florida consulted with Alabama and Georgia. How were these issues resolved? Which issues are still subject to controversy or in negotiation?

Response:
The State of Florida consulted with Alabama and Georgia on the issue of the coastal zone boundary and a particular issue concerned navigation and dredging on the Apalachicola River. This latter issue was resolved with the issuance of a 5-year maintenance dredging permit and initiation of a general Apalachicola Basin study.

X. Comment:
Page II-20: Exemptions to water discharge permits appear to be available without regard to their location in particularly sensitive environments or without regard to the effects of a combination of exempt facilities on the same ecosystem. This is contrary to the CZMA which requires a balancing of environmental and other concerns.

Response:
Exemptions to water discharge permits are granted only for certain classes of waters and are granted only after public notice and a hearing conducted pursuant to Chapter 120 F.S. and after consideration of the environmental and public interest criteria set forth in regulation at 17-4. 243 F.A.C. OCZM feels that this process balances public interests as required by the CZMA and offers ample opportunity for public scrutiny and objection.

Y. Comment:
The program should include better methods for public notice/participation. Notice of permit application should be placed in the section of the paper read by the general public. It should describe the activity, its effect on the environment and mitigation measures.

Response:
Notice requirements are pursuant to State law.

Z. Comment:
How can the program be properly implemented when no one agency is given the authority to review all decisions that affect the coastal zone? Page II-258: Please explain how DER can compel agency compliance with FCMP?

Response:
See Generic Response 1.

AA. Comment:
The National Interest section of the Program omits a discussion of the National Interest.

Response:
OCZM and Florida disagree. Section II-G contains a discussion of various national interest issues.

BB. Comment:
What mechanism is used for public notice of OCS plans to inform the public that the six month period for state concurrance in terms of consistency has begun?

Response:
Public notice of the State's receipt of an OCS plan and accompanying consistency certification shall be given in the same manner as the notice for the receipt of a consistency certification for any Federally licensed or permitted activity listed for review in the FCMP (15 C.F.R. 930.78). At a minimum, the notice will be timely, issued in accordance with State law, cover the immediate area of the coastal zone likely to be affected by the proposed activity, and will be expanded in proportion to the degree of public interest likely to be engendered. The notice will include a summary of the proposed activity, announce the availability for public inspection of the consistency certification and supporting information, and will give the address of the State's consistency review agency for submission of comments.

CC. Comment:
To what extent is information gathered by the OCS Advisory Committee, IMC & CAC available to the public? Which of their functions is subject to public notice?

Response:
All information gathered by these groups is available to the public in accordance with Chapter 119, F.S. Their meetings are open to the public in accordance with Chapter 120, F.S. Section 286.011, F.S. requires that all meetings, and decisions, of state and local government boards or commissions be held and made in public at a time and place for which reasonable notice has been given.

DD. Comment:
DER reg. 17-6.01(2)(a) provides that each prospective waste water facility shall be assessed on an individual basis. However, in order to fully assess the impact of a facility, the total combined affect of all facilities in the area needs to be considered, as well as the anticipated effect of all future facilities in the area.

Response:
Waste load allocation assessments are done on a systems basis. However, projected waste water facilities must be assessed on an individual basis in the context of the waste load allocation.

EE. Comment:
In Chapter 366, F.S., how does the FCMP provide for the exercise of Public Service Commission powers to rebuild, repair, and locate facilities in compliance with the goals and purposes of the Federal Coastal Zone Management Act and the policies of the FCMP?

Response:
Chapter 366 is an authority of the FCMP. As such, the coastal program includes those powers of the Public Service Commission pursuant to 366.05(1) requiring repairs, improvements, etc. to plants and any equipment belonging to any public utility.

40. HOPPING BOYD GREEN & SAMS
Calvin J. Livingston
Tallahassee, Florida

A. Comment:
The Program is the result of a comprehensive effort by the Florida Department of Environmental Regulation and the Federal Office of Coastal Zone Management to develop a management plan that will satisfy the requirements of the Coastal Zone Management Act. The Florida Legislature has specifically directed that Florida's plan may only use existing legislation. Consequently, the Florida Coastal Management Program is a compilation of a wide range of statutes and regulations affecting land and water usage in coastal regions.

Response:
No response necessary.

B. Comment:
The DEIS fails to recognize that various permitting scenarios exist which require varying treatment in terms of Federal consistency. If after a letter of intent is issued in terms of Federal consistency, a petition requesting a hearing is filed, the consistency certification is stayed pending a final determination of the State proceeding. This uniform treatment threatens greater delays in an already lengthy permitting process. The consistency process could be administered in a more expeditious and equitable fashion if the following guidelines were adopted:

(1) Where there is an analogous State permit, and the State has issued a Notice of Intent to Grant -

(a) Federal Consistency Certification shall be presumed and processing of the Federal application shall continue, but final issuance shall be stayed pending completion of the State administrative proceeding;

(b) The affected State agency shall expedite the State administrative proceedings to reduce delays in the Federal permitting procedure;

(c) However, where the processing of the State permit has been stayed for a period of 6 months due to on-going administrative proceedings, the Federal permit may be issued.

(2) Where there is an analogous State permit, and the State has issued a Notice of Intent to Deny -

(a) Processing of the Federal application shall continue, but final issuance shall be stayed pending completion of the State administrative proceedings;
(b) The affected State agency shall expedite the State administrative proceedings to reduce delays in the Federal permitting procedure.

(3) Where there is no analogous State permit, and the State has issued a Notice of Intent to Grant Consistency Certification -

(a) Federal consistency shall be presumed and the Federal application may be processed and issued. To allow a State administrative hearing to delay the Federal permitting process would, in effect, add a layer of administrative review, where none had previously existed this - would be in direct violation of Section 380.21(2), Florida Statutes, which provides that:

> (...It is the further intent of the Legislature that enactment of this legislation shall not amend existing statutes or provide additional regulatory authority to any governmental body...)

(4) Where there is no analogous State permit and the State has issued a Notice of Intent to Deny Consistency Certification -

(a) Same as No. 2 supra.

Response:
In Florida, the issuance or denial of a State permit for an activity which also requires a Federal license or permit constitutes the State's consistency determination with respect to that activity. There is no additional layer of review at the State level. DER will issue the State's consistency determination upon notification of the decision of the permitting agency on each permit application within that agency's purview which requires a Federal consistency review. The date of the State's permit decision signals the end of the consistency review period, which must be six months or less because of the permit decision deadlines established by State law and the Federal Consistency regulations. An appeal of the State's decision does not stay this six month period.

If a state permit requiring Federal consistency review is issued without being challenged under State law, the Federal agency may issue its permit. If a permit issuance is challenged, the Federal agency must withhold the issuance of its permit, but the State will have met the 6 month consistency review period by its initial permitting decision. If the State permit is denied, the denial may be challenged under State law. If for some reason a Federal agency disagrees with the State consistency decisions that Federal agency may try to resolve the conflict on its own through informal negotiations with the State permitting agency, seeking mediation by the United States Secretary of Commerce, or by appealing to the Secretary of Commerce to reverse the State's consistency decision. Such reversal, however, may only be based on national security or a determination that the project is consistent with the objectives or purposes of the CZMA, and does not reverse the State's permitting decision.

The Federal consistency review process set forth in the FCMP does not affect the ultimate ability of a project proponent to begin the project. Except for the efforts of the Federal agency to resolve the conflict, the appeals procedures are those established by existing State law. Since the projects we are discussing here cannot commence without both a State permit and a Federal permit, and since the Federal consistency review consists of the State permit review, the denial of a State permit will not slow the commencement of a project any more than it would be under existing State law.

C. Comment:
Additional language is recommended to indicate the true intent of the section entitled "Issues of Special Focus", the following underlined language should be inserted in the first paragraph on page II-170:

> Other sections of this document describe the structure of the coastal program and the existing laws and programs under which it is implemented. This section is not intended to implement any new regulatory or permitting criteria or rules. The recommendations contained in this section are aspirational in nature, and prior to implementation must be adopted pursuant to Florida law. The

purpose of this section is to describe the primary issues that the State intends to address through its Coastal Management Program, and to outline recommendations for addressing the issues. Thus, this section is action oriented: it brings the various elements of the document together, and welds the program into an effective tool for solving problems.

Response:
The text has been revised to reflect the intent of the comment.

41. LEAGUE OF WOMEN VOTERS OF FLORIDA
Carol Rist, Vice-President
Miami, Florida

A. Comment:
The CZMA embodies many of the League's goals for the management of America's land resources. Members of the League have served on coastal advisory committees and helped to educate the public concerning Florida's coastline and the need to better manage coastal resources.

Response:
No response necessary.

B. Comment:
Through the formation of the Interagency Management Committee, Florida has found the mechanism to manage coastal resources using already existing statutes and rules.

Response:
No response necessary.

C. Comment:
The program will establish a governmental structure to coordinate local, State and Federal efforts to provide access to the coastline and reduce the likelihood that a severe coastal storm will result in great loss of life and property.

Response:
No response necessary.

D. Comment:
The inventory of Federal lands in the document does not include any land under the jurisdiction of the BLM. BLM has 1,200 acres of land in 13 counties (11 of them coastal) under its jurisdiction.

Response:
Florida recognizes that BLM has jurisdiction over miscellaneous lands in Florida. It is incumbent on BLM to provide the State with any proposed changes to these properties and with an inventory of these lands.

Response:
The State's DNR has adopted a State Lands Management Plan and will be pursuing management monitoring and enforcement of uses of state owned land.

43. MARTIN CONSERVATION ASSOCIATES
John W. Martin, Jr.
Public Hearing Statement

A. Comment:
The DER plays favorites in giving away pieces of marsh lands, vertical seawalls and indiscriminate dredging. Local officials have played favorites in terms of the widening of roads on primary dunes, etc. On the other hand, local port facilities mandated by the legislature have been denied, for non-germane political purposes.

Response:
The State of Florida makes permitting decisions based on the considerations and standards contained in state statutes and regulations. Persons believing that State agencies have acted illegally have adequate recourse through administrative appeals and the courts.

B. Comment:
Predictable criteria for development should evolve from the program to prevent the expense of preparing proposals that are eventually denied.

Response:
One objective of the program as stated in the Introduction of this document is to increase the efficiency and predictability of governmental actions.

C. Comment:
Federal flood insurance subsidies encourage development in hazardous areas. Public investments as well as private investments in hazardous areas should be discouraged.

Response:
The State recognizes the problems associated with the Federal Flood Insurance Program. A major effort of the FCMP addresses limiting unwise public investments in high hazard areas. See response to comments received from the Federal Emergency Management Agency.

D. Comment:
The State needs consistent implementation and enforcement of existing programs.

Response:
See response to comment 42 B. above.

E. Comment:
There should be special impact fees and taxing districts to assess developers who want to build on the beach or fill marshes.

Response:
Thank you for your suggestion.

44. NATURAL RESOURCES DEFENSE COUNCIL
Gary Grant, Atlantic Coast Project
New York, New York

A. Comment:
Florida's authorities and regulations relating to the protection of natural resources such as wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife habitats, as well as coastal development management are heavy on procedure but lean on specific substantive standards.

The FCMP relies on statutes and regulations which establish permit programs that lack clear standards. Decision makers are allowed too much discretion. there is little more than good faith to assure that the multitude of authorities contained in the program will be used in a manner consistent with the CZMA.

Response:
We disagree and cite as examples of substance the establishment of regulations for and the management of aquatic preserves pursuant to Chapter 258 F.S., the control of coastal construction pursuant to Chapter 161 F.S., the specific performance standards established for dredging and filling and water quality control by Chapters 253 and 403 F.S. The operation of the programs established by these and the other statutes forming the legal foundation of the FCMP are adequate to meet the Federal requirements for program approval. Since the coordinated statutory and regulatory scheme contained in the FCMP meets the Federal requirements for program approval, the discretion exercised by State decisionmakers and the consistency of their decisions with the requirements of the CZMA during program implementation will be evaluated as part of the continuing Federal review of program performance conducted pursuant to Section 312 of the CZMA.

B. Comment:
Two noteworthy additions to the program are the Joint Resolution on Hazards and the MOU between DER, DOT and the Governor concerning road and bridge projects in hazardous coastal areas.

Response:
No response necessary.

C. Comment:
The section of the FCMP on wetlands has been expanded to include a clearer discussion of permits issues under §§ 403 and 253 F.S.. While this has improved the text, the adequacy of the wetlands protection in Florida is still subject to question. Both §§403 and 253 are too vague for consistent and predictable enforcement.

Response:
The permit review procedures and performance standards set forth in the regulations issued pursuant to Chapters 253 and 403 F.S. provide Florida with well defined policies and criteria on which to base the State's wet-

42. LEAGUE OF WOMEN VOTERS OF HILLSBOROUGH COUNTY, FLORIDA
Mary Figg, President
Lutz, Florida

A. Comment:
The League of Women Voters enthusiastically supports the adoption of the proposed Florida Coastal Management Program.

Response:
No response necessary.

B. Comment:
The document fails to address off-shore mining of phosphate. While this mining is not yet a reality, its potential impact is sufficient to warrant a state position.

Response:
It has been estimated that the off-shore mining of phosphate may not be a reality for 50 years.

C. Comment:
Compliance with the program by local governments should be mandatory, not discretionary.

Response:
Compliance with the program by local governments is mandatory to the extent such compliance is required by existing State laws. Their participation in the program is, however, discretionary. Section 380.24 F.S. of the FCMA of 1978 requires local governments on the coast or contiguous to waters of the State where marine plants dominate shall develop a coastal zone protection element as part of Chapter 163 F.S. Beyond this, participation by local governments e.g., receipt of Federal implementation funds in the State program is voluntary.

D. Comment:
Aquatic areas should be aided by an aggressive restoration program.

Response:
The document identifies and discusses the State's restoration program in the areas of Preservation and Restoration section.

E. Comment:
Harbor and port deepening may be necessary but should not be done at the expense of fishing and recreational businesses.

Response:
These are not necessarily mutually exclusive and even in cases where they do compete, the balance between development and preservation will be maintained.

F. Comment:
Public ownership of coastal land is necessary. The State should vigorously monitor those lands under its jurisdiction.

45. SIERRA CLUB NATIONAL COASTAL COMMITTEE
Shirley Taylor
Tallahassee, Florida

A. Comment:
The Sierra Club generally approves of the Florida Coastal Management Program as described in the DEIS.

Response:
No reponse necessary.

B. Comment:
Florida is relying on pastiche of existing laws, as have other states like Maine, Massachusetts and Maryland. Although a comprehensive new coastal law would have been the tidiest approach, this is not 1970 and state legislatures are generally opposed to adding new permit programs. The difficulties of adopting old laws to a new and more specific purpose is equally obvious. However, using existing Florida law does have the advantage of having a basis that have been tested by time and withstood legal challenges -- a management program set on firm foundations. After years of problems with setting a meaningful coastal boundary it is a good solution to include the entire state -- two coasts back-to-back -- since a number of the legal handles apply statewide.

Response:
No response necessary.

C. Comment:
The degree to which this Coastal Program works rests on the Governor of the State and on state agency heads. The most exciting innovation coming with this program is the Interagency Management Committee -- the perfect forum for this cooperative resolution of coastal problems, the place in which to share overlapping problems and their solutions. The continued resolve of the Governor and of all departments concerned to use and to perfect the operation of the IMC can make all the difference in turning Florida's assembly of land-use and resource legislation from providing a spotty coverage of the state to a well-organized effective mechanism of administering rational decision-making in a timely fashion.

Response:
No response necessary.

D. Comment:
The Florida Program lays out what we now have, how its parts can work together for a single goal and the Issues for Special Focus provides an ideal memo for the future of problems yet to be addressed. The issues are analyzed quite effectively and provide guidance to all steps to take year by year. I am not satisfied with one issue--Energy--and feel it needs considerable improvement to bring a broader and clearer focus that will serve Florida well in this decade of growth.

Response:
Florida recognizes that the issue of energy will require more study and continued attention during Program implementation. Several energy related tasks will likely be included in the first year work program.

E. Comment:
Finally, I would emphasize the importance of more effective public understanding and appreciation of managing our coast. Part of this can come only with being a part of the process. I'm convinced that with imagination and determination the Florida coastal concern concept can develop a public constituency -- and that is of supreme importance to our state.

Response:
No response necessary.

46. TAMPA PORT AUTHORITY
William K. Fehring
Director of Environmental Affairs
Tampa, Florida

A. Comment:
The definition of spoil islands on page xii should be revised to reflect that such islands are not always state-owned. Such islands within Hillsborough County are owned by the Tampa Port Authority.

Response:
Comment accepted. See changes in text.

B. Comment:
Current state air pollution regulations create pressures for development strategies which are in direct conflict with state water quality goals and Coastal Zone Management objectives. The emphasis of the state program needs to be expanded to include a more comprehensive look at state environmental and development goals.

Response:
The general conflicts between regulatory authorities relating to port development are discussed in the Issue of Special Focus on Ports.

C. Comment:
The discussion of economic problems and issues on pages II-6 and II-7 does not adequately address the economic problems of proper port development caused by conflicting and inadequately-drafted environmental regulations.

Response:
Florida will address this issue through the implementation of CS/HR 490, which is discussed in response 10 H above.

D. Comment:
The statements regarding classification of waters in the first paragraph on page II-18 fail to accurately describe the water classification system in the state. It should be noted that while there exists a classification for navigation waters, none of the port waters within the State of Florida are so designated. The current classification system includes the designation of highly industrialized urban port waters for recreation and wildlife propagation.

Response:
The need to develop separate water quality standards and criteria for Florida's Ports is addressed in CS/HR 490, which is discussed in response 10 H.

E. Comment:
The discussion of water quality in port areas on page II-198 inadequately addresses the impact of current classifications and regulations on proper maintenance dredging of port channels.

Response:
See Response 46D above.

F. Comment:
The discussion of the impact of air quality of port development in the second paragraph on page II-198 should be expanded. The limited options which ports have in siting facilities make the conflict between water quality regulations, Coastal Zone Management objectives, and present air pollution regulations particularly critical.

Response:
See Response 46B above.

G. Comment:
The discussion of the Coastal Energy Impact Program at the top of page II-200 appears to overstate its present impact on port planning and development. While this program does offer some limited opportunity to assist ports, the restrictions on currently-available funds are such as to limit the effectiveness of this program to the overall goals of proper planning for port development.

Response:
No response necessary.

H. Comment:
The discussion of long-range port planning in the middle of page II-200 should be expanded to recognize more clearly the dependence of port development on market conditions. It should be recognized that the ability of ports to supply long-range economic projections can vary widely.

Response:
OCZM believes that the long-range economic projects have been addressed adequately.

I. Comment:
The discussion of maintenance dredging in the third paragraph on page II-202 makes a presumption that maintenance dredging causes the dispersion of contaminated spoil into biologically-productive areas. This presumption is incorrect. The statement contained in this section is reflective of a method of operation which has not been permitted in Florida for many years.

Response:
Comment accepted. Note change in document.

J. Comment:
The discussion regarding bond financing of port development projects at the top of page II-204 should also be included in the section on port development. This is a key issue which is involved in port projects which may not require designation of new spoil disposal sites.

Response:
Comment accepted. See revisions to the text.

K. Comment:
We strongly support the language regarding long-term comprehensive mitigation planning found on page II-205.

Response:
No response necessary.

L. Comment:
The Port Authority strongly supports the goal of reducing administrative and bureaucratic delays regarding maintenance dredging described in the last paragraph on page V-9.

Response:
No response necessary.

M. Comment:
This program has the potential to greatly assist public port authorities in the State of Florida in properly planning and developing port facilities. Such a resources management program is badly needed to bring consistency and greater effectiveness to the overall program for environmental improvement.

Response:
No response necessary.

Interested Individuals

47. BARRY J. APPLEBY
Deland, Florida

A. Comment:
The plan in no way resembles the plan that was drafted by the technical advisory committee when Mr. Appleby was a member for 3 years. This plan is a compromised version resulting from state legislative initiative. This weakened plan is better than nothing.

Response:
No response necessary.

48. KEVIN L. ERWIN
Consulting Ecologist
Fort Myers, Florida

A. Comment:
The document meets the requirements for state coastal programs under the CZMA. The program should be approved as soon as possible.

Response:
No response necessary.

49. LOUIS A. GAITANIS
Gainesville, Florida

A. Comment:
If the entire state is included in the boundary of the Florida Coastal Zone Management Program the distribution of the EIS should include all 67 counties, not just the 35 listed on page xviii of the DEIS.

Response:
The document was available on request in accordance with the requirements of the National Environmental Policy Act.

B. Comment:
There was too short a time between the media publicity and the 4/13/81 deadline for comments.

Response:
There was a 45-day review and comment period for the document in accordance with CEQ regulations pursuant to the National Environmental Policy Act.

50. PAUL A. HOWE
Sanibel, Florida

A. Comment:
The document is impressive and authoritative. Florida has taken giant policy steps in the past decade with some bumpy passages through the Legislature.

Response:
No response necessary.

B. Comment:
The 1981 Legislative Session should enact an omnibus authorization for involved state departments to freely share their duty to preserve, protect, concerve, and wisely manage coastal resources with local general purpose governments whose boundaries embrace these coastal assets

Response:
The State Legislators should be made aware of your feelings.

51. JACK W. HUNTER
Col., USAF (Ret.)
Shalimar, Florida

A. Comment:
There is no Florida Coastal Management Program in the context of the CZMA. Federal funds under Section 306 would be essentially wasted.

Response:
OCZM does not agree. The FCMP appears to meet all requirements for Federal approval pursuant to the CZMA.

B. Comment:
The adequacy of the State's management authorities is irrelevant.

Response:
OCZM does not agree.

C. Comment:
There would be no net environmental benefit from OCZM approval.

Response:
OCZM does not agree.

52. ROY D. WILLIAMS
Crystal River, Florida

A. Comment:
The latest version of the Florida CZM Program is a side step of the management obligation resulting from the legislative mandate to remain within existing legislation. This approach provides no real drive or impetus to search out and develop new ideas for resources management.

Response:
See Generic Responses 1 and 2.

B. Comment:
The inclusion of the entire state within the boundary is appropriate.

Response:
No response necessary.

C. Comment:
It is only through aggressive action at all levels of government - local, state and national that Florida will overcome the boom - bust - rebuild - boom cycle. Such cooperative effort is unlikely under existing legislation and the guidance of DER.

Response:
See Generic Responses 1 and 2.

D. Comment:
Water Districts and Planning Councils will certainly have a difficult time convincing local jurisdictions they are beneficient partners in coastal management. Present local, regional and state planning efforts have demonstrated an amazing lack of interest in people. There needs to be a public education program instilling an appreciation of Florida's natural resources in the citizenry.

Response:
OCZM and Florida agree. Also see Generic Response 3.

E. Comment:
State and local attentions should center on cataloging resources establishing standards of environmental quality and ultimately limiting population to preserve standards set.

Response:
While much work remains to be done, many state programs such as the Conservation Recreational Lands Program and the State Lands Management Plan and local plans are actively involved in identifying the value of critical resources.

F. Comment:
Agriculture in Florida is doomed unless we aggressively seek to make it a viable part of the economy. Every acre of Central Florida orange grove or North Florida timber land that is paved over and built will degrade the air quality, water quality and ultimately the livability of the entire coastal zone.

Response:
Florida believes that agriculture is a viable part of the State's economy. See comments received from the U.S. Department of Agriculture and OCZM's responses, above.

G. Comment:
The development of roadways within sensitive areas can promote growth. Other modes of transportation should be encouraged, such as a rapid transit system.

Response:
OCZM and Florida agree.

H. Comment:
Potential supply and demand problems for potable water need to be addressed. Floridans will probably be drinking 80% of their own waste water within the decade. The effect of this must be addressed.

Response:
The State and the five water management districts are presently addressing this issue through numerous actions including the development of the water use policy plans.

I. Comment:
The State must encourage the development and growth of smaller communities within the State, plan new communities on stable sites that will intersect transportation routes, have water, drainage and other utilities, and develop long term capital funding to aid necessary public construction.

Response:
No response necessary.

53. HOWARD WOLF
Col., USMC (Ret.)
Melbourne Beach, Florida

A. Comment:
The Florida CMP is consistent with the objectives and policies of the CZMA.

Response:
No response necessary.

B. Comment:
The award of Federal funds under Section 306 of the CZMA is vital to the Florida CMP objectives.

Response:
No response necessary.

C. Comment:
The States management authorities are adequate to implement its coastal program, however, we entertain reservations regarding adequate state committment to enforcement. The State should be required to demonstrate a continuing obligation to rigorous enforcement of FCMP related law, rules and regulations.

Response:
The State has expressed such a commitment and possesses adequate authority to carry it out. The effectiveness of its enforcement will be a subject of the continuing review of program implementation carried out by OCZM pursuant to Section 312(a) of the CZMA.

D. Comment:
Program approval and implementation will result in a net environmental benefit, but more importantly, there will be extensive environmental penalty inflicted on every citizen if the program is not approved or fails to be implemented.

Response:
No response necessary.

LIST OF PREPARERS

LIST OF PREPARERS

Ms. Ann H. Berger-Blundon, Gulf/Islands Regional Manager, Office of Coastal Zone Management

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Mr. William Millhouser, Gulf/Islands Assistant Regional Manager, Office of Coastal Zone Management

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Experience: 5 years coastal zone management

Mr. John Pedrick, General Counsel, Office of Coastal Zone Management

Degrees: B.A.E. University of Virginia, 1967
M.A. Marine Affairs, University of Delaware, 1974
J.D. Northwestern School of Law, Lewis and Clark College, 1977

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Experience:

8 years Florida Coastal Coordinating Council (1972-1974)
Florida Bureau of Coastal Zone Planning (1975-1978)
Florida Office of Coastal Management (1978-Present)

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5 years Florida Coastal Management Program

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M.A. Public Administration

Experience: 3 years Cost Engineer in Drilling Industry
4 years Estimator Drilling Industry
2 years Florida Coastal Management Program

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Degrees: B.A. Political Science
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6 years Enforcement Administrator
2 years Deputy General Counsel
1 year General Counsel

This document was produced with the assistance of:

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ADDENDUM

This part includes various instruments related to implementating the Florida Coastal Management Program. Some instruments are in draft form, pending final action; the majority are in final form, for inclusion in the program document.

A. Chapter 366, F.S. - "Public Utilities"

CHAPTER 366

PUBLIC UTILITIES

366.01 Legislative declaration.
366.015 Interagency liaison.
366.02 "Public utility" defined.
366.03 General duties of public utility.
366.04 Florida Public Service Commission; jurisdiction.
366.041 Rate fixing; adequacy of facilities as criterion.
366.05 Powers.
366.055 Availability of, and payment for, energy reserves.
366.056 Annual tax on gross revenues of municipal electric utilities and rural electric cooperatives.
366.06 Rates; procedure for fixing and changing.
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[1]**366.01 Legislative declaration.**—The regulation of public utilities as defined herein is declared to be in the public interest and this chapter shall be deemed to be an exercise of the police power of the state for the protection of the public welfare and all the provisions hereof shall be liberally construed for the accomplishment of that purpose.

History.—s. 1, ch. 366-60, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.015 Interagency liaison.**—The Public Service Commission is directed to provide for, and assume primary responsibility for, establishing and maintaining continuous liaison with all other appropriate state and federal agencies whose policy decisions and rulemaking authority affect those utilities over which the commission has primary regulatory jurisdiction. This liaison shall be conducted at the policy making levels as well as department, division, or bureau levels. Active participation in other agencies' public hearings is encouraged to transmit the commission's policy positions and information requirements, in order to provide for more efficient regulation.

History.—s. 6, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.02 "Public utility" defined.**—The term "public utility" as used herein means and includes every person, corporation, partnership, association or other legal entity and their lessees, trustees or receivers, now or hereafter either owning, operating, managing or controlling any plant or other facility supplying electricity or gas (natural, manufactured or similar gaseous substance) to or for the public within this state, directly or indirectly for compensation; but the term "public utility" as used herein does not include either a cooperative now or hereafter organized and existing under the Rural Electrification Cooperative Law of the state nor a municipality nor any natural gas pipeline transmission company making only sales of natural gas at wholesale and to direct industrial consumers, nor a person supplying liquefied petroleum gas, in either liquid or gaseous form, irrespective of the method of distribution or delivery, unless such person also supplies electricity, manufactured or natural gas.

History.—s. 2, ch. 26849, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.03 General duties of public utility.**—Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate and efficient service upon terms as required by the commission, provided, no public utility shall be required to furnish electricity or gas for resale. All rates and charges made, demanded or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

History.—s. 3, ch. 26849, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.04 Florida Public Service Commission; jurisdiction.**—

(1) In addition to its existing functions, the Florida Public Service Commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates, service and the issuance and sale of its securities except a security which is a note or draft maturing not more than 1 year after the date of such issuance and sale, and aggregating (together with all other then outstanding notes and drafts of a maturity of 1 year or less on which such public utility is liable) not more than 5 percent of the par value of the other securities of the public utility then outstanding. In the case of securities having no par value, the par value for the purpose of this section shall be the fair market value as of the date of issue. The jurisdiction conferred upon said commission shall be exclusive and superior to that of all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in case of conflict therewith all lawful acts, orders, rules and regulations of the commission shall in each instance prevail.

(2) In the exercise of its jurisdiction, the commission shall have power over rural electric cooperatives and municipal electric utilities for the following purposes:

(a) To prescribe uniform systems and classifications of accounts.

(b) To prescribe a rate structure for all electric utilities.

(c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.

(d) To approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. However, nothing in this chapter shall be construed to alter existing territorial agreements as between the parties to such agreements.

(e) To resolve any territorial dispute involving service areas between and among rural electric cooperatives, municipal electric utilities, and other electric utilities under its jurisdiction. In resolving territorial disputes, the Public Service Commission may consider, but not be limited to, the ability of the utilities to expand services within their own capabilities and the nature of the area involved, including population and the degree of urbanization of the area and its proximity to other urban areas and the present and reasonably foreseeable future requirements of the area for other utility services.

No provision of this chapter shall be construed or applied to impede, prevent, or prohibit any municipally owned electric utility system from distributing at retail electrical energy within its corporate limits, as such corporate limits exist on July 1, 1974; however, existing territorial agreements shall not be altered or abridged hereby.

(3) The commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.

History.—s. 4, ch. 26849, 1951; s. 1, ch. 63-339; s. 1, ch. 63-379; s. 1, ch. 63-82; s. 1, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.041 Rate fixing; adequacy of facilities as criterion.**—

(1) In fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state by any and all public utilities under its jurisdiction, the Florida Public Service Commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the facilities provided and the services rendered, the value of such service to the public, and the ability of the utility to improve such service and facilities; provided that no public utility shall be denied a reasonable rate of return upon its rate base in any order entered pursuant to such proceedings. In its consideration thereof, the commission shall have authority, and it shall be the commission's duty, to hear service complaints, if any, that may be presented by subscribers and the public during any proceedings involving such rates, charges, fares, tolls, or rentals; provided however, that no service complaints shall be taken up or considered by the commission at any proceedings involving rates, charges, fares, tolls or rentals unless the utility shall have been given at least 30 days' written notice thereof and any proceeding may be extended prior to final determination for such period; and provided further that no order hereunder shall be made effective until a reasonable time shall be given the utility involved to correct the cause of service complaints considering the factor of growth in the community and availability of necessary equipment.

(2) The power and authority herein conferred upon the Florida Public Service Commission shall not cancel or amend any existing punitive powers of the commission but shall be supplementary thereto and shall be construed liberally to further the legislative intent that adequate service shall be rendered by public utilities in the state in consideration for the rates, charges, fares, tolls, and rentals fixed by said commission and observed by said utilities under its jurisdiction.

(3) The term "public utility" as used herein means all persons or corporations which the Public Service Commission has the authority, power, and duty to regulate for the purpose of fixing rates and charges for services rendered and requiring the rendition of adequate service.

(4) Any order entered pursuant to the provisions of this section shall be fully reviewable by the Supreme Court as provided by law.

History.—ss. 1-4, ch. 67-326; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 79-95.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]**366.05 Powers.**—

(1) In the exercise of such jurisdiction, the commission shall have power to prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and service rules and regulations to be observed by each public utility; to prescribe uniform system and classification of accounts for all public utilities, which among other things shall set up adequate, fair and reasonable depreciation rates and charges; to require the filing by each public utility of periodic reports and all other reasonably necessary data; to require repairs, improvements, additions and extensions to the plant and equipment of any public utility reasonably necessary to promote the convenience and welfare of the public and secure adequate service or facilities for those reasonably entitled thereto; to employ and fix the compensation for such examiners, and technical, legal and clerical employees as it deems necessary to carry out the provisions of this chapter, to prescribe all rules and regulations reasonably necessary and appropriate for the administration and enforcement of this chapter; and to exercise all judicial powers, issue all writs and do all things, necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements.

(2) Every public utility as defined in s. 366.02, who in addition to the production, transmission, delivery or furnishing of heat, light or power also sells appliances or other merchandise, shall keep separate and individual accounts for the sale and profit deriving from such sales. No profit or loss shall be taken into consideration by the commission from the

sale of such items in arriving at any rate to be charged for service by any public utility.

(3) The commission shall provide for the examination and testing of all appliances used for measuring any product or service of a public utility.

(4) Any consumer or user may have any such appliance tested upon payment of the fees fixed by the commission.

(5) The commission shall establish reasonable fees to be paid for testing such appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance be found defective or incorrect to the disadvantage of the consumer or user, in excess of the degree or amount of tolerance customarily allowed for such appliances, or as may be provided for in rules and regulations of the commission.

(6) The commission may purchase materials, apparatus, and standard measuring instruments for such examination and tests.

(7) The commission shall have the power to require reports from all electric utilities to assure the development of adequate and reliable energy grids.

(8) If the commission determines that there is probable cause to believe that inadequacies exist with respect to the energy grids developed by the electric utility industry, it shall have the power, after proceedings as provided by law, and after a finding that mutual benefits will accrue to the public utilities involved, to require installation or repair of necessary facilities, including generating plants and transmission facilities, with the costs to be distributed in proportion to the benefits received, and to take all necessary steps to insure compliance. The electric utilities involved in any action taken or orders issued pursuant to this subsection shall have full power and authority, notwithstanding any general or special laws to the contrary, to jointly plan, finance, build, operate, or lease generating and transmission facilities and shall be further authorized to exercise the powers granted to corporations in chapter 361. This subsection shall not supersede or control any provision of the Electric Power Plant Siting Act, ss. 403.501-403.515.

History.—s. 6, ch. 26545, 1951; s. 2, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457; s. 53, ch. 78-95.

*Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.055 Availability of, and payment for, energy reserves.—

(1) Energy reserves of all utilities in the Florida energy grid shall be available at all times to insure that grid reliability and integrity are maintained. The commission is hereby authorized to take such action as necessary to assure compliance. However, prior commitments as to energy use:

(a) In interstate commerce, as approved by the Federal Power Commission;

(b) Between one electric utility and another, which have been approved by the Federal Power Commission, or

(c) Between an electric utility which is a part of the energy grid created herein and another energy grid

shall not be abridged or altered except during an energy emergency as declared by the governor and cabinet.

(2)(a) When the energy produced by one electric utility is transferred to another or others through the energy grid and under the powers granted by this section, the commission shall direct the appropriate recipient utility or utilities to reimburse the producing utility in accordance with the latest wholesale electric rates approved for the producing utility by the Federal Power Commission for such purposes.

(b) Any utility which provides a portion of those transmission facilities involved in the transfer of energy from a producing utility to a recipient utility or utilities shall be entitled to receive an appropriate reimbursement commensurate with the transmission facilities and services provided. However, no utility shall be required to sell purchased power to a recipient utility or utilities at a rate lower than the rate at which the power is purchased from a producing utility.

(3) To assure efficient and reliable operation of a state energy grid, the commission shall have the power to require any electric utility to transmit electric energy over its transmission lines from one utility to another or as a part of the total energy supply of the entire grid, subject to the provisions hereof.

History.—s. 3, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.056 Annual tax on gross revenues of municipal electric utilities and rural electric cooperatives.—Each municipal electric utility and rural electric cooperative shall pay to the commission, on or before March 31 of each year, one-sixty-fourth of 1 percent of its gross operating revenues for the preceding calendar year. All payments shall be deposited in the State Treasury to the credit of the Florida Public Service Regulatory Trust Fund to be used by the commission in the performance of its duties under ss. 366.04(2) and (3), 366.05(7) and (8), and 366.065.

History.—s. 6, ch. 79-255.

*Note.—This section was created subsequent to the enactment of ch. 76-168, and is therefore presumed to be excluded from the blanket repeal of ch. 366 by that act.

[1]366.06 Rates; procedure for fixing and changing.—

(1) All rates being charged and collected by a public utility on May 9, 1951 shall be the lawful rates until changed in accordance with the rules, regulations or orders of the commission or court decree. Under rules and regulations to be prescribed by the commission every public utility shall, within 90 days after the effective date of such rules and regulations, file with the commission schedules showing all rates, classifications and charges for service of every kind furnished by it, and all rules and regulations relating thereto in effect on May 9, 1951. Thereafter current schedules shall be maintained on file with the commission on such forms and under such rules and regulations as the commission may prescribe.

(2) A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service in

volved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just and reasonable rates that may be requested, demanded, charged or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for rate-making purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor.

(3) Whenever the commission shall find, upon request made or upon its own motion, that the rates demanded, charged or collected by any public utility company for public utility service, or that the rules, regulations or practices of any public utility company affecting such rates are unjust, unreasonable, unjustly discriminatory, or in anywise in violation of law, or that such rates are insufficient to yield reasonable compensation for the services rendered, or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing, giving notice to the public and to the utility company, and shall thereafter determine just and reasonable rates to be thereafter charged for such service and to promulgate rules and regulations affecting equipment, facilities and service to be thereafter installed, furnished, and used; provided, however, that nothing in this chapter shall be construed to affect a rate in litigation and refund proceedings thereunder pending in the courts on April 3, 1951; provided, however, that a rate order of a duly constituted local regulatory board or authority entered before April 3, 1951 shall be deemed to be the lawful rates charged and collected by the public utility subject to such regulatory body, and should such rate order be challenged or such challenge is pending before the courts of this state or the United States, such rate order shall continue in full force and effect until final determination of such litigation, or until changed by an order of the commission, and the jurisdiction of said board to continue said litigation, and said rates, shall continue until such final determination by the courts, and the commission shall not interfere with the conduct of such litigation nor the jurisdiction of the board.

(4) Pending a final order by the commission in any rate proceeding under this section, the commission may withhold consent to the operation of all or any portion of the new rate schedules, delivering to the utility requesting such increase, within 30 days, a reason or written statement of good cause for withholding its consent. Such consent shall not be withheld for a period longer than 8 months from the date of filing the new schedules. The new rates or any portion not consented to shall go into effect under bond at the end of such period, but the commission shall, by order, require such utility to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts were paid, and upon completion of hearing and final decision in such proceeding shall by further order require such utility to refund with interest at a fair rate, to be determined by the commission in such manner as it may direct, such portion of the increased rate or charge as by its decision shall be found not justified. Any portion of such refund not thus refunded to patrons or customers of the utility shall be refunded or disposed of by the utility as the commission may direct; however, no such funds shall accrue to the benefit of the utility.

History.—s. 6, ch. 26545, 1951; s. 4, ch. 74-196; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

cf.—s. 223.08, 367.081.—Rates, procedure for fixing and changing.

s. 364.08.—Changing rates, bills, rentals, etc.

[1]366.065 Prevention of discrimination or unreasonably high profits.—In order to prevent discrimination or unreasonably high profits, upon receipt of a consumer complaint alleging that:

(1) The consumer purchases energy from a company holding a certificate of public convenience and necessity from a state or federal agency authorizing it to sell energy;

(2) The rates and charges of the company are either discriminatory or unreasonably high;

(3) The energy product or an alternative energy product is not readily available to the consumer from a competitive supplier; and

(4) The price of energy sold by the company to the consumer is not regulated by a government agency,

the Public Service Commission may assume jurisdiction to investigate the allegations and is authorized to exercise all of the powers and duties it is granted by law for the regulation of public utility rates and charges notwithstanding any exemptions or limitations otherwise placed upon the commission's jurisdiction.

History.—s. 1, ch. 79-289; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.07 Rates; adjustment.—Whenever the commission, after public hearing either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, or unjustly discriminatory or preferential, or in anywise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

History.—s. 7, ch. 26545, 1951; s. 24, ch. 67-1; s. 3, ch. 76-168; s. 1, ch. 77-457.

*Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior

to that date

366.072 Rate adjustment orders.—Any order issued by the Florida Public Service Commission adjusting general increases or reductions of the rates of an electric, telephone, or gas company shall be reduced to writing including any dissenting or concurring opinions within 20 days of the official vote of the commission. Within said 20 days, the commission shall also mail a copy of the order to the clerk of the circuit court of each county in which customers are served who are affected by the rate adjustment, which copy shall be kept on file and made available to the public. The commission shall notify all parties of record in the proceeding of the date of such mailing. Such an order shall not be considered rendered for purposes of appeal, rehearing, or judicial review until the date the copies are mailed as required by this section. This provision shall not delay the effective date of the order. Such an order shall be considered rendered on the date of the official vote for the purposes of ss. 364.05(4) and 366.06(4).

History.—s. 1, ch. 76-137.
Note.—Also published at s. 364.052.

[1]366.08 Investigations, inspections; power of commission.—The commission or its duly authorized representatives may during all reasonable hours enter upon any premises occupied by any public utility and may set up and use thereon all necessary apparatus and appliances for the purpose of making investigations, inspections, examinations and tests and exercising any power conferred by this chapter; provided, such public utility shall have the right to be notified of and be represented at the making of such investigations, inspections, examinations and tests.

History.—s. 9, ch. 26645, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.09 Incrimination at hearing of commission.—Any person called upon to testify before the commission or one of its examiners shall not be excused from answering on the ground or claim that his testimony would tend to incriminate himself; but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced documentary evidence provided that no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying.

History.—s. 9, ch. 26645, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.10 Review of commission's orders.—Any public utility or any person in interest dissatisfied with any order of the commission may have it reviewed by the supreme court by certiorari.

History.—s. 10, ch. 26645, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.11 Certain exemptions.—

(1) No provision of this chapter shall apply in any manner, other than as specified in ss. 366.04(2) and (3), 366.05(7) and (8), 366.055, and 366.056, to utilities owned and operated by municipalities, whether within or without any municipality, or by cooperatives organized and existing under the Rural Electrification Cooperative Law of the state, or to the sale of electricity, manufactured gas, or natural gas at wholesale by any public utility to, and the purchase by, any municipality or cooperative under and pursuant to any contracts now in effect or which may be entered into in the future, when such municipality or cooperative is engaged in the sale and distribution of electricity or manufactured or natural gas, or to the rates provided for in such contracts.

(2) Nothing herein shall restrict the police power of municipalities over their streets, highways and public places or the power to maintain or require the maintenance thereof, or the right of a municipality to levy taxes on public services under s. 166.231, or affect the right of any municipality to continue to receive revenue from any public utility as is now provided or as may be hereafter provided in any franchise.

History.—s. 11, ch. 26645, 1951; s. 5, ch. 74-198; s. 3, ch. 76-168; s. 7, ch. 76-268; s. 168, ch. 77-104; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.12 Penalty.—If any public utility, by any authorized officer, agent or employee, shall knowingly refuse to comply with or willfully violate any provision of this chapter or any lawful rate, rule or regulation, order, direction, demand or requirement prescribed by the commission hereunder, such public utility shall incur a penalty for each such offense of not more than $5,000 to be fixed, imposed and collected by the commission. Each day that said refusal or violation continues shall constitute a separate offense. Each penalty shall be a lien upon the real and personal property of the public utility, enforceable by the commission as statutory liens under chapter 85, the proceeds of which shall be deposited to the credit of the general revenue fund of the state.

History.—s. 12, ch. 26645, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

[1]366.13 Taxes, not affected.—No provision of this chapter shall in any way affect any municipal tax or franchise tax in any manner whatsoever.

History.—s. 12A, ch. 26645, 1951; s. 3, ch. 76-168; s. 1, ch. 77-457.
[1]Note.—Repealed by s. 3, ch. 76-168, as amended by s. 1, ch. 77-457, effective July 1, 1980, except for the possible effect of laws affecting this section prior to that date.

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B. orts Bill

Florida Coastal Protection Trust Fund, based upon their recommendations and the recommendations made by the ports and the Department of Environmental Regulation. Such priority acquisition and improvement program shall take into consideration each port's existing need for spoil disposal sites, the frequency and volume of maintenance dredging at each port, the movement of petroleum and other pollutant hazards at each port, the protection of recreational and environmental quality, and whether the proposed site meets the permit requirements of chapters 403 and 253.

(d) The recipient port authority or appropriate governmental entity shall contribute not less than 50 percent of the cost of acquisition of a spoil disposal site. Such contribution may include land owned or improvements to the spoil disposal sites. The department shall establish procedures for the payment of funds and matching contributions consistent with the provisions herein.

(e) Any moneys received from the sale of dredged materials deposited on spoil disposal sites acquired hereunder or from the sale of acquired spoil disposal sites shall be paid to the Florida Coastal Protection Trust Fund until said fund has been reimbursed for its participation in the purchase of said site. Any remaining funds shall be paid to the contributing governmental entity until said entity is reimbursed for its contribution. Then any funds remaining thereafter shall be paid to the Florida Coastal Protection Trust Fund.

(5) Moneys in the Florida Coastal Protection Trust Fund shall be disbursed for the following purposes and no others:

CODING: Words in struck through type are deletions from existing law; words underlined are additions.

(e) The acquisition of spoil disposal sites and improvements to existing and future spoil sites for the ports of St. Petersburg Bayboro Harbor, Jacksonville, Port Canaveral, Ft. Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, Port St. Joe, Tampa, Panama City, Pensacola, and other navigable waters of the state.

(f) Any interest in lands acquired using moneys in the Florida Coastal Protection Trust Fund shall be held by the Trustees of the Internal Improvement Trust Fund and such lands shall be acquired pursuant to the procedures set forth in s. 253.025, Florida Statutes.

Section 5. The provisions of this act except for section 4 shall only apply to the port waters, spoil disposal sites and port harbors, navigation channels, turning basins and harbor berths used for deep-water commercial navigation in the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, and Pensacola.

Section 6. 370.12(2)(j) is hereby amended to read:

(j) ~~For the purpose of this subsection, the term "boat," "vessel," or "motor boat" and the regulation thereof, does not refer to commercial vessels engaged in interstate, interstate, or foreign commerce entering or leaving the channels and harbors of the port authorities of this state. In addition,~~ The department shall promulgate regulations relating to the operation and speed of motor boat traffic in port waters with due regard to the safety requirements of said traffic and the navigational hazards related to the movement of commercial vessels ~~as defined herein~~.

Section 7. This act shall take effect upon becoming a law.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.

dedicated use of these waters is for deep-water commercial navigation.

Section 3. Section 403.816, Florida Statutes, is created to read:

403.816 Permits for maintenance dredging of deep-water ports.--

(1) The department shall establish a permit system under this chapter and chapter 253 providing for the performance for up to 25 years from the issuance of the original permit of maintenance dredging of permitted navigation channels, port harbors, turning basins, and harbor berths. No charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority except as provided in s. 403.813(1)(f).

(2) Disposal of spoil material resulting from maintenance dredging of deep-water navigation channels, port harbors, turning basins or harbor berths shall be exempt from the requirements of s. 253.124 when spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state or in a spoil disposal area permitted under ss. 403.061(24), 403.087 and 253.124 or in a federally-authorized ocean disposal area beyond the territorial limits of the state.

(3) The provisions of s. 253.77 shall not apply to a permit for maintenance dredging and spoil site approval when there is no change in the size or location of the spoil disposal site and when the applicant provides documentation to the department that the appropriate lease, easement or consent of use for the project site issued pursuant to chapter 253 is recorded in the county where the project is located.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.

Section 4. Subsection (3) of section 376.11, Florida Statutes, 1980 Supplement, is amended and paragraph (e) is added to subsection (5) of said section to read:

376.11 Florida Coastal Protection Trust Fund.--

(3)(a) Moneys in the fund not needed currently to meet the obligations of the department in the exercise of its responsibilities under this chapter shall be deposited with the treasurer to the credit of the fund and may be invested in such manner as is provided for by statute. Interest received on such investment shall be credited to the Florida Coastal Protection Fund.

(b) Effective July 1, 1980, 50 percent of the interest earned from investments of the fund when the balance of the fund is greater than $35 million shall be used for the acquisition of spoil disposal sites and improvements to existing and future spoil sites for the ports of St. Petersburg Bayboro Harbor, Jacksonville, Port Canaveral, Ft. Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, Port St. Joe, Tampa, Panama City, Pensacola and other navigable waters of the state. In the event that the balance of the fund is reduced to $35 million or less, the interest normally accruing to the priority acquisition and improvement program for spoil disposal sites shall be discontinued until the balance of the fund exceeds $35 million. The provisions of this paragraph shall not apply if the Federal Government preempts the authority to levy, collect and use an excise tax pursuant to this section or if the Governor and Cabinet declare an emergency related to a major pollutant hazard.

(c) The Department of Natural Resources shall establish a priority acquisition and improvement program for spoil disposal sites, to be acquired using moneys from the

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A bill to be entitled

An act relating to environmental control; adding subsection (9) to s. 403.021, Florida Statutes, providing legislative intent with respect to the "Florida Air and Water Pollution Control Act"; adding a new subsection (26) to s. 403.061, Florida Statutes, 1980 Supplement, directing the Department of Environmental Regulation to develop certain standards and criteria related to waters used for deep water shipping; creating s. 403.816, Florida Statutes, relating to dredging permits; providing for maintenance dredging permits for up to 25 years; exempting permits for maintenance dredging from certain permitting requirements; amending s. 376.11(3), Florida Statutes, 1980 Supplement, and adding paragraph (e) to subsection (5) of said section; providing for use of interest earned from the Florida Coastal Protection Trust Fund for acquisition of spoil disposal sites; establishing priorities for acquisition; requiring local matching funds; limiting application of the act to specified ports; repealing the restrictions on protection of manatees relating to commercial vessels entering or leaving port waters; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

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1:enc

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Section 1. Subsection (9) is added to section 403.021 Florida Statutes, to read:

403.021 Legislative declaration; public policy.--

(9) The Legislature finds and declares that it is essential to preserve and maintain authorized water depth in the existing navigation channels, port harbors, turning basins, and harbor berths of this state in order to provide for the continued safe navigation of deep-water shipping commerce. The department shall recognize that maintenance o authorized channel depths is an ongoing, continuous, beneficial and necessary activity and it shall develop a regulatory process which shall enable the ports of this stat to conduct such activities in an environmentally sound, expeditious and efficient manner.

Section 2. Subsection (26) of section 403.061, Flori Statutes, 1980 Supplement, is renumbered as subsection (27) and a new subsection (26) is added to said section to read:

403.061 Department; powers and duties.--The departm shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules and regulations adopted and promulgated by it, and fo this purpose to:

(26) Develop standards and criteria for waters used for deep-water shipping which consider existing water quali appropriate mixing zones and other requirements for maintenance dredging in previously constructed deep-water navigation channels, port harbors, turning basins or harbo berths, appropriate mixing zones for disposal of spoil material from dredging and where necessary develop a separ. classification for such waters. Such classification, standards and criteria shall recognize that the present

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C. Save Our Rivers Bill

1 A bill to be entitled
2 An act relating to the excise tax on documents;
3 amending s. 201.02(1), Florida Statutes;
4 increasing tax on certain documents; amending
5 s. 201.15, Florida Statutes; providing for
6 distribution of taxes collected; creating s.
7 373.590, Florida Statutes; creating the Water
8 Management Lands Trust Fund in the Department
9 of Environmental Regulation; directing the
10 secretary of the Department of Environmental
11 Regulation to allocate moneys from the fund to
12 the five water management districts for the
13 acquisition of certain lands; providing for
14 other disposition of moneys in the fund and
15 lands acquired; providing for future repeal;
16 providing effective dates.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Subsection (1) of section 201.02, Florida
21 Statutes, is amended to read:
22 201.02 Tax on deeds and other instruments relating to
23 lands, etc.--
24 (1) On deeds, instruments, or writings whereby any
25 lands, tenements, or other realty, or any interest therein,
26 shall be granted, assigned, transferred, or otherwise conveyed
27 to, or vested in, the purchaser, or any other person by his
28 direction, on each $100 of the consideration therefor the tax
29 shall be 45 ~~40~~ cents. When the full amount of the
30 consideration for the execution, assignment, transfer, or
31 conveyance is not shown in the face of such deed, instrument,

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document, or writing, the tax shall be at the rate of 45 ~~40~~ cents for each $100 or fractional part thereof of the consideration therefor.

Section 2. Section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.--All taxes collected under the provisions of this chapter shall be distributed as follows:

(1) Seventy-nine point five percent ~~Six-sevenths~~ of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the General Revenue Fund of the state, to be used and expended for the purposes for which said General Revenue Fund was created and exists by law.

(2) Thirteen point three percent ~~One-seventh~~ of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the Land Acquisition Trust Fund. Sums deposited in such fund pursuant to this section may be used for any purpose for which funds deposited in the Land Acquisition Trust Fund may lawfully be used and may be used to pay the cost of the collection and enforcement of the tax levied by this chapter.

(3) Seven point two percent of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the Water Management Lands Trust Fund. Sums deposited in that fund may be used for any purpose authorized in s. 373.590, and may be used to pay the cost of the collection and enforcement of the tax levied by this chapter.

Section 3. Section 373.590, Florida Statutes, is created to read:

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1 373.590 Water Management Lands Trust Fund.--
2 (1) There is established within the Department of
3 Environmental Regulation the Water Management Lands Trust
4 Fund, to be used as a nonlapsing fund for the purposes of this
5 section. The moneys in this fund are hereby continually
6 appropriated for the purpose of acquiring land in accordance
7 with the provisions of this section.
8 (2) Each district shall file a 5-year plan for
9 acquisition with the Legislature and the secretary by January
10 15, 1982. Annually thereafter each district shall file with
11 the Legislature and the secretary a report of acquisition
12 activity together with modifications or additions to its 5-
13 year plan of acquisition. Expenditure of moneys from the
14 Water Management Lands Trust Fund shall be limited to the
15 acquisition costs of lands included within the plan as filed
16 by each district.
17 (a) Prior to July 15, 1982, the use of moneys from the
18 fund shall be limited to the following land acquisitions:
19 1. By South Florida Water Management District--lands
20 in the water conservation areas and areas adversely affected
21 by raising water levels of Lake Okeechobee in accordance with
22 present regulation schedules, and the Savannahs Wetland area
23 in Martin County and St. Lucie County.
24 2. By Southwest Florida Water Management District--
25 lands in the Four River Basins areas, including Green Swamp,
26 Upper Hillsborough and Cypress Creek, Anclote Water Storage
27 Lands (Starkey), Withlacoochee and Hillsborough riverine
28 corridors, and Sawgrass Lake addition.
29 3. By St. Johns River Water Management District--
30 Seminole Ranch, Latt Maxey and Evans properties in the upper
31 St. Johns River Basin.

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1 4. By Suwannee River Water Management District--lands
2 in Suwannee River Valley.
3 5. By Northwest Florida Water Management District--
4 lands in the Choctawhatchee and Apalachicola River Valleys.
5 (b) After July 15, 1982, the use of moneys from the
6 fund shall be used for continued acquisition of lands listed
7 above and as set forth in the districts' 5-year land
8 acquisition plan.
9 (3) Moneys from the Water Management Lands Trust Fund
10 shall be used for acquiring the fee or other interest in lands
11 necessary for water management, water supply and the
12 conservation and protection of water resources, except that
13 such moneys shall not be used for the acquisition of rights-
14 of-way for canals or pipelines. Lands acquired with moneys
15 from the fund shall be managed and maintained in an
16 environmentally acceptable manner, and to the extent
17 practicable, in such a way as to restore and protect their
18 natural state and condition. The secretary of the Department
19 of Environmental Regulation shall release moneys from the
20 Water Management Lands Trust Fund to the districts following
21 receipt of a resolution adopted by the governing board
22 identifying the lands being acquired and certifying that such
23 acquisition is consistent with the plan of acquisition and
24 other provisions of this act.
25 (4) Water management land acquisition costs shall
26 include payments to owners, and costs and fees associated with
27 such acquisition.
28 '(5) The state-to-district ratio for funding of water
29 management land acquisition shall be 4 to 1 except that the
30 first $2 million of the moneys allocated to the district
31 annually shall be exempt from the matching requirement. Any

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1 unused portion of a district's share of the fund shall
2 accumulate in the trust fund to the credit of that district.
3 Interest earned on such portion shall also accumulate to the
4 credit of that district to be used for land acquisition as
5 provided in this section. The total moneys over the life of
6 the fund available to any district under this section shall
7 not be reduced except by resolution of the district governing
8 board stating that the need for the moneys no longer exists.
9 (6) Moneys from the Water Management Lands Trust Fund
10 shall be available to the five water management districts in
11 the following percentages:
12 (a) Thirty percent to the South Florida Water
13 Management District.
14 (b) Twenty-five percent to the Southwest Florida Water
15 Management District.
16 (c) Twenty-five percent to the St. Johns River Water
17 Management District.
18 (d) Ten percent to the Suwannee River Water Management
19 District.
20 (e) Ten percent to the Northwest Florida Water
21 Management District.
22 (7) Moneys in the fund not needed to meet current
23 obligations incurred under this section shall be transferred
24 to the State Board of Administration, to the credit of the
25 fund, to be invested in the manner provided by law. Interest
26 received on such investments shall be credited to the fund.
27 (8) Lands acquired for the purposes enumerated in this
28 section shall also be used for general public recreational
29 purposes which are not inconsistent with subsection (3).
30 (9) A district may dispose of land acquired under this
31 section, pursuant to s. 373.089. However, revenue derived

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1 from such disposal may not be used for any purpose except the
2 purchase of other lands meeting the criteria specified in this
3 section.
4 Section 4. The tax increase imposed by section 1 of
5 this act is repealed effective July 1, 1991, and the tax rate
6 shall be reduced to 40 cents for each $100 or fractional part
7 thereof of the consideration. The change in the schedule of
8 distributions imposed by section 2 of this act is repealed
9 effective August 1, 1991, at which time the schedule of
10 distributions shall revert to the schedule existing at the
11 time of passage of this act.
12 Section 5. Section 373.590, Florida Statutes, is
13 repealed effecti July 1, 1992. Any unobligated moneys
14 remaining in the Water Management Lands Trust Fund on the date
15 of the repeal of that section shall be deposited in the
16 General Revenue Fund.
17 Section 6. This act shall take effect July 1, 1981,
18 except section 2 shall take effect August 1, 1981.
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D. Joint Resolution on IMC

STATE OF FLORIDA
DEPARTMENT OF NATURAL RESOURCES
RESOLUTION

WHEREAS, it is the policy of the State of Florida to protect and manage Florida's extensive and fragile coastal resources in order to protect their natural, residential, recreational, scientific, and commercial value for present and future Floridians; and

WHEREAS, it is the policy of the State of Florida to direct public funds, such as for roads and sewers, to suitable areas where natural resources can support growth, where there is a need for economic development and where potential danger to human life and property from natural hazards is minimal; and

WHEREAS, it is the policy of the State of Florida to manage state lands for the maximum public benefit and to discourage practices which adversely affect state land and water resources; and

WHEREAS, Florida has many separate laws dealing with natural resource management and economic development, there are frequently conflicts in the implementation of the various state policies and goals which result in unnecessary harm to natural resources and which waste time, money, energy, and other valuable resources. In order to increase effectiveness of state programs and reduce the time and cost of permitting, state agencies must coordinate and streamline permit review procedures to eliminate duplication and increase the quality of regulation and resource protection; and

WHEREAS, the timely development and implementation of a coastal management program in Florida which will meet the requirements for approval under the Federal Coastal Zone Management Act is of highest priority;

NOW THEREFORE BE IT RESOLVED BY I, Bob Graham, Governor, and the members of the Cabinet of the State of Florida, in order to improve the effective and efficient administration of the Executive Branch in state government, are hereby formally establishing an Interagency Management Committee which shall be comprised of the secretaries of the Departments of Commerce, Environmental Regulation, Transportation, Health and Rehabilitative Services, and Community Affairs, the Executive Director of the Game and Fresh Water Fish Commission, the Director of the

Division of Archives and History in the Department of State, the Director of Forestry in the Department of Agriculture and Consumer Services, the Executive Director of the Department of Natural Resources, and the Director of the Governor's Office of Planning and Budgeting.

The responsibilities of the respective agencies and the Committee shall be as follows:

1. Initially, the Committee shall be chaired by the Secretary of the Department of Environmental Regulation who shall serve in that capacity through the first year of federal program approval. Subsequently, the position of chairperson shall rotate on an annual basis among the Executive Director of the Department of Natural Resources, the Secretary of the Department of Community Affairs, and the Secretary of the Department of Environmental Regulation.

2. The Committee members shall select a vice-chairperson on an annual basis. The Committee shall meet at least quarterly, and more often as workload requires and shall establish procedures for the conduct of Committee business. The chairperson shall provide the minutes of each meeting to the Governor and Cabinet. Each agency head is to attend the meeting of the Committee. Only on rare occasions should an agency head be represented by someone else at the meetings, and then only by the person next in charge in the agency.

3. The Committee shall be charged with the prime responsibility for identifying problems and to develop better means of resolving conflicts and inconsistencies in the implementation of laws and funding programs under the purview of the member agencies. Written reports including issues raised by individual agencies and Committee recommendations shall be sent to the Governor and Cabinet. In addition, the Committee shall make recommendations to the Governor and Cabinet, as appropriate, on specific actions necessary to implement improvements, including new legislation,

memorandum of understanding or rulemaking. Agencies under the direct or indirect control of the Governor or the Governor and Cabinet shall cooperate and provide assistance to the work of the Committee as the Committee deems it appropriate, and shall conduct their agency activities accordingly. The Committee shall develop a priority listing of work items and a time schedule for the resolution of each item.

4. All members of the Interagency Management Committee and their respective staffs shall participate in the development and implementation of coastal program activities and specific grant work tasks to the extent compatible with statutory responsibilities of the agencies. Cooperation and coordination of agency activities shall be achieved on a formal and informal basis, and shall be conducted in a manner consistent with the coastal program.

5. Special attention shall be given by the Committee to the management of coastal resources, to natural storm hazard prevention and mitigation, to funding practices which create conflicts with natural resource management policies, and to a more efficient, effective, and coordinated administration of environmental licensing laws.

6. The Department of Environmental Regulation is directed to furnish staff, through the Office of Coastal Management, to the IMC. This staff will be responsible for keeping the Interagency Management Committee appraised of progress by the respective agencies toward the assignments as hereinafter set forth and perform such other liaison and administration functions as the Interagency Management Committee may direct.

7. The Department of Community affairs, the Department of Transportation, the Department of Environmental Regulation, and the Department of Natural Resources are directed to develop a Memorandum of Understanding to be submitted to the Interagency

Management Committee relating to coastal hazard mitigation and hurricane evacution. The Department of Community Affairs will be the lead agency responsible for this development.

8. The Department of Natural Resources and the Department of Environmental Regulation shall work with the other members in the development and implementation of the State Lands Management Plan, in particular as it pertains to the development of aquatic preserve rules and the aquatic preserve management plans.

9. All agencies are authorized to enter into Memoranda of Understanding and rulemaking to further define the specific implementation activities necessary to effectuate the recommendation of the Interagency Management Committee.

IN TESTIMONY WHEREOF, The Governor and Cabinet of the State of Florida have hereunto subscribed their names and have caused the official seal of the said State of Florida to be hereunto affixed, in the City of Tallahassee, Florida, on this 26th day of August, A. D. 1980.

GOVERNOR

SECRETARY OF STATE

ATTORNEY GENERAL

COMPTROLLER

TREASURER

COMMISSIONER OF EDUCATION

COMMISSIONER OF AGRICULTURE

As and Constituting the Head of the State of Florida Department of Natural Resources.

ATTEST:

EXECUTIVE SECRETARY

E. Memorandum of Understanding on IMC

MEMORANDUM OF UNDERSTANDING AMONG THE FLORIDA DEPARTMENT OF COMMERCE, THE FLORIDA DEPARTMENT OF VETERANS AND COMMUNITY AFFAIRS, THE FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION, THE FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, THE FLORIDA DEPARTMENT OF NATURAL RESOURCES, THE FLORIDA DEPARTMENT OF TRANSPORTATION, THE FLORIDA GAME AND FRESHWATER FISH COMMISSION, THE DIVISION OF ARCHIVES AND HISTORY OF THE FLORIDA DEPARTMENT OF STATE, THE DIVISION OF FORESTRY OF THE FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND THE OFFICE OF THE GOVERNOR RELATIVE TO THE INTERAGENCY MANAGEMENT COMMITTEE

WHEREAS, the Governor, and the members of the Cabinet of the State of Florida, in order to improve the effective and efficient administration of the Executive Branch in state government, issued a joint resolution on August 26, 1980, establishing an Interagency Management Committee(suggested amendment, see attachment).

NOW, THEREFORE, in order to ensure the effective and efficient administration of the Executive Branch of State government IT IS AGREED BY AND AMONG THE PARTIES TO THIS MEMORANDUM OF UNDERSTANDING:

THAT they will fully implement and comply with the Joint Resolution of the Governor and Cabinet of August 26, 1980, concerning the establishment of the Interagency Management Committee and will fulfill all responsibilities set forth in that document.

Effective Date and Termination Consent

This Memorandum of Understanding will be effective from the date of signature by the parties hereto and shall terminate only if superceded by a future Memorandum of Understanding or by mutual consent of the signatories hereto and with the approval of the Governor and the Cabinet. This Memorandum shall be reviewed annually to determine appropriate and desirable alterations and amendments.

Signed this 6 day of August, 1981.

Executive Director,
Department of Natural
Resources

Executive Director,
Game and Freshwater Fish
Commission

Secretary, Department of
Veterans and Community Affairs

Director, Division of Archives,
History, and Records Management

Secretary, Department of
Environmental Regulation

Director of Forestry,
Department of Agriculture and
Consumer Services

Secretary, Department of
Commerce

for Tom Herndon
Office of the Governor
Director, Office of Planning
and Budgeting

Secretary, Department of
Transportation

Secretary, Department of
Health and Rehabilitative
Services

Suggested Amendment To The Joint Resolution Establishing The Interagency Management Committee (August 26, 1980):

Amend item 1 under the responsibilities of the respective agencies and the Committee reflecting the appointment of the Lieutenant Governor as the permanent chairman of the Interagency Management Committee.This amendment carries out a proposal described in the Florida Coastal Management Program Draft Environmental Impact Statement (February, 1981).

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE FLORIDA DEPARTMENT OF NATURAL RESOURCES;

THE FLORIDA DEPARTMENT OF VETERAN AND COMMUNITY AFFAIRS;

AND

THE FLORIDA DEPARTMENT OF ENVIRONMENTAL REGULATION

RELATIVE TO THE COASTAL MANAGEMENT PROGRAM

This Memorandum of Understanding sets forth areas of mutual responsibility and joint operating procedures to be followed by the Department of Natural Resources, the Department of Veteran and Community Affairs, and the Department of Environmental Regulation under the State of Florida's coastal management program, administered under the federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451, *et seq.*).

Statement of Existing Agency Authority

The following statutory authorities and agency responsibilities are essential to the coastal management program.

1. The Department of Environmental Regulation (DER) administers most of the state's environmental permitting programs, including:
   a. Sources of air and water pollution, statewide; Chapter 403, F.S.
   b. Dredging and filling on submerged lands, waters of the state, and wetlands; Chapter 253 and 403, F.S.
   c. Electrical Power Plant Siting, Transmission Line Siting, and Industrial Siting; Chapters 288 and 403, F.S.
   d. Water Wells; Chapter 373, F.S.
   e. State Water Use Plan related to the regulation and control of water resources throughout the state; Chapter 373, F.S.

   In addition, the DER, pursuant to Section 380.22, F.S., of the Florida Coastal Management Act of 1978, must develop and administer the state's annual Section 306 grant pursuant to the Federal Coastal Zone Management Act of 1972. With an approved program, the DER, as lead agency, will have the responsibility to

insure that participating state agency actions comply with the authorities, policies and objectives presented in the state coastal management program.

2. The Department of Natural Resources (DNR) manages most of the state's natural resources, and administers the following program areas related to coastal management:

   a. Management of all state-owned lands including submerged sovereignty lands administered through the Board of Trustees of the Internal Improvement Trust Fund; Chapter 253, F.S.

   b. Management of recreation and conservation areas, aquatic preserves, state parks, wilderness areas, environmentally endangered lands, and recreational trails; Chapters 258, 259, 260, and 375, F.S.

   c. Shoreline use and protection; beach nourishment and erosion control projects; assurances of adequate beach access, establishment of coastal construction control lines; Chapter 161, F.S.

   d. The conservation and management of marine fishery resources; Chapter 370, F.S.

   The DNR also is the owner/administrator of the Apalachicola River and Bay and the Rookery Bay Estuarine Sanctuaries as well as the joint owner/administrator of the Key Largo Marine Sanctuary and the Looe Key Marine Sanctuary developed as part of the Coastal Management Program.

3. The Department of Veteran and Community Affairs administers the following activities related to the coastal management program:

   a. Coordination of the state's responsibilities related to Developments of Regional Impact and Areas of Critical State Concern; Chapter 380, F.S.

   b. Primary agency for implementation of the Coastal Energy Impact Program (CEIP) under the Federal Coastal Zone Management Act, as amended; 16 U.S.C. 1451 et. seq..

   c. Implementation of a state disaster preparedness program including establishment of a procedure for coordinating

hazard mitigation to reduce vulnerability to damage, injury and loss of life and property from natural or manmade hazards; Chapter 252, F.S.

Coordination of Agencies Under The Coastal Management Program

In agreeing to the following procedures and responsibilities under Florida's coastal management program, the DER, DVCA, and DNR recognize the statutory limitations of each agency and do not intend to expand or limit their existing statutory powers in any way.

DER, DNR and DVCA Responsibilities Under the Coastal Management Program:

1. The DNR and DVCA hereby express support for the Coastal Management Program and agree to cooperate and coordinate with the DER in the implementation of the program.
2. The DNR and DVCA hereby agree to recognize the final Coastal Management Program, approved by the Governor, as a statement of policy for the protection, conservation, and development of coastal resources in the state.
3. The DNR and DVCA hereby agree to act consistently with the policies and objectives of the coastal management program and to assist the DER to address the issues identified in the program.
4. The DNR and DVCA hereby agree to assist DER with the implementation of the federal consistency provisions of the coastal management program.
5. The DVCA, under direction of a Joint Resolution of the Governor and Cabinet (12/16/80) and Chapter 252, F.S., to review state agency actions (including developing rules) which impact state hazard mitigation policy and to make recommendations to the agencies which will incorporate comments for affecting pending actions.
6. Under the Joint Resolution, the DVCA shall provide quarterly reports to the IMC reflecting hazard mitigation accomplishments and identifying hazard mitigation actions and problems in interagency coordination.

7. The DER, in executing its responsibilities as the coastal management lead agency for funding purposes, shall, to the maximum extent practicable, enter into appropriate arragements to utilize, on a reimbursable basis, the capabilities of the DNR and DVCA to implement mutual program concerns, including, but not limited to:

DNR Coordination With The FCMP

a. The coastal management program will provide funding and technical assistance to the DNR to carry out the State Lands Management Plan, with emphasis on coordinating DNR and DER administrative rules and developing cooperative management agreements to improve the management of state owned lands. For example, assistance will be directed toward development of aquatic preserve management plans and rules.

b. The coastal management program will provide assistance to the DNR to improve management, regulation and access to beach and dune areas pursuant to Chapter 161, F.S.

c. Specifically related to addressing shoreline management the coastal management program will assist the DNR with the review, finalization, and implementation of the State Comprehensive Erosion Control, Beach Preservation and Hurricane Protection Plan.

d. The coastal management program will assist the DNR with development of a comprehensive fisheries management program to fulfill the following objectives:

- Help define a comprehensive interagency approach to the management of living marine resources, with emphasis on nearshore fishery habitat.
- Bring State and Federal coastal zone management and fisheries management objectives and operation closer together.
- Provide better information for well informed decision-making about living marine resources.
- Improve management of fish stocks.

e. The coastal management program, utilizing CZM "306" funds where practicable, will assist DNR with the monitoring and enforcement requirements related to tasks a through d.

DVCA Coordination With The FCMP

a. Pursuant to coastal hazard initiatives established by the Interagency Management Committee and implemented through the Governor and Cabinet's Joint Resolution on hazards adopted December 16, 1980, the coastal management program will assist the DVCA, through CZM "306" funding and technical assistance, with interagency and intergovernmental coordination in prevention or mitigation of disasters resulting from natural or manmade hazards. Program emphasis will be on the prevention or reduction of coastal hazards from hurricanes and associated flooding and wind damage.

b. Specifically related to hurricane mitigation efforts, the coastal management program will utilize CZM "306" funds to assist the DVCA with the preparation, review and implementation of regional hurricane evacuation plans.

c. Utilizing CZM "306" funds, the coastal management program will provide assistance to the DVCA to improve management of resource planning and management areas under the Area of Critical State Concern (ACSC) program and to improve coordination procedures related to reviewing binding letters on potential Coastal DRI's, with emphasis on hazard mitigation and resource protection.

d. The coastal management program (DER) will provide technical assistance for Coastal Energy Impact Program (CEIP) projects. As a part of this assistance, coastal program comments will be provided to the DVCA during its first review of a grant application. This preliminary support to the CEIP will augment DVCA review and will assure that coastal program objectives are addressed by each project. Reviews of CEIP projects will include consideration of the principle objectives of the CEIP (15 CFR931.2, 5/21/79), but not constitute

a determination of consistency carried out under the A-95 review in later phases of project evaluation. The formal consistency determination will be conducted during the A-95 review by the DER and other agencies responsible for carrying out the authorities of the FCMP. Attachment A of this memorandum lists the type of considerations that will guide the preliminary coastal management program review of CEIP projects.

Effective Date and Termination Consent

This Memorandum of Understanding will be effective from the date of signature by the parties hereto and shall terminate only if superceded by a future Memorandum of Understanding or by mutual consent of the three signatories hereto and with the approval of the Governor. This Memorandum shall be reviewed annually to determine appropriate and desirable alterations and amendments.

Signed this 29 day of July, 1981.

Executive Director,
Department of Natural Resources

Secretary, Department of Veterans
and Community Affairs

Secretary, Department of
Environmental Regulation

ATTACHMENT A

COASTAL MANAGEMENT REVIEW OF PROPOSALS SUBMITTED TO COASTAL ENERGY IMPACT PROGRAM (CEIP)

Implementation of the CEIP involves coordination with the state coastal management program. The first federal objective of the CEIP is "To improve and strengthen coastal zone management ... providing financial assistance only for those programs and projects that are in accord with the policy of the Coastal Zone Management Act and the coastal zone management objectives of the individual states" (15 CFR, Part 931.2(a)(1), Vol. 44, Federal Register, No. 99, 5/21/79).

In order to assure that a working relationship is maintained between the two programs, the coastal management program will screen CEIP project proposals during the first review of each application by the Department of Veterans and Community Affairs. Coastal Management Program participation at this stage in the CEIP review procedure will provide an adequate period for additional consultation prior to the formal determination of consistency in the A-95 review. Early screening of projects will not only increase aligment between the programs, but also will indicate any need for further technical assistance from the coastal management program.

This attachment contains a list of considerations which will guide coastal program reviews of CEIP project proposals. The list, while not exhaustive, reflects coastal management program priorities and outlines other considerations such as national concerns, the need for federal, state and local permits, and the range of siting alternatives.

1. Determination of suitable sites for facilities and evaluation of alternative siting strategies including the likelihood for designation by local government and industry and compatibility with state resource management systems. Among the elements of review, an evaluation will be made of the project's effects on the risks of flood and storm hazard losses.

2. Locational and performance factors which minimize adverse environmental, economic, and social effects while satisfying industrial requirements. Assessment of long and short term adverse and positive impacts.
3. Consistency with projected community needs and local and regional plans and objectives. Compatibility of facility with existing and subsequent adjacent uses, including transportation systems.
4. Environmental, economic, and social effects of concentrating or consolidating facilities.
5. Dependence of energy facilities on a shoreline location and evaluation of effects of facilities on other water-dependent uses.
6. Protection of public access and recreational benefits.
7. Avoidance of adverse impacts on sensitive shorelands, estuaries, and important habitats.
8. Potential of project for encouraging management and development agreements between landowners, industry, and governmental entities.
9. Long-term use or conversion of facilities for public or economic reasons.

G. Joint Resolution on Hazards

JOINT RESOLUTION FOR GOVERNOR AND CABINET

WHEREAS, Governor Graham's Policies and Priorities Statement for 1981-1983 has expressed a concern regarding state agency capability related to the preparedness, response, recovery and mitigation from hazards of all types; and

WHEREAS, because of this expressed concern, it is now considered policy by the Governor that the State shall realize the potential for hazard prevention or mitigation in all programs carried out by state programs; and

WHEREAS, the Governor and Cabinet of the State of Florida, in order to improve the effective and efficient administration of the Executive Branch in state government, formally adopted by joint resolution the establishment of the Interagency Management Committee to deal with coastal management issues including the prevention or reduction of coastal hazards posed by hurricanes and other natural hazards in August, 1980; and

WHEREAS, in accordance with initiatives established by the Interagency Management Committee, state agencies were directed to cooperate in the development of management alternatives designed to prevent or reduce coastal hazards posed by hurricanes and other natural hazards. These initiatives are currently focused on the following activities:

(1) location of wastewater management facilities,
(2) building bridge access to undeveloped barrier islands,
(3) bridge design and construction,
(4) beach renourishment projects,
(5) public work projects, and
(6) purchase of conservation and recreation lands; and

WHEREAS, Chapter 252, Florida Statutes, mandates that the State take action to reduce the vulnerability of people in communities of this state to damage, injury and loss of life or property resulting from natural or manmade hazards; and

WHEREAS, Chapter 252 further provides a mechanism for interagency and intergovernmental coordination in the prevention or mitigation of disasters resulting from natural or manmade hazards as outlined in Attachment A of this document; and

WHEREAS, we have called for and authorized several studies and reviews intended to improve the efficiency and effectiveness of hazard management within the State of Florida;

NOW, THEREFORE, be it resolved that it is the intent of this joint resolution to support the Interagency Management Committee's efforts to address the hazards issue, and stress the concern of the Governor and Cabinet for the mitigation of hazards, particularly those of Florida's coastal and floodplain areas. We endorse the management mechanisms previously established by statute for programs in this area, and desire that effective and coordinated implementation of the various resource management policies and legislative mandates be applied to addressing this issue. Signed this 16th day of December, 1980.

Robert Graham
Governor

Doyle Conner
Commissioner of Agriculture

George Firestone
Secretary of State

Jim Smith
Attorney General

Gerald Lewis
Comptroller

Bill Gunter
Treasurer

Ralph Turlington
Commissioner of Education

AGENCY RESPONSIBILITY

1. Under the authority of Chapter 252, the Department of Community Affairs shall establish a procedure for the coordination of hazard mitigation within the State of Florida.

2. The Department of Environmental Regulation, the Department of Health and Rehabilitative Services, the Department of Natural Resources, and the Department of Transportation shall report pending actions which might reasonably impact on the State's hazard mitigation policy to the Department of Community Affairs. The Department of Community Affairs shall provide comments and recommendations concerning such pending actions, such as any proposed rule changes (see 3. below), incorporating comments from other agencies involved in the mitigation of hazards.

3. The Department of Community Affairs, in conjunction with the Department of Environmental Regulation, shall prepare a report to the Interagency Management Committee to be submitted no later than January 30, 1981 reflecting the structure and mechanism for future coordination of hazard mitigation as directed by the July, 1980 MOU on coastal hazards. Based on this MOU, signatory agencies were to cooperate in the development of management alternatives designed to prevent or reduce the effects of hurricanes and other associated natural hazards in coastal areas. For example, each signatory agency (DER, DNR, DCA, HRS, DOT, and the Governor's Office of Planning and Budgeting) was requested to review the effectiveness of their respective programs regarding coastal hazard mitigation and effect program improvements through rule changes, policy changes, funding changes, etc., if needed.

4. Subsequently, the Department of Community Affairs shall provide to the Interagency Management Committee a quarterly report due during the first two weeks of each quarter. The report is to reflect the hazard mitigation accomplishments of the previous quarter, contemplated hazard mitigation actions of the upcoming quarter, as well as identifying problems in interagency coordination and general hazard mitigation policy.

5. The Interagency Management Committee is requested to review the report of January 30th and subsequent quarterly reports and make a presentation to the cabinet within thirty days of receipt of these reports.

Witness

Witness

March 5, 1981
Date

Witness

Witness

March 23, 1981
Date

Witness

Witness

March 6, 1981
Date

Witness

Witness

April 1, 1981
Date

Witness

Witness

March 6, 1981
Date

Witness

Witness

March 9, 1981
Date

Secretary, Department of Environmental Regulation

Executive Director, Department of Natural Resources

Secretary, Department of Community Affairs

Secretary, Department of Health and Rehabilitative Services

Secretary, Department of Transportation

Director, Governor's Office of Planning and Budgeting

H. MOU on Hazard Coordination

MEMORANDUM OF UNDERSTANDING AMONG
DEPARTMENT OF COMMUNITY AFFAIRS, DEPARTMENT OF ENVIRONMENTAL REGULATION, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, DEPARTMENT OF NATURAL RESOURCES, DEPARTMENT OF TRANSPORTATION, AND THE OFFICE OF THE GOVERNOR

WHEREAS there exists a need to develop and implement an effective coastal resource management program which meets state and national interests in managing competing uses of Florida's valuable coastal resources; and

WHEREAS protection of Florida's coastal resources, including human resources, is crucial to the economic and social stability of the State; and

WHEREAS the timely development and implementation of a coastal management program in Florida that will meet the requirements for approval under the Federal Coastal Zone Management Act is of highest priority; and

WHEREAS Florida's extreme vulnerability to natural hazards, particularly hurricanes, is an everpresent threat to both human life and other resources in the coastal area; and

WHEREAS mitigating natural hazards has been identified as among the key elements to be addressed in the coastal zone management program; and

WHEREAS it is the policy of the State of Florida to direct public funds such as roads and sewers to suitable areas where natural resources can support growth, where there is a need for economic development and where potential danger to human life and property from natural hazards is minimal; and

WHEREAS Florida has many separate laws dealing with natural resource management and economic development, there are frequently conflicts in the implementation of the various state policies and goals which result in unnecessary harm to natural resources and which waste time, money, energy and other valuable resources. In order to increase effectiveness of state programs and reduce the time and cost of permitting,

state agencies must coordinate and streamline permit review procedures to eliminate duplication and increase the quality of regulation and resource protection; and

NOW, THEREFORE, in order to finalize recommendations to the Governor on the best way to coordinate existing and future programs which impact on coastal zone management and the prevention and/or reduction of the effects of hurricanes and other natural hazards, IT IS AGREED BY AND AMONG THE PARTIES TO THIS MEMORANDUM OF UNDERSTANDING:

THAT they will cooperate in the development of management alternatives designed to prevent or reduce the coastal hazards posed by hurricanes. In order to develop these management alternatives, each agency agrees to review the program materials on which the "Interim Report on the Comprehensive Emergency Management Review of the Hazards of a Hurricane" is based. These materials will be provided by the Department of Community Affairs.

THAT upon receipt of this material each signatory agency will:

1. Add to the list any relevant programs which may have been omitted.
2. Explain how the listed programs can help or hinder the state's coastal hazard mitigation efforts.
3. Indicate ways to improve the effectiveness of these programs as coastal hazard mitigation tools through rule changes, internal and interagency policy changes, statutory changes, and/or funding changes.
4. Establish priorities for implementing those program changes which will improve the effectiveness of coastal hazard mitigation in Florida.

5. Compile and forward this information to the Department of Community Affairs, Bureau of Disaster Preparedness, no later than September 11, 1980.

THAT the goal of the parties to this Memorandum is that future state policy--based on this input, the Final Report on Comprehensive Emergency Management of the Hazards of a Hurricane, and the recommendations set forth by the Interagency Management Committee--will provide that:

1. All agencies will expend state funds only in a manner consistent with state policies on coastal zone management and hazard mitigation.
2. All agencies will expend federal funds and develop new federal program applications only in ways consistent with state policies on coastal zone management and hazard mitigation.
3. All agencies involved in coastal zone management and hazard mitigation will cooperate in reviewing and processing permits involving those activities essential to effective coastal zone management, particularly the mitigation of coastal hazards.

THAT this Memorandum of Understanding shall terminate only if superceded by a future Memorandum of Understanding or by mutual agreement when there are no longer any programs of mutual concern relative to the hazard mitigation program. This Memorandum shall be reviewed annually to determine appropriate and desirable alterations and amendments.

IN WITNESS WHEREOF, the parties have set their hands and seals this 29 day of July, 1980.

Secretary, Department of Community Affairs

Secretary, Department of Environmental Regulation

Secretary, Department of Health and Rehabilitative Services

Executive Director Department of Natural Resources

Secretary, Department of Transportation

John T. Herndon
Office of the Governor

MEMORANDUM OF UNDERSTANDING BETWEEN
THE OFFICE OF THE GOVERNOR, THE DEPARTMENT OF TRANSPORTATION,
AND THE DEPARTMENT OF ENVIRONMENTAL REGULATION

The siting of transportation facilities within the state's coastal regions generally involve projects underwritten by public investment (i.e., primary, secondary, or local roads; bridge and/or causeway construction; access routes to and from ports, public airports, and recreation areas; etc., financed through federal, state and/or local governmental appropriations) and which collectively have an important influence on land use and ultimate growth patterns in any given area. The installation of such transportation facilities, particularly in Florida's coastal floodplain and high hazard areas needs careful coordination with other state agencies and appropriate areawide plans. This coordination would provide a basis for preventing or resolving potential built-in conflict between the undersigned governmental agencies.

It is the purpose of this Memorandum of Understanding (MOU) to provide a beginning point for establishing and encouraging consistency between agency goals and objectives related to coastal storm hazard management issues. This MOU is entered pursuant to the Coastal Hazards MOU regarding natural hazard mitigation signed July 29, 1980 (see Attachment 1) as well as supportive of the Governor's Policies and Priorities for Florida, 1981-1983. This effort is also in conformance with federal regulations and policies as provided in Executive Orders 11988 and 11990 on floodplain management and protection of wetlands; the Water Resources Council: Floodplain Management Guidelines for implementing Executive Order 11988/11990 (Federal Register, Vol. 43, No. 29, February 10, 1978); and FHWA/DOT Final Rule on Floodplain Management (23 CFR Part 650).

Intergovernmental Coordination and Consistency

In order to enhance decision-making between the FDOT and FDER and to assure conformity of action with the Governor's Natural Resource policies and priorities and the Florida Coastal Management Program, it is agreed that:

1. Road or bridge projects involving the expenditure of public funds (Federal and State) to provide new access to undeveloped barrier islands will not be approved by the Department of Transportation unless an overwhelming public interest can be demonstrated;

2. For those new or substantially improved roadways and bridges to be considered designated in coastal high hazard zones (V-zones), the design standards should be consistent with the intent of the Federal DOT Final Rule on Location and Hydraulic Design of Encroachments on Flood Plains (Federal Register, Vol. 44, No. 228, November 26, 1979); and

3. FDOT will provide notice to FDER of intent to conduct activities, including the necessary steps during planning and design phases that would directly affect coastal areas, so as to provide FDER, at the earliest planning stages, an opportunity to evaluate activities as to their consistency to the maximum extent practicable with the state coastal management program.

Effective Date and Termination Consent

This agreement will be effective after 60 days from the date of signature by parties hereto and may be terminated at any time, by mutual consent of the parties hereto, and with the approval of the Governor.

Signed this 6th day of January, 1981.

John T. Herndon
Office of the Governor

W. L. Rose
Department of Transportation

Jacob D. Varn
Department of Environmental Regulation

STATE OF FLORIDA

CONSTRUCTION GRANTS PRIORITY SYSTEM

FOR

WASTEWATER TREATMENT WORKS

April 2, 1981

INTRODUCTION

The Federal Water Pollution Control Act, as amended by the Clean Water Act, authorizes federal construction grants to municipalities for the planning, design and construction of publicly owned wastewater treatment works. The grants are awarded from the State's annual allotment according to the Priority System. The Priority System sets forth a method of rating and ranking projects and the procedures for the development and management of a Project Priority List. In accordance with federal regulations, the Priority System and List are designed to achieve optimum water quality management consistent with the goals and requirements of the Act.

Federal regulations require the determination of priority to be based on (1) the severity of the pollution problems, (2) the existing population affected, and (3) the need to preserve high quality waters. Other optional factors are considered in the determination of project priority. Treatment plants receive higher priority than interceptors, and interceptors receive higher priority than collection systems. Treatment works (including sewer projects) which would provide reserve or future capacity on coastal/barrier islands, beaches, dunes, or coastal wetlands, or which would encourage urban sprawl receive low priority. Treatment works (including sewer projects) which would improve and revitalize existing communities and communities which have completed plans pursuant to State or federal requirements receive higher priority. The determination of project priority, including other factors, is fully discussed below in Section 2.

In addition to priority, project sequence (Step), availability of funds, and other management criteria are considered in developing and managing the Priority List. A project's anticipated priority certification date (readiness to receive a grant), as determined by the Department of Environmental Regulation, is of primary importance in identifying which projects qualify for listing on the Fundable Portion of the Priority List. Although the preceding step need not be complete for a project to qualify for listing on the Fundable Portion, it must be complete for a project to qualify for priority certification and a grant award.

Section 1. PRIORITY LIST DEVELOPMENT AND MANAGEMENT

1.01 Definitions

1.01(a) "Act" means the Federal Water Pollution Control Act as amended.

1.01(b) "Amendment" means the formal addition of projects to the Fundable Portion; an Amendment is generally required for the addition of one or more Step 3 or combined Step 2+3 projects. It also means Bypass action resulting in the assignment of a project to the Planning Portion. An Amendment is not required prior to certification or other approval for funding grant increases and certain projects utilizing a Reserve Fund; these are Step 1 and Step 2 projects and Step 2+3 and Step 3 projects involving emergency situations. An Amendment shall comply with public participation requirements.

1.01(c) "Bypass" means the assignment of lower priority to a project previously listed on the Fundable Portion which is not proceeding on schedule due to reasons other than changes in the completion status of the preceding Step or changes in status with respect to other listing requirements. The result is that previously lower ranked projects on the Fundable Portion and, possibly, projects on the Planning Portion or which have not been identified will be assigned higher funding priority than the bypassed project. Bypassed projects shall retain Priority Scores but shall be assigned to the Planning Portion.

1.01(d) "Certified Project" means a project having received Priority Certification but not yet having been awarded, or denied, a Grant by EPA.

1.01(e) "Commission" means the Environmental Regulation Commission.

1.01(f) "Complete Grant Application" means an application meeting the federal requirements specified in Code of Federal Regulations (40 CFR 35.920-3).

1.01(g) "Deferral" means the assignment of a project, failing to maintain its listing qualification status (for reasons other than, or in addition to, the failure to proceed as previously scheduled), from the Fundable Portion to the Planning Portion; Deferral action is distinguished from Bypass and does not require a public hearing.

1.01(h) "Department" means the Department of Environmental Regulation.

1.01(i) "EPA" means the U. S. Environmental Protection Agency.

1.01(j) "Fundable Portion" means the portion of the Priority List consisting of projects scheduled for Priority Certification during the first fiscal year of the five-year planning period; the sum of the requested funds for all listed projects shall not exceed the total funds, less Reserve Funds, expected to be available during the fiscal year.

1.01(k) "Grant" means financial assistance awarded to a Municipality by the

EPA under Title II of the Act for eligible Step 1 planning, Step 2 design, Step 3 construction, and combination Step 2+3 design/construction of wastewater treatment projects. The grant amount, prior to consideration of innovative/alternative technology, shall be 75 percent of the eligible project costs.

1.01(l) "Grant Increase" means an amendment to an active Grant resulting in the award of additional funds for the original project or a related project; Department approval of a Grant Increase request is required but a Priority Score and Priority Certification are not required.

1.01(m) "Municipality" means a town, county district or other public body, including an intermunicipal agency, created under State law, having jurisdiction over treatment or disposal of sewage, industrial wastes, or other wastes. (See 40 CFR 35.905 for a more complete definition.)

1.01(n) "Planning Portion" means the portion of the Priority List consisting of projects that may receive funding, under anticipated allotment levels, during, at a minimum, the last four years of the five-year planning period; the Planning Portion may extend beyond the minimum requirement of five years.

1.01(o) "Priority Certification" means the official Department affirmation (on EPA Form 5700-28) that a project has a priority ranking on the Fundable Portion; the Priority Certification is submitted by the Department to EPA in conjunction with a Complete Grant Application. The affirmation authorizes EPA to award a grant from Florida's construction grants program allotment. Priority Certification results in a Certified Project.

1.01(p) "Priority List" means a ranked listing of projects for which federal assistance is anticipated during a 5-year planning period starting at the beginning of the federal fiscal year (October 1). It consists of the Fundable Portion and Planning Portion.

1.01(q) "Priority Score" means the rating determined for each project in accordance with the method set forth in Section 2; projects are initially ranked on the Priority List by Priority Score in descending order.

1.01(r) "Removal" means the deletion of a project from the Priority List by the Department due to the project (1) having been awarded a Grant, (2) no longer qualifying for listing under the Priority System, (3) otherwise failing to be eligible for a Grant pursuant to the Act and associated regulations, or (4) having been withdrawn by the Municipality.

1.01(s) "Reserve Fund" means a portion of the State allotment set aside for a specific purpose (such as for Grant Increases).

1.01(t) "Target Certification Date" means the anticipated date the Department will submit a Priority Certification to EPA; data provided by the Municipality regarding anticipated submission of a Complete Grant Application is

considered by the Department in establishing the Target Certification date for incorporation in the Priority List.

1.01(u) "Treatment Works" means any devices and systems for the storage, treatment, recycling, and reclamation of municipal sewage, domestic sewage, or liquid industrial wastes. These include, but are not limited to, sewage collection/transmission systems and modifications thereof as well as any facilities, including land, that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment. (See 40 CFR 35.905 for a more complete definition.)

1.01(v) "Update" means minor revisions to project data identified on the Priority List which do not adversely affect project priority rank of projects previously on the Priority List. An update does not require a public hearing.

1.02 Priority List Development

The Priority List is developed annually by the Department. Municipalities are encouraged to submit anticipated project application dates and other data to assist the Department in identifying projects for inclusion on the Priority List. These projects are given consideration for assignment to the Fundable Portion of the Priority List.

Each project is assigned a target Certification Date by the Department based on anticipated review and approval actions as well as information provided directly by the Municipality. A project on the Fundable Portion, for which a Complete Grant Application is not received by the Department, or which for some other reason cannot be given Priority Certification, within 90 days of the Target Certification Date, will be subject to Bypass, Deferral, or Removal Action. The submittal by each Municipality of a realistic anticipated grant application date for each of its projects, based on the expected completion of the preceding step (when appropriate), will assist the Department in assigning realistic Target Certification Dates and thereby minimize the reassignment of projects from the Fundable Portion to Planning Portion during the fiscal year.

1.02(a) A Priority List shall be developed annually by the Department; upon approval by the Commission and EPA, it supersedes the previous year's Priority List.

1.02(b) Until April 15 of each year, the Department will accept requests from Municipalities for initial inclusion of projects on the next fiscal year's Priority List. A request form (available from the Department) must be submitted for each Step 1, Step 2, Step 2+3, and Step 3 project. Incomplete request forms may result in a lower Priority Score or failure to be included on the Fundable Portion. Request forms need not be submitted for projects on the current Priority List. A project status report must be submitted for all projects on the Priority List except Certified Projects; failure to submit the status report may result in Bypass, Deferral, or Removal of projects

previously included on the Fundable Portion. The status reports will be utilized by the Department in the managing of the current Priority List and developing next fiscal year's Priority List.

1.02(c) Projects shall be ranked by Priority Score (determined in accordance with Section 2) in descending order at the time of development of the initial Priority List (prior to periodic Amendments). Projects meeting the criteria for listing on the Fundable Portion shall be ranked above Planning Portion projects. Projects on the Fundable Portion of the current Priority List will be included on the Fundable Portion of the next fiscal year's Priority List being developed, unless Bypass, Deferral, or Removal action is appropriate. If the sum of the grants required for the projects qualifying for inclusion on the Fundable Portion exceeds the total funds available, less reserve funds, the projects with the highest Priority Scores shall be ranked on the Fundable Portion; other qualifying projects shall be ranked on the Planning Portion.

1.02(d) Certified Projects shall be ranked at the top of the Priority List in chronological order by Priority Certification date.

1.02(e) On an emergency basis and subject to EPA approval, the Secretary of the Department may assign to a project, which is required to alleviate an imminent or existing public health or safety hazard, a higher priority. Due to the emergency basis for the priority assignment, concurrence by the Commission is not required unless a Bypass results.

1.02(f) Where the Priority Score determined according to Section 2 is not appropriate for a particular project, the Department may recommend to the Commission an appropriately derived Priority Score for that project. The assignment of such a Priority Score is subject to both Commission and EPA approval.

1.03 <u>Requirements for Inclusion on Priority List</u>

1.03(a) All projects listed on the Fundable Portion must meet eligibility requirements of the Act and associated Federal Regulations, including the enforceable requirements of the Act, except that up to 25% of the allotment may be used for pipe-related projects not meeting enforceable requirements of the Act. These projects may be sewer system replacement (or major rehabilitation), new collectors and appurtenances, new interceptors and appurtenances, or correction of combined sewer overflows. To be eligible, these projects must be deemed necessary (by the Department) for pollution control. No special priority or Reserve Fund will be used in conjunction with such projects.

1.03(b) All Step 3 and combination Step 2+3 projects listed on the Fundable Portion, except those assigned on an emergency basis, must meet public participation requirements as provided in Subsection 105.

1.03(c) Only projects expected by the Department to be ready to receive a Grant

during the first fiscal year of the five-year planning period qualify for listing on the Fundable Portion. In order to be ready to receive a Grant for Step 2, Step 3, or Step 2+3, the previous step must be complete. However, completion of the previous step project is not required prior to listing on the Fundable Portion of the Priority List.

1.03(d) A combined Step 2+3 project may be listed on the Priority List for applicant Municipalities of 25,000 or less population provided the applicant Municipality's total estimated Step 3 construction cost is $4 million or less. A combined Step 2+3 project must, at a minimum, meet all the prerequisites for Step 2 listing.

Priority List Management

1.04(a) The Priority List may be amended or updated periodically throughout the current fiscal year as deemed necessary by the Department.

1.04(b) Any qualifying project for which a request for inclusion on the Fundable Portion is received by the Department after April 15, may be added to the bottom of the Fundable Portion by the Commission (by Amendment) subject to EPA approval provided funds are available.

1.04(c) Any Step 1 or Step 2 project, meeting Fundable Portion listing requirements for which a Complete Grant Application is received, may be added to the Fundable Portion by the Chief, Bureau of Wastewater Management and Grants, subject to EPA approval, for utilization of the Reserve Fund established in Subsection 3.01(a) provided such funds are available. Such projects are not ranked among other projects on the Fundable Portion, and a public hearing is not required.

1.04(d) A Municipality must submit a Complete Grant application for each of its projects on the Fundable Portion to the Department within 90 days of each project's Target Certification Date as established by the Priority List. A project for which a Complete Grant Application is not received within 90 days of the Target Certification Date may be, depending on the reason for the delay, bypassed at a public hearing, or deferred to the Planning Portion or removed from the Priority List by the Department. When Bypass is appropriate, a minimum of 90 days shall elapse between the Target Certification Date and the public hearing date.

1.04(e) If EPA determines a grant application is unacceptable, the project may be retained on the Fundable Portion for up to 90 days to permit the applicant to correct any application deficiencies after which, if the deficiencies have not been corrected the project may be deferred to the Planning Portion by the Department. A project may be immediately deferred to the Planning Portion or removed from the Priority List if (in the Department's opinion) the reasons for unacceptability obviously cannot be rectified within 90 days.

1.04(f) A project on the Fundable Portion may be subject to Bypass or Deferral for reasons other than those stated in Subsections 1.04(d) and (e) when these actions, as defined in Subsections 1.01(c) and (g), are appropriate. A project may be removed from the Priority List when Removal, as defined in Subsection 1.01(r), is appropriate.

1.05 Public Participation

1.05(a) The opportunity for public participation, as required by State and Federal Regulations, shall be provided prior to adoption of the Priority List. This public participation will include a public hearing and circulation of information concerning the Priority List. At a minimum, the Fundable Portion of the proposed Priority List including a description of each project will be made available.

1.05(b) The opportunity for public participation shall be provided prior to adopting Amendments to the Priority List including those Amendments which involve a Bypass.

1.05(c) The opportunity for public participation need not be given for an Update of project data, project Deferral, and project Removal.

1.05(d) The Priority Certification of Step 1 and Step 2 projects and certain high priority Step 2+3 and Step 3 emergency projects (as provided in Subsection 1.02(e), as well as the approval of Grant Increase Requests, need not fulfill public participation requirements.

1.05(e) The addition to the Fundable Portion of a non-controversial Step 2+3 or Step 3 project involving less than a $10 million Grant need not fulfill the full 45-day federal public participation requirements; however, a 21-day public notice, at a minimum, and a public hearing will be required.

Section 2 PRIORITY DETERMINATION

The rank of each project on the initial Priority List is determined by the Priority Score, which, in part, equals the sum of the segment score, the overload score, and the present available flow score. In this way, the state priority ranking formula considers the pollution of the stream segment where the plant is, or is to be, located, the pollution to be reduced, the existing population affected, and the need for preservation of high quality waters. In addition, Priority Score considers type of project, the location of the project with respect to coastal floodplains, and the status of community planning. Projects are ranked according to Priority Score in descending order.

2.01 Segment Score: Florida has been divided into a total of 115 parts or stream segments. The segment boundaries are those utilized in the approved state basin plan and are intended to define uniform hydrologic units. The segment

score is the sum of three factors required by Federal Regulations: pollution severity, existing population affected, and need to preserve high quality waters. These factors are determined as follows:

.01(a) Pollution Severity: Each segment receives a certain quantity of pollution from discharges (i.e., the segment load). Each segment is able to "clean up" or assimilate a certain quantity of waste associated with these discharges without lowering the water quality below state standards (i.e., the segment assimilative capacity). The pollution severity of a segment is the segment load minus the segment assimilative capacity. Therefore, the more the segment loading exceeds the segment assimilative capacity, the higher the pollution severity will be. Where an existing discharger has already received EPA grant funds for construction (Step 3), but the construction is incomplete, the discharge used in calculating pollution severity is based on the quantity of the present flow assuming the facility is already functional. Both the segment load and the assimilative capacity are measured as the ultimate oxygen demand (UOD) which is the amount of oxygen, in pounds, required to clean up or assimilate the waste. The segment assimilative capacity is determined by means of standard mathematical calculations. There are two situations in which assimilative capacity is replaced with technology based effluent limitations in accordance with State regulations. These situations are as follows:

(1) Federal and state laws generally require a minimum of secondary treatment of wastes from all sewage treatment plants and ocean outfalls. Secondary treatment has been defined by the State of Florida. Therefore, unless mathematical modeling indicates a need for more stringent treatment, the effluent limitation has been defined as the UOD the plants would release if they were meeting secondary treatment requirements.

(2) Wilson-Grizzle advanced waste treatment (AWT) areas are those areas defined by the Wilson-Grizzle Bill (403.086(1)(b), Florida Statutes) for which the effluent limitation is calculated as the amount of UOD which would be discharged if all plants met the required AWT standards. However, if the water quality is such that AWT is insufficient, additional levels of treatment, or no discharge, will be required based on wasteload allocations.

After the pollution severity is determined for each segment by subtracting the segment assimilative capacity from the segment load, the scores are converted to a scale of zero to 100, with the highest segment pollution severity receiving 100 points.

.01(b) Existing Population Affected: The entire segment population is used in determining priority points. Segments with larger populations receive more points. Priority points for population range from 5 to 50, and are determined according to the following scale (Page 9):

Points	Population
5	< 5,000
0.001 times the population	5,000 - 25,000
25 + 0.2 times (population minus 25,000)	25,000 - 150,000
50	> 150,000

2.01(c) Need to Preserve High Quality Waters: A segment score is increased by 15 points for each of the following conditions:

1) Segment located within all or part of an aquatic preserve.

2) Segment located within all or part of a designated area of critical state concern.

3) Segment contains Class IA or Class II Waters.

4) Segment contains all or part of a designated canoe trail or wild and scenic river.

Total possible additional points is 60.

2.01(d) Projects or project service areas located in more than one stream segment shall utilize the segment score of the plant outfall site or that of the major portion of the project service area, whichever is higher. When the project results in the elimination of a discharge to surface water, the score is computed as if the "outfall site" existed as above. In summary, the segment score is the sum of the factors for pollution severity, existing population affected, and need to preserve high quality waters. The total possible segment score is 210 points.

2.02 Overload Score: The second major part of the Priority Score formula is directed toward the specific project proposed for a construction Grant. Consideration is given the amount of pollution, or overload, which will be eliminated by the project. The overload is identified by a municipal discharge inventory and is defined as the amount of waste the existing plant(s) or pollution source(s) discharges in excess of the amount of waste the receiving waters can assimilate. Overload is measured in pounds of UOD and is based on the plant load being discharged minus the plant effluent limitations required to meet State and federal discharge requirements; interim limitations are not used. Overload is based on the present actual flow and not on present available flow. Like the segment assimilative capacity, plant effluent limitations

are determined by mathematical calculations or are set on a technology basis (for plants discharging in the ocean, in the Wilson-Grizzle area, etc.). The overload values are converted to a scale of zero to 100 with higher values receiving higher scores (See Subsection 2.03(a)). Where a proposed project will not reduce or eliminate an overload source, zero points will be awarded. Overload scores for Step 1 projects will be zero.

2.02(a) A project essential to a treatment plant, such as sludge disposal facilities, shall receive the overload score of the treatment plant. The overload score of a project involving more than one treatment plant shall be based on the sum of the overload scores for all of the plants involved.

2.02(b) The overload value of a proposed interceptor project is the sum of the overloads at any plants or discharge sources that the interceptors would phase out

2.02(c) After the overload score is determined, those projects which are designed to eliminate or decrease the pollution load currently discharging into one or more lakes, as defined in the "Florida Lakes Gazeteer," will be awarded an additional 15 points to the overload score.

2.02(d) A project required to control the nitrogen or phosphorous load of an existing discharge shall receive 5 additional points for each nutrient controlled. This determination must be based on wasteload allocation or permit effluent limits.

2.03(a) Present Available Flow Score: The present available flow (PAF) is defined as the average flow through the treatment facility which would exist if the proposed project were now complete. When the particular project deals with a portion of a wastewater treatment system, the PAF is the average monthly flow through that portion as if it were completed at the present time. The population utilized for determining the PAF score is the present day population which would be served by the particular project. The PAF values are expressed in millions of gallons per day (monthly average) and are converted to a scale of zero to 100 with higher values receiving higher scores. No PAF points will be awarded for Step 1 projects.

The PAF and overload points are determined according to the following scales:

OVERLOAD (lbs/day UOD)	PAF (MGD)	POINTS
0 UOD	0 MGD	0
0 < UOD ≤ 5	0 < MGD ≤ 0.1	10
5 < UOD ≤ 10	0.1 < MGD ≤ 0.2	20
10 < UOD ≤ 20	0.2 < MGD ≤ 0.4	30
20 < UOD ≤ 40	0.4 < MGD ≤ 0.8	40
40 < UOD ≤ 80	0.8 < MGD ≤ 1.6	50
80 < UOD ≤ 160	1.6 < MGD ≤ 3.2	60
160 < UOD ≤ 320	3.2 < MGD ≤ 6.4	70
320 < UOD ≤ 640	6.4 < MGD ≤ 12.8	80
640 < UOD ≤ 1280	12.8 < MGD ≤ 25.6	90
1280 < UOD	25.6 < MGD	100

2.03(b) Interceptors will be subject to the following loss of points if the present available peak flow is less than 25% of the capacity of the interceptor:

PAF Percent of Interceptor Capacity			Loss of PAF Points
0	to	5	100
> 5	to	10	90
> 10	to	15	80
> 15	to	20	60
> 20	to	25	30

2.03(c) The PAF score for expansion projects not required for upgrading treatment is based only on that portion of the PAF in excess of the existing plant capacity.

2.03(d) The PAF of effluent and sludge disposal projects is based on the corresponding plant influent.

2.04 Category. Project category points are received according to the following schedule:

	Category	Points
I.	Secondary treatment facilities	800
II.	More stringent treatment facilities	800
III.a.	Infiltration/Inflow correction	400
III.b.	Sewer/system replacement or major rehabilitation	400
IV.a.	New collector systems and appurtenances	0
IV.b.	New interceptors and appurtenances	400

2.04(a) Effluent disposal, sludge handling facilities, and flow equalization facilities projects will be considered part of the treatment facilities.

2.04(b) Facilities planning (Step 1) projects will receive 800 points.

2.04(c) An additional 25 points will be awarded to those projects located within the geographical area covered by a completed 201 facilities plan or to those Municipalities that have adopted a comprehensive plan in accordance with the Local Comprehensive Planning Act.

2.04(d) An additional 50 points will be awarded to those portions of projects which call for the rehabilitation of sewers in urban areas which were originally constructed

prior to October 18, 1972, in order to improve and revitalize existing communities. Interceptor projects which phase out treatment plants for an entire Municipality will receive 800 points. Interceptor projects which phase out one or more treatment plants, but not the entire treatment needs of a Municipality will receive 500 points.

2.04(f) An interceptor or collection system may be included in a treatment plant project if the Department determines that the plant cannot be placed in operation without the interceptor or collection system.

2.04(g) Step 2, Step 3, and combination Step 2+3 projects for new pump stations and treatment plants to be constructed within the 100-year floodplain, where there is a practical alternative, shall receive no category points after the effective date of the 1981 revisions to Chapter 17-6, FAC.

2.05 Innovative/Alternative Technology Incentive. Step 2 and Step 3 projects utilizing innovative or alternative technology will receive 15 additional points. These points must meet EPA criteria for innovative or alternative technology (See 40 CFR, Part 35, Subpart E, Appendix E). (See Subsection 3.01 (f) below for additional incentive information.)

Section 3. Reserve Funds

This Subsection establishes several Reserve Funds in accordance with federal regulations. These Reserve Funds are stated as a percent of the State allotment. These Reserve Funds generally may be periodically replenished (or diminished) by transfer from (or to) the unreserved funds by the Commission with EPA concurrence; such transfers are not possible for the Reserve Fund established in Subsection 3.01(e) for innovative and alternative technology projects.

The four Reserve Funds addressed in Subsections 3.01 (a), (b), (c) and (d) may be maintained until the next year's appropriation becomes available or six months prior to the reallotment deadline, whichever occurs first, at which time, the Reserve Funds may be released for general use in certifying projects or approving Grant Increases. The discretionary use of Reserve Funds identified in Subsections 3.01(a), (b), and (c) to enable a Grant for innovative technology projects and emergency projects is addressed in Subsections 3.01(f) and (g).

3.01(a) Ten percent of the State allotment may be initially reserved for Step 1 and Step 2 projects not currently on the Fundable Portion of the Priority List. The Reserve Fund may also be utilized for Grant Increases to ongoing Step 1 and Step 2 projects as well as for Grants for innovative technology projects and emergency projects.

3.01(b) A minimum of ten percent of the State Allotment shall be initially reserved

for Grant Increases to Step 3 and Step 2+3 projects. The Reserve Fund may also be used for Grants for innovative technology projects and emergency projects.

3.01(c) Up to four percent of the State allotment may be reserved to fund alternatives to conventional treatment works in small communities. The establishment of this Reserve Fund must be authorized by the EPA Regional Administrator. It has not been established to date.

3.01(d) Two percent of the State allotment shall be initially set aside for State management assistance to cover the reasonable costs of administering program activities delegated to the State by EPA pursuant to Section 205(g) of the Act. No program activities are currently delegated to Florida.

3.01(e) The Act may require each state to set aside a specific percentage of its annual allotment for increasing Grants for projects utilizing innovative or alternative technology. The fiscal year 1982 Reserve Fund may be established after this Priority System becomes effective provided funds are made available; initially the Reserve Fund will be set at zero. When insufficient funds are available to ensure full funding of all qualifying innovative and alternative technology projects, chronological Priority Certification of the original Grants shall generally serve as the basis for determining the distribution of this Reserve Fund among projects.

3.01(f) As added incentive for using innovative technology, a Step 3 or combined Step 2+3 project involving innovative technology may utilize available Reserve Funds established in Subsection 3.01(a), (b), and (c) for its basic 75 percent Grant. The project must be listed on the Fundable Portion; it may be added by Amendment when unreserved funds are unavailable and when sufficient funds to enable project Priority Certification are available in the referenced Reserve Funds.

3.01(g) When unreserved funds are unavailable, a project assigned higher priority on an emergency basis to alleviate an imminent or existing public health or safety hazard, in accordance with Subsection 1.02(e), may utilize available Reserve Funds established in Subsection 3.01(a), (b), and (c).

RULES

OF THE

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF STATE LANDS

CHAPTER 16Q-20

FLORIDA AQUATIC PRESERVES

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16Q-20.01 Intent.

(1) All sovereignty lands within a preserve shall be managed primarily for the maintenance of essentially natural conditions, the propagation of fish and wildlife, and public recreation, including hunting and fishing where deemed appropriate by the board, and the managing agency.

(2) The aquatic preserves which are described in Sections 258.39, 258.391, and 258.392, F.S., and in 16Q-20.02, F.A.C., were established for the purpose of being preserved in an essentially natural or existing condition so that their aesthetic, biological and scientific values may endure for the enjoyment of future generations.

(3) The preserves shall be administered and managed in accordance with the following goals:

(a) To preserve, protect, and enhance these exceptional areas of sovereignty submerged lands by reasonable regulation of human activity within the preserves through the development and implementation of a comprehensive management program;

(b) To protect and enhance the waters of the preserves so that the public may continue to enjoy the traditional recreational uses of those waters such as swimming, boating, and fishing;

(c) To coordinate with federal, state, and local agencies to aid in carrying out the intent of the Legislature in creating the preserves;

(d) To use applicable federal, state, and local management programs, which are compatible with the intent and provisions of the act and these rules, to assist in managing the preserves;

(e) To encourage the protection, enhancement or restoration of the biological, aesthetic, or scientific values of the preserves, including but not limited to the modification of existing manmade conditions toward their natural condition, and discourage activities which would degrade the aesthetic, biological, or scientific values, or the quality, or utility of a preserve, when reviewing applications, or when developing and implementing management plans for the preserves;

(f) To preserve, promote, and utilize indigenous life forms and habitats, including but not limited to: sponges, soft coral, hard corals, submerged grasses, mangroves, salt water marshes, fresh water marshes, mud flats, estuarine, aquatic, and marine reptiles, game and non-game fish species, estuarine, aquatic and marine invertebrates, estuarine, aquatic and marine mammals, birds, shellfish and mollusks;

(g) To acquire additional title interests in lands wherever such acquisitions would serve to protect or enhance the biological, aesthetic, or scientific values of the preserves.

(h) To maintain those beneficial hydrologic and biologic functions, the benefits of which accrue to the public at large.

(4) Nothing in these rules shall serve to eliminate or alter the requirements or authority of other governmental agencies, including counties and municipalities, to protect or enhance the preserves provided that such requirements or authority are not inconsistent with the act and this chapter.

Specific Authority 120.53, 258.43(1) Law Implemented 258.36, 258.36, 258.37, 258.38, ch. 80-280, Laws of Florida History New 2-23-81

16Q-20.02 Boundaries and Scope of the Preserves.

(1) These rules shall only apply to those sovereignty lands within a preserve, title to which is vested in the board, and those lands for which the board has an appropriate instrument in writing, executed by the owner, authorizing the inclusion of specific lands in an aquatic preserve pursuant to Sections 258.40(1), and 258.41(5), F.S., and pursuant to 16Q-20.08, F.A.C. Any publicly owned and maintained navigation channel authorized by the United States Congress, or other public works project authorized by the United States Congress designed to improve or maintain commerce and navigation shall be deemed excluded from the provisions of this chapter, pursuant to Subsection 258.40(2), F.S. Furthermore, all lands lost by avulsion or by artificially induced erosion shall be deemed excluded from the provisions of this chapter pursuant to Subsection 258.40(3), F.S.

(2) These rules do not apply to Boca Ciega Bay, Lake Jackson (Leon County), Pinellas County, or Biscayne Bay Aquatic Preserves. Because each of these preserves are established under separate acts, each will be subject to a separate rule.

(3) These rules are promulgated to clarify the responsibilities of the board in carrying out its land management functions as those functions apply within the preserves. Implementation and responsibility for environmental permitting of activities and water quality

protection within the preserves are vested in the Department of Environmental Regulation. Since these rules are considered cumulative with other rules, a person planning an activity within the preserve should also consult the other applicable department rules (16C-12, F.A.C., for example) as well as the rules of the Department of Environmental Regulation. (Chapter 17-3 and 17-4, F.A.C.)

(4) These rules are prospective in their application and shall not apply to activities for which applications have been submitted to the board or the Department of Environmental Regulation prior to the adoption date of these rules; and shall not affect previous actions of the board concerning the issuance of any easement or lease; or any disclaimer concerning sovereignty lands.

(5) The intent and specific provisions expressed in 16Q-20.01 (e) and (f) applies generally to all existing or future aquatic preserves within the scope of this chapter. Upon completion of a resource inventory and approval of a management plan for a preserve, pursuant to 16Q-20.14, the type designation and the resource sought to be preserved may be readdressed by the board.

(6) For the purpose of clarification and interpretation, the legal description set forth as follows do not include any land which is expressly recognized as privately owned upland in a pre-existing recorded mean high water line settlement agreement between the board and a private owner or owners. Provided, however, in those instances wherein a settlement agreement was executed subsequent to the passage of the Florida Coastal Mapping Act, the determination of the mean high water line shall be in accordance with the provisions of such act.

(7) The attached map (Figure 1) shows the general location of the preserves. It is included for informational purposes only and is not intended to be, nor is it, an accurate depiction of the legal boundaries of the preserves. Persons interested in obtaining details of particular preserves should contact the Bureau of State Lands Management, Department of Natural Resources, 3900 Commonwealth Blvd., Tallahassee, FL 32303 (telephone 904-488-2297).

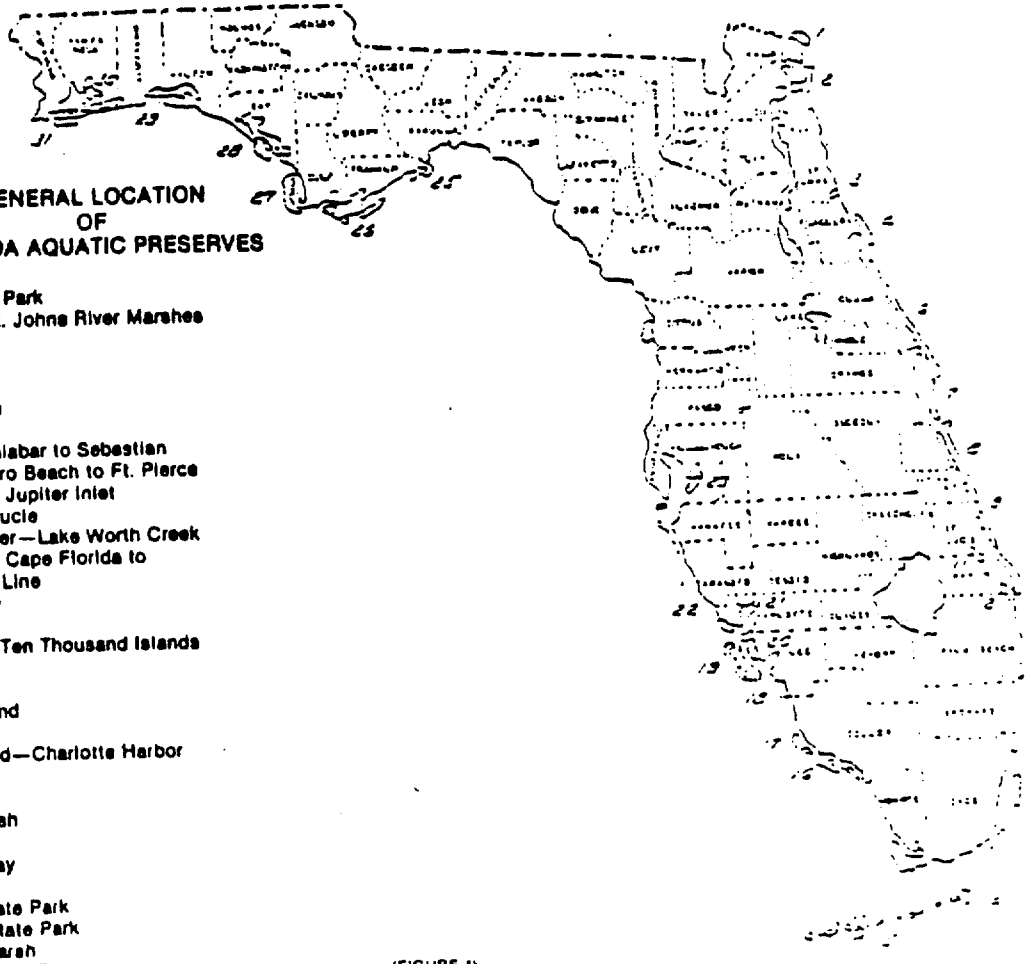
(a) The preserves are described as follows:

1. Fort Clinch State Park Aquatic Preserve, as described in the Official Records of Nassau County in Book 108, pages 343-346, and in Book 111, page 409.

2. Nassau River — St. Johns River Marshes Aquatic Preserve, as described in the Official Records of Duval County in Volume 3183, pages 547-552, and in the Official Records of Nassau County in Book 108, pages 232-237.

3. Pellicer Creek Aquatic Preserve, as described in the Official Records of St. Johns County in Book 181, pages 363-366, and in the Official Records of Flagler County in Book 33, pages 131-134.

4. Tomoka Marsh Aquatic Preserve, as described in the Official Records of Flagler County in Book 33, pages 135-138, and in the Official Records of Volusia County in Book 1244, pages 615-618.



(FIGURE 1)

5. Wekiva River Aquatic Preserve, as described in Section 258.39(30), F.S.

6. Mosquito Lagoon Aquatic Preserve, as described in the Official Records of Volusia County in Book 1244, pages 619-623, and in the Official Records of Brevard County in Book 1143, pages 190-194.

7. Banana River Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 195-198, less those lands dedicated to the U.S.A. prior to the enactment of the act, until such time as the U.S.A. no longer wishes to maintain such lands for the purpose for which they were dedicated, at which time such lands would revert to the board, and be managed as part of the preserve.

8. Indian River — Malabar to Sebastain Aquatic Preserve, as described in the Official Records of Brevard County in Book 1143, pages 199-202, and in the Official Records of Indian River County in Book 368, pages 5-8.

9. Indian River — Vero Beach to Fort Pierce Aquatic Preserve, as described in the Official Records of Indian River County in Book 368, pages 9-12, and in the Official Records of St. Lucie County in Book 187, pages 1083-1086.

10. Jensen Beach to Jupiter Inlet Aquatic Preserve, as described in the Official Records of St. Lucie County in Book 218, pages 2865-2869.

11. North Fork, St. Lucie Aquatic Preserve, as described in the Official Records of Martin County in Book 337, pages 2159-2162, and in the Official Records of St. Lucie County in Book 201, pages 1676-1679.

12. Loxahatchee River — Lake Worth Creek Aquatic Preserve, as described in the Official Records of Martin County in Book 320, pages 193-196, and in the Official Records of Palm Beach County in Volume 1860, pages 806-809.

13. Biscayne Bay — Cape Florida to Monroe County Line Aquatic Preserve, as described in the Official Records of Dade County in Book 7055, pages 852-856, less, however, those lands and waters as described in Section 258.165, F.S., (Biscayne Bay Aquatic Preserve Act of 1974), and those lands and waters within the Biscayne National Park.

14. Lignumvitae Key Aquatic Preserve, as described in the Official Records of Monroe County in Book 502, pages 139-142.

15. Coupon Bight Aquatic Preserve, as described in the Official Records of Monroe County in Book 502, pages 143-146.

16. Cape Romano — Ten Thousand Islands Aquatic Preserve, as described in the Official Records of Collier County in Book 381, pages 298-301.

17. Rookery Bay Aquatic Preserve, as described in Section 258.39(31), F.S.

18. Estero Bay Aquatic Preserve as described in Section 258.39(31), F.S.

19. Pine Island Sound Aquatic Preserve, as described in the Official Records of Lee County in Book 648, pages 732-736.

20. Matlacha Pass Aquatic Preserve, as described in the Official Records of Lee County in Book 800, pages 725-728.

21. Gasparilla Sound — Charlotte Harbor Aquatic Preserve, as described in Section 258.392, F.S.

22. Cape Haze Aquatic Preserve, as described in Section 258.39(29), F.S.

23. Cockroach Bay Aquatic Preserve, as described in Section 258.391, F.S.

24. St. Martins Marsh Aquatic Preserve, as described in the Official Records of Citrus County in Book 276, pages 238-241.

25. Alligator Harbor Aquatic Preserve, as described in the Official Records of Franklin County in Volume 98, pages 82-85.

26. Apalachicola Bay Aquatic Preserve, as described in the Official Records of Gulf County in Book 46, pages 77-81, and in the Official Records of Franklin County in Volume 98, pages 102-106.

27. St. Joseph Bay Aquatic Preserve, as described in the Official Records of Gulf County in Book 46, pages 73-76.

28. St. Andrews State Park Aquatic Preserve, as described in the Official Records of Bay County in Book 379, Pages 547-550.

29. Rocky Bayou State Park Aquatic Preserve, as described in the Official Records of Okaloosa County in Book 593, pages 742-745.

30. Yellow River Marsh Aquatic Preserve, as described in the Official Records of Santa Rosa County in Book 206, pages 568-571.

31. Fort Pickens State Park Aquatic Preserve, as described in the Official Records of Santa Rosa County in Book 220, pages 60-63, in the Official Records of Escambia County in Book 518, pages 659-662, less the lands dedicated to the U.S.A. for the establishment of the Gulf Islands National Seashore prior to the enactment of the act, until such time as the U.S.A. no longer wishes to maintain such lands for the purpose for which they were dedicated, at which time such lands would revert to the board and be managed as part of the preserve.

Specific Authority 120.53, 258.43(1) FS. Law Implemented 258.39, 258.40, 258.41, 258.42, 258.43, 258.44, 258.46 FS. History—New 2-23-81.

16Q-20.03 Definitions. When used in these rules, the following words shall have the indicated meaning unless the context clearly indicates otherwise.

(1) "Act" means the provisions of Section 258.35 through 258.46, F.S., the Florida Aquatic Preserve Act.

(2) "Activity" means any project and such other human action within the preserve requiring board approval for the use, sale, lease or transfer of interest in sovereignty lands or materials, or which may require a license from the Department of Environmental Regulation.

(3) "Aesthetic values" means scenic characteristics or amenities of the preserve in its essentially natural state or condition, and the maintenance thereof.

(4) "Applicant" means any person making application for a permit, license, conveyance of an interest in state owned lands or any other necessary form of governmental approval in order to perform an activity within the preserve.

(5) "Beneficial biological functions" means interactions between flora, fauna and physical or chemical attributes of the environment, which provide benefits that accrue to the public at large, including, but not limited to: nutrient, pesticide and heavy metal uptake; sediment retention; nutrient conversion to biomass; nutrient recycling and oxygenation.

(6) "Beneficial hydrological functions" means interactions between flora, fauna and physical geological or geographical attributes of the environment, which provide benefits that accrue to the public at large, including, but not limited to: retardation of storm water flow; storm water retention, and water storage, and periodical release;

(7) "Biological values" means the preservation and promotion of indigenous life forms and habitats including but not limited to sponges, soft corals, hard corals, submerged grasses, mangroves, salt water marshes, fresh water marshes, mud flats, marine, estuarine, and aquatic reptiles, games and non-games fish species, marine, estuarine, and aquatic mammals, marine, estuarine, and aquatic invertebrates, birds and shellfish.

(8) "Board" means the Governor and Cabinet sitting as the Board of Trustees of the Internal Improvement Trust Fund.

(9) "Channel" means a trench, the bottom of which is normally covered entirely by water, with the upper edges of its sides normally below water.

(10) "Commercial/industrial dock" means a dock which is located in, on, or over sovereignty lands and which provides fueling or sewage pump out facilities, or which is used to produce income, or which serves as an inducement to renting, purchasing, or using accompanying facilities. This term shall be construed to include any dock not a private dock.

(11) "Department" means the State of Florida Department of Natural Resources, as administrator for the board.

(12) "Division" means the Division of State Lands, which performs all staff duties and functions related to the administration of lands title to which is, or will be, vested in the board, pursuant to section 253.002, F.S.

(13) "Dock" means a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels either temporarily or indefinitely.

(14) "Essentially natural condition" means those functions which support the continued existence or encourage the restoration of the diverse population of indigenous life forms and habitats to the extent they existed prior to the significant development adjacent to and within the preserve.

(15) "Fill" means materials caused to be deposited by a person, by any means onto sovereignty lands, below mean high water line within the preserve.

(16) "Lease" means a conveyance of interest in lands, title to which is vested in the board, granted in accordance with specific terms set forth in writing.

(17) "Marina" means a small craft harbor complex used primarily for recreation.

(18) "Oil and gas transportation facilities" means those structures necessary for the movement of oil and gas from the production site to the consumer.

(19) "Person" means individuals, minors, partnerships, corporations, joint ventures, estates, trusts, syndicates, fiduciaries, firms, and all other associations and combinations, whether public or private, including governmental entities.

(20) "Pier" means a structure in, on, or over sovereignty lands, which is used by the public primarily for fishing, swimming, or viewing the preserve. A pier shall not include a dock.

(21) "Preserve" means any and all of those areas which are exceptional areas of sovereignty lands and the associated water body so designated in Section 258.39, 258.391, and 258.392, F.S., including all sovereignty lands, title to which is vested in the board, and such other lands as the board may acquire of approve for inclusion, and the water column over such lands, which have been set aside to be maintained in an essentially natural or existing condition of indigenous flora and fauna and their supporting habitat and the natural scenic qualities and amenities thereof.

(22) "Private dock" means a dock located in, on, or over sovereignty lands, which is used for private leisure purposes for a dwelling and which does not provide fueling or sewage pump-out facilities, and does not produce income, and does not serve as an inducement to renting, purchasing or using accompanying facilities.

(23) "Public interest" means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severence of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.

(24) "Public navigation project" means a project primarily for the purpose of navigation which is authorized and funded by the United States Congress or by port authorities as defined by Section 315.02(2), F.S.

(25) "Public necessity" means the works or improvements required for the protection of the health and safety of the public, consistent with the Act and these rules, for which no other reasonable alternative exists.

(26) "Public utilities" means those services, provided by persons regulated by the Public Service Commission, or which are provided by rural cooperatives, municipalities, or other governmental agencies, including electricity, telephone, public water and wastewater services, and structures necessary for the provision of these services.

(27) "Quality of the preserve" means the degree of the biological, aesthetic and scientific values of the preserve necessary for present and future enjoyment of it in an essentially natural condition.

(28) "Resource management agreement" means a contractual agreement between the board and one or more parties which does not create an interest in real property but merely authorizes conduct of certain management activities on lands held by the board.

(29) "Riparian rights" means those rights incident to lands bordering upon navigable waters, as recognized by the courts of this state and common law.

(30) "Sale" means a conveyance of interest in lands, by the board, for consideration.

(31) "Scientific values" means the preservation and promotion of certain qualities or features which have scientific significance.

(32) "Shore protection structure" means a type of coastal construction designed to minimize the rate of erosion. Coastal construction includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore processes.

(33) "Sovereignty lands" means those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean highwater line, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and of which it has not since divested its title interest. For the purposes of this rule sovereignty lands shall include all submerged lands within the boundaries of the preserve, title to which is held by the board.

(34) "Spoil" means materials dredged from sovereignty lands which are redeposited or discarded by any means, onto either sovereignty lands or uplands.

(35) "Transfer" means the act of the board by which any interest in lands, including easements, other

than sale or lease, is conveyed

(36) "Utility of the preserve" means fitness of the preserve for the present and future enjoyment of its biological, aesthetic and scienfitic values, in an essentially natural condition.

Specific Authority 258.43(1) Law Implemented 258.37, 258.43(1) History New 2-25-81

16Q-20.04 General Management Criteria.

(1) Before the board approves the use, sale, lease, or transfer of interest in sovereignty lands or severence of materials therefrom, an applicant must affirmatively demonstrate, where applicable, that:

(a) The proposed dredging is the minimum necessary to accomplish the stated purpose and that the activity is designed to minimize the need for maintenance dredging;

(b) No new lands will be created by filling or spoiling within the preserve unless no reasonable alternative exists to accomplish the stated purpose, and the project is designed to require the minimum filling to accomplish the stated purpose of the activity consistent with the protection of the preserve;

(c) Marina facilities over water are restricted to those structures which are necessary to support water dependent activities and which are designed to allow the unimpeded flow of water, and minimize bottom shading;

(d) Docks, piers, and other structures are designed to allow the unimpeded flow of water and minimize bottom shading;

(e) Utility cables or pipes are constructed and placed in a manner, and located along a route, which will cause minimum disturbance of the habitats and life forms sought to be preserved pursuant to 16Q-20.01(3)(f), F.A.C., or those identified in resource inventories and management plans for the preserve, when developed. The board recognizes that plants and other life forms have certain regenerative capabilities that can survive minimal disturbances.

(2) The board shall discourage any project which involves the cutting or removal of seagrasses, mangroves, marsh grasses or rushes. Only those activities which have no reasonable alternative and in which adequate mitigation and subsequent monitoring measures are also proposed as a part of the project, shall be considered by the board.

(3) The board shall encourage the stabilization of shorelines, where possible, with natural vegetation or rip-rap materials. Where natural vegetation does not appear to be capable of preventing shoreline erosion and board shall recommend the use of rip-rap materials.

(4) It shall be the policy of the board not to approve the use, sale, lease or tranafer of state owned lands within a preserve for the purpose of providing private or public road access to islands where such access did not previously exist.

Specific Authority 258.43(1) FS Law Implemented 253.03, 253.123, 253.124, 258.42, 268.43 FS History—New 2-25-81

16Q-20.05 Uses, Sales, Leases, or Transfer of Interests in Lands, or Materials, Held by the Board.

(1) A use, sale, lease or transfer of sovereignty lands, or materials, shall be subject to such terms, conditions, or deed restrictions, as the board deems necessary to protect the quality or utility of the preserve and further the intent of the act of these rules. A condition of a sale, lease or transfer of sovereignty lands, or materials, shall be the applicant's reimbursement for the department's cost of advertising and notification of adjacent property owners. Unless a sale of lands is approved by the legislature, a condition of the deed of sale shall be that the lands shall continue to be managed as a part of the preserve.

(2) The document which manifests a use, sale, lease or transfer of lands or materials shall state, with particularity, the activities to be conducted. Additional activities not expressly included in the document are prohibited and may be conducted only after further approval by the board.

(3) Uses, Sales, Leases, or Transfer of Interests in Lands.

(a) All activities to be conducted on lands held by the board shall require prior approval of the board in the form of a sale, lease, transfer, letter of consent to use, or resource management agreement, for the proposed activities on sovereignty lands.

(b) There shall be no further use, sale, lease, or transfer of interest in sovereignty lands unless an applicant affirmatively demonstrates sufficient facts to support a finding by the board that:

1. The use, sale, lease, or transfer of interest and the activity planned in conjunction with the use, sale, lease or transfer of interest is in the public interest; and

2. The activity planned in conjunction with the use, sale, lease, or transfer of interest is consistent with these rules and management plans when developed for the preserve; and

3. If there are to be structures constructed, or dredging and filling undertaken on sovereignty lands, the activity for which a use, sale, lease, or transfer of interest in sovereignty lands or materials is sought shall be one of the following:

(i) a public navigation project;

(ii) maintenance of an existing navigation channel;

(iii) creation or maintenance of a commercial/industrial dock, or a pier, or a marina;

(iv) creation or maintenance of a private dock for reasonable ingress and egress of riparian owners;

(v) creation or maintenance of a shore protection structure;

(vi) installation or maintenance of approved navigational aides;

(vii) installation or maintenance of oil and gas transportation facilities;

(viii) creation, maintenance, or replacement of structures required for the installation or expansion of public utilities;

(ix) restoration of land as authorized by Subsection 258.124(8), F.S.; and

(x) other activities which are a public necessity or which are necessary to enhance the quality or utility of the preserve and which are consistent with the act and this chapter.

(xi) reasonable improvements for mosquito control.

4. In the case of the activities enumerated in 16Q-20.05(3)(b)3., (i), (ii), (iii), (iv), (v), (vi), and (vii), F.A.C. the activity is designed so that the structure or structures to be built in, on, or over sovereignty lands are limited to structures necessary to conduct water dependent activities, and

5. no other reasonable alternative exists which would allow the proposed activity to be constructed or undertaken outside the preserve, and

(c) Docks in, on, or over sovereignty lands:

1. A commercial/industrial dock on sovereignty lands shall require a lease;

2. A private dock in excess of 500 square feet may not require a lease if the applicant affirmatively demonstrates that the particular physical geography of the location necessitates the excess in order to obtain reasonable ingress and egress to and from the upland riparian property. Without such affirmative demonstration a lease shall be required;

3. A private dock of 500 square feet or less shall not require a lease, but shall require a letter of consent to use sovereignty lands.

(d) The failure of the board to affirmatively find that an activity complies with the provision of 16Q-20.05(3)(b), F.A.C., shall preclude a finding of consistency with these rules and management plans when developed for the preserves.

(4) Sales or Transfer of Materials to be Severed

(a) There shall be no severence of bottom sediment or rock unless an applicant affirmatively demonstrates sufficient facts to support a finding by the board that:

1. Sales or transfer of materials to be severed and the activity planned in conjunction with that sale or transfer is in the public interest; and

2. The sale or transfer of materials to be severed and the activity planned in conjunction with the sale or transfer of those severed materials is consistent with these rules and the management plans when developed.

(b) There shall be no excavation of shell or minerals, except the dredging of dead oyster shells as approved by the department, subject to the formal approval of the board.

(c) There shall be no sale or transfer of materials to be severed for the sole or primary purpose of providing fill or creating new lands.

(d) There shall be no drilling of gas or oil wells within the preserves.

(e) Spoil disposal within the preserves is discouraged by the board. Spoil disposal will only be approved within the preserve where the applicant affirmatively demonstrates that the spoil will not be harmful to, or may benefit, the quality or utility of the preserve.

(5) The failure of the board to affirmatively find that an activity complies with the provisions of 16Q-20.05(3)(b), F.A.C., shall preclude approval of the activity by the board.

Specific Authority 258.43(1) FS. Law Implemented 253.02, 253.12, 258.42 FS. History - New 2-25-81.

16Q-20.06 Cumulative Impacts. In evaluating applications for activities within the preserves or which may impact the preserves, the department recognizes that, while a particular alteration of the preserve may constitute a minor change, the cumulative effect of numerous such changes often results in major impairments to the resources of the preserve. Therefore, the department shall evaluate a particular site for which the activity is proposed with the recognition that the activity may, in conjunction with other activities adversely affect the preserve which is part of a complete and interrelated system. The impact of a proposed activity shall be considered in light of its cumulative impact on the preserve's natural system. The department shall include as a part of its evaluation of an activity:

(1) The number and extent of similar human actions within the preserve which have previously affected or are likely to affect the preserve, whether considered by the department under its current authority or which existed prior to or since the enactment of the Act; and

(2) The similar activities within the preserve which are currently under consideration by the department, and

(3) Direct and indirect effects upon the preserve and adjacent preserves, if applicable, which may reasonably be expected to result from the activity; and

(4) The extent to which the activity is consistent with management plans for the preserve, when developed; and

(5) The extent to which the activity is permissible within the preserve in accordance with comprehensive plans adopted by affected local governments, pursuant to section 163.3161, F.S., and other applicable plans adopted by local, state, and federal governmental agencies.

(6) The extent to which the loss of beneficial hydrologic and biologic functions would adversely impact the quality or utility of the preserve; and

(7) The extent to which mitigation measures may compensate for adverse impacts.

Specific Authority 258.43(1) FS. Law Implemented 258.36, 258.43, 258.44 FS. History - New 2-25-81.

16Q-20.07 Protection of Riparian Rights. Neither the establishment nor the management of the aquatic preserves under the provisions of the act shall operate to unreasonably infringe upon the traditional riparian rights of upland property owners adjacent to or within the preserves.

Specific Authority 258.43(1) FS. Law Implemented 258.123, 258.124(8), 258.44 FS. History - New 2-25-81.

16Q-20.08 Inclusion of Lands, Title to Which is not Vested in the Board, in a Preserve.

(1) Lands and water bottoms which are within designated aquatic preserve boundaries, or adjacent thereto and which are owned by other governmental agencies, may be included in an aquatic preserve upon specific authorization for inclusion by an appropriate instrument in writing executed by the agency.

(2) Lands and water bottoms which are within designated aquatic preserve boundaries or adjacent thereto, and which are in private ownership, may be included in an aquatic preserve upon specific authorization for inclusion by an appropriate instrument in writing executed by the owner.

(3) The appropriate instrument shall be either a dedication in perpetuity, or a lease. Such lease shall contain the following conditions:

(a) The term of the lease shall be for a minimum period of ten years.

(b) The board shall have the power and duty to enforce the provisions of each lease agreement, and shall additionally have the power to terminate any lease if the termination is in the best interest of the aquatic preserve system, and shall have the power to include such lands in any agreement for management of such lands.

(c) The board shall pay no more than $1 per year for any such lease.

Specific Authority 258.43(1) FS. Law Implemented 258.40, 258.41 FS. History - New 2-25-81.

16Q-20.09 Establishment or Expansion of Aquatic Preserves.

(1) The board may expand existing preserves or establish additional areas to be included in the aquatic preserve system, subject to confirmation by the legislature.

(2) The board may, after public notice and public hearing in the county or counties in which the proposed expanded or new preserve is to be located, adopt a

resolution formally setting aside such areas to be included in the system.

(3) The resolution setting aside an aquatic preserve area shall include:

(a) A legal description of the area to be included. A map depicting the legal description shall also be attached.

(b) The designation of the type of aquatic preserve.

(c) A general statement of what is sought to be preserved.

(d) A statement that the area established as a preserve shall be subject to the management criteria and directives of this chapter.

(e) A directive to develop a natural resource inventory and a management plan for the area being established as an aquatic preserve.

(4) Within 30 days of the designation and establishment of an aquatic preserve, the board shall record in the public records of the county or counties in which the preserve is located a legal description of the preserve.

Specific Authority 258.43(1) FS. Law Implemented 258.41 FS. History—New 2-25-81.

16Q-20.10 Exchange of Lands. The board in its discretion may exchange lands for the benefit of the preserve, provided that:

(1) In no case shall an exchange result in any land or water area being withdrawn from the preserve; and

(2) Exchanges shall be in the public interest and shall maintain or enhance the quality or utility of the preserve.

Specific Authority 258.43(1) FS. Law Implemented 258.41(5), 258.42(1) FS. History—New 2-25-81.

16Q-20.11 Gifts of Lands. The board in its discretion may accept any gifts of lands or interests in lands within or contiguous to the preserve to maintain or enhance the quality and utility of the preserve.

Specific Authority 258.43(1) FS. Law Implemented 258.42(5) FS. History—New 2-25-81.

16Q-20.12 Protection of Indigenous Life Forms. The taking of indigenous life forms for sale or commercial use is prohibited, except that this prohibition shall not extend to the commercial taking of fin fish, crustacea or mollusks, except as prohibited under applicable laws, rules or regulations. Members of the public may exercise their rights to fish, so long as not contrary to other statutory and regulatory provisions controlling such activities.

Specific Authority 258.43(1) FS. Law Implemented 258.43(1) FS. History—New 2-25-81.

16Q-20.13 Development of Resource Inventories and Management Plans for the Preserves.

(1) The board authorizes and directs the division to develop a resource inventory and management plan for each preserve.

(2) The division may perform the work to develop the inventories and plans, or may enter into agreements with other persons to perform the work. In either case, all work performed shall be subject to board approval. Within six months from the effective date of this rule the division shall present a report to the board detailing:

(a) an estimate of the length of time staff requirements, and cost, to develop an inventory and plan for each preserve, and

(b) an indication of which persons might be interested in performing work on the inventories and the plans; and

(c) a conceptual strategy for the development, implementation and enforcement of the plans; and

(d) criteria for designating urban and wilderness types of preserves. The criteria shall be related to those factors or functions necessary for the maintenance of essentially natural conditions. The type designation for each preserve according to these criteria shall be indicated in the report. Additional management criteria for wilderness preserves shall be drafted for inclusion in the rule; and

(e) additional management criteria for those preserves within designated Manatee Critical Habitat areas.

(3) Each resource inventory shall contain at a minimum:

(a) the current geographic distribution of flora; and

(b) the current geographic distribution of fauna; and

(c) the presence of any rare, endangered or threatened species; and

(d) information on changes through history of the extent, composition and periodicity of the distribution of flora and fauna, if possible; and

(e) the physical geography of the area, including maps and cross-sections to illustrate system-interrelationships; and

(f) human alterations of the natural conditions including:

1. a list of all types of human alterations; and

2. the timing and geographical distribution of the human alterations; and

3. the intensity of each type of human alterations.

(g) a detailed resource survey could include:

(I) GEOGRAPHY

A. Location: latitude and longitude, township, range and sections.

B. Definition: descriptions of available maps and aerial images

C. Placenames and Landmarks

1. Promonotories

2. Islands

3. Passes

4. Beaches and bars

5. Embayments

D. Physical Setting

1. Position on coast

2. Position on estuary or estuarines

3. Position on drainage basin(s)

E. Political Setting

1. Municipalities

2. County or counties

3. Regional authorities

4. Federal interests

(II) PHYSICAL FEATURES

A. Total area

1. Land (stated in absolute terms, like sq. km., and relatively, as percent total)

a. Emergent and submerged

i. public (city, county, state, federal, other)

ii. private

iii. vegetated

iv. disturbed

2. Water

a. Fresh

b. Brackish and marine

B. Meteorology

1. Temperature

2. Rainfall
3 Winds
4. Catastrophes
a. freezes
b. hurricanes
5. Micrometeorology
C. Geology
1. Stratigraphy
2. Topography and bathymetry
3. Islands
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5. Mineral resources
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a. water quality classification
b. abiotic parameters
c. biotic parameters
d. best water quality conditions
e. average water quality conditions
f. worst water quality conditions
i. sources and amounts
ii. permit status
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a. air quality classification
b. best air quality conditions
c. average air quality conditions
d. worst air quality conditions
i. sources and amounts
ii. permit status
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a. biological condition
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b. plants
c. animals
2. Probably present
a. fungi
b. plants
c animals
3 Composition
a. numerical
i. dominant species
ii. rare species
b. community analysis
4. Habitats
a. subtidal
i. mud, sand, peats
ii. oyster
iii. seagrass
iv. water column
b. Intertidal
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iii. beach
c. Supratidal
i. salt barren
ii. coastal hammock/barrier island
iii. uplands
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1. Primary production
a. rates
b. area
c total
2. Secondary productivity
a. rates
b. compartments
c. total
3. Export and import
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1. Names
2. Records and occurrence
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3. Undesirable habitat
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1. Park, preserves, etc.
2. Scenic vistas
3. Recreation
a. birding and nature study areas
b. fishing areas
c. boating and swimming areas
4. Areas used for commercial fishing
5. Areas closed to commercial fishing
6. Private leases of state lands
a. number, location and size
b. uses
7. Privately owned lands within preserves' designated boundaries
a. access
b. area
c. use
C. Activities with potentially adverse impact
1. Shoreline protection structures
2. Commercial and industrial docks
3. Marinas
4. Bridges and causeways
5. Channels and spoil areas
6. Utility installations
7. Oil and pipe lines

(4) Each management plan shall contain at a minimum:

(a) A description of what "an essentially natural condition" consists of for each preserve; and

(b) An evaluation of the impacts upon flora, fauna, and physical geography caused by human alterations; with an estimate of the point in time at which the preserve became or will become, "no longer in an essentially natural condition"; and

(c) An evaluation of the preserve's ability to provide benefits for future generations; and

(d) An evaluation of:

1. Local authorities
2. Local conservation and nature study groups
3. Local educational and research facilities
4. Available bibliographies
5. Current research
6. Resources of value
7. Vulnerability of resources
8. Archaeological sites
9. Interactions between contiguous preserves
10. Distinguishable impacts on preserves divided by political boundaries

(e) An evaluation of the goals, policies and implementation tools of the local government for managing activities which are either in, or which impact upon a preserve, and recommended policies and implementation techniques for dealing with the findings of the above evaluations and inventory.

(f) An evaluation of any restoration needs, and available techniques and costs.

(g) An evaluation of any needs for preserve expansion to include further sensitive aesthetic, biological or scientific areas. Such evaluation should include consideration of the current pattern and other legal encumberances, as well as possible cumulative effects of such expansion.

(h) Recommended management techniques for aesthetic, biological or scientific types of preserves, as appropriate.

(5) Only those management plans developed pursuant to 16Q-20.13, F.A.C., or those found by the board to be consistent with the provisions of 16Q-20.13, F.A.C., and which are adopted by order of the board, shall be implemented. The board may enter into contracts or resource management agreements with any person to assist in the implementation of an adopted management plan for a preserve.

Specific Authority 258.43(1) FS. Law Implemented 253.03(7), 253.03(8) FS. History.--New 2-25-81.

16Q-20.14 Enforcement. The rules shall be enforced as provided in Section 258.46.

Specific Authority 258.43(1) FS. Law Implemented 258.46 FS. History.--New 2-25-81.

16Q-20.15 Application Form.

(1) The application form in 16C-12, F.A.C., is to be submitted to the department for activities which require board approval for the use of sovereignty lands. Applicants are advised to check with the Department of Environmental Regulation (DER) to determine whether a permit is required from that agency. It is comprised of the department's application for activities upon sovereignty lands and the joint Department of Army-Florida Department of Environmental Regulation forms for activities within waters of the State of Florida. It is the intent of these rules to adopt a single form which shall be filed with the department and with the Department of Environmental Regulation for all projects upon sovereignty lands. It is the further intent of the department to adopt any new Department of Environmental Regulation forms for activities upon sovereignty lands, as rules, when formally adopted by the Department of Environmental Regulation.

Specific Authority 253.43(1) FS. Law Implemented 258.43 FS. History.--New 2-25-81.

16Q-20.16 Coordination with Other Governmental Agencies. Where a Department of Environmental Regulation permit is required for activities on sovereignty lands the department will coordinate with the Department of Environmental Regulation to obtain a copy of the joint Department of Army/Florida Department of Environmental Regulation permit application and the biological survey. The information contained in the joint permit application and biological assessment shall be considered by the department in preparing its staff recommendations to the board. The board may also consider the reports of other governmental agencies that have related management or permitting responsibilities regarding the proposed activity.

Specific Authority 253.43(1) FS. Law Implemented 258.43 FS. History.--New 2-25-81.

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RULES OF THE

DEPARTMENT OF ENVIRONMENTAL REGULATION

CHAPTER 17-4

PERMITS

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17-4.32 Certification and Acceptance (Amended)

PART I. General

17-4.01 Scope of Part I. (No change)

17-4.02 Definitions. When used in this Chapter, the following words shall have the indicated meanings unless the context clearly indicates otherwise:

(1) through (11) (No change)

(12) "Dredging" is excavation, by any means, in waters of the state. It is also the excavation (or creation) of a water body which is, or is to be, connected to any of the waters listed in Section 17-4.28(2), F.A.C., directly or via an excavated water body or series of excavated water bodies.

(13) (No change)

(14) (No change)

(15) "Filling" is the deposition, by any means, of materials in waters of the state.

(16) (No change)

(17) "Landward extent of waters of the state" is, pursuant to Section 403.817, F.S., that portion of a surface water body indicated by the presence of one or a combination of the following as the dominant species:

Submerged Marine Species:

Batis	Batis maritima
Big Cordgrass	Spartina cynosuroides
Black mangrove	Avicennia germinans
Black rush	Juncus roemerianus
Cuban shoalweed	Diplanthera (Halodule) wrightii
Leather fern	Acrostichum aureum
Manatee grass	Syringodium filiformis
Red mangrove	Rhizophora mangle
Rubber vine	Rhabdadenia biflora
Smooth cordgrass	Spartina alterniflora
Turtle grass	Thalassia testudinum
Widgeon grass	Ruppia maritima
White mangrove	Laguncularia racemosa

Submerged Fresh Water Species:

Alligator weed	Alternanthera philoxeroides
Arrowhead	Sagittaria spp.

Arrowroot lily	Thalia geniculata
Bald cypress	Taxodium distichum
Beak rush	Rhynchospora tracyi
Bladder wort	Utricularia vulgaris
Blue green algal mats	
Bullrush	Scirpus americanus
	Scirpus validus
Cattail	Typha latifolia
	Typha angustifolia
	Typha domingensis
Coontail	Ceratophyllum demersum
Duck weed	Lemna spp.
Florida elodea	Hydrilla verticillata
Golden club	Orontium aquaticum
Leather fern	Acrostichum danaeifolium
Maiden cane	Panicum hemitomon
Naiad	Najas spp.
Ogeeche tupelo	Nyssa ogeche
Pickerelweed	Pontederia lanceolata
Pond apple	Annona glabra
Pond cypress	Taxodium ascendens
Pondweed	Potamogeton illinoensis
Royal fern	Osmunda regalis
Saw grass	Cladium jamaicensis
Spatter dock	Nuphar spp.
Spike rush	Eleocharis cellulosa
Soft rush	Juncus effusus
Swamp lily	Crinum americanum
Swamp tupelo	Nyssa biflora
Tape grass	Vallisneria neotropicalis
Water ash	Fraxinus caroliniana
Water fern	Salvinia rotundifolia
Water hyssop	Bacopa caroliniana
Water lily	Nymphaea spp.
Water shield	Brasenia schreberi
Water tupelo	Nyssa aquatica
Water willow	Justicia ovata

or that portion of a surface water body up to the waterward first fifty (50) feet, or the waterward quarter (1/4) of the entire area, whichever is greater, where one or a combination of the following are the dominant species:

Transitional Marine Species:

Aster	Aster tenuifolius
Beach carpet	Philoxerus vernicularis
Button wood	Conocarpus erecta
Glasswort (Annual)	Salicornia bigelovii
Glasswort (Perennial)	Salicornia virginica
Key grass	Monanthochloe littoralis
Salt grass	Distichlis spicata
Sea blite	Suaeda linearis
Sea daisy	Borrichia frutescens
	Borrichia arborescens
Sea grape	Coccoloba uvifera
Sea lavender	Limonium carolinianum
Sea purslane	Sesuvium portulacastrum
Switch grass	Spartina patens
Railroad vine	Ipomoea pes-caprae

Transitional Fresh Water Species:

Button bush	Cephalanthus occidentalis
Dahoon	Ilex cassine
Giant reed	Phragmites communis
Primrose willow	Ludwigia peruviana
St. John's wort	Hypericum fasciculatum
Switch grass	Panicum virgatum
Willow	Salix caroliniana

Specific Authority 403.061, 403.805, F.S. Law Implemented 403.021, 403.031, 403.061, 403.087, 403.088, 403.802, 403.817, F.S. History--New 3-4-72. Revised 5-17-72. Amended 6-10-75. Joint Administrative Procedures Committee Objection Filed--See FAW Vol. 1, No. 28, 1-12-76; Joint Administrative Procedures Committee Objection Withdrawn--See FAW Vol. 3, No. 30, 7-29-77, Amended

17-4.021 (No change)

17-4.03 (No change)

17-4.04 Exemptions. The following sources are exempted from the permit requirements of this Chapter.

(1) through (9) (No change)

(10) Construction; Dredging or filling activities associated with the following types of projects:

(a) The installation of overhead transmission lines where the support structures are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation of aids to navigation and buoys associated with such aids, provided that the devices are marked pursuant to Section 371.521, F.S.

(c) (No change)

(d) The performance of maintenance dredging of existing manmade canals, channels, and intake and discharge structures, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state; provided that no more dredging is to be performed than is necessary to restore the canal, channels, and intake and discharge structures to original design specifications and provided that control devices are utilized to prevent turbidity and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. This exemption shall apply to all canals constructed prior to April 3, 1970, and to those canals constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption shall not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters of the state. Where no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water.

(e) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists, or the installation

and maintenance to design specifications of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state, however, any material removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material into the waters of the state. For the purpose of this exemption artificial bodies of water shall include, but not be limited to, existing residential canal systems, canals permitted by a water management district created under Section 373.069, F.S., and artificially created portions of the Florida Intracoastal Waterway.

(f) Construction of seawalls (including necessary backfilling), and private docks (as defined in Section 17-4.04(10)(c), F.A.C.) in artificially created waterways where such construction will not violate existing water quality standards, impede navigation or affect flood control. An artificially created waterway will be defined as a body of water that has been totally dredged or excavated and did not overlap natural surface waters of the state. For the purpose of this exemption, artificially created waterways shall also include existing residential canal systems. The Commission recommends and encourages some method of land retention such as rip-rap, which is more environmentally compatible than vertical seawalls.

(g) (No change)

(h) The restoration of seawalls at their previous location or upland of or within one (1) foot waterward of their previous location. No filling can be performed except in the above authorized restoration of the seawall. No construction shall be undertaken without necessary title or leasehold interest especially where private and public ownership boundaries have changed as a result of natural occurrences such as accretion, reliction and natural erosion. The Commission recommends and encourages some method of land retention such as rip-rap, which is more environmentally compatible than vertical seawalls.

(i) The maintenance of existing, and of [illegible]

dikes and irrigation and drainage ditches, provided that spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive as determined by the Department of Health and Rehabilitative Services, pursuant to Section 403.088(1), F.S., that it will inhibit proposed insect control, then existing spoil sites or dikes may be used, upon notification to the department. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications. This exemption shall apply to manmade trenches dug for the purpose of draining water from the land or for transporting water for use on the land and which are not built for navigational purposes. This exemption does not include navigable residential canal systems.

(j) (No change)

(k) (No change)

(l) (No change)

(m) The deposition of up to and including twenty-five (25) cubic yards of material in areas of waters of the state where transitional vegetation species, as described in Section 17-4.02(17), F.A.C., are the dominant species, except in Class II waters. No person shall be entitled to more than one exemption under this provision every six months. If at any time the department determines that the cumulative effect of successive filling by a person either under this provision or under some other provision of this rule and the provision may have a significant effect on water quality, it may suspend the application of this

exemption provision to that person by so notifying him in writing.

(n) The construction of, or dredging or filling in, artificial waterways, except in Class II waters, behind control structures permitted by a water management district created under Section 373.069, Florida Statutes, except those:

1. to be used for residential purposes; or,

2. which directly connect to works of said water management district; or,

3. to be constructed in waters of the state.

(o) The construction of, or dredging or filling in, artificial waterways, except in Class II waters, not used for residential purposes, and which serve as artificial tributaries only following the occurrence of rainfall and which normally do not contain contiguous areas of standing water.

(p) The construction of, or dredging or filling in, artificial waterways, except in Class II waters, for commercial forestry operations, of less than thirty-five (35) square feet in total cross-sectional area, which are not to be constructed in waters of the state where submerged vegetation species, as described in Section 17-4.02(17), F.A.C., are the dominant species, but which may encroach on the area of waters of the state where transitional vegetation species, as described in Section 17-4.02(17), F.A.C., are the dominant species, and where a berm exists which impedes the flow of water from the uplands through said area into waters of the state.

(q) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state, except in Class I-A and Class II waters and aquatic preserves provided that no dredging or filling is necessary.

(r) The replacement or repair of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state.

(s) The construction of private seawalls in waters of the state where such construction is between and adjoins at both ends existing seawalls, follows a continuous and uniform seawall

construction line with the existing seawalls, is no more than 150 feet in length, and does not violate existing water quality standards, impede navigation, or affect flood control. However, this shall not affect the permitting requirements of Chapter 161, F.S.

(11) and (12) (No change)

Specific Authority 403.061, 403.805, F.S. Law Implemented 253.123, 253.124, 403.021, 403.031, 403.061, 403.087, 403.088, 403.802, 403.805, 403.813, F.S. History--Formerly 17-4.03(2), F.A.C. New 3-4-72, Revised 5-17-72, Amended 8-7-73, 6-10-75, 10-26-75, 7-8-76, 7-13-78, 3-1-79, Joint Administrative Procedures Committee Objection Withdrawn--See FAW Vol. 3, No. 30, 7-29-77, Amended

17-4.05 through 17-4.27 (No change)

17-4.28 Dredging or Filling Activities; Permits, Certifications.

(1) Regardless of whether a permit is required, all dredging or filling activities conducted in or connecting to waters of the state shall comply with Chapter 17-3, F.A.C. Compliance shall be in regard to the long-term, as well as the short-term effects of the projects.

(2) Pursuant to Sections 403.061, 403.087, or 403.088, F.S., those dredging or filling activities which are to be conducted in, or connected directly or via an excavated water body or series of excavated water bodies to, the following categories of waters of the state to their landward extent as defined by Section 17-4.02(17), F.A.C. require a permit from the department prior to being undertaken:

(a) rivers and natural tributaries thereto;

(b) streams and natural tributaries thereto;

(c) bays, bayous, sounds, estuaries, and natural tributaries thereto;

(d) natural lakes, except those owned entirely by one person and except for lakes that become dry each year and are without standing water together with lakes of no more than ten (10) acres of water area at a maximum average depth of two (2) feet existing throughout the year;

(e) Atlantic Ocean out to the seaward limit of the state's territorial boundaries;

(f) Gulf of Mexico out to the seaward limit of the state's territorial boundaries;

(g) natural tributaries do not include intermittant natural watercourses which act as tributaries only following the occurrence of rainfall and which normally do not contain contiguous areas of standing water.

The department recognizes that the natural border of certain water bodies listed in this section may be difficult to establish because of seasonal fluctuations in water levels and other characteristics unique to a given terrain. The intent of the vegetation indices in Section 17-4.02(17), F.A.C., is to guide in the establishment of the border of the water bodies listed in this section. It is the intent of this rule to include in the boundaries of such water bodies areas which are customarily submerged and exchange waters with a recognizable water body (i.e., areas within the landward extent of waters of the state as defined in Section 17-4.02(17)). Isolated areas which infrequently exchange water with a described water body or provide only insignificant benefit to the water quality of a water body are intended to be designated as uplands. The vegetation indices in Section 17-4.02(17), F.A.C., are presumed to accurately delineate the landward extent of such water bodies.

(3) (no change)

(4) With regard to the review of the following types of dredging or filling activities, the department will provide a statement as to the necessity of obtaining a permit. Said statement will be provided by the department within thirty (30) calendar days of receipt of a short-form application. The types of projects described below may be combined in one short-form application. If any portion of the proposed project exceeds the criteria for short-form applications, the application as filed shall be processed as a standard-form application. Successive short form applications shall not be processed for portions of a project whose total scope exceeds the criteria

established. Applications shall be made on the application form as set forth in Section 17-1.1221(15), F.A.C.

(a) (No change)

(b) Dockage or marina facilities not exceeding 20,000 square feet of waters of the state to their landward extent, or dockage or marina facilities, regardless of area occupied, designed primarily for the mooring or storage of watercraft used exclusively for sport or pleasure and containing less than one hundred (100) slips which number is the sum of existing and proposed boatslips. The square footage limitation shall include all areas excluded from public use by the facility or enclosed by a line surrounding all components of the facility located in waters of the state.

(c) (No change)

(d) The installation of buoys, aids to navigation except those described in Section 17-4.04(10)(b), F.A.C., the installation of signs, fences, and ski ramps, and the installation of fish attractors by the Florida Game and Fresh Water Fish Commission.

(e) (No change)

(f) The installation of subaqueous transmission and distribution lines entrenched in (not exceeding 10,000 cubic yards of dredging), laid on or embedded (as defined in Section 17-4.02(14), F.A.C.) in the bottoms of waters of the state carrying water, wastewater, electricity, communication cables, oil and gas, except those exempted in Section 17-4.04(10)(c), F.A.C.

(g) through (k) (No change)

(5) Emergencies; Classification and Procedure.

(a) Class A

1. Those emergencies which involve the loss of human life, limb, or property due to natural calamitous occurrences such as but not limited to hurricanes, tornadoes, fires, floods, high winds, or the breaks of dams or levees.

2. No permit shall be required for temporary measures taken to correct or give relief from Class A emergencies. Immediately after the occurrence of a Class A emergency, the

appropriate district office of the department shall be notified of the emergency. Within fourteen (14) calendar days after the correction of the emergency a report to the district office of the department shall be made outlining the details of the emergency and the steps taken for its temporary relief. The report shall be a written description of all of the work performed involving dredge and fill activities and shall set forth any pollution control measures which were utilized or are being utilized to prevent pollution of waters of the state. A permit shall be required in connection with dredge and fill activities for permanent measures in relief of Class A emergencies.

(b) Class B

1. Other non-natural disasters such as but not limited to bridge collapses, sudden and unpredictable structural collapses, and sudden and unpredictable hazards to navigation which do not threaten the immediate loss of life or property but will require immediate action for relief.

2. No permit shall be required for temporary measures needed to correct or give relief from Class B emergencies. Temporary measures shall be limited to only those minimum works required to protect against loss of life, limb, health or property or which immediately threaten plant and animal life. The appropriate district office of the department shall be notified within twenty-four (24) hours after occurrence of a Class B emergency and a written report shall be given within fourteen (14) calendar days after completion of the temporary measures which have been taken. The report shall be a written description of all works which have been performed as well as pollution control measures utilized. A permit shall be required in connection with dredge and fill activities for permanent measures taken for relief of Class B emergencies.

(6) through (7)(e) (No change)

(8)(a) The department recognizes the special value and importance of Class II waters to Florida's economy as existing or potential sites of commercial and recreational shellfish harvesting and as a nursery area for fish and shellfish. Therefore,

permits or certifications for dredging or filling activities in Class II waters, except where the applicant has submitted a plan or procedure which will adequately protect the project area and areas in the vicinity of the project from significant damage. The department shall not issue a permit for dredging or filling directly in areas approved for shellfish harvesting by the Department of Natural Resources. Provided, however, that the staff of the department may issue permits or certifications for maintenance dredging of existing navigational channels, for the construction of coastal protection structures and for the installation of transmission and distribution lines for carrying potable water, electricity or communication cables in rights-of-way previously used for such lines.

(9) Reserved.

(10) through (11)(d) (No change)

(e) No department permit authorizing construction in, on or over navigable waters or by dredging or filling in waters of the state, unless extended by the department, shall be valid for more than five (5) years from the date of receipt by the applicant of all state and federal governmental authorizations as may be required for completion of the proposed work. Provided, however, certain maintenance dredging permits issued pursuant to standard applications may be granted for renewable periods of up to ten (10) years from the date described in the preceding sentence, and certain spoil disposal site permits may be issued for up to twenty-five years in accordance with Section 403.061(24), F.S.

(f) Prior to commencement of work authorized by a permit under this section, permittee shall notify the local district or subdistrict office of the department.

(12) through (15) (No change)

Specific Authority 403.061, 403.805, F.S. Law Implemented 403.021, 403.061, 403.087, 403.088, 403.802, 403.813, 403.817, F.S. History--New 6-10-75, Amended 10-26-75, 7-8-76, Joint Administrative Procedures Committee Objection, Filed 1-12-76, See FAW, Vol. 1, No. 28, Amended 7-19-77, Joint Administrative Procedures Committee

Objection Withdrawn, See Vol. 3, No. 30, 7-29-77, Amended 2-6-78, 2-18-79,

17-4.29 Construction, Dredging or Filling Activities in, on or over Navigable Waters; Permits Required Pursuant to Chapter 253, F.S. The provisions of this section apply only in regard to the requirements of Chapter 253, F.S., and do not relieve any persons from complying with Chapter 403, F.S.

(1) and (2) (No change)

(3) The following activities shall be considered short form projects, for which the application, as set forth in Section 17-1.1221(15), F.A.C., shall be completed and submitted to the department. The types of projects described below may be combined in one application. If any portion of the proposed project exceeds the criteria for short form applications, the application as filed shall be processed as a standard form application. Successive short form applications shall not be processed for portions of a project whose total scope exceeds the criteria established.

(a) Projects not exceeding 10,000 cubic yards of material placed in or removed from navigable waters of the state. The 10,000 cubic yardage limit shall be separately applied to proposed dredging or filling (i.e., a short form application may be processed for a single project encompassing both 10,000 cubic yards of filling and an additional 10,000 cubic yards of dredging). In addition, the limitations shall include the total yardage of material involved in the creation or elimination of navigable waters of the state. This short form category is not intended to apply to portions of a project whose total scope exceeds the above maximum cubic yard limitations.

(b) Dockage or marina facilities not exceeding 20,000 square feet of navigable waters of the state or dockage or marina facilities, regardless of area occupied, designed primarily for the mooring or storage of watercraft used exclusively for sport or pleasure and containing less than one hundred (100) slips, which number is the sum of existing and proposed boatslips.

The square footage limitation shall include all areas excluded from public use by the facility or enclosed by a line surrounding all components of the facility located in navigable waters of the state.

(c) (No change)

(d) The installation of buoys, aids to navigation except those described in Section 17-4.04(10)(b), F.A.C., the installation of signs, fences, and ski ramps, and the installation of fish attractors by the Florida Game and Fresh Water Fish Commission.

(e) (No change)

(f) The installation of subaqueous transmission and distribution lines entrenched in (not exceeding 10,000 cubic yards of dredging), laid on or embedded (as defined in Section 17-4.02(14)) in the bottoms of navigable waters of the state carrying water, wastewater, electricity, communication cables, oil and gas.

(g) through (j) (No change)

(4) Application for an the issuance and denial of permits under this section shall be made in accordance with the provisions of Part I of Chapter 17-4, F.A.C., where applicable. Additionally, the requirements specified in Section 17-4.28(11), F.A.C., shall apply. The emergency provisions contained in Section 17-4.28(5), F.A.C., shall also apply to construction, dredging or filling in, on or over the navigable waters of the state pursuant to Chapter 253, F.S. The fee provision contained in Section 17-4.05(3), F.A.C., shall be superseded by the fee schedule contained in Section 17-4.29(9), F.A.C., when a portion of the proposed activity is to be performed in, on or over the navigable waters of the state.

(5) through (9) (No change)

Specific Authority 253.03(7), 403.805, F.S. Law Implemented 253.03, 253.123, 253.124, 403.813, F.S. History--New 10-26-75, Amended 7-19-77, 2-18-79,

17-4.30 (No change)

17-4.31 (No change)

17-4.32 Certification and Acceptance.

(1) and (2) (No change)

(3) Definitions.

(a) (No change)

(b) "Activity" is any dredging, filling or construction for which a permit is required involving the maintenance, repair, or replacement of existing structures in, on, or over waters of the state, including, but not limited, to excavation of material from waters of the state, the deposition of fill material in waters of the state, or the physical alteration of any existing structure, when the act of alteration or the altered structure may reasonably be expected to be a source of pollution.

(c) through (j) (No change)

(4) Certification for Construction, Dredging or Filling Activities.

(a) (No change)

1. (No change)

2. (No change)

3. (No change)

4. Statement of dimensional limits (areal and volumetric) of the certification. The certification shall establish limits for quantities of material dredged or filled, if applicable, and shall designate quantities filled or removed waterward of the approximate line of mean high water/ordinary highwater, and quantities filled or removed landward of the approximate line of mean high water/ordinary high water, and waterward of the landward extent of waters of the state.

5. through 8. (No change)

(b) and (c) (No change)

(5) through (12) (No change)

Specific Authority 253.03(7), 403.061, 403.805, F.S. Law Implemented 253.123, 253.124, 253.126(1),(2), 403.061(14)(a)(b), 403.087, 403.088, 403.802, 403.813, F.S. History--New 7-12-79, Amended

Filed with Secretary of State July 6, 1981, effective date July 26, 1981.

RULES OF THE DEPARTMENT OF ENVIRONMENTAL REGULATION

Chapter 17-26

STATE PUBLIC WORKS PROGRAM - BASIS OF STATE REVIEW

17-26.01 General Authority

1) Pursuant to Section 373.026(9), Florida Statutes, the Department of Environmental Regulation is authorized to:

a) "hold annually a conference on water resources development";

b) "select those projects for presentation in the Florida program of public works which best represent the public welfare and interest of the people of the state as required for the proper development, use, conservation and protection of waters of the state and land resources affected thereby"; and,

c) "present to the appropriate committees and agencies of the Federal government a program of public works for Florida, requesting authorization for funds for each project."

2) The State Public Works Program contains those water resource studies or projects carried out by the U.S. Army Corps of Engineers.

3) Projects included in the State Public Works Program remain subject to state permits pursuant to Chapters 373, 403 and 253, Florida Statutes, and state water quality certification pursuant to Section 401 of P.L. 92-500, as amended. Whenever possible the Department and local sponsor shall identify at the study stage, for informational purposes only, as many issues as can be determined might arise at such time as permit applications

are submitted to the Department.

Specific Authority: 373.043, 373.044, F.S.

Law Implemented: 373.026(9), 373.043, 373.044, F.S.

History: New.

17-26.02 Definitions

1) "Continuing Authority Projects" are those projects, usually not exceeding $2,000,000 in cost, which the Secretary of the Army and Chief of Engineers may undertake without specific authorization from Congress.

2) "Corps" means the United States Army Corps of Engineers.

3) "Department" means the Department of Environmental Regulation.

4) "Local Sponsor" means the local public body which sponsors a water resource study or project.

5) "Project" means those implementation actions taken by the Corps based upon the recommendations contained in a study and which are specifically authorized and funded by Congress.

6) "Public Works Program" or "Program" means Florida's annual request for federal funding for water resource studies and projects.

7) "Study" means a water resource investigation conducted by the Corps specifically authorized and funded by Congress to determine the feasibility of a proposed project or to provide planning services to state and local governments.

Specific Authority: 373.043, 373.044, F.S.

Law Implemented: 373.026(9), 373.043, 373.044, F.S.

History: New.

17-26.03 Studies or Projects to be Conducted by the Corps of Engineers

1) Federal funding may be requested for studies or projects.

2) Except for Continuing Authority Projects, studies and projects must be specifically authorized by Congressional Resolution or Act and funded as a separable line item by Congress.

3) The Corps is provided general authorization and discretionary funding by Congress for Continuing Authority Projects.

Specific Authority: 373.043, 373.044, F.S.

Law Implemented: 373.026(9), 373.043, 373.044, F.S.

History: New.

17-26.031 Local Sponsors for Corps of Engineers Studies or Projects

1) Each study or project must have a local sponsor responsible for obtaining Congressional authorization for the study or project.

2) A local sponsor of a project must be a public body capable of meeting the following requirements:

a) Providing the necessary local cost-share;

b) Furnishing necessary lands, rights-of-way and easements to implement the study or project; and,

c) Holding and saving the United States government free from damages resulting from the implementation and operation of the study or project.

3) Other requirements of the local sponsor of a study or project which may be specified by the Corps include:

a) Operating and maintaining completed improvements;

b) Preventing future encroachments on the study

or project area;

c) Providing utility relocations, disposal areas, royalty-free rock, supplemental dredging and jetty work, dikes for containing dredge material, and cash contributions toward new work; and,

d) Contracting to repay all or a portion of the costs allocated to project facilities beneficial to local interests.

4) Local sponsors for studies or projects may include, but are not limited to, water management districts, regional water supply authorities, counties, municipalities, special districts (e.g., inland navigation, water control improvement or inlet districts) and port authorities.

5) Certain public bodies which do not meet requirements for sponsoring projects (e.g., regional planning councils, Florida Game and Fresh Water Fish Commission) may sponsor studies.

6) Each local sponsor shall provide the Department with a copy of notices of public hearings and workshops, feasibility study reports, general and detailed design memoranda, and environmental impact statements.

Specific Authority: 373.043, 373.044, F.S.

Law Implemented: 373.026(9), 373.043, 373.044, F.S.

History: New.

17-26.04 Water Resources Conference and Study/Project Review Procedures

1) A water resource conference shall normally be held in February of each year for the fiscal

year beginning October 1 of the following year. This conference shall be conducted by the Department to give local sponsors the opportunity to formally present proposed studies or projects, including new Continuing Authority Projects, to appropriate state agencies and the public.

2) Notice and application forms as approved by the Department shall be provided by mail at least 45 days prior to the conference to each county commission, water management district, regional water supply authority, port authority, all past applicants, affected state or federal agencies, and any person from whom the Department has received a prior written request for such notification or application form.

3) Applications shall be submitted to the Department not later than seven days prior to the water resources conference. If the Department notifies the local sponsor of the need for further information to complete the application, such information shall be submitted by the local sponsor within 30 days of the date of notification. Failure to provide such information within 30 days may result in withdrawal of further consideration of the proposed study or project.

4) Except as provided in 17-26.04(5), Florida Administrative Code, ongoing studies or projects which have been previously approved by the Department, and for which funding has been appropriated by Congress, shall not be subject to reevaluation by

the Department in its formulation of the program in subsequent fiscal years. At least 7 days before the water resources conference, a local sponsor seeking continuation of a study or project shall submit to the Department information concerning any amendments or modifications to the application originally approved. If there are no amendments or modifications, the notice shall state the local sponsor's desire for continued inclusion in the public works program and the level of funding required.

5) If the Department determines that amendments or modifications to the approved application, new information, changes in land use, or changes in applicable laws and rules provide good cause to reevaluate the study or project, the Department shall so notify the local sponsor within 30 days of the water resources conference.

6) The Department shall publish notice of the conference in the Florida Administrative Weekly at least 30 days prior to the conference. Local sponsors attending the conference shall have the opportunity to present their study or project and to respond to questions. Members of the general public shall have the opportunity to ask questions or express an opinion relative to each study or project presented.

7) On or before April 15, the Department shall publish in the Florida Administrative Weekly a list of those studies or projects for which state

approval is sought, and shall request comments from interested persons regarding the proposed activity.

8) The Department shall submit a copy of each application to the State A-95 Clearinghouse and shall submit copies of each application for beach erosion control studies or projects to the Department of Natural Resources no later than May 15. Comments from the State A-95 Clearinghouse and the Department of Natural Resources shall be due to the Department within 60 days of receipt of the applications.

Specific Authority: 373.043, 373.044, F.S.

Law Implemented: 373.026(9), 373.043, 373.044, F.S.

History: New.

17-26.05 Preliminary Public Works Program

1) By no later than September 1, the Department shall publish a notice in the Florida Administrative Weekly summarizing the preliminary public works program. The notice shall include the name, local sponsor, and location of each study or project and the Department's intent to approve, disapprove, or approve with conditions such study or project.

2) By no later than September 1, the Department shall issue a notice of intent by certified mail to the local sponsor, stating Department intent to approve, disapprove, or approve with conditions a study or project and the reasons therefor. The local sponsor shall provide reasonable assurance within 14 days of receipt or publication of notice, that all conditions specified in the notice of intent

will be met.

3) The local sponsor or any person whose substantial interests are affected may request a hearing pursuant to Section 120.57, Florida Statutes, within 14 days of receipt or publication of notice. Failure to request a hearing within 14 days or receipt or publication of notice shall constitute a waiver of the right to a hearing.

4) The Department shall submit a preliminary program, which shall consist of those approved or conditionally approved studies and projects published in the Florida Administrative Weekly pursuant to 17-26.05(1), Florida Administrative Code, to the federal Office of Management and Budget (OMB) by no later than October 30, or the date of submission to the Congress of the President's annual budget proposal, whichever is sooner.

Specific Authority: 373.043, 373.044, F.S.

Law Implemented: 373.026(9), 373.043, 373.044, F.S.

History: New.

17-26.06 Public Works Program

1) By no later than February 1 of the year following the water resources conference, the Department shall publish in the Florida Administrative Weekly a list of those studies or projects to be included in the program, and of those studies or projects which may be included pending the outcome of hearings pursuant to Section 120.57, Florida Statutes. Any person whose substantial interests are affected by a material modification of a

proposed study or project contained in the preliminary public works program may request a hearing pursuant to Section 120.57, Florida Statutes, concerning the effect of such modification within 14 days after publication of notice.

2) Should final agency action be taken to approve a study or project as a result of Chapter 120 administrative or judicial proceedings pursuant to 17-26.05(3) or 17-26.06(1), Florida Administrative Code, the Department shall take all reasonable steps to include the study or project in the program. If the Department is unable to include the study or project in the program, the Department shall include the study or project as approved in the public works program developed for the following year and without further evaluation.

3) Should final agency action be taken to disapprove a study or project as a result of Chapter 120 administrative or judicial proceedings pursuant to 17-26.05(3), or 17-26.06(1), Florida Administrative Code, or if the local sponsor has not provided reasonable assurance to the Department pursuant to 17-26.05(2), or has violated the conditions for approval, such study or project shall not be included in the program.

4) At the invitation of the U.S. Congress, the Department shall submit to Congress the program for the fiscal year beginning October 1 of the year following the water resources conference.

5) A copy of the program shall be provided to the

appropriate subcommittees of the Congressional Appropriations Committees, Florida's Congressional Delegation, the Office of the Governor, and all local sponsors included in the program.

6) The Department shall make every reasonable effort to secure funding for each study or project in the Program.

Specific Authority: 373.043, 272.044, F.S.

Law Implemented: 373.026(9), 373.043, 373.044, F.S.

History: New.

17-26.07 Criteria for Reviewing Water Resource Development and Management Studies and Projects

1) The Department shall not include in the program any study or project for which a current and complete application, including supplemental information requested by the Department pursuant to 17-26.04(3), has not been received.

2) The decision to include or include with conditions a proposed study or project will be based upon the requirements of Section 373.026(9). In making that decision, the Department may consider:

a) Comments received from water management districts, regional planning councils, or local governing bodies in whose jurisdiction the study or project lies;

b) Consistency with approved water quality management plans certified by the Governor pursuant to Section 208 of P.L. 92-500, as amended;

c) Consistency with an approved Coastal Manage-

ment Program certified by the Governor pursuant to Section 306 of P.L. 92-583;

d) Comments received at hearings or workshops and other comments received from federal and state agencies, individuals, and private organizations;

e) Whether the proposed study or project would conflict with state water policy or with other applicable state and federal rules, regulations, and law;

f) In the case of a project, the feasibility study reports, draft and final environmental impact statements, and general and detailed design memoranda;

g) Action taken by the Department to approve or disapprove the study or project in prior years; and

h) Whether the proposed study or project is designed to withstand or mitigate flood damage and will not exacerbate existing flood hazard conditions or harm areas where natural vegetation or land characteristics provide flood damage protection, water quality protection, or fish and wildlife habitat.

Specific Authority: 373.043, 373.044, F.S.

Law Implemented: 373.026(9), 373.043, 373.044, F.S.

History: New.

N. Proposed Wastewater Treatment Plant Siting Rule Changes

*Proposed rule changes by page.

WORKSHOP DRAFT #3
NOVEMBER 1980

DRAFT RULE

OF THE

DEPARTMENT OF ENVIRONMENTAL REGULATION

- CHAPTER 17-6 -

WASTEWATER FACILITIES

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devices. Small pumping stations serving a single building may not be required to provide surge protection devices where it is demonstrated in the engineering report that they are not necessary. Complex or critical pumping stations shall be designed to incorporate standby pumping capacity, power generation, and other appropriate features pursuant to Subsection 17-6.04(4)(m).

* (c) All new pumping stations located within 300 feet of the boundary of residential or residentially-zoned areas (excluding easements and roadways) shall be designed to incorporate appropriate equipment, appurtenances, and landscaping so as to minimize objectionable odors, noise, and lighting.

(d) All new pumping stations shall be subject to the provisions of Subsection 17-6.07(5), regarding facility design and location in floodplains areas. In areas with high water tables, the design shall

17-6.05 include measures taken to withstand flotation forces when empty.

* (e) All branches of intersecting force mains shall be provided with appropriate valves such that one branch may be shut down for maintenance and repair without interrupting the flow of other branches. Stubouts on a force main, placed in anticipation of future connections, shall be equipped with a valve to allow such connections without interruption of service.

(f) All sewers crossing under water mains shall be laid to provide a minimum vertical distance of 18 inches between the invert of the upper pipe and the crown of the lower pipe. Where this minimum separation cannot be maintained, the crossing shall be arranged so that the sewer pipe joints and water main joints are equidistant from the point of crossing with no less than 10 feet between any two joints. Alternatively, the sewer main may be placed in a sleeve or encased in concrete to obtain the equivalent of the required 10-feet separation.

(g) In all instances where there is no alternative to sewer pipes crossing over a water main, the criteria for minimum separation

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* 17-6.05(2)(c) New pumping stations shall be designed and located on the site so as to minimize adverse effects resulting from odors, noise, and lighting. All such design control measures shall be described in the engineering report. The permittee shall give reasonable assurance that the facility shall not cause odor, noise or lighting in such amounts or at such levels that they adversely affect neighboring residents, in commercial or residential areas, so as to be potentially harmful or injurious to human health or welfare or unreasonably interfere with the enjoyment of life or property, including outdoor recreation. Reasonable assurance may be based on such means as aeration, landscaping, treatment of vented gases, buffer zones owned or under the control of the permittee, chemical additions, prechlorination, ozonation, innovative structural design or other similar techniques and methods, as may be required.

CODING: Words underlined are additions; words in ~~strick-through~~ type are deletions from existing law.

* 17-6.05(2)(e) In areas with high water tables, the pump station shall be designed to include measures to withstand flotation forces when empty. The potential for damage or interruption of operation because of flooding shall be considered by the permittee when siting new pumping stations at inland or coastal locations. The electrical and mechanical equipment shall be protected from physical damage by the 100-year flood. The pumping station shall be designed to remain fully operational and accessible during the 25-year flood; lesser flood levels may be designed for, dependent on local conditions, but in no case shall less than a 10-year flood be used. Design considerations (water surface elevation, forces arising from water movement, etc.) shall be addressed in the engineering report and shall be based upon available information; where site-specific information is unavailable, sound engineering practices shall be used in siting and design of pump station facilities.

CODING: Words underlined are additions; words in ~~struck-through~~ type are deletions from existing law.

routine monitoring and other considerations necessary to insure facility compliance with the requirements of this Chapter.

(2) Plant Sites

* (a) New treatment plants or expansions of an existing plant proposed in developed areas (areas in or adjacent to residences or residentially-zoned or commercially-zoned areas), for which construction permit applications are approved by the department after the effective date of this rule, shall be designed and located on the site so as to minimize any adverse effects resulting from aerosol drift, odors, noise, and lighting. A minimum distance of 300 feet between uncovered treatment plant processes (e.g., clarifiers, sludge drying beds, aeration tanks) and the boundary of such developed areas (easements and roadways widths shall be considered as part of the required buffer distance) shall be required unless the engineering report provides reasonable assurance that measures which preclude
17-6.07 objectionable aerosol drift, odors, noise, and lighting will be incorporated into the design and that a lesser distance may be utilized. Covered treatment plants processes, pumping equipment, and operation and maintenance buildings shall be landscaped and provided with other noise, lighting, odor control equipment or appurtenances if located within 300 feet of developed areas.

(b) The treatment plant site shall be enclosed with a fence, or otherwise provided with appropriate features, that discourage the entry of animals or unauthorized persons.

(3) Provisions shall be made in the design for easy access points for the purpose of obtaining representative influent and effluent samples required by Chapter 17-19 and this Chapter, FAC. These access points shall be dry points which can be reached safely on foot.

(4) Provisions for flow measurements shall be in accordance with Chapter 17-19, FAC.

* (5) All new treatment plants for which construction permit applications are approved by the department after the effective date of

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* 17-6.07(2)(a) New treatment plants and modifications to existing plants shall be designed and located on the site so as to minimize adverse effects resulting from odors, noise, aerosol drift and lighting. All such design control measures shall be described in the engineering report. The permittee shall give reasonable assurance that the treatment plant or modifications to an existing plant shall not cause odor, noise, aerosol drift or lighting in such amounts or at such levels that they adversely affect neighboring residents, in commercial or residential areas, so as to be potentially harmful or injurious to human health or welfare or unreasonably interfere with the enjoyment of life or property, including outdoor recreation. Reasonable assurance may be based on such means as aeration, landscaping, treatment of vented gases, buffer zones owned or under the control of the permittee, chemical additions, prechlorination, ozonation, innovative structural design or other similar techniques and methods, as may be required. The design shall include adequate aeration.

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* 17-6.07(5) The potential for damage or interruption of operation because of flooding shall be considered by the permittee when siting new treatment plants and expansions of existing plants at inland or coastal locations. The treatment plant structures essential for the purpose of treating, stabilizing, conveying, or holding incompletely treated waste and electrical and mechanical equipment shall be protected from physical damage by the 100-year flood. The treatment plant shall be designed to remain fully operational and accessible during the 25-year flood; lesser flood levels may be designed for, dependent on local conditions, but in no case shall less than a 10-year flood be used. Design considerations (water surface elevation, forces arising from water movement, etc.) shall be addressed in the engineering report and shall be based upon available information; where site-specific information is unavailable, sound engineering practices shall be used in siting and design of treatment plant facilities.

CODING: Words underlined are additions; words in ~~struck-through type are deletions~~ from existing law.

PART III OPERATION AND MAINTENANCE OF DOMESTIC WASTEWATER FACILITIES

17-6.10 Collection/Transmission Systems

(1) A collection/transmission system for which a valid construction permit has been obtained from the department, pursuant to Section 17-6.05 (1) above, shall not be placed into operation without prior approval of the department.

(2) Collection/transmission systems shall be operated and maintained so as to provide uninterrupted service as required by this Chapter.

*(3) All equipment necessary for the collection/transmission of domestic wastewater, including equipment provided pursuant to Subsection 17-6.05(2), shall be maintained so as to function in accordance with design specifications approved by the department in the permit application review.

(4) Copies of record drawings pursuant to Subsection 17-6.16(5), and the approved operation and maintenance manual pursuant to Subsection 17-6.17(1)(e), shall be kept available at a site acceptable to the department for use by operation and maintenance personnel and for inspection by department personnel.

17-6.11 Treatment Plants

(1) Treatment plants shall be operated and maintained so as to function continuously in attaining, at a minimum, the removal of pollutants and effluent quality required by the design/performance standards of this Chapter.

(2) The operation of a treatment plant shall be under the supervision of an operator certified as required and in accordance with Chapter 17-16, FAC. However, all facility operations (including those exempt from certification per Chapters 17-16 and 17-4, FAC) shall provide for the minimum care and maintenance of the facility in accordance with Chapter 17-16, FAC.

*(3) All equipment necessary for the collecting, handling, trea-

* 17-6.10(3) All equipment for the collection/transmission of domestic wastewater, including equipment pursuant to Section 17-6.05(2), shall be maintained so as to function as intended. In the event odor, noise or lighting adversely affect neighboring developed areas at levels prohibited by 17-6.05(2)(c), corrective action (which may include modifications of the collection/transmission system) shall be taken by the permittee. Other corrective action may be required to ensure compliance with rules of the department.

CODING: Words underlined are additions; words in ~~strick-through~~ type are deletions from existing law.

17-6.11(3) (3) All equipment necessary for the treatment and disposal of domestic wastewater shall be maintained, at a minimum, so as to function as intended. In the event odor, noise, aerosol drift, or lighting adversely affect neighboring developed areas at the levels prohibited by 17-6.07(2)(a), corrective action (which may include modifications of the treatment plant) shall be taken by the permittee. Other corrective action may be required to ensure compliance with rules of the department.

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O. Draft CMP Funding Rule

COASTAL MANAGEMENT PROGRAM GRANTS

17-CZ.01 Purpose

The purpose of this rule is to provide for the administration of coastal management funds allocated by the Department of Environmental Regulation and to establish procedures for the application for funds, evaluation of applications, and disbursement of the funds.

General Authority - 380.19(7), F.S.

Law Implemented - 380.19, 380.22(3), F.S.

17-CZ.02 Policy

The policy of the Department pertaining to the Coastal Management Program is as follows:

(1) The Department will administer the program consistent with the intent and purposes of the Florida Coastal Zone Management Act of 1978, the Federal Coastal Zone Management Act of 1972 as amended, and applicable federal regulations.

(2) Coastal management funds will be utilized to meet both state and national coastal management objectives by funding activities and tasks which address issues or improvements in coastal areas.

(3) This rule will be utilized to administer funds appropriated under, and in accordance with, sections "306" and "306A" of the Federal Coastal Management Act of 1972, as amended.

(a) Section 306 funds may be utilized by the Department to assure effective implementation of the

management program, including administrative actions to carry out and enforce program policies and authorities. These funds may be used for personnel costs, supplies and overhead, equipment, feasibility studies, and preliminary engineering reports.

(b) Subject to the promulgation of federal regulations, Section 306A funds may be utilized to provide access to public beaches, public coastal areas and coastal waters; to redevelop deteriorating and underutilized urban waterfronts and ports that are designated by the State as areas of particular concern; and for preservation and restoration projects in areas designated for preservation or restoration or in areas that contain one or more coastal resources of national significance. Grant awards under this section may be utilized for land acquisition, low-cost construction projects, urban waterfront and port rehabilitation projects, detailed engineering and design studies, and educational and management costs.

General Authority - 380.19(7), F.S.

Law Implemented - 380.19(4), F.S.

17-CZ.03 <u>Definitions</u>

As used in this rule,

(1) "Applicant" includes state agencies, water management districts, regional planning councils, and local governments. Only units of local government abutting

the Gulf of Mexico or the Atlantic Ocean, or which include or are contiguous to waters of the state where marine species of vegetation listed by rule pursuant to s. 403.817, F.S., constitute the dominant plant community, are eligible to receive coastal management funds. See Table 1 for a listing of eligible local governments.

(2) "Recipient" means an applicant who receives a grant award.

(3) "Department" means the Florida Department of Environmental Regulation.

(4) "Coastal Management Funds" means those funds received pursuant to Sections 306 and 306A of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et. seq.) as amended.

(5) "Match" means non-federal funds expended and/or in-kind services provided by the recipient in conjunction with funds received through this program.

General Authority - 380.19(7), F.S.

Law Implemented - 380.19(7), 380.24, F.S.

17-CZ.04 Application Procedures

(1) The Department shall issue a notice of the availability of funds in the Florida Administrative Weekly at least thirty days prior to the deadline for receiving applications.

(2) Each applicant seeking to obtain coastal management funds shall obtain the most recent instructions and application forms provided by the Department.

(3) In order to be eligible for coastal management funds, an applicant must submit a completed application form and any other supportive information which may be required by the Office of Coastal Zone Management or the Department. Applications for funds must be postmarked or hand delivered to the Department before the established deadline.

(4) The Department will review applications based upon criteria established in this rule.

General Authority - 380.19(7), F.S.

Law Implemented - 380.19(4), F.S.

17-CZ.05 Preliminary Approval

(1) The Department shall make a preliminary decision to approve or disapprove each application. The Department shall issue a notice of its intended action to each applicant.

(2) Notice of the proposed action regarding an application shall be published in the Florida Administrative Weekly. Any person whose substantial interests are affected may request a hearing pursuant to Section 120.57 within 14 days of publication of the notice. Failure to request a hearing within the applicable time period shall constitute a waiver of the right to a hearing.

(3) Petitioners for hearing shall not cause the suspension of further action on other applications for which a petition for a hearing has not been filed in a timely

manner. If, as a result of Chapter 120 administrative or judicial proceedings, the Department's preliminary decision to disapprove a project is reversed, the Department will take all reasonable steps to include the application in its current financial assistance application. If this inclusion is not possible, the Department shall give appropriate priority consideration to the application in its following application to the Federal Office of Coastal Zone Management.

(4) Applications which receive preliminary approval shall be submitted as a part of the Department's financial assistance application to the Federal Office of Coastal Zone Management and to the appropriate state and regional A-95 Clearinghouse for review and comment.

General Authority - 380.19(7), F.S.

Law Implemented - 380.21, 380.22, F.S.

17-CZ.06 Federal Approval and Acceptance

(1) Subsequent to A-95 review and final action by the Federal Office of Coastal Zone Management, the Department shall notify those applicants who have received preliminary approval as to the status of their applications.

(2) Recipients will have a maximum of 15 calendar days from the receipt of notification of selection for a grant award to submit a letter of acceptance.

(3) Recipients will have a maximum of 45 calendar days from receipt of notification of funding to

(a) submit to the Department an executed contract between the Department and the recipient, and

(b) where applicable, submit to the Department for approval, any applicable subcontracts.

(4) The Department may revoke grant awards to recipients who do not comply with the requirements of Section 17-CZ.06 (2) and (3).

General Authority - 380.19(7), F.S.

Law Implemented - 380.21, 380.22, F.S.

17-CZ.07 Review Criteria

(1) The Department shall not include in its Coastal Management financial assistance application to the Federal Office of Coastal Zone Management any application for which current and complete application forms, including supplemental information as may be requested by the Department, has not been received.

(2) The Department, in its preliminary decision to approve or disapprove an application, shall consider:

(a) Funding priorities established by the Department subsequent to comments from the Interagency Management Committee and the State Coastal Advisory Committee.

(b) Federal and state coastal management goals and objectives.

(c) The amount of available coastal management funds.

(d) Specific comments by state and areawide A-95 Clearinghouses.

(e) Consistency of the application with the Florida Coastal Management Program and with applicable state and federal rules, regulations and statutes.

(3) In addition to these aforementioned criteria, local government applicants shall demonstrate that their application is consistent with their adopted local comprehensive plan.

General Authority - 380.19(7), F.S.

Specific Authority - 380.22(3), F.S.

Law Implemented - 380.21(2), 380.22, F.S.

17-CZ.08 Award Conditions

(1) Each recipient under this program shall pledge and provide at least a 20 percent match.

(2) The recipient shall comply with OMB Circular A-102 and FMC 74-4; coastal management requirements found in 15 CFR 923; and any specific award conditions.

(3) The recipient may not use other federal funds to meet the matching share requirements of the award.

(4) Each recipient shall submit progress reports in accordance with the performance schedule found in the contract.

(5) The tasks performed by the recipient pursuant to this program shall be completed on or before the end of the contract. Requests for payment must be submitted to

the Department by the recipient within forty-five days following the end of the contract.

(6) Each recipient shall include in its annual post audit, an audit of its coastal management grant. The annual audit shall include a schedule identifying revenues, expenditures, fund balances and match funds in accordance with applicable rules, regulations and contract provisions. A copy of this schedule and any audit comments related thereto shall be provided to the Department within 30 days after completion of the audit. In the event that the requirements of these rules and the contract are not met, the recipient shall be held liable for reimbursement to the Department for all funds not spent in accordance with applicable state and federal regulations and contract provisions.

(7) The inclusion of the substance of an application in the state's coastal management financial assistance application does not imply the approval of, or exemption from, any Department permit or license required to construct or operate the project. Projects included in the state coastal management financial assistance application shall meet all applicable permitting requirements, including, if necessary, obtaining state water quality certification pursuant to Section 404 of the Federal Water Pollution Control Act.

General Authority - 380.19(7), F.S.

Law Implemented - 380.21(2), 380.22, F.S.

TABLE 1

COUNTIES AND CITIES ELIGIBLE FOR
COASTAL MANAGEMENT FUNDS

BAY COUNTY

Bayview
Callaway
Lynn Haven
Mexico Beach
Panama City
Panama City Beach
Parker
Springfield

BREVARD COUNTY

Cape Canaveral
Cocoa
Cocoa Beach
Indialantic
Indian Harbor Beach
Malabar
Melbourne
Melbourne Beach
Palm Bay
Palm Shores
Rockledge
Satellite Beach
Titusville

BROWARD COUNTY

Dania
Deerfield Beach
Fort Lauderdale
Hallandale
Hillsboro Beach
Hollywood
Lauderdale-by-the-Sea
Lighthouse Park
Oakland Park
Pompano Beach
Sea Ranch Lakes
Wiltons Manor

CHARLOTTE COUNTY

Punta Gorda

CITRUS COUNTY

(no cities)

COLLIER COUNTY

Everglades City
Naples

DADE COUNTY

Bal Harbour Village
Bay Harbour Islands
Coral Gables
El Portal
Golden Beach
Indian Creek Village
Islandia
Miami
Miami Beach
Miami Shores
North Bay
North Miami
North Miami Beach
Surfside

DIXIE COUNTY

Horseshoe Beach

DUVAL COUNTY

Atlantic Beach
Jacksonville
Jacksonville Beach
Neptune Beach

ESCAMBIA COUNTY

Pensacola

FLAGLER COUNTY

Beverly Beach
Flagler Beach
Marineland (part)
Painters Hill

FRANKLIN COUNTY

Apalachicola
Carrabelle

GULF COUNTY

Port St. Joe

HERNANDO COUNTY

(no cities)

HILLSBOROUGH COUNTY

Tampa

INDIAN RIVER COUNTY

Indian River Shores
Orchid
Sebastian
Vero Beach

JEFFERSON COUNTY

(no cities)

LEE COUNTY

Cape Coral
Ft. Myers
Sanibel

LEVY COUNTY

Cedar Key
Yankeetown

MANATEE COUNTY

Anna Maria
Bradenton
Bradenton Beach
Longboat Key (part)
Holmes Beach
Palmetto

TABLE 1
(Continued)

MARTIN COUNTY

Jupiter Island
Ocean Breeze Park
Sewall's Point
Stuart

MONROE COUNTY

Key Colony Beach
Key West
Layton
Munson Island

NASSAU COUNTY

Fernandina Beach

OKALOOSA COUNTY

Cinco Bayou
Fort Walton Beach
Mary Esther
Niceville
Shalimar
Valparaiso

PALM BEACH COUNTY

Boca Raton
Boynton Beach
Briny Breezes
Delray Beach
Gulfstream
Highland Beach
Hypoluxo
Juno Beach
Jupiter
Jupiter Inlet Coloney
Lake Park
Lantana
Manalapan
North Palm Beach
Ocean Ridge
Palm Beach
Palm Beach Gardens
Palm Beach Shores
Riviera Beach
South Palm Beach
Tequesta
West Palm Beach

PASCO COUNTY

New Port Richey
Port Richey

PINELLAS COUNTY

Belleair
Belleair Beach
Belleair Bluffs
Belleair Shores
Clearwater
Dunedin
Gulfport
Indian Rocks Beach
Indian Shores
Largo
Madiera Beach
North Redington Beach
Oldsmar
Redington Beach
Redington Shores
Safety Harbour
St. Petersburg
St. Petersburg Beach
Seminole
South Pasadena
Tarpon Springs
Treasure Island

ST. JOHNS COUNTY

Marineland (part)
St. Augustine
St. Augustine Beach

ST. LUCIE COUNTY

Fort Pierce
Port St. Lucie
St. Lucie Village

SANTA ROSA COUNTY

Gulf Breeze

SARASOTA COUNTY

Longboat Key (part)
North Port
Sarasota
Venice

TAYLOR COUNTY

(no cities)

VOLUSIA COUNTY

Daytona Beach
Daytona Beach Shores
Edgewater
Holly Hill
New Smyrna Beach
Oak Hill
Ormond Beach
Ponce Inlet
Port Oragne
South Daytona

WAKULLA COUNTY

St. Marks

WALTON COUNTY

(no cities)

JIM SMITH
Attorney General
State of Florida

DEPARTMENT OF LEGAL AFFAIRS

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32301

RECEIVED
JUL 9 1981
Office of the Secretary

July 8, 1981

INFORMATION COPY

081-49

The Honorable Robert Graham
Governor, State of Florida
The Capitol
Tallahassee, Florida 32301

The Honorable Vicki Tschinkel
Secretary
Department of Environmental Regulation
Twin Towers Office Building
2600 Blairstone Road
Tallahassee, Florida 32301

Re: GOVERNOR--GOVERNOR AND CABINET--ADMINISTRATIVE PROCEDURE ACT--RULEMAKING--STATE AGENCIES--to the extent that certain state agencies are statutorily authorized or required to implement or comply with Coastal Zone Management legislation, Governor and Cabinet, as agency head, may give binding directions by resolution or otherwise that such agencies comply; state agencies need not adopt rules governing the funding of legislatively authorized projects unless such rules are mandated by statute.

Dear Governor Graham and Secretary Tschinkel:

This is in response to your request, made on behalf of the National Oceanic and Atmospheric Agency (NOAA) and the Office of Coastal Zone Management in the development of Florida's Coastal Zone Management plans, for an opinion on substantially the following questions:

(1) CAN THE GOVERNOR BY EXECUTIVE ORDER AND THE GOVERNOR AND CABINET BY RESOLUTION OR OTHERWISE GIVE BINDING DIRECTIONS TO

STATE AGENCIES TO IMPLEMENT AND COMPLY WITH FLORIDA'S COASTAL ZONE MANAGEMENT PLAN WITHOUT VIOLATING THE REQUIREMENTS OF THE FLORIDA ADMINISTRATIVE PROCEDURE ACT?

(2) WHETHER A STATE AGENCY MAY FUND A LEGISLATIVELY AUTHORIZED PROJECT WITHOUT FIRST ADOPTING RULES GOVERNING SUCH EXPENDITURES?

QUESTION ONE

An answer to your first question requires a determination of what power the Governor or the Governor and Cabinet possess which would permit them to direct state agencies to act and, assuming the Governor or the Governor and Cabinet do possess such a power over state agencies, whether the various state agencies are authorized or required by law to act in the manner directed by the Governor or the Governor and Cabinet.

The Governor has no inherent powers but possesses only those powers and duties as are vested in him by the Constitution and the statutes of the state. AGO 068-58; 16 C.J.S. Const. Law §167; 81A C.J.S. States §130; See also AGO's 071-28 and 080-77. The Florida Constitution specifies in §1, Art. IV, that the Governor is the state's chief executive officer and "[h]e shall take care that the laws be faithfully executed. . . ." Research of the Florida decisional law which mentions this particular language of the Constitution does not reveal that the language has ever been interpreted or construed as conveying to the Governor any specific power with regard to, or blanket control over, the operations of state agencies or the actual and direct execution of the laws. See In Re Advisory Opinion to the Governor, 9 So.2d 172 (Fla. 1942); Advisory Opinion to the Governor, 200 So.2d 534 (Fla. 1967); and Thompson v. State, 342 So.2d 52 (Fla. 1977). Indeed, these decisions involve either the Governor's exercise of a specifically enumerated constitutional duty (appointment of public officers in In Re Advisory Opinion to the Governor, supra) or the exercise of a specific statutory power conferred upon him as a result of the legislative implementation of §1, Art. IV (protection of the life, liberty and property of the state and its

inhabitants against criminal acts in Advisory Opinion to the Governor, supra, and in Thompson v. State, supra). Far from holding that the language of §1, Art. IV, quoted above, empowers the Governor to exercise some prerogative power to execute the laws pursuant to his authority to see that all the laws of this state are carried out, these decisions appear to be a recognition of the proposition that the Governor's general authority to "take care that the laws be faithfully executed" does not by implication confer any specific power which he does not otherwise possess but that this general power is limited by his specific constitutional powers and statutory authority. See 81A C.J.S. States §130. See also 16 Am.Jur. 2d Const. Law §303; 38 Am.Jur. 2d Governor §4; Shields and Preston v. Bennett, 8 W. Va. 74 (W. Va. 1874) and Henry v. State, 39 So. 856 (Miss. 1906).

To maintain that the Governor's general constitutional duty to see that the laws are "faithfully executed" confers some prerogatory power over state agencies which the Governor does not otherwise specifically possess also runs contrary to the plain language of Art. IV, §6 of the Florida Constitution which expressly provides that all functions of the executive branch will be distributed among not more than 25 departments and which further provides that:

> . . . The administration of each department, unless otherwise provided in this constitution, shall be placed by law under the direct supervision of the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor . . . . (emphasis added)

It is a maximum of constitutional construction that in construing provisions of a constitution, each provision must be given effect, according to its plain and ordinary meaning. In re Advisory Opinion to Governor Request of June 29, 1979, 374 So.2d 959 (Fla. 1979). When this tool of construction is applied to the quoted language of Art. IV, §6, it must be concluded that the Governor's general constitutional duty to see that the laws are "faithfully

executed" does not confer on him any power of direct control and supervision over all state agencies; to hold otherwise, would render the plain language of Art. IV, §6 meaningless. It is a further rule of constitutional construction that where one method or means of exercising power is prescribed, the exercise of such power in other ways is excluded. S & J Transportation, Inc. v. Gordon, 176 So.2d 69 (Fla. 1965). The plain and ordinary meaning of the language of Art. IV, §6 is that the power of administration and direct supervision over the 25 executive departments shall only be exercised by either the governor, the lieutenant governor, the governor and cabinet, a cabinet member, or an officer or board appointed by and serving at the pleasure of the governor, as determined by the Legislature, unless the constitution provides otherwise. Accordingly, I am constrained to conclude that the issue of whom may exercise the power of administration and direct supervision over a particular state agency is left to the wisdom of the Legislature, unless such has been pre-empted by the Constitution. The Constitution provides otherwise only with regard to the State Board of Education (see Art. IX, §2, Fla. Const.), the State Board of Administration (see Art. XII, §9, Fla. Const.), the Game and Fresh Water Fish Commission (see Art. IV, §9, Fla. Const.), and the Parole and Probation Commission (see Art. IV, §8[c], Fla. Const.).

The Legislature has implemented the dictates of Art. IV, §6 by the enactment of Chapter 20, Florida Statutes, known as the Governmental Reorganization Act of 1969. It is the declared policy of Ch. 20, F.S., that the responsibility for the implementation of programs and policies by state agencies be "clearly fixed and ascertainable" and in subsections (1)(a) and (b) of §20.05, this responsibility is assigned to each agency head who shall, among other things:

> (1)(a) Plan, direct, coordinate, and execute the powers, duties, and functions vested in that department or vested in a division, bureau, or section of that department; powers and duties assigned or transferred to a division, bureau, or section of the department

> shall not be construed to be a limitation upon this authority and responsibility;
>
> (b) Have authority, without being relieved of responsibility, to execute any of the powers, duties, and functions vested in said department or in any administrative unit thereof through said administrative units and through such assistants and deputies as shall be designated by the head of the department from time to time, unless the head of the department is explicitly required by law to perform the same without delegation.

Under subsections (1)(a) and (b) the direction, control and execution of an agency's powers, duties and functions is exclusively limited to the head of the agency or by such agency head through the administrative units of the agency and such assistants and deputies as may be designated by the agency head, unless the head of the department is explicitly required by law to perform the same without delegation. See AGO 075-306.

A review of Ch. 20, F.S. reveals that the Legislature has not named the Governor, alone, as head of any of the executive departments specified therein. (However, in section 14.201, F.S., the Legislature does designate the Governor as head of the Executive Office of the Governor. See §§14.201 and 14.202, F.S.) Although the Governor and Cabinet are named as "head of the department" of several executive departments, the Legislature has not specified that the Governor, alone, shall exercise any of the powers and duties of a department head. Cf. §§14.201 and 14.202, F.S. Because only the "head of the department" may, pursuant to subsection (1)(a) of §20.05, F.S., direct the powers, duties and functions vested in a department, or, pursuant to subsection (1)(b) execute the same through designated administrative units, assistants and deputies, and because the Governor is not the head of any executive department (except the Executive Office of the Governor) I

am of the opinion that the Governor may not by executive order give binding directions to any of the state executive departments created in Ch. 20, F.S., to implement and comply with Florida's Coastal Zone Management Plan or the Florida Coastal Management Act or exercise any rulemaking authority in that regard over or for such executive departments, absent some specific authorization in Ch. 380, Part II, F.S., or other general law, which would permit such.

The Cabinet, like the Governor, is a creature of the Constitution, and possesses only those powers conferred by the Constitution or prescribed by statute. See Art. IV, §4, Fla. Const. In addition to the individual constitutional duties and powers conferred upon each Cabinet member, subsection (a) of Art IV, §4, directs that the Cabinet "shall exercise such powers and perform such duties as may be prescribed by law." Unlike the Governor who the Legislature has made the department head of only the Executive Office of the Governor, the Legislature in Ch. 20, F.S., has made the Cabinet together with the Governor the head of several executive departments. In particular, the Governor and Cabinet sit as department head of the Department of Revenue, See, §20.21(1), F.S.; the Department of General Services, See §20.22(1), F.S.; the Department of Highway Safety and Motor Vehicles, See §20.24(1), F.S.; the Department of Natural Resources, See §20.25(1), F.S; the Department of Education, See §20.15(1), F.S.; and the Department of Law Enforcement, See §20.201(1), F.S. As department head of the above named agencies, the Governor and the Cabinet are authorized to direct and execute the power, duties and functions of those agencies. Thus, to the extent that one of these departments is statutorily authorized or required to implement or comply with Florida's Coastal Zone Management Plan or the Coastal Management Act, it would be my opinion that the Governor and Cabinet, as department head, could give binding directions by resolution or other written direction that a given department comply or execute and implement any statutory requirements applicable to and governing a particular department so far as the same relates to the State Coastal Zone Management Plan or the Florida Coastal Management Act of 1978. Again, this opinion is premised on the Governor and Cabinet being the "head of the department" and on the department having the requisite statutory authority or duty to execute, comply with or

implement the Coastal Management Plan or the Coastal Management Act.

The question has been raised whether such a resolution or other written direction would violate the rulemaking requirements of Chapter 120, F.S. Under the definition of "agency" found in §120.52(1)(b), F.S., the Governor and Cabinet acting as a collegial body and as the head of a given department would be subject to Chapter 120, F.S. However, being governed by Ch. 120. does not necessarily mean that such a joint resolution or other written direction or expression of the will of that body directed to the administrative units or the officials or employees of a given department commanding them to execute or comply with or implement statutes applicable to and controlling the functions and operations of a particular department would be subject to the rulemaking requirements of Ch. 120, F.S. Even if such executive direction were to be deemed a rule, it would simply constitute a rehearsal or restatement of what the law already requires of the department and its governing head. Moreover, a department's general rulemaking power is circumscribed by and limited to the statutes prescribing its powers, duties and functions in particular areas, such as the Florida Coastal Management Act, and it may prescribe only such rules or regulations as come within the specifications laid down by the governing statute or statutes. See, e.g., §20.05(5), F.S.; §120.54(14), F.S.; Lewis v. Florida State Board of Health, 143 So.2d 867 (Fla. 1st DCA 1962); and Department of Health and Rehabilitative Services v. Florida Psychiatric Society, Inc., 382 So.2d 1280 (Fla. 1st DCA 1980). Section 120.52(14)(a), Florida Statutes, provides that internal management memoranda are exceptions to the definition of "rule" and thus fall outside the scope of Chapter 120, Florida Statutes. However, such memoranda must neither affect the private interests of any person, nor any plan or procedure which is important to the public and must have no application outside of the agency issuing such memoranda. See §120.52(14)(a), F. S. This exception has been narrowly interpreted such that memoranda affecting the private interests of any person were held not to be excluded from the reach of Chapter 120, Florida Statutes. Webster v. South Florida Water Management District, 367 So.2d 734 (Fla. 4th DCA 1979). Any internal action taken or directions to the administrative units of a

department to comply with or execute existing laws governing that agency by the Governor and Cabinet as head of a particular agency would seem to fall outside the purview of Chapter 120, F. S. Therefore, a joint resolution or other written direction which is mandatory only upon a state agency headed by the Governor and Cabinet, and which is not of general applicability and does not affect the private interest of any person, may be considered to be an internal management memorandum. Thus, in agencies like the Department of Natural Resources, which is headed by the Governor and Cabinet (§20.25[1], F.S.), any directions given to the staff of the agency itself to comply with or execute such provisions of the Florida Coastal Management Act of 1978 as are applicable to and govern the operations of such agency would seem to effectively avoid the rulemaking requirements of §120.54. It would therefore be my opinion that a joint resolution or other expression or direction which simply orders agency staff to execute and implement or comply with any statutory requirements governing a particular agency would not be subject to Ch. 120, F.S.

QUESTION TWO

The second question which you raise is whether a state agency may fund a legislatively authorized project without first adopting rules governing such an expenditure. The answer to your question is dependent upon the legislative direction given an agency with regard to its funding of the project. Cf. §380.22(3), F.S. (provides that the Secretary of Environmental Regulation shall adopt, by rule, a specific formula for the allocation of federal funds for the administration of the state coastal management program).

Except for those agencies specifically created by the Constitution, an administrative agency is strictly a creature of the Legislature and possesses only those powers, duties and responsibilities as are given it by the Legislature. More specifically, an agency may not promulgate rules or regulations without the authority to do so being given it by the Legislature. This authorization can be in the form of specific rulemaking authority, e.g., §466.024(1), F.S., or in the context of general rulemaking authority, e.g., §460.405, F.S. No state agency has inherent rulemaking power. See §120.54(14), F.S.

No statute has been brought to my attention which uniformly authorizes or requires every agency to promulgate rules and regulations governing its funding of legislatively authorized projects. Further, my review of the Administrative Procedure Act (Ch. 120, F.S.) does not disclose any specific provision requiring such rules. The only directive to promulgate certain rules which is contained in Ch. 120, F.S., is found in §120.53, F.S., which provides, in pertinent part, that:

> (1) In addition to other requirements imposed by law, each agency shall:
> (a) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.
> (b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures, including a list of all forms and instructions used by the agency in its dealings with the public. The list of forms and instructions shall include the title of each form or instruction and a statement of the manner in which the form or instruction may be obtained without cost.
> (c) Adopt rules of procedure appropriate for the presentation of arguments concerning issues of law or policy, and for the presentation of evidence on any pertinent fact that may be in dispute.
> (d) Adopt rules for the scheduling of meetings, hearings, and workshops, one of which shall be that an agenda shall be prepared by the agency in time to insure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. . . .

The provisions of §120.53(1), quoted above, speak to the requirement that an agency promulgate rules of organization and practice and procedure and it does not purport to require rules governing the disbursement of agency funds or the funding of legislatively authorized projects.

It would be my opinion that Ch. 120, F.S., standing alone, neither authorizes nor requires a state agency to promulgate rules governing the disbursement of its appropriations or its funding of legislatively authorized projects. No such authority or duty has been prescribed by the Legislature to my knowledge. To hold otherwise, would be to accord more authority to state agencies than they actually possess. However, this opinion does not preclude the promulgation of such rules if an agency is given the statutory duty or discretionary authority to do such.

To sumarize, then, I am of the opinion that:

1. Absent specific statutory authority therefor, the Governor may not by executive order give binding directions to any of the state executive departments created by Ch. 20, F.S., to implement and comply with the Florida Coastal Management Plan or the Florida Coastal Management Act of 1978 or exercise any rulemaking authority in such regard for or on behalf of such administrative or executive departments.

2. To the extent that any state administrative or executive agency or department is assigned to and governed by the Governor and the Cabinet as the agency head and is statutorily authorized or required to implement or comply with the Florida Coastal Management Plan or the Florida Coastal Management Act of 1978, the Governor and the Cabinet may give binding directions by resolution or other written direction to such agencies or the staff thereof to comply or execute and implement any statutory requirements applicable to and governing such agency or agencies,

including those contained in the Florida Coastal Management Act of 1978.

3. A resolution or other expression or direction of the Governor and Cabinet as the governing head of any administrative or executive agency or department ordering its staff or employees to execute and implement or comply with any statutory requirements, including the Florida Coastal Management Act, governing that agency would not be subject to the rulemaking procedures or requirements prescribed by the Florida Administrative Procedure Act, Ch. 120, F.S.

4. The provisions of Ch. 120, F.S., per se, do not authorize or require any state administrative or executive agency or department to adopt rules governing the disbursement of its appropriations or its funding of a legislatively authorized project; such rule or rules may be promulgated if the affected agency or department is given the statutory duty or discretionary authority to do so.

Sincerely,

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ATTORNEY GENERAL

Prepared by:

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JS/G/w

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