



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

January 9, 2007

Mr. Andrew Zemba
Pennsylvania Department of Environmental Protection
Water Planning Office
Post Office Box 2063
400 Market Street, 2nd Floor
Harrisburg, Pennsylvania 17105-2063

Dear Mr. Zemba:

Thank you for the Pennsylvania Department of Environmental Protection's October 31, 2006, request that the following changes be incorporated into the Pennsylvania Coastal Management Program (PACMP): expansion of the Pennsylvania Coastal Zone Boundary; deletion of the inventory of Geographic Areas of Particular Concern (GAPCs) from the CMP document and change in process for designating GAPCs; revised federal consistency review process (including interstate consistency); reorganization of lead agency; and regulatory changes made in 2002-03. You requested that these changes be incorporated as routine program changes (RPCs), pursuant to Coastal Zone Management Act (CZMA) regulations at 15 C.F.R. part 923, subpart H, and Office of Ocean and Coastal Resource Management (OCRM) Program Change Guidance (July 1996). OCRM received the request on October 31, 2006, and OCRM received clarification on the PACMP's review of the development of or changes to Nationwide Permits, State Programmatic General Permits, and Regional Permits on December 5, 2006. OCRM's decision deadline was extended until January 9, 2007.

Based on our review of your submission, we concur that the changes described in the enclosed table are RPCs and we approve the incorporation of the changes as enforceable policies and other enforceable elements of the PACMP. Federal Consistency will apply to the approved changes only after you publish notice of this approval pursuant to 15 C.F.R. part 923.84(b)(4). Please include in the public notice the list of changes to enforceable policies provided in this letter, and please send a copy of the notice to OCRM.

SECTIONS APPROVED

See enclosed list of the enforceable policies and other enforceable elements incorporated as changes to the PACMP.

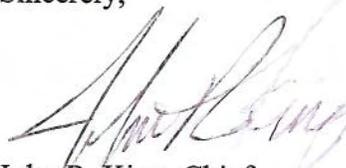


PUBLIC AND FEDERAL AGENCY COMMENTS

The U.S. Army Corps of Engineers, Buffalo District, submitted comments on this request, and those comments and OCRM's response is enclosed for your reference.

Thank you for your cooperation in this review. Please contact Joshua Lott at (301) 713-3155, extension 178, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. King". The signature is fluid and cursive, written over a light blue horizontal line.

John R. King, Chief
Coastal Programs Division

Enclosures:

Policies and other Program Elements Approved and Incorporated into the PACMP
Comments from the U.S. Army Corps of Engineers, Buffalo District, and OCRM's response to those comments

Name/Description of Commonwealth Law/Regulation/ Policy Added or Removed from CMP	Commonwealth Legal Citation	Date Adopted by Commonwealth	Date Effective in Commonwealth
Commonwealth Regulatory Changes			
Hazardous Waste Management: codification of the Commonwealth's Solid Waste Management Act (SWMA) requirements that differ from or are broader than the federal requirements incorporated by reference; clarification of ambiguous requirements; clarification of manifesting requirements; and correction of typographical errors.	25 PA CODE Chapters 250a-265a, 270a	Sept. 17, 2002	Dec. 14, 2002
Safe Drinking Water: incorporate new federal EPA primacy requirements into the Department's Safe Drinking Water regulations, establish new requirements for community water systems to prepare and provide to their customers an annual consumer confidence report, add major revisions to the public notification requirements, revise the regulation of lead and copper to improve implementation, and correct minor deficiencies in Chapter 109 to retain primary enforcement authority (primacy) and to clarify existing requirements.	25 PA CODE Chapter 109	May 22, 2002	Aug. 10, 2002
Fishing and Boating: addition of <i>Alasmidonta heterodon</i> (dwarf wedgemussel) to list of Pennsylvania's endangered species	58 PA CODE Chapter 75	July 19, 2003	July 19, 2003
Injurious Nonnative Species: addition of several species of fish and mussels covered by regulations on the propagation and introduction of fish into Commonwealth waters, and regulations on the possession and transportation of live fish into the Commonwealth.	58 PA CODE Chapters 71, 73	Sept. 6, 2003	Sept. 6, 2003
Regulatory Changes Required under the Federal Clean Air and Clean Water Acts			
Great Lakes Initiative: incorporation of federal requirements concerning prohibitions and phasing out of mixing zones for bioaccumulative chemicals of concern (BCCs) in waters of the Great Lakes System.	25 PA CODE Chapter 93	Sept. 17, 2002	Dec. 14, 2002
Water Quality Standards: technical correction to correct previous error in classifying sulfate and chloride water quality criteria	25 PA CODE Chapter 96	Sept. 17, 2002	Dec. 14, 2002
Heavy-Duty Diesel (HDD) Emissions Control Program: The amendment to § 121.1 (relating to definitions) includes the terms and phrases applicable to a new Heavy-Duty Diesel Emissions Control Program. These definitions include "heavy-duty diesel engine" and "heavy-duty diesel vehicle."	25 PA CODE Chapter 121	Mar. 19, 2002	May 11, 2002

Name/Description of Commonwealth Law/Regulation/ Policy Added or Removed from CMP	Commonwealth Legal Citation	Date Adopted by Commonwealth	Date Effective in Commonwealth
CMP Boundary, Organization, and Federal Consistency Procedures			
Boundary Change/Addition of Geographic Area of Particular Concern (GAPC): approximately 2,283 acres of Fairmount Park in Philadelphia added to the coastal zone and designated as a Recreational, Historical, and Cultural GAPC.	Page II-1-9 of the PACMP Document	N/A	Upon publication of public notice of OCRM's approval of this RPC
Deletion of "Inventory of GAPCs" in Program Document and change in procedure to nominate and designate GAPCs	Page II-3-8 of the PACMP Document	N/A	Upon publication of public notice of OCRM's approval of this RPC
Program Organization Change: Renaming the Office of River Basin Cooperation to the Water Planning Office and integration of program activities	N/A	Sept. 2003	Sept. 2003
Update of CZMP's Federal Consistency Review Process: Incorporation of the 2001 regulatory revisions to 15 CFR Part 930 into the PACMP's federal consistency review requirements.	Chapter 5 of the PACMP Document	N/A	Upon publication of public notice of OCRM's approval of this RPC
Interstate Consistency			
Interstate Consistency Boundary: The area extends from the Ohio/Pennsylvania border approximately three miles westward to the northern terminus of Lake Erie Street in the City of Conneaut, Ohio. The area extends from the Ordinary High Water Mark lakeward to the United States/Canadian border in Lake Erie	A new subsection of Chapter 5 of the PACMP Document	N/A	Upon publication of public notice of OCRM's approval of this RPC
Federal Agency Activities: Shore protection and dredging and disposal of dredge or fill material activities conducted by the USACE and Department of Homeland Security, U.S. Coast Guard, under the Rivers and Harbors Act (33 USC 1), Water Resources Development Act (42 USC 1962 d-5, d5e, d5f), Marine Protection, Research and Sanctuaries Act (33 USC 1413), and Federal Water Pollution Control Act (33 USC 1344).			
Federal License and Permit Activities: USACE permits authorized under Sections 9, 10, 11, and 14 of the Rivers and Harbors Act (33 USC 401, et seq.) and Section 404 of the Federal Clean Water Act (33 USC 1344)			
Development of, or amendments to, Nationwide Permits, State Programmatic General Permits, and Regional Permits by the USACE: Specific permits that address the activities cited above will be reviewed. Including, but not limited to, the following Nationwide Permits (NWPs): NWP # 3 Maintenance; NWP #13 Bank Stabilization; NWP #19 Minor			

Name/Description of Commonwealth Law/Regulation/ Policy Added or Removed from CMP	Commonwealth Legal Citation	Date Adopted by Commonwealth	Date Effective in Commonwealth
Dredging; NWP # 35 Maintenance Dredging; and NWP #36 Boat Ramps.			



RPC XII

**2002 AND 2003 PROPOSED ROUTINE PROGRAM
CHANGES**

TO

**PENNSYLVANIA'S COASTAL ZONE
MANAGEMENT PROGRAM**

September 2006

OCRM Clarification Added February 2007

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RPC XII

2002 AND 2003 ROUTINE PROGRAM CHANGES TO PENNSYLVANIA'S COASTAL ZONE MANAGEMENT PROGRAM

INTRODUCTION

The following constitutes a request by the Pennsylvania Coastal Zone Management Program (CZM) to the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resources Management (OCRM) to concur that the following program changes are Routine Program Changes (RPCs) and not amendments. This RPC XII is the twelfth request for program changes CZM has submitted since 1980. All prior RPCs have been approved as RPCs.

An RPC is defined in federal regulations (15 C.F.R. Section 923.84) as, "Further detailing of a state's program that is the result of implementing provisions approved as part of the state's approved management program that does not result in (an amendment)."

An amendment is defined (15 C.F.R. Section 923.80(d)) as "Substantial changes in one or more of the following five coastal management program areas:

- 1. Uses Subject to Management** (15 C.F.R. Part 923, Subpart B) (i.e., permissible land and water uses within a coastal zone which have a direct and significant impact in coastal waters),
- 2. Special Management Areas** (15 C.F.R. Part 923, Subpart C) (i.e., criteria or procedures for designating or managing geographical areas of particular concern, or areas for preservation or restoration),
- 3. Boundaries** (15 C.F.R. Part 923, Subpart D),
- 4. Authorities and Organization** (15 C.F.R. Part 923, Subpart E) (i.e., the state regulations and organizational structure on which a state will rely to administer its coastal management program), and
- 5. Coordination, Public Involvement, and National Interest** (15 C.F.R. Part 923, Subpart F) (i.e., coordination with governmental agencies having interest and responsibilities affecting the coastal zone; the involvement of

interest groups as well as the general public; and the provision for adequate consideration of the national interest involved in planning for and managing the coastal zone, including the siting of facilities (such as energy facilities) which are of greater than local significance).

OCRM's Program Change Guidance (July 1996) states that a substantial change is a high threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources. OCRM's guidance also states that an explanation why a proposed change will not result in an amendment should describe the elements of the state coastal program that are affected. The following pages contain:

- a discussion of each program change,
- an analysis of the effect that the change will have on Pennsylvania's CZM Program, and
- a conclusion as to why the change is routine and not a program amendment, as defined by the federal CZM regulations.

PROPOSED CHANGES

Several CZM Program changes have occurred in 2002 and 2003. The Commonwealth of Pennsylvania is submitting these proposed changes to OCRM, and is requesting their concurrence with our findings that these changes are routine, and not Program amendments.

The following are proposed RPCs to the Commonwealth of Pennsylvania Coastal Zone Management Program, and Final Environmental Impact Statement (FEIS) (August 1980). These changes are to the following Program Management Areas:

- Special Management Areas, and involves the addition of one Geographical Area of Particular Concern (GAPC), the deletion of CZM's Inventory of GAPCs from the FEIS, and a revision to CZM's Process for Future Nomination of GAPC,
- Boundaries, and involves the extension of the Delaware Coastal Zone Boundary to include the above GAPC expansion,
- Program Authorities and Organization, and involves general regulatory changes affecting the CZM Program's enforceable authorities, and discusses renaming of the Office for River Basin Cooperation to the Water Planning Office, and integration into the Water Management Deputate, and
- Coordination, Public Involvement, and National Interest, and discusses updates to CZM's federal consistency review process, and the addition of Interstate Consistency.

2002 CHANGES TO THE PENNSYLVANIA COASTAL ZONE BOUNDARY

INTRODUCTION – SECTION 306 BOUNDARY CHANGE

Section 306 of the Federal Coastal Zone Management Act of 1972 (Act), as amended, provides for formal changes to states' coastal boundaries through the Routine Program Change (RPC) process. Section 304 of the Act defines the coastal zone as the coastal waters (including the lands therein and thereunder) and adjacent shorelands, strongly influenced by each other. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact upon the coastal waters.

This Routine Program Change (RPC) will expand Pennsylvania's Delaware Estuary Coastal Zone (DECZ) by adding approximately 2283 acres of the existing Fairmount Park. The following discussion will show that this coastal zone boundary expansion will add adjacent shorelands, which have a direct and significant impact upon Delaware Estuary coastal waters, and therefore merits inclusion into Pennsylvania's DECZ.

FAIRMOUNT PARK BOUNDARY EXPANSION – Delaware Estuary

The City of Philadelphia, Fairmount Park Commission, (Commission) owns Fairmount Park. Fairmount Park, consists of 62 neighborhood and regional parks, and is Philadelphia's 9,200-acre citywide park system. Approximately 50-acres of one neighborhood park, the Schuylkill River Park is currently located within the DECZ boundary. Schuylkill River Park is currently designated by CZM as a Recreational, Historical, and Cultural value Geographical Area of Particular Concern (GAPC). It is best known for the Fairmount Water Works contained within it. The CZM boundary line at Schuylkill River Park is located on the Fairmount Dam, which spans the Schuylkill River. Schuylkill River Park is located on the east side of the Schuylkill River at the Dam, and extends south to South Street Creek (See Figure 1).

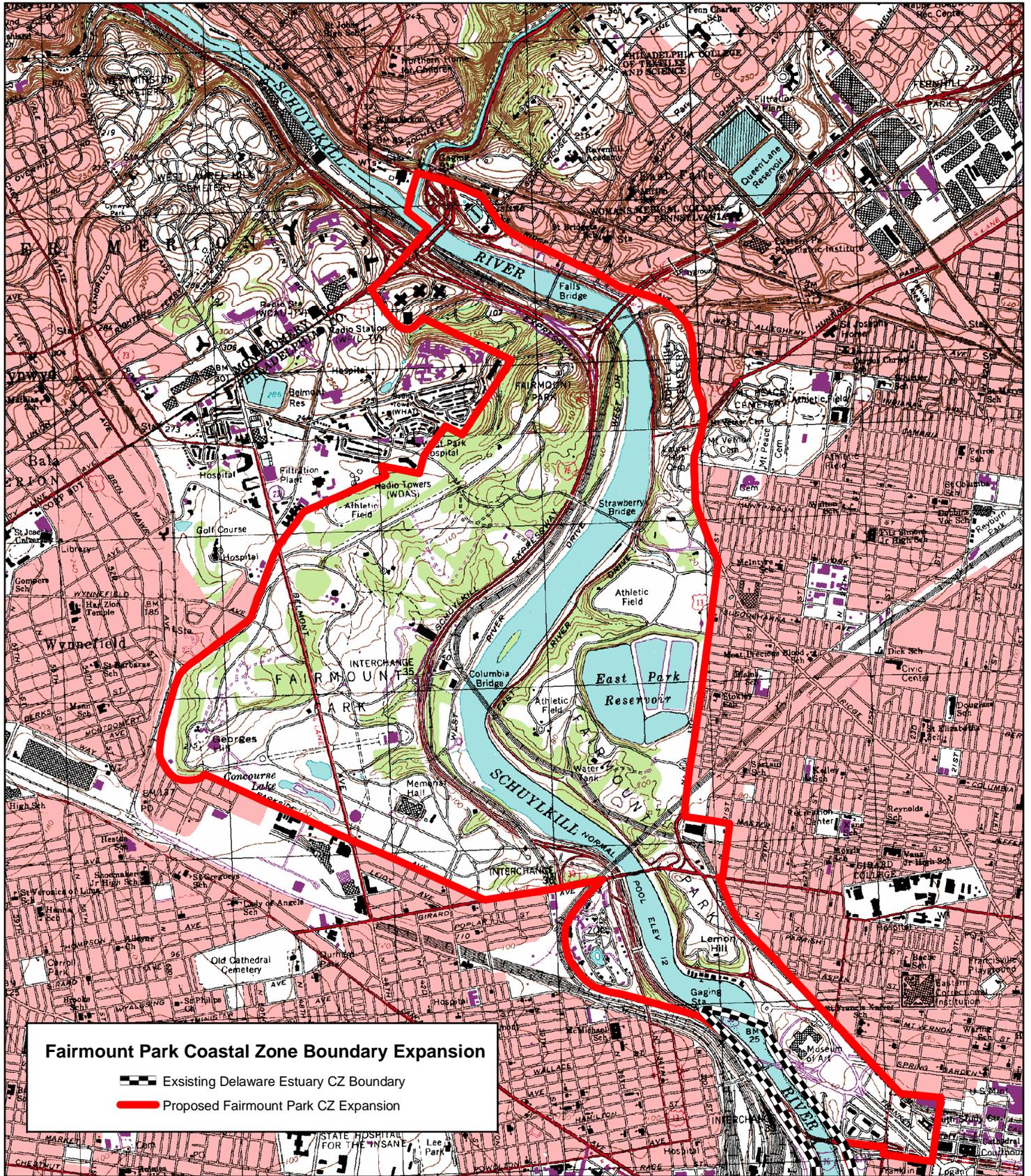


Figure #1
Fairmount Park Coastal Zone Boundary Expansion.

Schuylkill River Park has been the recipient of several CZM grants that were used to design the Walnut Street Bridge dock, and for an environmental education demonstration project. The Park has also been the recipient of federal grants used to design and construct portions of the River Park.

The Commission is proposing to expand the Pennsylvania CZM boundary in the City of Philadelphia by adding a 2283-acre parcel of the existing Fairmount Park system. The proposed addition is located on both sides of the Schuylkill River. The addition will move the boundary approximately 3.8 miles above the Dam, upriver to the mouth of the Wissahickon Creek (See Figure 1). The Commission has found that this section of Fairmount Park (ie. the shorelands) has a strong influence upon the Schuylkill River, and the River upon the Park. The CZM Program agrees that the many uses of the Park have a direct and significant impact upon the coastal waters and vice versa.

The proposed expansion area hosts in excess of 1 million visitors per year. Numerous events are held at Fairmount Park such as regattas, marathons, bike races, and charitable walks and runs as well as the daily use for recreational purposes. The proposed expansion area provides many significant recreational, historical and cultural amenities. Approximately 40 miles of bike and hiking paths exist in the proposed area.

The proposed expansion area on the east side of the Schuylkill River contains many well-known historical and cultural amenities such as the Philadelphia Museum of Art, the Rodin Museum, and over 200 sculptures, the Robin Hood Dell East Amphitheater, the East Park Reservoir, and several athletic fields. The proposed expansion area on the west side of the Schuylkill River contains the Playhouse in the Park, several historic mansions, the Mann Music Center, Memorial Hall, the Horticulture Center, the Japanese House, and several small lakes.

The expansion of Fairmount Park above the Dam would further the City of Philadelphia's plan to develop a linear park corridor along the Schuylkill River from Center City Philadelphia to Valley Forge. The addition of this section would also complement the City's other plans in Fairmount Park to improve trails and other visitor amenities. Possible future developments envisioned for Fairmount Park include many new family-oriented recreational opportunities, such as the Audubon Environmental Center, the completely renovated Smith Playground and new hiking trails.

The addition of this 2283-acre linear parcel will also be designated by CZM as a Recreational, Historical, and Cultural value GAPC. As a designated GAPC, the Commission will be able to apply for CZM Program funding to meet their future recreational goals. Page II-3-7 of the PA CZM Program's FEIS, defines a Recreational, Historical, and Cultural value GAPC "as having significant social value to citizens as a resource for recreational and cultural activities associated with the river and port. The goal of the CZM Program should be to protect, maintain, or restore these areas.....". CZM's FEIS also recommends priorities for uses of GAPCs. For Recreational, Historical, and Cultural value GAPCs, recommended High Priority Activities are:

“1. Activities that maintain or increase the resource value of these GAPC such as better access and walkways, increased parking, improved security, new park equipment, public boat launches, landscaping, etc.

2. Activities which provide financial support, e.g. subsidies, public acquisition, or fund raising.”

As can be seen, the proposed 2283-acre expansion meets the definition of a Recreational, Historical, and Cultural value GAPC, and contains all of the CZM Program’s recommended High Priority Activities.

The new coastal boundary will begin at the current coastal boundary located just below the Dam, at a point on the SEPTA rail line, on the west side of the Schuylkill River (See Figure 1). The boundary line continues north along the SEPTA line, to a point where it would intersect with Zoological Avenue (if extended eastward). At this intersection point the boundary goes west along Zoological Avenue to its intersection with Girard Avenue, west on Girard Avenue to Parkside Avenue, west on Parkside Avenue to its intersection with Edgely Avenue. At this intersection point, the CZM Boundary continues east along Edgely Avenue / Fairmount Park property line to its intersection with Neill Drive. West on Neill Drive to Presidential Boulevard, and then north along Presidential Boulevard to the Philadelphia / Montgomery County Line. West along the Philadelphia / Montgomery County Line (in the Schuylkill River) to where it would intersect with the Fairmount Park property line (if extended westward), located on the north side of the Wissahickon Creek. North along the Fairmount Park property line to its intersection with Ridge Avenue, south on Ridge Avenue to 33rd Street, south on 33rd Street to Master Avenue, east on Master Avenue to 31st Street, south on 31st Street to Girard Avenue, west on Girard Avenue to Pennsylvania Avenue, south on Pennsylvania Avenue to Hamilton Street, south on Hamilton Street to 20th Street, south on 20th Street to Winter Street, west on Winter Street to 22nd Street, north on 22nd Street to Vine Street, west on Vine Street to the 100 year floodplain of the east side of the Schuylkill River, which is the current coastal boundary.

ANALYSIS OF IMPACT – Fairmount Park Boundary Expansion

The CZM Act defines the coastal zone as “coastal waters. ...and the adjacent shorelands strongly influenced by each other.” The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters.

The section titled “*Defining the Coastal Zone Boundary*” found on page II-1-9 of the PA CZM Program’s FEIS, discusses the Act’s and CZM’s methodology used to determine a coastal boundary. The CZM Program’s methodology follows Section 304 of the Act, which defines the coastal zone as the coastal waters (including the lands therein and thereunder) and adjacent shorelands, strongly influenced by each other. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact upon the coastal waters. This FEIS section also lists land uses which constitute a direct and significant impact, and which should be subject to

management by the CZM Program. Two of the uses listed, which are pertinent to the Fairmount Park expansion are:

- "1. Activities which possess the potential for providing public access sites for both passive and active forms of recreation, and
2. Activities that enhance the restoration and / or preservation of historic sites and structures."

As can be seen by the previous discussions, the proposed expansion area provides numerous recreational, cultural and historic uses, which are listed in CZM's FEIS as having a direct and significant impact upon Pennsylvania's coastal zone. CZM's FEIS recommends that these uses should be subject to management by the Pennsylvania CZM Program.

The proposed 2283-acre linear expansion will also be designated as a Recreational, Historical, and Cultural value GAPC. A section titled "*Process for Future Nomination of GAPCs*", found on page II-3-12 of the PA CZM Program's FEIS, provides a federally approved process for the addition of GAPCs. This process has been completed with this RPC. Page II-3-7 of the FEIS defines Recreational, Historical, and Cultural Opportunity GAPCs "as having significant social value to citizens as a resource for recreational and cultural activities associated with the river and port. The goal of the CZM Program should be to protect, maintain, or restore these areas..." The FEIS also recommends priorities for future uses of GAPCs. For Recreational, Historical, and Cultural value GAPCs, recommended High Priority Activities are:

- "1. Activities that maintain or increase the resource value of these GAPCs such as better access and walkways, increased parking, improved security, new park equipment, public boat launches, landscaping, etc.
2. Activities that provide financial support, e.g. subsidies, public acquisition, or fund raising."

As can be seen, the 2283-acre expansion of the DECZ is provided for by the FEIS, and the proposed expansion area meets the definition of a Recreational, Historical, and Cultural value GAPC, by containing all of CZM's recommended High Priority Activities.

SUMMARY AND CONCLUSION – Fairmount Park Boundary Expansion

The Fairmount Park Boundary Expansion is not a substantial change to the DECZ, but routine. Shoreland uses occurring within the proposed Fairmount Park boundary expansion area have direct and significant impacts upon the coastal zone, are considered High Priority, and should be subject to future state and federal consistency reviews.

The proposed boundary change is in conformance with the Pennsylvania CZM Program's methodology and guiding principles for determining the coastal zone boundary contained in the CZM Program's FEIS. Furthermore, the boundary

change complies with the Federal CZM Act and regulations promulgated at 15 CFR Part 923 Subpart D - Boundaries. Future developments envisioned for the Park are also consistent with CZM's recommended High Priority Activities for uses of Recreational, Historical, and Cultural value GAPCs.

The Pennsylvania CZM Program's methodology and guiding principles state that recreational, historical and cultural uses located on adjacent shorelands have a direct and significant impact, are an important coastal amenity, and should be subject to management by the CZM Program. This boundary expansion is a logical extension of the DECZ boundary, and would allow the Program to manage these uses. The DECZ Steering Committee and the State Coastal Zone Advisory Committee have approved this boundary expansion and GAPC addition.

OCRM's Program Change Guidance (July 1996) states that a substantial change is a high threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources.

This boundary change is not a substantial change to Pennsylvania's DECZ Boundary. CZM's FEIS contains federally approved procedures for boundary expansions and the addition of GAPCs. CZM has expanded the boundary several times in the past, and has added many GAPCs by following these procedures. This boundary expansion will not add new or revised enforceable policies to address coastal uses or resources not previously managed, nor will it change the way CZM manages coastal uses or resources. Based on the previous discussion and impact analysis, we have determined that this program change to Pennsylvania's coastal **Boundaries** is routine, and will further detail Pennsylvania's CZM Program. This boundary change results from, and is in conformance, with Sections 304 and 306 of the federal CZM Act.

2002 DELETION OF INVENTORY OF GAPCs

INTRODUCTION – INVENTORY OF GAPCs

The Federal CZM Act while noting the importance of the entire coastal zone finds that certain areas are of greater significance. As a requirement for Program approval, the Act requires coastal states to inventory and denote these Geographical Areas of Particular Concern (GAPCs) on a generic (ie. by category), on a site-specific basis, **OR** both (Section 305(b)(3)). The Pennsylvania CZM Program met both requirements by inclusion of two sections in our FEIS titled “*Inventory of GAPC*” sites (beginning on page II-3-8) and “*Criteria for Nominated GAPC*” (beginning in page II-3-3). The “*Inventory of GAPC*” is a list of specific GAPC sites, while the “*Criteria for Nominated GAPC*” describes the four generic categories of GAPCs, that each site specific GAPC must be designated.

The Act further requires coastal states to make provisions to denote future GAPC areas in order to preserve, protect and restore them. The CZM Program has also met this requirement by developing a section titled “*Process for Future Nomination of GAPC*”. This process begins on II-3-12 of our FEIS.

DELETION OF INVENTORY OF GAPCs

The “*Inventory of GAPC*” was originally contained in the Program’s Draft Environmental Impact Statement (DEIS), and subsequently in the Program’s federally approved FEIS. Because the “*Inventory*” was included in our FEIS, it was CZM’s understanding that additions to this “*Inventory*” constituted a CZM Program change, which requires a lengthy and time-consuming Routine Program Change (RPC). This is not the case however. Discussions with OCRM confirmed that there is no federal requirement that a coastal state may only add site specific GAPCs to its “*Inventory*” via the RPC process. OCRM clarified that the only federal requirement pertaining to the addition of site-specific GAPCs is that a coastal state must place each newly added GAPC into one of our four GAPC categories. To eliminate this misconception in the future, OCRM suggested that CZM delete the site-specific “*Inventory of GAPC*” from our FEIS, but stressed that CZM must continue placing any new site specific GAPCs into one of the four categories CZM has listed in its “*Criteria for Nominated GAPC.*” These four GAPC categories are:

- Areas of significant Natural Value
- Areas of significant Recreational, Historic, or Cultural Value
- Development Opportunity Areas, and
- Overlap Areas.

This RPC will delete the “*Inventory of GAPC*” from page II-3-8 of our FEIS document. However, in order to maintain a record of the existing 90+ site-specific GAPCs, and subsequent site-specific GAPC additions, the “*Inventory of GAPC*”

will be relocated to CZM files. CZM staff and grant applicants will need to consult these files to ascertain whether a site is already a GAPC, or what are a particular GAPC's exact boundaries. Furthermore, CZM Program mapping will no longer show site-specific GAPCs. Instead, mapping depicting the site-specific GAPCs will also be relocated to program files along with the *Inventory of GAPC*. Both mapping and "*Inventory of GAPC*" will also be added to the Program's GIS records.

Finally, this RPC will revise the FEIS section titled "*Process for Future Nomination of GAPC*" due to a problem found through CZM's experience. As currently written, the "*Process*" only allows GAPCs to be added "once each year." This "once each year" time period was originally chosen because the approving body, the statewide Coastal Zone Advisory Committee (CZAC), only met once a year. The CZAC presently meets twice a year. In addition, review of GAPC proposals can also be accomplished through E-mail review sent at anytime. CZM has found that the "once each year" requirement for adding GAPCs to the coastal zones was severely limiting the Program's ability to serve the coastal public by creating unnecessary delays for entities applying for Section 306A construction grants. As a result, the "*Process for Future Nomination of GAPC*" section will be revised to eliminate the "once each year" requirement. As rewritten, GAPC additions can be proposed at any time.

The following revised section (*in bold italics*) will replace the section titled "*Process for Future Nomination of GAPC*", found on page II-3-12 of our FEIS.

Process for Creation of Future Nominated and Designated GAPCs

CZM or any governmental agency with an interest (ie. State ownership, state regulation or contractual agreement) may propose individual sites as a Designated GAPC.

Any individual, group, or governmental agency may propose individual sites as a Nominated GAPC.

ALL proposed GAPCs will be sent concurrently to the local Coastal Zone Steering Committee and to CZM, and must contain the following information:

- 1. Proposed GAPCs must be identified as either:***
 - Areas of significant natural value,***
 - Development opportunity areas,***
 - Areas of significant recreational, historic, or cultural value, or***
 - Overlap areas.***
- 2. A general location map of the proposed GAPC showing GAPC boundaries,***
- 3. A site-specific map of the proposed GAPC showing GAPC boundaries,***

- 4. A written description of the GAPC boundary,**
- 5. Size of proposed GAPC in square acres or miles,**
- 6. Ownership of proposed GAPC,**
- 7. Particular significance of proposed GAPC,**
- 8. Priority of Use proposed for the site (i.e. low, medium, high),**
- 9. For a Designated GAPC, the name of the state agency which owns the property, the state authorities that will be used to manage the GAPC, and the type of contractual agreement with the agency or entity responsible for management of the GAPC must also be submitted (See beginning of this chapter under Purpose of Designated and Nominated GAPC).**

Following discussion, the local coastal zone steering committee will transmit proposed GAPCs along with recommendations and documentation of support or non-support, to the CZM Program. The statewide Coastal Zone Advisory Committee will review all proposed GAPCs, and if approved, the proposed GAPC will be made a GAPC. CZM's GAPC files, mapping, and GIS records will be revised accordingly.

ANALYSIS OF IMPACT – Deletion of Inventory of GAPCs

As a federal requirement for Program approval, the Pennsylvania CZM Program developed an “*Inventory of GAPC*”, and included the “*Inventory*” into its FEIS. By its inclusion in the FEIS, it became part of the federally approved CZM Program, and any changes to the “*Inventory*” would require an RPC under OCRM’s Program Change Guidance (July 1996). OCRM has informed CZM that the “*Inventory*” does not need to be included in CZM’s FEIS, and recommended its removal in order to preclude unnecessary RPCs. However, in order to maintain a record of the existing 90+ site-specific GAPCs, CZM has decided to relocate the “*Inventory of GAPC*”, GAPC mapping, and subsequent GAPC additions to CZM files and GIS records for future reference by CZM staff and grant applicants.

Inclusion in the FEIS of the sections titled “*Process for Future Nomination of GAPC*” and “*Criteria for Nominated GAPC*” were required for federal approval. These two sections are still required by the Act for Program approvability, and will remain in the FEIS. The section titled “*Process for Future Nomination of GAPC*” will be revised because it allows GAPCs to be added only “once a year.” Limiting GAPCs to be added only “once a year” created a hardship for coastal entities and CZM grant applicants. No changes will be made to the FEIS section titled, “*Criteria for Nominated GAPC.*”

SUMMARY AND CONCLUSION – Deletion of Inventory of GAPCs

As a result of this RPC, the section titled “*Inventory of GAPC*” will be deleted from the CZM Program’s FEIS. Although initially required for Program approval, it does not need to be contained in CZM’s FEIS. Following OCRM’s recommendation, CZM will delete it from the FEIS to eliminate the development of unnecessary RPCs. Furthermore, the section titled “*Process for Future Nomination of GAPC*” will be revised because its provision allowing the addition of GAPCs only “once a year” is too restrictive. Elimination of this “once a year” restriction will allow the CZM Program to better serve the coastal public in a timely manner.

OCRM’s Program Change Guidance (July 1996) states that a substantial change is a high threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources. Although the proposed removal of the “*Inventory of GAPC*” from the FEIS, and removal of the “once a year” restriction do affect the CZM Program’s **Special Management Areas**, they are not substantial changes, and are consistent with the Federal CZM Act and regulations promulgated at 15 CFR Part 923 Subpart C – Special Management Areas. Based on the previous discussion and impact analysis, we have determined that these changes are routine program changes.

2002 Regulatory Changes

INTRODUCTION – GENERAL REGULATORY CHANGES

CZM's enforceable policies are based on Commonwealth regulations, were incorporated into this Program's enforceable policies at the time of original CZM Program approval in 1980. However, over time these regulations are amended. Before these regulatory changes become part of Pennsylvania's CZM Program, they must first be approved by OCRM through the RPC process. Furthermore, the addition of new regulations and authorities must also be approved by OCRM before they become part of Pennsylvania's CZM Program. The following section discusses changes to regulations currently in the Pennsylvania CZM Program, as well as any new authorities or regulations proposed to be added.

25 PA CODE CHAPTERS 260a - 265a and 270a Hazardous Waste (Amended December 2002)

The Commonwealth's solid waste regulations (Chapter 75) were originally part of the CZM Program when the Program was federally approved in 1980. In 1992, Chapter 75 was renumbered. Article VII of Chapter 75 (dealing with hazardous waste) and Article VIII (dealing with municipal waste) were replaced by Chapters 260, 261, 262, 263, 264, 265, 267, 269, and 270. Article VIII of Chapter 75 which regulates municipal waste, was replaced by Chapters 271, 272, 273, 275, 277, 281, 283, and 285. The regulations under Chapter 75 Article IX (dealing with residual waste) were moved to Chapters 287, 288, 289, 291, 293, 295, 297, and 299. All of these changes to CZM Program Authorities were approved in 1993 by OCRM, under RPC VI.

In 1999, the Commonwealth amended its hazardous waste regulations, and as a result was authorized to administer the federal hazardous waste program (discussed below). The amended hazardous waste regulations were renumbered as Chapters 260a, 261a, 262a, 263a, 264a, 265a, 266a, 266b, 268a, 269a, and 270a. These changes to CZM Program Authorities were approved in 2000 by OCRM under RPC X.

The federal Environmental Protection Agency (EPA) administers the Resource Conservation and Recovery Act (RCRA) (42 U.S.C.A. §§6901–6992k) and federal regulations at 40 CFR Parts 260-270 (Hazardous and Solid Waste Amendments (HSWA)) which contain the basic federal hazardous waste program requirements. RCRA provides that states may apply for and receive authorization from EPA for all or parts of the federal hazardous waste management program, under 42 U.S.C.A. §6947. As stated above, the Commonwealth amended its hazardous waste management regulations accordingly, and in 1999 received authorization from EPA to administer the federal RCRA requirements.

In 2002, necessary regulatory amendments were made to the Commonwealth's hazardous waste management regulations in order to update EPA's authorization.

The Commonwealth's hazardous waste regulations are now found in DEP's Chapters 260a - 267a, and 270a. These chapters deal with the management and permitting of hazardous waste facilities in Pennsylvania. These facilities include treatment, storage, and disposal facilities, as well as generators of hazardous waste.

Since 1999, DEP has had over three years experience implementing these regulations. Several of the changes resulting from these 2002 amendments were developed to address issues raised since 1999, and also correct problems identified over the past three years of HSWA implementation. One problem involves reporting of spills and discharges of hazardous waste by generators. DEP compared its regulations with reporting requirements for discharges under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Department of Transportation's release reporting requirements, and reporting requirements of other states. This comparison resulted in amendments to ensure consistency with these other requirements.

The regulatory amendments to Chapters 260a - 265a and 270a generally fall into one of four categories: codification of the Commonwealth's Solid Waste Management Act (SWMA) requirements that differ from or are broader than the federal requirements incorporated by reference; clarification of ambiguous requirements; clarification of manifesting requirements; and correction of typographical errors. The specific changes in these categories are:

1. *Codification of statutory requirements*

DEP has a general policy not to duplicate statutory definitions or provisions in regulations unless a compelling reason exists to do so. The hazardous waste regulations contain provisions that incorporate by reference large portions of the federal hazardous waste regulations. The controlling statutory authority in the Commonwealth is the SWMA. However, where the SWMA and the federal regulations touch on the same subject, the SWMA governs that subject in this Commonwealth. As a result, the Commonwealth hazardous waste regulations contain some provisions that duplicate SWMA requirements where the federal regulations vary from the commands of the SWMA. In addition, there are some subjects that the SWMA explicitly regulates, and on which the federal regulations are silent. The amendments duplicate the SWMA provisions in two instances. This duplication is necessary to eliminate confusion over the incorporation by reference of contradictory federal regulations, and to establish requirements where the federal regulations are silent. The first instance is in § 260a.10 (relating to definitions) where the amendment adds the definition of "treatment." The term is defined differently in section 103 of the SWMA (35 P. S. § 6018.103) and 40 CFR 260.10. The definition follows the SWMA language.

The second instance is in § 263a.13(b)(4) and (j) (relating to licensing). In accordance with section 403(b) of the SWMA, the amendments add the requirement that a transporter of hazardous waste prepare and carry a preparedness, prevention and contingency plan (PPC plan) to address potential discharges or spills of hazardous waste. The incorporated federal regulations do not contain this requirement.

2. Clarification of ambiguous requirements

The second broad category of amendments address ambiguous requirements identified during the implementation of the regulations over the past 2 years. Several of the changes in this category relate to containment and contingency plans. Section 403(b) of the SWMA states:

(b) It shall be unlawful for any person or municipality who generates, transports, stores, treats or disposes of hazardous waste to fail to:

(10) Develop and implement contingency plans for effective action to minimize and abate hazards from any treatment, storage, transportation or disposal of any hazardous waste.

(11) Maintain such operation, train personnel, and assure financial responsibility for such storage, treatment or disposal operations to prevent adverse effects to the public health, safety and welfare and to the environment and to prevent public nuisances.

(12) Immediately notify the department and the affected municipality or municipalities of any spill or accidental discharge of such waste in accordance with a contingency plan approved by the department and take immediate steps to contain and clean up the spill or discharge.

As a result of inquiries from regulated entities regarding compliance with these requirements, DEP has added new language that clarifies how a person can comply with the containment and contingency plan requirements of the SWMA.

First, § 262a.34 (relating to accumulation time) is added to require secondary containment for generator storage of hazardous waste in containers. Second, § 263a.12 (relating to transfer facility requirements) adds requirements for PPC plan preparation for hazardous waste transfer facilities. The amendment accomplishes this through reference to § 263a.13(b)(4).

The amendment to § 264a.97 (relating to general groundwater monitoring requirements) specifies the frequency of the analyses required by that section. This amendment eliminates setback requirements contained in § 264a.173(2) (relating to management of containers) for reactive or ignitable waste. This provision, which is not mandated, created an arbitrary distance requirement where safe management could allow a closer storage distance and duplicated certain fire safety requirements (see, for example, 37 Pa. Code § 13.1 (relating to relative location to property)).

The amendments delete § 265a.175 (relating to containment and collection system). This section is redundant since containment and collection system requirements are already incorporated by reference for interim status facilities in § 265a.179 (relating to containment).

The amendments adjust the fee schedule for permit modifications by amending § 270a.3 (relating to payment of fees). The section is amended because Class 2 permit modifications are generally much less complex than Class 3 modifications and therefore demand less time and resources from the Department for review.

Appendix I to 40 CFR 270.42 (relating to permit modification at the request of the permittee) contains tables classifying the various types of permit modifications as Class 1, 2 or 3. These tables are incorporated by reference in § 270a.1(a) (relating to incorporation by reference, scope and applicability).

New language is added to § 270a.51 (relating to continuation of existing permits) to clarify when an expired permit continues in effect. This language is needed since the federal counterpart in 40 CFR 270.51 (relating to continuation of expired permits) explicitly applies only to permits issued by the EPA. The language added matches the federal regulation and clarifies this issue with regard to DEP-issued permits.

Section 270a.60 is amended to eliminate the application of siting criteria for permit-by-rule facilities. These changes are contained in § 270a.60(b)(2)(ii), (3)(ii), (4)(ii) and (5)(ii). Permits-by-rule are generally intended to assure proper management of hazardous waste without causing overly burdensome regulation. If an issue arises regarding siting of a particular permit-by-rule facility, DEP retains the authority in § 270a.60(a) to require an owner or operator to obtain an individual permit for the facility. Under § 264a.18 (relating to location standards), the siting criteria would apply to that permit.

Finally, the incorporation by reference of 40 CFR Part 262, Subpart E (relating to exports of hazardous waste) in § 262a.10 (relating to incorporation by reference, purpose, scope and applicability) is simplified. The amendments eliminate the separate exceptions to the "blanket substitution of terms" contained in §§ 262a.55-262a.57 (relating to exception report; annual reports; and record keeping) by deleting those sections and replacing them with a new § 262a.50 (relating to applicability) that contains the blanket exclusion of terms.

3. Manifest completion requirements or clarifications

The third category of amendments addresses the administration of the manifest program for tracking the movement of hazardous waste in this Commonwealth. This is a series of changes designed to clarify ambiguous requirements for all parties involved, streamline the manifesting process, and ensure that DEP receives proper notification in a timely fashion.

First, the amendment to § 262a.20(1) (relating to general requirements) clarifies that a generator does not need to send a generator copy of the manifest to DEP unless specifically required to do so. Section 262a.21 (relating to acquisition of manifests) requires Commonwealth generators of hazardous waste to use a Commonwealth manifest if the destination State for the hazardous waste does not require use of a manifest. This change is important for tracking the waste while it remains within this Commonwealth. Several changes are made to § 262a.23 (relating to use of the manifest). These changes require legible information on the manifest, clarify submission requirements for Commonwealth generators when the destination facility is out-of-State and prohibit alteration of the Manifest Tracking Number.

An amendment to § 263a.12(3) (relating to transfer facility requirements) clarifies the responsibilities of hazardous waste transporters when a shipment is transferred from one transporter to another at a transfer facility. This is another change

identified as necessary through field implementation of the hazardous waste program.

The amendments to § 263a.20 (relating to manifest system) give specific manifest handling guidance to subsequent transporters of hazardous waste. Section 263a.21 (relating to compliance with the manifest) is amended to require a transporter to accept only complete manifests from a hazardous waste generator and prohibits alteration of the Manifest Tracking Number.

Finally, § 264a.71 (relating to use of the manifest system) requires use of a Commonwealth manifest, accounts for bulk shipment discrepancies and requires legible information by a permitted facility; the amendments to § 265a.71 (relating to use of the manifest system) add the same requirements for an interim status facility.

4. *Typographical errors*

Several sections of the 1999 regulations contained minor typographical errors and omissions. Rather than submit a separate rulemaking for minor corrections, DEP decided to wait to make these minor changes until a broader amendment package was developed to update the hazardous waste program. These errors and omissions are corrected by these amendments by corrections to §§ 263a.24(b), 264a.83(a)(2) and (3), 270a.3(3), 270a.42, 270a.60(b)(1)(iv) and (5), 270a.62, 270a.66, 270a.81 and 270a.83.

ANALYSIS OF IMPACT – Chapters 260a - 265a and 270a Regulatory Changes

Chapters 260a - 265a and 270a contain the Commonwealth's hazardous waste management regulations. In 1999 the Commonwealth revised its hazardous waste regulations. As a result, DEP was authorized by EPA to administer the RCRA requirements under DEP's hazardous waste program. The 2002 regulatory changes to these state regulations are necessary in order to update EPA's 1999 authorization. In addition, DEP's regulatory changes clarify ambiguous requirements, streamline the manifesting process, and correct typographical errors.

The most important regulatory changes deal with ensuring that the Commonwealth's SWMA has statutory authority over federal requirements when the state and federal regulations deal with the same subject matter. Other regulatory changes resulted from identified ambiguities and issues experienced by DEP and regulated entities during the three years that DEP has administered the federal HSWA requirements. These regulatory changes apply statewide, and are not specific to the coastal zones.

Regulatory Chapters 260a - 265a and 270a are contained in Policy VIII-1: Energy Facility Siting/Permitting found on Page II-2-25 of CZM's FEIS. This policy ensures through regulations, by permit, that energy facilities such as oil and gas refineries, electric generating stations (coal, hydro, oil and gas), electric generating substations, gas drilling, and liquefaction of natural gas operations locating in the coastal areas are sited in such a manner that the coastal areas' ecosystems are

not adversely affected. The 2002 regulatory changes deal with hazardous waste. Specifically, they regulate the transportation of hazardous waste, and permit and manage hazardous waste facilities in Pennsylvania. As can be concluded by the previous discussion of regulatory changes, the siting of energy facilities in the coastal areas will not be affected by the regulatory changes to Chapters 260a - 265a, and 270a. However, these regulatory changes will apply to energy facilities sited/constructed in Pennsylvania's coastal zones, if the facilities become generators of hazardous waste. These regulatory amendments will benefit all facilities in the coastal areas that generate and transport hazardous wastes by relieving them of unnecessary regulatory burdens. These regulatory changes will not result in a written revision to the Regulations or Authorities Sections of Policy VIII-1: Energy Facility Siting/Permitting.

SUMMARY AND CONCLUSION – Chapters 260a - 265a and 270a Regulatory Changes

The main purpose of these regulatory changes is to update EPA's 1999 authorization of the Commonwealth's administration of the federal HSWA requirements. Other changes ensure that the Commonwealth's stricter SWMA requirements will take precedent over federal regulation in situations where the federal regulations are not as strict or where they are silent. The regulatory changes apply statewide, and are not specific to the coastal zones. However, the coastal zones will benefit from these regulatory changes.

As can be concluded by the previous discussion, these regulatory changes will not affect CZM's Policy VIII-1: Energy Facility Siting/Permitting, which regulates the siting of energy facilities in the coastal zones. The hazardous waste regulatory changes will have no effect on the siting of energy facilities in the coastal zone, but energy facilities that may become generators of hazardous waste will have to comply with them.

OCRM's Program Change Guidance (July 1996) states that a substantial change is a high-threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources.

The regulatory changes to Chapters 260a - 265a and 270a are not substantial changes to Pennsylvania's CZM Program, but are routine. The 2002 regulatory changes merely amend regulations approved by OCRM as part of the original Pennsylvania CZM Program. The amended regulations are currently in use throughout the Commonwealth. Since the original regulations were incorporated into Pennsylvania's CZM Program, their amendments will also serve to strengthen the CZM Program. These submitted RPCs fall within the existing state authorities of Chapters 260a - 265a and 270a. These changes are in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

Although these regulatory changes do affect an enforceable policy related to **Uses Subject to Management** and CZM Program's **Authorities**, they are not

substantial changes. Based on the previous discussion and impact analysis of the amendments to Chapters 260a - 265a and 270a, we have determined that these changes to the Pennsylvania CZM Program are routine program changes.

25 PA CODE CHAPTER 109 – Safe Drinking Water (Amended August 2002)

Chapter 109 protects the public health and safety by assuring that public water systems provide a safe and adequate supply of water for human consumption by establishing drinking water quality standards, permit requirements, design and construction standards, system management responsibilities and requirements for public notification. A “public water system” also includes providing water for bottling or bulk hauling for human consumption.

Chapter 109, the Department's Safe Drinking Water regulations were revised in 2002, to incorporate new federal Environmental Protection Agency (EPA) primacy requirements into the Department's Safe Drinking Water regulations. These revisions will allow the Commonwealth to continue its primacy in enforcement authority under the federal Safe Drinking Water Act (SDWA). The primacy requirements are contained in the three following federal rulemakings: Consumer Confidence Report (CCR) Final Rule as published in the August 19, 1998, *Federal Register*; Public Notice (PN) Final Rule as published in the May 4, 2000, *Federal Register*; and the regulation of lead and copper (LCRMR) as published in the January 12, 2000, *Federal Register* (40 CFR Parts 9, 141, and 142 (relating to OMB approvals under the Paperwork Reduction Act; National primary drinking water regulations; and National secondary drinking water regulations). The amendments will address these new and revised provisions to satisfy primacy requirements.

The Chapter 109 regulatory changes also establish new requirements for community water systems to prepare and provide to their customers an annual consumer confidence report, add major revisions to the public notification requirements, revise the regulation of lead and copper (LCRMR) to improve implementation, and correct minor deficiencies in Chapter 109 to retain primary enforcement authority (primacy) and to clarify existing requirements.

The regulatory revisions are:

1. New Consumer Confidence Report (CCR) requirements.

The revisions include new requirements for community water systems to prepare and provide to their customers an annual CCR on the quality of the water delivered by the public water system. These revisions will incorporate the provisions of the federal CCR Rule that were mandated by the 1996 amendments to the federal SDWA. The CCR is the cornerstone of the public right-to-know provisions in the federal SDWA.

The CCR will provide valuable information to customers of community water systems and allow them to make personal, health-based decisions regarding their drinking water consumption. The information in the report is information that the community water system already collects. Reports shall contain information on the sources of water provided, levels of detected contaminants, violations of State regulations and health information concerning drinking water and potential risks

from detected contaminants. The information contained in a CCR can raise consumers' awareness of where their water comes from, help them understand the process by which safe drinking water is delivered to their homes and educate them about the importance of preventative measures, such as source water protection, that ensure a safe drinking water supply. Water suppliers can use the CCR to promote dialogue with their consumers and to encourage consumers to become more involved in decisions that may affect their health.

2. Revisions to Public Notification (PN) requirements.

The revisions include changes to the PN requirements and will incorporate the provisions of the federal PN Rule. Public water suppliers use public notification to alert consumers to potential health risks from violations of drinking water standards and to tell them how to avoid or minimize the risks. The EPA revised its PN requirements in April 2000 as required by the 1996 amendments to the Federal SDWA because it was determined that the complexity of the rule hindered successful implementation. The EPA was required to amend the existing PN provisions to better target notices for serious violations posing a short-term exposure risk to health and to make the existing notification process less burdensome and more effective.

The revisions to the PN modify the minimum requirements public water suppliers must meet regarding the form, manner, frequency and content of public notices. The new requirements make it easier for water suppliers to provide consumers with more accurate and timely information on violations and the seriousness of any potential adverse health effects. The revisions require faster notice in emergencies and fewer notices overall. In addition, public notification of drinking water violations provides a means to protect public health, builds trust with consumers through open and honest sharing of information, and establishes an ongoing, positive relationship with the community.

3. Minor revisions to the regulation of lead and copper (LCRMR).

The revisions reflect minor changes to the regulation of lead and copper. The lead and copper regulations apply to community and nontransient, noncommunity water systems. The EPA made several minor revisions to the National Primary Drinking Water Regulations for lead and copper. The changes do not affect the lead or copper maximum contaminant level goals, the action levels or the basic regulatory requirements. The intended effect of this action is to streamline and reduce regulatory burden where changes can be made without jeopardizing the level of public health protection or protection of the environment. Other minor changes clarify requirements and improve the rule's implementation. Finally, the revisions address two issues that were the subject of an EPA judicial remand.

4. Revisions to correct minor deficiencies and clarify existing requirements.

The revisions will correct minor deficiencies in Chapter 109 to satisfy outstanding issues with the EPA and obtain primacy approval for the LCRMR and an earlier rulemaking known as the Phase II/V Rule. The revisions also clarify existing requirements.

ANALYSIS OF IMPACT – Chapter 109 Regulatory Changes

Chapter 109 contains Pennsylvania's safe drinking water regulations. These regulations protect the public health and safety by assuring that public water systems provide a safe and adequate supply of water for human consumption by establishing drinking water quality standards, permit requirements, design and construction standards, system management responsibilities and requirements for public notification.

The 2002 regulatory changes to Chapter 109 establish new requirements for community water systems to prepare and provide an annual CCR to their customers, add revisions to the PN requirements, and to the regulation of lead and copper (LCRMR) to improve implementation. The changes also incorporate federal corrective amendments into the Pennsylvania Safe Drinking Water Regulations (25 Pa. Code Chapter 109) in order to obtain primary enforcement authority, under the federal SDWA. These revised drinking water policies apply statewide, and are not specific to Pennsylvania's coastal zones.

Chapter 109 is contained in Policy IV-1: Wetlands, found on page II-2-16 of our FEIS. This policy preserves, protects, enhances, and restores coastal wetlands. It ensures the protection of wetlands' functions and values, and protects the habitat of federal and state threatened and endangered species. In addition, the policy requires that any wetlands that are impacted in the coastal zone area will be replaced and/or mitigated within the coastal zone area.

Wetlands and other bodies of open water have a direct connection to water tables. One important wetland function is to recharge ground water supplies that have been withdrawn for consumption. The incorporation of Chapter 109 and other water quality regulations into the Wetlands Policy enables CZM to ensure that activities affecting wetlands will not compromise the water quality or sources of water, that recharge these groundwater supplies. As can be seen by the previous description of the 2002 Chapter 109 regulatory changes, the changes deal solely with water and its quality after it has been withdrawn from the water table and is made part of a public water system. The Chapter 109 regulatory revisions do not change or modify CZM's Wetlands Policy, which was designed in part, to preserve a wetland's function of recharging groundwater.

The Chapter 109 regulations were part of the Pennsylvania's original CZM Program when it was federally approved in 1980. These regulations have been revised in 1993, 1996, and 2000, and were approved by OCRM under RPCs VI, VII and X, respectively. As can be seen by the previous discussion, the incorporation of these amendments into Chapter 109 will not affect CZM's Wetlands Policy.

SUMMARY AND CONCLUSION – Chapter 109 Regulatory Changes

Chapter 109 protects the public health and safety by assuring that public water systems provide a safe and adequate supply of water for human consumption. It establishes drinking water quality standards and regulates through permits, facility design and construction standards, system management responsibilities, and

public notification requirements for public drinking water systems. The 2002 revisions to Chapter 109 further this goal, and allow the Commonwealth to continue its primacy in enforcement authority under the federal SDWA.

As can be concluded by the previous discussion, these regulatory changes will not affect CZM's Policy IV-1: Wetlands, found on page II-2-16 of our FEIS. This policy preserves, protects, and enhances, coastal wetlands, and protects wetlands' functions and values, one of which is as a recharge for groundwater supplies. On the other hand, Chapter 109 as well as its recent revision pertains to groundwater after it has been withdrawn from the water table and is made part of a public water system. These revised Chapter 109 regulations are currently in use throughout Pennsylvania. Since the original regulations were incorporated into Pennsylvania's CZM Program, their revision will also serve to strengthen the Program. These changes are in keeping with Pennsylvania's CZM Program and the national CZM objectives and policies.

OCRM's Program Change Guidance (July 1996) states that a substantial change is a high-threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources. Although the regulatory changes to Chapter 109 do affect an enforceable policy related to **Uses Subject to Management** and CZM Program's **Authorities**, they are not substantial changes. Based on the previous discussion and impact analysis of the revisions to Chapter 109, we have determined that these changes are not substantial changes to Pennsylvania CZM Program, but are routine.

2002 REGULATORY CHANGES REQUIRED **UNDER THE FEDERAL CLEAN AIR AND** **CLEAN WATER ACTS**

Section 307(f) of the Federal CZM Act requires the incorporation of the requirements of the Federal Water Pollution Control Act, as amended, and the Federal Clean Air Act, as amended, into state coastal zone management programs.

As a result, states are not required to submit these requirements to NOAA's Office of Coastal Resources Management (OCRM) as program changes. However, states must notify OCRM, federal, state, and local agencies, and other interested parties, of the incorporation of these requirements into their state coastal management programs. As such, Pennsylvania's CZM Program is taking this opportunity to provide the required notification (See FEIS page II-5-14 - Incorporation of Water Pollution and Air Pollution Requirements).

25 PA CODE CHAPTER 93 - Water Quality Standards (Amended December 2002)

These amendments to Chapter 93 incorporate federal requirements concerning prohibitions and phasing out of mixing zones for bioaccumulative chemicals of concern (BCCs) in waters of the Great Lakes System.

The federal Environmental Protection Agency promulgated the final rule to amend Appendix F, Procedure 3.C of 40 CFR Part 132 to prohibit mixing zones for BCCs in the Great Lakes System, subject to certain exceptions for existing discharges.

This regulatory amendment to Chapter 93 provides consistency with the federal guidance for the Great Lakes System by eliminating opportunity for the use of mixing areas for discharges of toxic and persistent chemicals known as BCCs. Examples of BCCs are mercury and dioxin. BCCs in the waters of the Great Lakes are not flushed from the system but build up for long periods of time, allowing aquatic organisms to accumulate and magnify the pollutants. Animals and humans who consume the fish are subject to increased loadings of these toxic pollutants. These regulatory amendments eliminate the use of mixing areas in calculating allowable discharge limits for BCCs, thereby lessening loadings to the Great Lakes System.

25 PA CODE CHAPTER 96 - Water Quality Standards (Amended December 2002)

Chapter 96 was created in November 2000 to fulfill the requirements of the Federal Clean Water Act. Chapter 96 contains regulatory requirements which were previously located in Chapter 93, 95 and 97.

In the creation of Chapter 96, changes were made to Chapter 93 (relating to water quality standards). The changes to Chapter 93 included deletion of § 93.7, Table 4 (relating to specific water quality criteria) and a clarification that all the specific criteria listed in § 93.7, Table 3 apply Statewide.

An inadvertent consequence of the restructuring of § 93.7 is the application of water quality-based effluent limitations for the parameters sulfate and chloride in many situations when they were not applied under the prior version of these regulations. The criteria for sulfate and chloride are the same as the secondary maximum contaminant levels (SMCLs) of the drinking water program and are not a significant concern from a public health perspective, but are an aesthetic consideration. Historically, sulfate and chloride were not treated as statewide parameters of concern and no environmental or public health concerns have been documented in this Commonwealth to support a change in this position. Under these regulatory changes, sulfate and chloride will be used to develop water quality-based effluent limits only in situations when there is potential for a downstream potable water supply to be negatively impacted by a discharge containing these contaminants.

The criteria for both chloride and sulfate date back to 1967, at which time the Sanitary Water Board (a predecessor of the Department) included them to prevent objectionable taste and odor in the water based on recommendations in the United States Public Health Service (US PHS) Drinking Water Standards of 1962. The US PHS recommended that chloride or sulfate should not exceed 250 mg/L in the water supply where other more suitable supplies were or could be made available. The limits were influenced primarily by considerations of taste. The Environmental Protection Agency's (EPA) SMCLs under the Federal Safe Drinking Water Act, which became effective in 1979, are set at the same levels. The Commonwealth's drinking water program is required to and has adopted the Federal standards into Chapter 109 (relating to safe drinking water).

In 1985, Chapter 93 was amended to provide for an exception to the statewide application of water quality criteria at all points instream after mixing for four parameters: total dissolved solids, fluoride, nitrite-nitrate and phenolics. The criteria for these substances are applicable at the point of all existing or planned surface potable water supply withdrawals, fully protecting the potable water supply use. That change made in 1985 is identical to these 2002 regulatory changes for sulfate and chloride. In November 2000, the provision of § 93.7 was moved without change, to § 96.3(d) (relating to water quality protection requirements).

These December 2002 regulatory changes add the sulfate and chloride criteria to the exceptions in § 96.3(d). This change will provide the appropriate level of protection for the potable water supply use. In addition, other surface water uses will be protected by application of other criteria listed in § 93.7.

25 PA CODE CHAPTER 121 – General Provisions (Amended May 2002)

Chapter 121 relates to the general provisions of the Commonwealth's air quality regulations. Simultaneously with amending Chapter 121, Chapter 126 (relating to motor vehicles and fuels program) was also amended, however only Chapter 121 is an enforceable authority in the CZM Program. The amendments to Chapter 126

establish a new Heavy-Duty Diesel (HDD) Emissions Control Program. HDD engines and vehicles contribute greatly to a number of serious health and welfare problems. The amendments establish an HDD Program in Chapter 126 consistent with the requirements of section 177 of the Clean Air Act, and will serve as the framework for the Commonwealth's program to control emissions from new HDD engines and vehicles.

With the addition of the HDD Emissions Control Program in Chapter 126, new terms and phrases applicable to the HDD Program have been added to Chapter 121. The amendment to § 121.1 (relating to definitions) includes the definitions "heavy-duty diesel engine" and "heavy-duty diesel vehicle."

NOTICE OF INCORPORATION OF FEDERAL CLEAN AIR AND WATER ACT REQUIREMENTS

This routine program change will incorporate by reference the regulatory amendments to Chapters 93, 96, and 121. Chapters 93, 96, and 121 are contained in the following CZM policies:

- Policy II-1: Dredging and Spoil Disposal, page II-2-10 (Chapters 93 and 96)
- Policy III-I: Fisheries Management / Support Fish Life, page II-2-13 (Chapters 93 and 96)
- Policy IV-I: Wetlands / Wetlands, page II-2-16 (Chapters 93 and 96)
- Policy VIII-I: Energy Facility Siting / Permitting, page II-2-25 (Chapters 93, 96, and 121)
- Policy IX-B.1: Intergovernmental Coordination / Water Quality, page II-2-29 (Chapters 93 and 96)
- Policy IX-B.2: Intergovernmental Coordination / Air Quality, page II-2-31 (Chapter 121)

As a result of Section 307(f) of the CZM Act, the Pennsylvania CZM Program is providing notice that these aforementioned regulatory changes, required by the Federal Clean Air and Clean Water Acts, have been incorporated into the Pennsylvania CZM Program.

2003 ORGANIZATIONAL CHANGE –

RENAMING THE OFFICE FOR RIVER BASIN COOPERATION TO THE WATER PLANNING OFFICE

ORGANIZATIONAL CHANGE - Renaming the Office for River Basin Cooperation to the Water Planning Office, and Integration into the Water Management Deputate.

The Pennsylvania Coastal Zone Management (CZM) Program was previously located in the Department of Environmental Protection's (DEP) Office for River Basin Cooperation (ORBC). In September 2003, the ORBC was renamed the Water Planning Office (WPO). The CZM Program will remain in the renamed WPO. Both the WPO and the CZM Program will be integrated into DEP's Water Management Deputate, directly under the Deputy Secretary for Water Management. The name of the CZM Program will be changed to the Coastal Resources Management Program.

The Water Management Deputate is responsible for developing policy related to the protection and enhancement of the Commonwealth's water resources. Policy is developed for a wide range of issues and subject areas, such as: storm water, wastewater discharges, wetlands, drinking water quality, source water protection, Chesapeake Bay Program, River Basin Commissions, Great Lakes Programs, coastal hazards, public access, fisheries management, invasive species, intergovernmental cooperation, port activities, dam safety, and flood protection.

Building on the results of DEP's recent efforts to move toward a watershed-based approach to environmental protection, the WPO was expanded to include several other watershed-based programs. In addition to the CZM Program and the Interstate Commissions / Water Policy Programs, the WPO now houses the Delaware Estuary Program, the Chesapeake Bay Program, the nutrient trading program, and support for the development of the State Water Plan (See Figure 2). WPO will be responsible for coordinating central office activities with those of the Office of the Great Lakes, which is located in the Northwest Regional Office. Consolidating these functions into the WPO is a logical step to better harmonize all of DEP's water-related programs and activities. The WPO is responsible for core water planning functions and to help promote efficiency, reduce duplication and improve utilization of the resources dedicated to water policy development. Grouping the various planning functions together also provides an ability to review the effectiveness of the development of water-related policy.

The WPO Director reports directly to the Deputy Secretary for Water Management. This helps maximize the planning and effectiveness activities of the WPO by allowing it to keep current on activities related to the multitude of issues that the Water Management Deputate handles on a daily basis. It better integrates the CZM Program with other watershed-based management programs, such as storm water, watershed management, watershed protection, water use management, nutrient management, wetlands, and water quality.

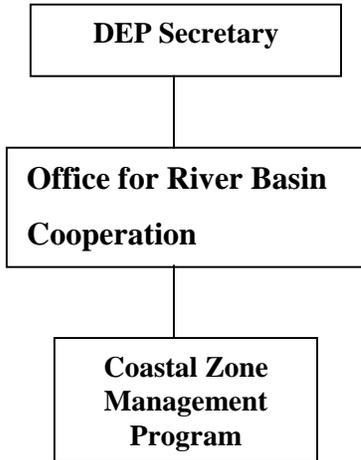
CZM's RPC XI dated December 2002 discussed the utilization of coastal management resources for pilot projects for state issues and local watershed initiatives. The creation of the WPO will help ensure these types of efforts are planned for maximum results.

Planning activities are a strength of the CZM Program, making it a key component of the WPO. CZM will continue its activities in providing local grants, monitoring, federal consistency, and technical assistance for policy implementation in both coastal zones, while working to integrate these efforts with DEP's overall water planning efforts. Pennsylvania was one of the first states to receive approval for their Coastal Nonpoint Pollution Control Program, and the Commonwealth continues to build on efforts that protect the water and living resources of its coastal areas. Changing the name of the program from the CZM Program to the "Coastal Resources Management Program" will highlight the focus of these efforts.

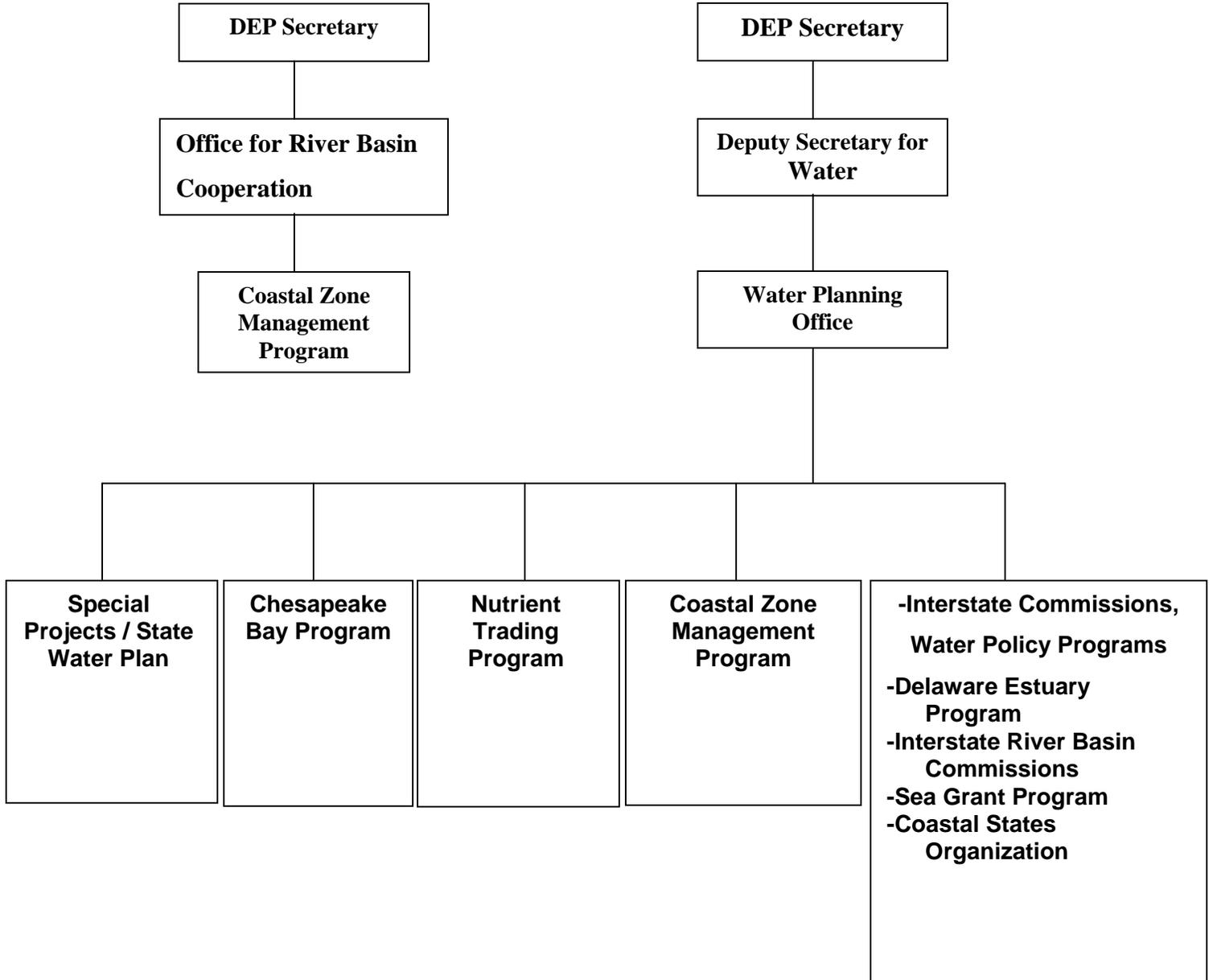
ANALYSIS OF IMPACT – Renaming the Office for River Basin Cooperation to the Water Planning Office, and Integration into the Water Management Deputate.

The Pennsylvania CZM Program was located in the ORBC, which reported directly to the Secretary of DEP. The ORBC was renamed the WPO, and relocated into DEP's Water Management Deputate. Essentially, this means that ORBC will not have direct access to the Secretary of DEP, and will add an administrative level (the Deputy Secretary for Water Management) between CZM and the Secretary. As a result, CZM will have indirect access to the Secretary through the Deputy Secretary. This organizational change will not affect CZM's ability to carry out its responsibilities under the federal CZM Act. CZM will be relocated under a Deputate with related programs and watershed responsibilities. This relocation is a positive move, as it will greatly increase the Program's networking capabilities.

**Organizational Chart
Before Renaming**



**Organizational Chart
After Renaming**



**Figure #2
Water Planning Office Organizational Chart**

Pennsylvania DEP has been steadily moving toward a watershed management approach for environmental management, targeting resources and establishing priorities. In recognition of similar missions on a broad range of interstate and river basin issues such as coastal hazards, wetland preservation, cumulative and secondary impacts of development, habitat preservation, public access, air and water quality, fisheries management, invasive species, intergovernmental cooperation and port activities, the Pennsylvania CZM program was retained in the renamed WPO. Keeping the CZM Program in the WPO serves to re-emphasize the important role of Pennsylvania's Lake Erie and Delaware Estuary Coastal Zones in management of their integral river basins and watersheds. Using coastal zone management resources for pilot projects for state issues and local watershed initiatives, DEP recognizes the potential for technology transfer and policy development statewide and throughout Pennsylvania's interstate river basins.

In its new role, the Pennsylvania CZM Program will assist WPO efforts to maximize benefits to Pennsylvania from membership on the Delaware River Basin Commission and the Great Lakes Commission, through cooperation on regional projects and policy initiatives. CZM will continue its activities in providing local grants, monitoring and technical assistance for policy implementation in both coastal zones, working to integrate these efforts with overall watershed management.

Finally, the Coastal Zone Management Program name has been changed to the "Coastal Resources Management Program." The name change will better capture the Program's attempts to more holistically address both the direct land-water interface (the area more traditionally referred to as the "Coastal Zone") and the larger watershed-based areas that impact the resources of the coast. As a result of renaming the ORBC, all references to the former Office for River Basin Cooperation in Chapter 4, and elsewhere throughout CZM's FEIS will now read **Water Planning Office**. In addition, all references to the Coastal Zone Management Program will now read **Coastal Resources Management Program**. Chapter 4 begins on page II-4-1 of our FEIS.

SUMMARY AND CONCLUSION – Renaming the Office for River Basin Cooperation to the Water Planning Office, and Integration into the Water Management Deputate.

The renaming of the ORBC to the WPO, and integration into the Water Management Deputate will not affect the requirements for federal approval of the CZM Program. CZM will still remain within DEP, upon whose regulations and authorities the CZM Program's enforceable policies are based. Since receiving federal approval 26 years ago, the Pennsylvania CZM Program has been housed within DEP, and has been relocated several times within DEP. The most recent relocation was in 2000 when CZM was relocated from the Bureau of Watershed Management into ORBC. This relocation was approved by OCRM under RPC XI. This current relocation will not affect the CZM Program's ability to carry out its responsibilities under the federal CZM Act. The Program will become more

efficient as it is able to better interact with other DEP water management programs, share information, and build on other DEP efforts in the coastal zones.

OCRM's Program Change Guidance (July 1996) states that a substantial change is a high-threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources. Renaming the ORBC to the WPO, and integrating it into the Water Management Deputate is not a high-threshold change to Pennsylvania's CZM Program. The CZM Program will remain within DEP, and essentially be housed in the same office, which in turn has been expanded by adding other watershed-based resource programs. CZM will have direct access to the Deputy Secretary for Water Management. By remaining in the WPO, CZM will be in a more effective position to protect and enhance Pennsylvania's coastal resources, while improving its networking capability and ability to develop policy on issues such as public access. The WPO will make planning a priority, help refine the focus of the CZM program, and better develop measurable results. Remaining in WPO will further the CZM Program's ability to carry out its objectives as an approved CZM program under the federal CZM Act. This change is in keeping with NOAA's and the nation's coastal policies and objectives.

Although CZM Program's relocation and name change do affect CZM's **Organizational** structure, they are not substantial changes. Based on the previous discussion and impact analysis we have determined that these changes to the Pennsylvania CZM Program are routine program changes.

2003 UPDATE OF THE PENNSYLVANIA CZM PROGRAM'S FEDERAL CONSISTENCY REVIEW PROCESS

INTRODUCTION – Update of CZM's Federal Consistency Review Process – Chapter 5

Chapter 5 of CZM's FEIS titled "*Intergovernmental / Public Coordination and Review*," contains a subsection titled "*Federal Consistency*," which discusses the Pennsylvania CZM Program's federal consistency review requirements, and describes the process that CZM uses to coordinate and review actions of various levels of government and the public. Other subsections contained in Chapter 5 discuss "*Excluded Federal Land*," "*National Interest*," "*Energy Production and Transmission*," and "*Interstate/State/Local Coordination Activities*." This RPC will only update the subsection titled "*Federal Consistency*."

The Pennsylvania CZM Program's federal consistency review process, which was approved by OCRM in 1980, is based on the requirements of 15 CFR Part 930. In 1990 and 1996 the Coastal Zone Management Act of 1972 (Act) was reauthorized and amended. Pursuant to these amendments, the federal consistency regulations at 15 CFR Part 930 were also amended, and became effective in January 2001. This RPC will update the "*Federal Consistency*" subsection of Chapter 5 by incorporating the 2001 regulatory revisions to 15 CFR Part 930, into CZM's federal consistency review requirements. In addition, as recommended by OCRM, changes will be made by clarifying descriptions of listed federal actions, and by including pertinent federal statutory citations or Code of Federal Domestic Assistance numbers where none were listed.

UPDATE OF CZM'S FEDERAL CONSISTENCY REVIEW PROCESS – Chapter 5

The most obvious change to Chapter 5 is that the section titled "*FEDERAL COORDINATION ACTIVITIES*" and the subsection titled "*Federal Agency Consultation*," on FEIS pages II-5-1 to II-5-3 have been deleted. These sections were originally in CZM's Draft Environmental Impact Statement (DEIS), and discussed the coordination between CZM and various federal agencies, during development of the Program's federal consistency process. These sections may have been required for Program approval, but serve no purpose by their present inclusion in the FEIS. These two sections will be deleted. In addition, the following changes have been made to the existing subsection titled "*Federal Consistency*," which begins on page II-5-3 of the FEIS:

- The original 1980 list of federal actions contained in Chapter 5 has been clarified with the addition of specific descriptions of these listed federal actions,

- The discussions pertaining to the four federal action areas have been updated to reflect new terminology resulting from the 2001 regulatory revisions to 15 CFR Part 930,
- Paragraphs have been rearranged to facilitate comprehension,
- Citations of federal Acts and regulations have been added for guidance / user benefit purposes,
- Pertinent federal statutory citations and Code of Federal Domestic Assistance numbers have been added where none were listed,
- Federal agency and department names have been updated.

It is important to note that there have been no changes made to the coordination procedures currently in use between CZM and the federal agencies / applicants. Furthermore, CZM's consistency review procedures at the state and local levels have not been changed by the 2000 regulatory revisions and will also remain the same.

Finally, as a result of the 2001 regulatory revisions to the federal consistency process and OCRM's recommendations, the following subsection (*in bold-faced italics*) titled "*Federal Consistency*" will replace the original, 1980 subsection in Chapter 5, titled "*Federal Consistency*." The original subsection section began on Page II-5-3 and ended on Page II-5-14 of CZM's FEIS.

Chapter 5

INTRODUCTION

This chapter describes the procedures that are used to coordinate with and review actions of various governmental units as well as the public. The coordination and review procedures established by Pennsylvania's Coastal Zone Management Program (CZM) are presented at the federal, interstate, state and local levels.

FEDERAL CONSISTENCY

Federal Consistency is the Federal Coastal Zone Management Act (CZMA) requirement that federal actions (regardless of location) that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone (also referred to as coastal uses or resources, or coastal effects) must be consistent with the enforceable policies of a coastal state's federally approved coastal management program, before they can occur. The CZMA federal consistency requirements are found at 15 CFR Part 930.

Federal actions consist of:

1. **Federal Agency Activities (15 CFR Part 930 Subpart C)**, - activities and development projects performed by a Federal agency, or a contractor for the benefit of a Federal agency.

E.g., Fisheries Plans by the National Marine Fisheries Service, Naval exercises, the disposal of federal land by the General Services Administration, a U.S. Army Corps of Engineers (Corps) breakwater or beach nourishment project, an outer continental shelf (OCS) oil and gas lease sale by the Minerals Management Service (MMS), improvements to a military base, Naval disposal of radioactive or hazardous waste performed by a private contractor, activities in National Parks such as installation of mooring buoys or road construction;

2. **Federally Licensed and Permitted Activities (15 CFR Part 930 Subpart D)**, - activities not performed by a Federal agency, but requiring federal permits, licenses or other forms of federal approval.

E.g., activities requiring Corps 404 permits, MMS approvals for OCS oil and gas plans, Corps permits for use of ocean dump-sites, Nuclear Regulatory Commission licenses for nuclear power plants, licenses from the Federal Energy Regulatory Commission (FERC) for hydroelectric facilities;

3. **Outer Continental Shelf (OCS) exploration, production and development plans (15 CFR Part 930 Subpart E)**, and

4. **Federal Financial Assistance to State and Local Government (15 CFR Part 930 Subpart F)**.

E.g., Federal Highway Administration funds to state and local governments, construction grants for wastewater treatment works, hazardous waste management trust fund, and Housing and Urban Development grants.

Pennsylvania's Department of Environmental Protection (DEP) is the state agency responsible for coordinating the federal consistency review of these federal actions, and concurring with or objecting to the consistency determinations of federal agencies, and consistency certifications of applicants for federal licenses or permits, Outer Continental Shelf (OCS) or federal assistance activities. The CZM Program within DEP has been tasked with federal consistency coordination and reviews.

Through coordination with all pertinent federal agencies, CZM has developed direct contact procedures to review all federal consistency actions. In these procedures either the pertinent federal agency or the applicant sends to the CZM the required consistency certification / determination, and the information necessary for CZM to perform its consistency review. In every consistency review CZM notifies in writing, BOTH the applicant and federal agency of its decision.

REVIEW PROCEDURES FOR ASSURING CONSISTENCY

Consistency for Federal Agency Activities, 15 CFR Part 930 Subpart C

CZM uses the following procedures to review federal agency activities and development projects. These procedures are modified if the federal consistency regulations promulgated by the National Oceanic and Atmospheric Administration (NOAA) mandate changes, or if unforeseen deficiencies or conflicts arise in using these procedures. Necessary changes made to correct deficiencies or conflicts are submitted to all federal agencies for comment. Following a reasonable review period, all received comments are evaluated and a new procedure is developed. This new procedure is then utilized in the review of federal actions requiring consistency.

The existing review procedures for federal agency activities or development projects are as follows:

- **Direct contact review procedures have been instituted with all pertinent federal agencies whereby these agencies send their federal activities and development projects to CZM for review. These federal agencies have been made aware of which of their activities and projects are expected to affect coastal uses or resources.**
- **At the earliest practicable time, federal agencies should notify CZM that they are planning to undertake an activity or development project affecting the coastal zone, and whether it is consistent to the maximum extent practicable with Pennsylvania's CZM program. The federal agency provides its consistency determination in writing to CZM at least 90 days before final state CZM approval of the federal agency activity unless both CZM and the federal agency agree to an alternative notification schedule. CZM uses the DEP's permit process, participation in pre-permit meetings, and review of the Federal Register and Pennsylvania Bulletin as a backup to ensure receipt of all federal agency activities and projects, and also to monitor for other unlisted, but pertinent federal activities and projects. For those federal activities and projects not received, the CZM notifies the federal agency of its need to review them.**

NOTE: Development projects located inside the Pennsylvania coastal zone are automatically subject to consistency reviews, and require a consistency determination. However, for federal agency activities located in or outside of the coastal zone, and development projects located outside of the coastal zone, the federal agency determines if they will have reasonably foreseeable coastal effects. Any federal agency activity / development project regardless of its location is subject to the CZMA consistency requirement if it will affect any natural resources, land uses, or water uses of the coastal zone. No federal agency activities / development projects are categorically exempt from this requirement.

States are encouraged to list federal agency activities (see list below) that are routinely expected to affect coastal uses or resources in their approved

management plans, and to monitor unlisted activities and to notify federal agencies when an unlisted activity requires consistency review. If coastal effects are reasonably foreseeable, then the federal agency must submit a consistency determination to CZM at least 90 days before the activity is scheduled to commence. If there are “no effects” the federal agency may have to provide a Negative Determination as per section 15 CFR 930.35.

- **The required consistency determination includes a brief statement on whether or not the proposed action will be undertaken in a manner consistent to the maximum extent practicable with the state’s approved management program, a detailed description of the proposed action, its associated facilities, its combined coastal effects, and will be presented in sufficient detail to support the federal agency’s consistency statement. As appropriate and at the request of the federal agency, CZM assists the agency in making the consistency determination concerning the proposal. Consistency determination is made with respect to the program’s enforceable policies approved by NOAA.**
- **Upon receipt of the consistency determination and other required information, CZM coordinates its review with appropriate state permitting and resource agencies, and responds to the federal agency within the time period (60 days,) and in the manner prescribed by 15 CFR Part 930 Subpart C. Should CZM object to the federal agency’s consistency determination and fail to resolve its differences with the federal agency, the CZM may request mediation by the Secretary of Commerce or the federal Office of Ocean and Coastal Resource Management (OCRM), pursuant to 15 CFR Part 930, Subpart G. Mediation is not required and is a non-binding administrative remedy. Should Pennsylvania be dissatisfied with the outcome of the mediation process, or if the federal agency elects to proceed despite the state’s objection, prior to, during or after the mediation, the state may pursue remedies in the federal courts.**

The following federal agency activities or development projects are expected to have coastal effects:

1. **U.S. Department of the Interior - Minerals Management Service**
 - a. **OCS oil and gas lease sales (Outer Continental Shelf Lands Act (43 USC 1334, et seq.)).**
 - b. **Pipeline rights-of-way or easements for oil and gas transmission on the Outer Continental Shelf (Outer Continental Shelf Lands Act (43 USC 1334, et seq.)).**
2. **U.S. Department of the Interior - National Park Service**
 - a. **Designing, acquiring, constructing, modifying and removing facilities and other national park service amenities (National Park Service Concessions Management Improvement Act of 1997 (16 USC 5951)).**

- Amendments and Base Closure and Realignment Act (10 USC 2687, and PL 104-106 (USC 2662)).*
- e. *Dredging, storing, testing, sampling, dewatering and disposing of dredged material (Marine Protection, Research and Sanctuaries Act (33 USC 1413), and Federal Water Pollution Control Act (33 USC 1344)).*
6. **U.S. Department of Defense - U.S. Air Force**
 - a. *Acquisition, design and construction of new or modified defense installations (PL 97-214 (10 USC 2682), and PL 85-861 (10 USC 2663)).*
 - b. *Base closures, disposal of Defense property, including disposal and reuse plans for base closures (Defense Authorization Amendments and Base Closure and Realignment Act (10 USC 2687), and PL 104-106 (USC 2662)).*
 7. **General Service Administration**
 - a. *Acquisition, design, construction, development, transfer, disposal and leasing of federal lands, structures and facilities (Federal Property and Administrative Services Act (40 USC 471, 472)).*
 8. **U.S. Department of Homeland Security - U. S. Coast Guard**
 - a. *Designation, expansion, modification or abandonment of anchorages, lightering areas, navigation channels and shipping lanes (Ports and Waterways Safety Act (33 USC 1223)).*
 - b. *Dredging, storing, dewatering and disposing of dredged material (Marine Protection, Research and Sanctuaries Act (33 USC 1413), and Federal Water Pollution Control Act (33 USC 1344)).*
 - c. *Construction of new or enlarged Coast Guard stations, bases and lighthouses (Ports and Waterways Safety Act (33 USC)).*
 9. **U.S. Department of Commerce - National Marine Fisheries**
 - a. *Development of Fishery Management Plans, amendments and framework adjustments (Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1835))*
 10. **Environmental Protection Agency**
 - a. *Designation of open water sites for dredged and other materials and development of standards for designated sites (Marine Protection, Research and Sanctuaries Act (33 USC 1412)).*
 - b. *Development of Comprehensive Port Improvement Plans (National Environmental Policy Act (42 USC 4321, et seq.))*
 11. **U.S. Department of Energy - Federal Energy Regulatory Commission**
 - a. *Grant of right of eminent domain for rights-of-way for natural gas pipelines (Natural Gas Act (15 USC 717f)).*

12. Department of Transportation - Federal Highway Administration

- a. *Designing, constructing, reconstructing and modifying roads, highways, bridges, causeways and associated transportation facilities such as rest areas, toll areas and park and ride facilities (Pub. L. 97-449, 103-272, 104-324, and 106-159 (49 USC 104)).*
- b. *Land acquisition for highway construction and improvements (PL 85-767 and 105-178 (23 USC 107) and Declaration of Taking Act (40 USC 258a)).*

13. Department of Transportation - Federal Aviation Administration

- a. *Siting and design, installation, construction, and demolition of aviation facilities and aids to navigation (Air Traffic Management System Performance Improvement Act (49 USC 106)).*

14. Department of Transportation - Maritime Administration

- a. *Ports and intermodal facilities and operations (Merchant Marine Act (46 USC 861), Defense Production Act, and Executive Orders 10480 and 12656)).*

Consistency for Federally Licensed and Permit Activities, 15 CFR Part 930 Subpart D - Section 930.51 defines federal license and permit activities:

Any applicant required to obtain a federal license or permit for an activity that affects any land or water use or natural resource of the coastal zone should consult with the CZM to assure that the proposed activity will be conducted in a manner consistent with the CZM.

NOTE: All federal license or permit activities occurring in Pennsylvania's coastal zone are deemed to affect coastal uses or resources, if CZM has "listed" the particular federal license, permit, approval or authorization in its federally approved program management document (i.e. see CZM list below).

Persons or agencies required to obtain federal licenses or permits listed by the state as requiring consistency review shall submit a copy of the license or permit application to the CZM along with the necessary data and information required by 15 CFR 930.58, and indicate that the proposed activity complies with and will be conducted in a manner consistent with the enforceable policies of the CZM. Upon receipt of the application, the CZM will coordinate its consistency review with appropriate state permitting and resource agencies, and respond in writing to both the applicant and federal agency in a manner prescribed by 15 CFR Part 930, Subpart D.

If an applicant is applying for one of the listed U.S. Army Corps of Engineers' permits, DEP and the Corps have developed a joint federal /state permit application to facilitate the state / federal permit process. A single application is submitted in triplicate to the pertinent DEP Regional Office. DEP keeps one copy, the second copy is sent to the Corps, and the third copy is sent to the Pennsylvania Fish and Boat Commission. Through coordination with DEP's regional offices, CZM will be informed of the project and requests a fourth copy from the applicant. Some activities requiring a

Corps' permit and which qualify for a Corps' State Programmatic General Permit-2 (in Pennsylvania only), have already been determined to be consistent by CZM, under 15 CFR Part 930 Subpart C, and do not require further state federal consistency review.

If a federal license or permit requires a CZM consistency review, and the CZM has not replied within 6 months of receipt of the certification and necessary data and information, then the CZM's concurrence is presumed. CZM's consistency decision will be communicated in writing to both the applicant and the authorizing federal agency.

CZM uses the DEP permit process, federal agencies' Public Notices, participation in pre-permit meetings, and review of the Federal Register and Pennsylvania Bulletin as a backup to ensure receipt of all listed federal licenses and permits, and also to monitor for unlisted federal licenses or permits. For those federal permit and license activities not received or unlisted, CZM notifies the applicant and applicable federal agency of any CZMA consistency responsibilities.

Upon receiving certification concurrence from CZM, the federal agency may approve the activity. If CZM objects, then CZM forwards in writing to the applicant and to the federal agency, the reasons the application was determined to be inconsistent. The letter may also include recommendations for making the application consistent with Pennsylvania's program. The applicant may appeal the CZM's objection to the Secretary of Commerce within 30 days of receipt of the CZM's objection. The Secretary of Commerce shall then determine whether the activity is consistent with the objectives of the Federal Coastal Zone Management Act, or is necessary in the interest of national security. If the Secretary finds that the proposal meets with either of these requirements, the federal agency may approve the activity. If neither of these requirements is met, then the Secretary shall notify the federal agency that it may not issue the permit. If CZM objects, the applicant is also encouraged to discuss options with CZM. If a satisfactory resolution is negotiated, then CZM will remove its objection.

The geographic scope of the consistency review involving federal licenses and permits includes the entire coastal zone and, in some cases, areas outside the coastal boundaries. Federal lands within the coastal zone boundary are excluded from the coastal zone, but listed federal license or permit activities on these federal lands are still subject to consistency review. Federal license or permit activities on federal lands and on other lands outside the zone boundary are subject to consistency review if the license or permit is listed by CZM and the activity is located in a geographic area outside the coastal zone that is described in CZM's FEIS. See 15 CFR 930.53. If the federal license or permit activity is not listed or is listed but is outside such a geographic location, then CZM must obtain OCRM approval to review the activity pursuant to 15 CFR 930.54. Persons proposing to conduct an activity with potential coastal effects should consult with CZM early in the planning process in order to avoid later problems

To assist federal agencies and applicants in determining whether or not licenses or permits for an activity require a consistency certification with CZM, the following list describes the licenses and permits subject to CZM's review. Other permits and licenses may be added as further needs are indicated. As this list is modified, CZM will communicate the changes to the appropriate federal agencies and OCRM.

The following federal permits and licenses are subject to CZM's consistency procedures.

1. Environmental Protection Agency

- a. Water Quality Certifications, NPDES permits and other activities requiring a permit or license under sections 401, 402, 405, and 318 of the Federal Water Pollution Control Act (Sections 401, 402, 405 and 318 of the Federal Water Pollution Control Act (33 USC 1341, 1342, 1345 and 1328)).**
- b. Permits pursuant to the Clean Air Act including prevention of significant deterioration permits, nonattainment major new source review permits, and permits for major amounts of hazardous air pollutants (Clean Air Act (42 USC 7401, et seq.))**

2. Nuclear Regulatory Commission

- a. Approval for the construction, decommissioning, and modification of nuclear facilities, and the possession and use of byproducts, source and special nuclear material (Atomic Energy Act of 1954 (42 USC 2011), Title II of the Energy Reorganization Act of 1974 (42 USC 5841), the National Environmental Policy Act of 1969, and Nuclear Waste Policy Act of 1982 and its 1987 amendments (10 CFR 71, 72 and 50)).**

3. Federal Energy Regulatory Commission

- a. Licenses required for non-federal hydroelectric projects (Federal Power Act (16 U.S.C. 796(11), 797(e), 800, 801, and 808) HYDROPOWER).**
- b. Orders for interconnection of electric transmission facilities (Section 202(b) of the Federal Power Act (16 U.S.C. 824a(b) HYDROPOWER).**
- c. Certificates of public convenience and necessity for the construction of natural gas pipeline facilities, including both interstate pipelines and LNG terminal facilities (Sections 7 and 7(c) of the Natural Gas Act (15 U.S.C. 717 and 717f(c)). (PIPELINES)**
- d. Permission and approval for the abandonment of natural gas pipeline facilities (Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)). (PIPELINES)**

4. Department of Defense - Army Corps of Engineers

- a. Permits for construction of dams, dikes, bulkheads, revetments, groins, jetties, piers, docks, pipelines, cables, seawalls, wharfs,**

piers or other structures (Sections 9, 10, 11 and 14 of the Rivers and Harbors Act (33 USC 401, et seq)).

- b. Discharge of dredge or fill material in navigable waters of the United States, including wetlands (Section 404 of the Federal Water Pollution Control Act (33 USC 1344)).*

5. Department of Homeland Security - US Coast Guard

- a. Permits for the construction or modification of bridges or causeways over navigable waters, including affixed pipelines or other structures (Section 9 or 10 of the Rivers and Harbors Act (33 USC 401 and 403), and General Bridge Act (33 USC 491-507, and 525-534)).*
- b. Construction of deepwater ports (Deepwater Ports Act (33 USC 1501 et seq.)).*

6. Department of Transportation - Surface Transportation Board

- a. Approval for construction, expansion, or alteration of railway services and facilities, water carriers, including commercial ferries and associated facilities, and intermodal facilities and operations (49 USC 10101 et seq., 49 USC 10901 et seq., and 49 USC 13101).*

7. Department of the Interior - Minerals Management Service

- a. Licenses and permits described in detail in OCS oil and gas plans (Outer Continental Shelf Lands Act (43 USC 1338 et seq.)).*

8. Department of Transportation - Surface Transportation Board and Federal Administration

- a. Licenses or Certificates for rail line construction, including line crossings (ICC Termination Act of 1995 (49 USC 10101, et seq.)).*
- b. Licenses or Certificates for design, construction, expansion, curtailment, upgrading, or regulating of railroad facilities, including bridges (ICC Termination Act of 1995 (49 USC 10101, et seq.)).*
- c. Licenses or Certificates for removal of trackage and disposition of right-of-way (ICC Termination Act of 1995 (49 USC 10101, et seq.)).*

Consistency for Outer Continental Shelf Exploration, Development and Production Activities, 15 CFR Part 930 Subpart E

Exploration, development, or production activities requiring a federal license or permit and described in detail in an Outer Continental Shelf (OCS) plan for any area which has been leased under the Outer Continental Shelf Lands Act (43 SC, Section 1331 et seq.), and which affect the coastal zone, must be conducted in a manner consistent with the enforceable policies of Pennsylvania's approved CZM program. The person submitting an OCS exploration or development/production plan to the U.S. Department of the Interior must provide a consistency certification. The Department of the Interior then forwards a copy of the OCS plan, excluding proprietary

information, and the person's consistency certification to CZM requesting a decision on the person's certification.

CZM should seek to coordinate review of other pertinent federal permits associated with the review of OCS plans. In addition, CZM will coordinate its review with other state permitting and resource agencies, especially regarding compliance with state oil and gas regulations. CZM also coordinates its review of OCS plans with any affected coastal communities.

CZM uses DEP's permit process, federal agencies' Public Notice, participation in pre-permit meetings, and review of the Federal Register and Pennsylvania Bulletin as a backup to ensure receipt of all OCS permits and projects. For those federal activities and projects not received, CZM notifies the federal agency of its need to review them.

CZM will respond to the person and the Department of the Interior within 3 months of receiving from the Department of the Interior the consistency certification and supporting information. If a decision on consistency is not issued within 3 months, CZM will notify the U.S. Department of the Interior and the person of the status of the consistency review. Concurrence with the consistency certification is conclusively presumed in the absence of this response. Concurrence is conclusively presumed in the absence of an objection by CZM within 6 months of commencement of the consistency review.

In the event that CZM objects to the consistency certification, CZM notifies the person, the Department of the Interior, and the Director of OCRM of the reasons why the state objects to the action. Additionally, the person will be provided with the following: suggestions for correcting the proposal so that it complies with the enforceable policies of the CZM, notice that the person may appeal CZM's objection to the Secretary of Commerce pursuant to 15 CFR part 930 subpart H. The CZM is also available to meet with the person to attempt to resolve the differences.

Consistency for Federal Assistance to State and Local Governments, 15 CFR Part 930 Subpart F

The term "federal assistance" means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid. An "applicant agency" is a State agency or local government applying for federal financial assistance. When these activities involve financial assistance to entities other than state or local governments, the activities are subject to the consistency provisions of 15 CFR Part 930, Subpart C.

CZM reviews all federal assistance activities to governmental agencies that potentially affect the environmental, economic, and social resources of the Commonwealth's coastal zones. CZM uses a review procedure where all pertinent federal, state and local governmental grant recipient agencies send their federal assistance grant applications directly to CZM for review. Federal agencies have informed these governmental agencies that their

grant activities require CZM's consistency review, and have directed them to submit consistency certifications and copies of grant applications to CZM. The federal Office of Management and Budget has added CZM consistency requirements to the "Assurances" form found in all grant applications. This "Assurances" form also requires compliance with NEPA, the National Historic Preservation Act, the Wild and Scenic Rivers Act, the Clean Air Act, etc.

In addition, CZM relies on DEP's internal federal assistance project review process developed under Executive Order 12372, and discussed in the last chapter.

CZM uses DEP's permit process, participation in pre-permit meetings, and review of the Federal Register and Pennsylvania Bulletin, as a backup to ensure receipt of all listed federal assistance activities, and also to monitor for other pertinent federal assistance activities not received. For those federal assistance activities not received, CZM notifies the pertinent governmental agency of its need to review them.

Upon receipt of the consistency certification and the information required by 15 CFR section 930.94(c), CZM coordinates its review with appropriate state permitting agencies, and affected coastal municipalities, and responds in writing to the applicant agency and the federal agency within 30 days of receipt of the certification. Within 30 days, CZM prepares a consistency concurrence or objection, and sends copies to the applicant and the federal grant agency. If CZM does not object, the federal agency may grant the funds.

In the event CZM objects to the applicant's proposal, CZM's written objection will describe how the proposal is inconsistent with the applicable CZM enforceable policies, or lacks information needed to determine consistency, and alternative measures which makes the proposed project consistent with CZM. CZM's objection letter is sent to the applicant, the federal agency and DEP's Office of Policy.

NOTE: Before sending an objection, CZM first coordinates its objection with DEP's Office of Policy.

As a result of CZM's federal consistency objection, the federal agency may not provide the financial assistance.

The applicant agency may appeal CZM's objection with the Secretary of Commerce as described above, within 30 days of receipt of the state's objection. Applicant agencies are also encouraged to arrange a meeting with CZM to address CZM's objection and enforceable policies.

The following federal assistance to state and local governments are subject to CZM's consistency procedures:

1. U.S. Department of the Interior - National Park Service

15.916 Outdoor Recreation, Acquisition, Development and Planning

15.918 Disposal of Federal Surplus Real Property for Parks, Recreation, and Monuments

- 15.919 Urban Park and Recreation Recovery Program**
- 2. U.S. Department of the Interior - US Fish and Wildlife Service**
- 15.600 Anadromous Fish Restoration**
- 15.605 Sport Fish Restoration**
- 3. Environmental Protection Agency**
- 66.001 Air Pollution Control Program Support**
- 66.005 Air Pollution Control Survey and Demonstration Grants
(construction projects only)**
- 66.418 Construction Grants for Wastewater Treatment Works**
- 66.419 Water Pollution Control, State and Interstate Program Support**
- 66.454 Water Quality Management Planning**
- 4. U.S. Department of Housing and Urban Development**
- 14.110 Manufactured Home Loan Insurance - Financing Purchase of
Manufactured Homes as Principal Residences of Borrowers**
- 14.112 Mortgage Insurance for Construction or Substantial
Rehabilitation of Condominium Projects**
- 14.117 Mortgage Insurance - Homes**
- 14.124 Investor Sponsored Cooperative Housing**
- 14.125 Mortgage Insurance - Land Development and New Communities**
- 14.127 Mortgage Insurance - Manufactured Home Parks**
- 14.128 Community Development Block Grants/Entitlement Grants**
- 14.129 Mortgage Insurance - Nursing Homes, Intermediate Care
Facilities, Board and Care Homes and Assisted Living Facilities**
- 14.218 Community Development Block Grants - Small Cities Program**
- 14.221 Urban Development Action Grants**
- 14.225 Community Development Block Grants/Special Purpose
Grants/Insular Areas**
- 14.228 Community Development Block Grants/State's Program**
- 14.231 Emergency Shelter Grants Program**
- 14.239 HOME Investment Partnerships Program**
- 14.248 Community Development Block Grants - Section 108 Loan
Guarantees**
- 5. U.S. Department of Transportation - Federal Aviation Administration**
- 20.102 Airport Development Aid Program**
- 20.103 Airport Planning Grant Program**
- 20.106 Airport Improvement Program**

6. **U.S. Department of Transportation - Federal Highway Administration**
20.205 Highway Planning and Construction
20.506 Urban Mass Transportation Demonstration Grants
20.515 State Planning and Research
7. **U.S. Department of Commerce - Economic Development Administration**
11.300 Grants and Loans for Public Works and Development Facilities
11.301 Business Development Assistance
11.302 Economic Development -Support
11.304 Economic Development - Public Works Impact Projects
11.305 State and Local Economic Development Planning
11.307 Special Economic Development and Adjustment Assistance Program - Long Term Economic Deterioration
11.308 Grants to States for Supplemental and Basic Funding Titles I, II, III, IV, and V Activities
11.501 Development and Promotion of Ports and Intermodal Transportation
11.509 Development and Promotion of Domestic Waterborne Transport Systems
8. **Department of Commerce - National Oceanic and Atmospheric Administration**
11.441 Regional Fishery Management Councils

ANALYSIS OF IMPACT – Update of CZM Program’s Federal Consistency Review Process - Chapter 5

Changes to Chapter 5 of CZM’s FEIS can be broken down into three categories: the deletion of an unnecessary section titled “*FEDERAL COORDINATION ACTIVITIES*,” changes resulting from the 2001 regulatory changes to 15 CFR Part 930, and changes recommended by OCRM.

The first section in 5 Chapter titled, “*FEDERAL COORDINATION ACTIVITIES*” will be deleted because it is unnecessary. This section contains a list of federal agencies that CZM consulted with during the early development of the Program’s federal consistency review process. It provides no guidance on federal / CZM coordination or procedures. It may have been originally included in the Program’s Draft Environmental Impact Statement for Program approval purposes, and was carried over into the Program’s FEIS. It serves no current purpose.

The second category of changes is necessitated by the 2001 regulatory changes to 15 CFR Part 930 and will result in an update of the subsection titled “Federal Consistency.” The “*Federal Consistency*” subsection discusses the federal consistency review requirements and describes the process that CZM uses to

coordinate and review federal actions. Federal agencies, applicant agencies, and permit applicants depend on this section for coordination guidance with CZM, the federal consistency review process, and the procedures for properly submitting federal actions to the Pennsylvania CZM for a consistency review. Therefore, it is crucial that this subsection be up-to-date. Changes resulting from the 2001 federal regulatory revisions include:

- The timeframe allowed for the consistency review of Federal Agency Activities has been changed from 45 days to 60 days; and
- replacing old terminology with new. One example is replacing the previous term “directly affecting” with “reasonably foreseeable effects on any land or water use or natural resource of the coastal zone.”

A third category of changes made at recommendation of OCRM is:

- clarifying the original 1980 list of federal actions by adding concise descriptions of listed federal actions and pertinent federal statutory citations or Code of Federal Domestic Assistance numbers;
- adding the new Department of Homeland Security, and relocating the US Coast Guard and its list of federal actions under it;
- reformatting the “*Federal Consistency*” subsection for logical reasons.

SUMMARY AND CONCLUSION – Update of CZM Program’s Federal Consistency Review Process - Chapter 5

The subsection titled “*Federal Consistency*” found in Chapter 5 of CZM’s FEIS contains the federal consistency process CZM follows to review federal actions. Since federal agencies and applicants rely on this process, it must be up-to-date and reflect current federal requirements. The process was written 24 years ago and was approved by OCRM. It has become outdated due to 2001 regulatory revisions to 15 CFR Part 930. Further changes have been made at the recommendation of OCRM. Finally, CZM has reformatted this subsection for clarity purposes and to facilitate its use. This update does not change the coordination / review procedures currently in use between CZM and federal agencies / applicants. Furthermore, CZM’s consistency review procedures at the state and local levels have not been changed by the 2000 regulatory revisions and will also remain the same.

OCRM’s Program Change Guidance (July 1996) states that a substantial change is a high-threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources.

Although the update of Chapter 5’s subsection titled “*Federal Consistency*” does pertain to the federal consistency review process related to **Coordination, Public Involvement, and National Interest**, the changes are not substantial. The update changes were made to reflect revised federal requirements in order to provide

accuracy to CZM's federal consistency procedures. The changes to this subsection do not add new processes, or delete or modify existing federal consistency processes or procedures. Federal agencies, applicant agencies, and permit applicants depend on this section for federal consistency guidance, and the procedures necessary to properly submit federal actions to the Pennsylvania CZM for a consistency review. Therefore, it is crucial that the subsection titled "*Federal Consistency*" reflect the current federal consistency requirements.

Based on the previous discussion and impact analysis of these low-threshold changes to update the subsection titled "*Federal Consistency*," we have determined that these changes are not substantial changes to Pennsylvania's CZM Program, but routine.

2003 ADDITION OF INTERSTATE CONSISTENCY

INTRODUCTION – Addition of Interstate Consistency – Chapter 5

Chapter 5 of CZM's FEIS titled "*Intergovernmental / Public Coordination and Review*," discusses the Pennsylvania CZM Program's federal consistency review requirements and describes the process that CZM uses to coordinate and review actions of various levels of government and the public. CZM's process was federally approved by the federal Office of Coastal Resource Management (OCRM) in 1980, and is based on the requirements of 15 CFR Part 930.

In 1990 and 1996 the Coastal Zone Management Act of 1972 was reauthorized and amended. The resulting regulatory revisions which became effective in January 2001, created a new subpart in 15 CFR Part 930, titled, Subpart I - Consistency for Federal Activities Having Interstate Coastal Effects. Subpart I allows one coastal state to review federal actions occurring totally within another state, if the action will have reasonably foreseeable effects on the uses or resources of the first state. "Effects" include both direct effects and indirect (cumulative and secondary) effects, which result from the federal action. The review of federal actions occurring in one coastal state, by another coastal state is referred to as "interstate consistency." After certain federal requirements are met, a coastal state can apply interstate consistency. This Routine Program Change (RPC) will satisfy those federal requirements and add interstate consistency to Pennsylvania's CRM Program.

ADDITION OF INTERSTATE CONSISTENCY – Chapter 5

Through this RPC a new subsection titled "*Consistency for Federal Actions Having Interstate Coastal Effects*" is being added to Chapter 5 of CZM's FEIS. This subsection contains lists of federal actions CZM intends to review, and includes a general description of the geographic area in Ohio, within which these federal actions will be subject to CZM's review.

The following new subsection (*in bold-faced italics*) titled "*Consistency for Federal Actions Having Interstate Coastal Effects*" is being added to CZM's Chapter 5, immediately following the previously discussed subsection entitled "*Federal Consistency*."

CONSISTENCY FOR FEDERAL ACTIONS HAVING INTERSTATE COASTAL EFFECTS

INTRODUCTION

This section deals with federal actions having interstate coastal effects or interstate consistency. Federal consistency is the Federal Coastal Zone

Management Act (CZMA) requirement that federal actions (regardless of location) that have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone, must be consistent with the enforceable policies of a coastal state's federally approved coastal management program, before they can occur. The CZMA federal consistency requirements are found at 15 CFR Part 930.

This section describes federal actions occurring in specified areas in the state of Ohio that have reasonably foreseeable effects on the uses or resources of Pennsylvania's coastal zone - called "interstate consistency." See 15 CFR Part 930 Subpart I - Consistency of Federal Activities Having Interstate Coastal Effects.

For example, Pennsylvania's Coastal Zone Management Program (CZM) may review a federal permit application for an activity occurring wholly within Ohio's borders, if Pennsylvania has met the requirements of 15 CFR Part 930 Subpart I. Inclusion of this section in the CZM Program's FEIS document signifies that CZM has met these requirements.

The following section lists those federal agency activities, federal development projects and federal permits and licenses located in Ohio (along with a geographical description of the area), which are subject to federal CZMA consistency review procedures. The Pennsylvania CZM has determined that these listed federal actions will have reasonable foreseeable coastal effects upon Pennsylvania's Lake Erie Coastal Zone because these actions will either trap or interrupt the flow of littoral beach material from Ohio into Pennsylvania, or will preclude former littoral beach material from being replaced back into the Ohio / Pennsylvania littoral drift system. These federal actions will exacerbate beach erosion and bluff recession along Pennsylvania's shoreline.

Federal Shoreline Structures

The design, construction and modification of federal shoreline structures in Ohio have reasonably foreseeable effects upon Pennsylvania's coastal resources. For example, as designed, Conneaut Harbor protrudes approximately 1 mile into Lake Erie, and interrupts and traps the flow of littoral beach material, which travels from Ohio, eastward into Pennsylvania's coastal zone. As a result, this trapped material cannot continue in the littoral drift system into Pennsylvania, where it would otherwise accumulate on Pennsylvania's beaches. Without nourishment by this littoral material, beach erosion is exacerbated along Pennsylvania's shoreline.

Furthermore, since the sand-starved littoral drift system cannot renourish Pennsylvania's remaining narrow beaches, destructive wave action eventually undercuts the high coastal bluffs in Pennsylvania east of the Harbor, causing bluff collapse and bluff recession along Pennsylvania's shoreline. CZM's long-term monitoring of bluff recession along Pennsylvania's Lake Erie shoreline shows that the highest recession rates are found along a section of shoreline that extends eastward from the

Conneaut Harbor structure into Pennsylvania, for a distance of 10.5 miles. (See Figures # 3 & 4.)

Conneaut Harbor in Ohio extends from the shoreline, approximately 1 mile into Lake Erie. (See Figure # 5). According to the Buffalo District Corps of Engineer's (COE) Section 111 Reconnaissance Report on Rehabilitation of Eroded Shoreline at Conneaut Harbor, Ohio, Preliminary Analysis of Shore Processes (4/4/77), large volumes of littoral beach material are being trapped by Conneaut Harbor. It concludes that the "severe erosion of the shoreline east of the Conneaut shorearm is attributable to the Federal structure." Therefore, there is a direct cause and effect from Conneaut Harbor's trapping of littoral beach material, and the high erosion and recession rates along Pennsylvania's western Lake Erie shoreline (See Figure # 6).

Littoral beach material moving within the littoral drift system, which normally builds up beaches and minimizes shoreline erosion and bluff recession along the shoreline east of Conneaut (i.e. in western Erie County, Pennsylvania), is being captured by Conneaut Harbor. The large volume of littoral beach material captured by this federal structure is trapped by the harbor's western wall, and has created a very large sand fillet outside the harbor, along the western wall. (See Figure # 7).

Furthermore, additional entrapment of littoral beach material also occurs inside Conneaut Harbor as a result of storm events. Trapped littoral beach material from the Conneaut fillet is washed over the Harbor's western wall, and deposits in the navigation and recreational channels within Conneaut Harbor. (See Figure # 8). Although once part of the littoral drift system, this trapped littoral material has also been effectively removed out of the littoral drift system by the Harbor structure.



Figure #3
Beach and Bluff Erosion in Pennsylvania, immediately east of Conneaut Harbor.



Figure #4
Beach and Bluff Erosion in Pennsylvania, immediately east of Conneaut Harbor.



Figure #5
Location and configuration of Conneaut Harbor.

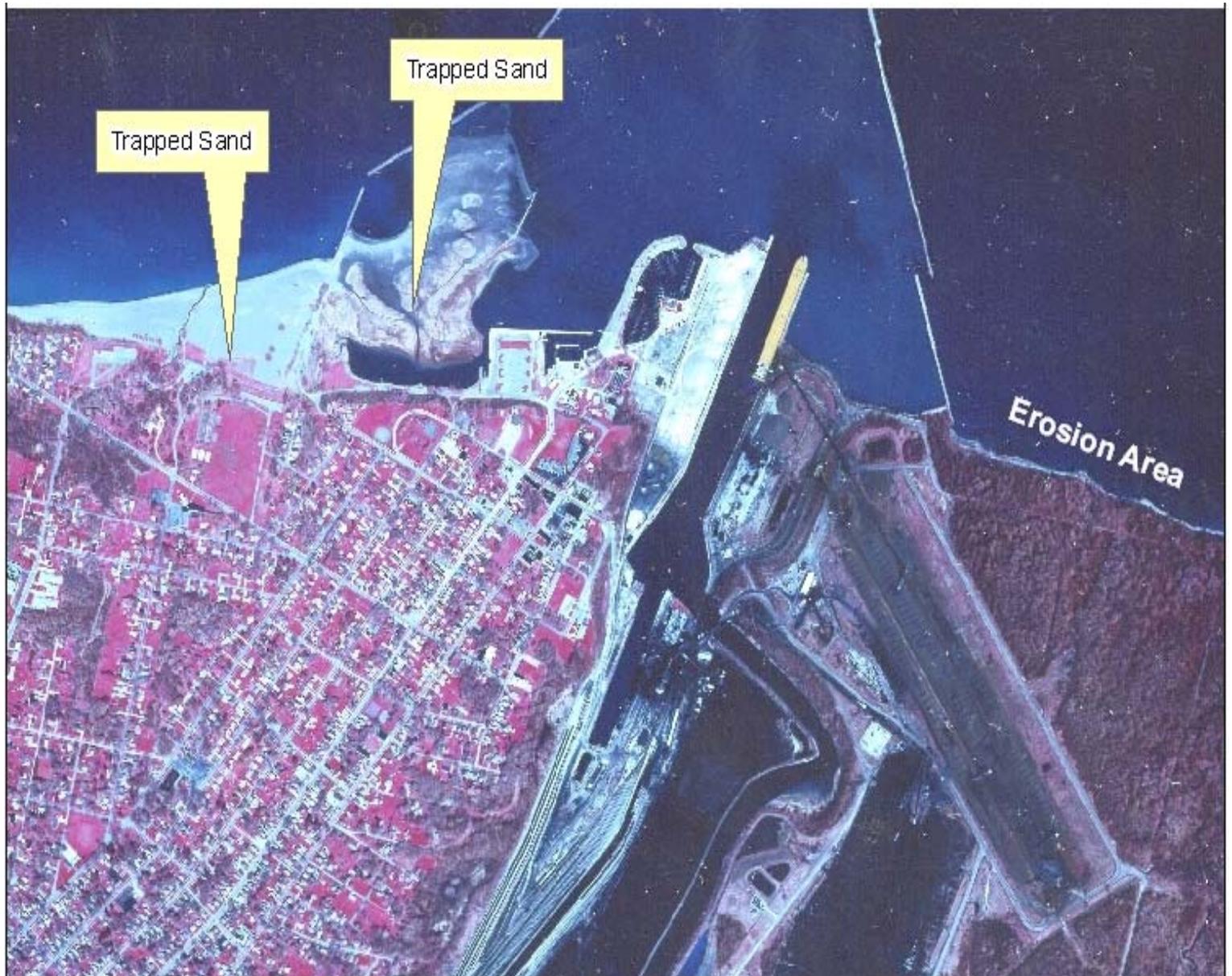


Figure #6 **Date: April, 2005**
**Comparison between volume of sand trapped by Conneaut Harbor and
downdrift erosion.**



Figure #7

Date: 2005

Sand trapped by Conneaut Harbor's western harbor wall, which has created a very large sand fillet (beach) outside the harbor. Note: Bench is on a high bluff overlooking the sand fillet.



Figure #8 **Date: April 19, 2006**
Sand trapped inside Conneaut Harbor as a result of storm events washing littoral sand from the Conneaut fillet over the Harbor's western wall.

Figure # 9 shows the total amount of sand trapped by Conneaut Harbor.

Through its review of these federal activities, CZM will ensure that the design, construction and modification of federal shoreline structures in Ohio will not interrupt or trap littoral drift beach material naturally flowing into Pennsylvania's Lake Erie coastal zone.

Federal Dredging and Disposal Activities

Federal activities, which dredge and dispose of material from federal waters, navigation channels, recreational channels and harbors also contribute to beach and bluff erosion in Pennsylvania.

As a matter of economics, the Buffalo COE selects the least costly method of disposing of dredge material. Typically, material dredged from Conneaut Harbor's channels that's suitable as beach nourishment material, is either disposed of in an approved open-lake disposal site, or in near-shore areas. In a February 25, 2004 negative consistency determination involving a previous dredging project at Conneaut Harbor, the Buffalo COE informed CZM that it uses the Federal Standard requirements pursuant to 33 CFR, Section 335, to determine the near-shore disposal site. According to the Buffalo COE, "Federal standard means the dredged material disposal alternative or alternatives identified by the Corps, which represents the least costly alternatives consistent with sound engineering and environmental requirements. USACE Buffalo District standard for near-shore disposal of suitable coarse-grain material at Conneaut Harbor, Ohio is -11 low water datum (LWD). Historic cost estimates, dredging equipment capabilities, and historic disposal depths define the acceptable depth of -11 LWD."

Through several studies (to be discussed later), CZM has found that the COE's disposal of dredge material into water deeper than 4 feet, places the material outside of the breaker zone of the sediment transporting beach-enriching littoral drift system. As such, the material will not be transported in the littoral drift system and nourish Pennsylvania's downdrift beaches. Instead, the material placed at the COE's Federal Standard of -11 feet of water depth is directed offshore by the undertow and lost in deeper water. Thus, the dredge material will not be available for needed beach replenishment. The COE's adherence to their Federal Standard of -11 feet LWD contributes to beach and bluff erosion along Pennsylvania's portion of the Lake Erie shoreline. In addition, CZM is not aware of any federal requirement that requires that dredge material found suitable for use as beach nourishment, must be used for beach replenishment.

As a result, these federal activities preclude former littoral beach material from ever being replaced back into the littoral drift system, which ultimately nourishes Pennsylvania's beaches and protect its bluffs.

CZM's requirement of placing suitable material into water no deeper than 4 feet is based on three studies. The first is a CZM funded study titled Development of a Predictive Model for Lake Erie Shoreline Stabilization Structures (Meadows, December 1982). This study notes the breaker zone along the Lake Erie shoreline as being an approximate water depth of 3 to 4 feet. The second



Figure #9 **Date: April 9, 2006**
Aerial view of total amount of sand trapped by Conneaut Harbor.

study, the previously mentioned Buffalo District COE study titled Section 111 Reconnaissance Report on Rehabilitation of Eroded Shoreline at Conneaut Harbor, Ohio, Preliminary Analysis of Shore Processes, discusses breaking waves at the exact location of CZM's preferred dredge disposal area and water depth along the shoreline just east of the Harbor's eastern shorearm, and states "Calculations showed the critical depth of breaking [breaker zone] to be 4.6 feet." Finally, another COE document entitled Groins - Their Applications and Limitations (Coastal Engineering Technical Note, CETN - III - 10/3/81 (Coastal Engineering Research Center at Fort Belvoir, Virginia)) states that most of the sand material transported along the coast by the littoral drift moves within the breaker zone. Thus, the breaker zone along the Lake Erie shoreline, which transports most of the littoral drift material, is located in approximately 4 feet or less of water depth. A federal agency's selection of a dredge disposal site in Ohio could have reasonable foreseeable coastal effects on Pennsylvania's coastal zone. The selection options for dredge disposal sites would include land acquisition or the choosing of dewatering sites, storage, transfer and disposal of the site. As previously mentioned as a matter of economics, the COE's least costly method of handling, processing and disposing of dredge material is usually selected.

The Pennsylvania CZM will review the selection of federal dewatering sites, land acquisition, storage, transfer and disposal of these sites to ensure that the sites selected will not preclude the reuse of suitable dredged material for use as beach nourishment. CZM will also review these sites to ensure that the location of the selected sites will not logistically or economically prevent the reuse of suitable dredge material for beach nourishment due to their remote location.

Federal License and Permit Activities

The COE's issuance of federal permits for dredging, filling, construction and maintenance of groins, jetties, docks, boat ramps, and shoreline structures, and the discharge of dredge or fill material into navigable waters may also interrupt the beach nourishing littoral currents and breaker zones, and contribute to the removal of sand material from the littoral drift system. Identical to the affects that Conneaut Harbor has on the littoral drift system, improperly designed and constructed nonfederal shoreline structures will also contribute to the removal of sand material from the littoral drift system.

If the structure, such as a groin is designed too high, its height will trap excessive amounts of littoral drift material, and will also prevent the trapped littoral sand from overtopping the structure during storm events. As a result, sand that is naturally destined to be carried onto Pennsylvania's beaches by the littoral drift system will be trapped on the updrift side of these high structures.

If the groin is designed too long (i.e., extending lakeward, beyond the 4-foot depth limits of the breaker zone), littoral drift material will be directed offshore into deeper water where it will not be able to reenter the littoral drift system. Moreover, during storm events, littoral drift material that has

already accreted on the updrift side of these structures will erode more rapidly, and also be directed offshore by the undertow, into water deeper than 4 feet. Eventually, more sand material will accrete on the updrift side of these longer groins to replace the sand material previously directed offshore into the depths of Lake Erie. This cycle will repeat itself with less sand remaining in the littoral drift system to nourish Pennsylvania's downdrift beaches.

In determining the proper design and construction of groin structures in Pennsylvania, CZM relies on the findings of the following three studies / documents:

Lake Erie - Shoreline Protection Structures Study (Bennett/Meadows, September 2001),

Development of a Predictive Model for Lake Erie Shoreline Stabilization Structures (Meadows, December 1982, and

Groins - Their Applications and Limitations (Corps of Engineers Coastal Engineering Technical Note, CETN - III - 10, 3/81).

Findings contained in these documents are used by the Pennsylvania Department of Environmental Protection and CZM in their review of permit applications for groin structures proposed along Pennsylvania's Lake Erie shoreline. The findings recommend that groin structures should be constructed as low profile structures designed to closely mimic the existing beach profile, and should not extend lakeward beyond the breaker zone (into water depths greater than 4 feet). In reviewing permit applications submitted to the COE for groin structures in Ohio, CZM will also utilize the findings of these three above listed documents to ensure that the design and construction of groin structures in Ohio will not remove sand from or interrupt the littoral drift system.

Development of or Changes to Nationwide Permits, State Programmatic General Permits, and Regional Permits

The PA CZM Program will review the COE's development of, or amendments to Nationwide Permits, State Programmatic General Permits, and Regional Permits to ensure that the design criteria contained in federal permits for groin structures is not contrary to the findings of the three aforementioned documents. As these permits are proposed or modified, PA CZM will notify the COE of the permits that will be subject to CZM review. For example, in late 2006, the COE published notice of its intent to reissue / issue 50 NWP's. PA CZM notified the COE that it is developing Regional Conditions for the following NWP's in Ohio that are reasonably foreseeable to affect Pennsylvania's Lake Erie shoreline: NWP #3 Maintenance, NWP #13 Bank Stabilization, NWP #19 Minor Dredging, NWP #35 Maintenance Dredging, and NWP #36 Boat Ramps. As previously discussed, this will ensure that federal permit criteria for groin construction in Ohio will not lead to the removal of sand from the littoral drift system or interrupt the flow of littoral beach material from Ohio into Pennsylvania.

The geographic area selected for the following list of federal actions is along Ohio's Lake Erie shoreline. The area extends from the Ohio / Pennsylvania border approximately 3 miles westward, to an aqueduct located on Ohio's Lake Erie shoreline. More specifically, the aqueduct is located at the northern terminus of Lake Erie Street in the City of Conneaut, Ohio. The geographic area extends from the Ordinary High Water Mark of 572.8 feet (IGLD 1955), lakeward to the United States / Canadian border located in Lake Erie.

Figure # 10 depicts the selected geographic area. The 1955 IGLD Ordinary High Water Mark elevation of 572.8 feet converts to IGLD's 1985 Ordinary High Water Mark of 573.4 feet.

In determining CZM's western limit of the geographical area for interstate consistency reviews, the Ohio Department of Conservation and Natural Resources, Division of Geologic Survey (ODNR) was consulted. According to ODNR, Avon Lake is near the nodal point of diverging westward and eastward littoral transport systems. That is, east of Avon Lake the littoral sand transport in Lake Erie is generally eastward, and west of Avon Lake the littoral sand transport is generally westward. The distance from the Pennsylvania / Ohio border to Avon Lake is approximately 86 miles. However, in an effort to have a more manageable area for interstate consistency reviews, CZM reduced this 86-mile length of Ohio shoreline, and selected its midpoint at Mentor On-The-Lake. This 43-mile geographic area was originally proposed by CZM in its early coordination with affected federal and state agencies. Subsequent to this coordination, CZM reevaluated the 43-mile distance and determined that there was no need for CZM to review federal permit applications for shoreline structures in this 43-mile reach to ensure that their design and construction would allow the passing of littoral drift material into Pennsylvania. CZM realized that the major and final impediment to passage of littoral drift material into Pennsylvania were federal actions occurring at or in the vicinity of Conneaut Harbor. As a result, CZM decided upon the 3-mile distance from the Pennsylvania/Ohio boundary to the Conneaut aqueduct in Ohio.

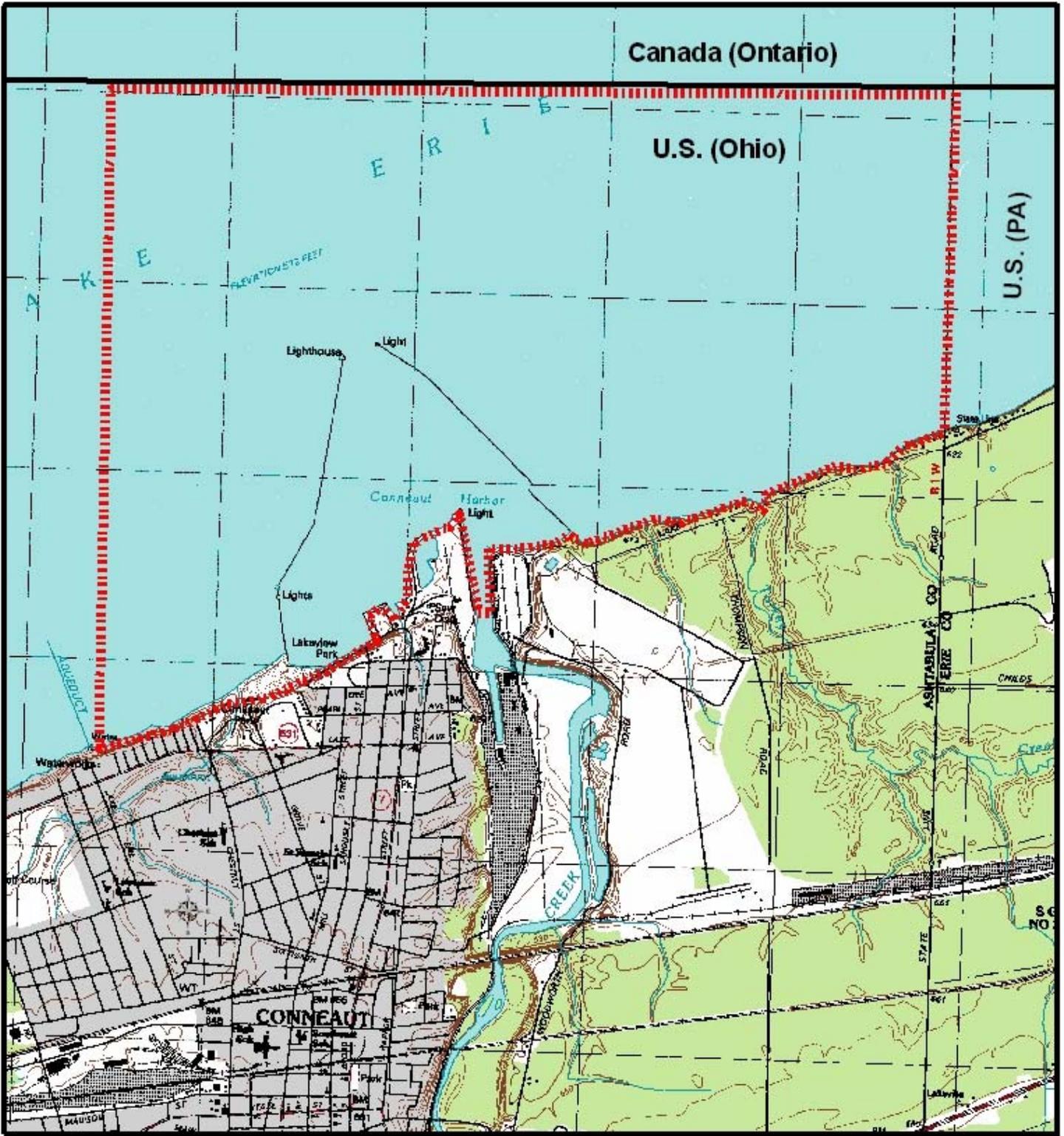


Figure #10
Geographic area in Ohio selected by Pennsylvania CZM for interstate consistency.

----- Geographic Area Selected

The following federal actions occurring in Ohio, within the geographic location described above are subject to the federal consistency review of CZM:

FEDERAL AGENCY ACTIVITIES

1. U.S. Department of Defense - U.S. Army Corps of Engineers

- a. Designing, constructing, reconstructing and modifying navigation channels, mooring areas, anchorages, breakwaters, groins, jetties, barriers, harbors, piers, docks, sand bypass systems, habitat areas including beach and dune nourishment, erosion control and shoreline stabilization structures (Rivers and Harbors Act (33 USC 1), and Water Resources Development Act (42 USC 1962 d-5, d5e, d5f)).**
- b. Dredging and disposal of dredge or fill material. This includes disposal of dredged material at designated and undesignated open water sites (Marine Protection, Research and Sanctuaries Act (33 USC 1413), and Federal Water Pollution Control Act (33 USC 1344)).**
- c. Selection of storage, dewatering and disposal sites for dredged material. This activity would include dredged material management plans (Marine Protection, Research and Sanctuaries Act (33 USC**
- d. Land acquisition, transfer and disposal including sites for disposal (33 USC 1413), and Federal Water Pollution Control Act (33 USC 1344) of dredged material, (Rivers and Harbors Act (33 USC 558b).**
- e. Development of or changes to Nationwide Permits, State Programmatic General Permits, and Regional Permits (33 CFR Parts 325 and 330).**

2. Department of Homeland Security - U.S. Coast Guard

- a. Dredging of access channels, mooring and berthing areas at existing or proposed facilities, and disposal of dredged material (Marine Protection, Research and Sanctuaries Act (33 USC 1413), and Federal Water Pollution Control Act (33 USC 1344)).**

FEDERAL LICENSE AND PERMIT ACTIVITIES

1. Department of Defense

- a. U.S. Army Corps of Engineers permits for obstructions or alterations in navigable waters (Sections 9, 10, 11, and 14 of the Rivers and Harbors Act (33 USC 401, et seq.)).**
- b. U.S. Army Corps of Engineers permits for discharge of dredge or fill material in navigable (Section 404 of the Federal Clean Water Act (33 USC 1344)).**

ANALYSIS OF IMPACT – Addition of Interstate Consistency – Chapter 5

Pennsylvania's Lake Erie shoreline is experiencing beach and bluff erosion. In an effort to address these problems, the CZM Program depends on two enforceable policies:

- Coastal Hazard Areas Policy 1.2 which regulates “the siting of any water obstruction or encroachments along Lake Erie to assure proper planning, design, construction, maintenance and monitoring, in order to prevent unreasonable interference with water flow (which includes sediment laden beach enriching currents),” and
- Dredging and Spoil Disposal Policy 2.1 which ensures that dredging and spoil disposal in the coastal zones will be regulated to protect against damages to the public interest.

CZM has been using these two policies to address federal actions in Pennsylvania for over 25 years. CZM will now rely on these two policies and the interstate consistency provisions of 15 CFR Subpart I to address federal actions occurring in Ohio, that have reasonably foreseeable effects on the uses or resources of Pennsylvania.

The previously discussed Buffalo District Corps of Engineer's (COE) Section 111 Reconnaissance Report on Rehabilitation of Eroded Shoreline at Conneaut Harbor, Ohio, Preliminary Analysis of Shore Processes has found that large volumes of sand are being trapped by Conneaut Harbor, and concludes “that the severe erosion of the shoreline east of the Conneaut shorearm is attributable to the Federal structure.” Furthermore, in response to a 2001 petition to Pennsylvania's Environmental Quality Board by the Millcreek Township, Erie County to clarify the designation of Bluff Recession Hazard Areas along Lake Erie, DEP conducted a study of Pennsylvania's entire Lake Erie shoreline to determine Bluff Recession Hazard Areas. The study is entitled, Study to Tentatively Designate Bluff Recession Hazard Areas – November 2004. As part of the study, bluff recession rates from 1975 to 2003 were averaged. The chart below shows the bluff recession rates for municipalities along Pennsylvania's Lake Erie shoreline. The listing of municipalities is from west (located immediately downdrift of Conneaut Harbor) to east.

Municipality	Average Rate of Bluff Recession Through 2003
Springfield Township	1.27 feet per year
Girard Township	1.14 feet per year
Fairview Township	0.57 feet per year
Millcreek Township	0.45 feet per year
City of Erie	0.24 feet per year
Lawrence Park Township	0.40 feet per year
Harborcreek Township	0.59 feet per year
North East Township	0.55 feet per year

As can be seen by the chart, Springfield and Girard Townships, the townships located immediately downdrift of Conneaut Harbor have average bluff recession

rates that are twice the average recession rates of the other affected municipalities. The Lake Erie shoreline length of these two municipalities is approximately 10.5 miles of Pennsylvania's total Lake Erie shoreline of 58 miles. An earlier study undertaken by CZM in 1975 entitled, Shoreline Erosion and Flooding – Erie County showed similar bluff recession rates. Therefore, there is a direct cause and effect caused by Conneaut Harbor's trapping of littoral beach material and the high erosion and recession rates along Pennsylvania's western Lake Erie shoreline.

Material dredged from Conneaut Harbor's channels and suitable for beach nourishment is either disposed of in an approved open-lake disposal site, or in near-shore areas. The Buffalo COE relies on the Federal Standard requirements pursuant to 33 CFR, Section 335. Federal Standard means the dredged material disposal alternatives identified by the COE, which represents the least costly alternatives consistent with sound engineering and environmental requirements. The Buffalo District has determined that the Federal Standard for near-shore disposal of suitable beach nourishment material from Conneaut Harbor is -11 low water datum (LWD). The use of the Federal Standard of -11 of water depth contributes to beach and bluff erosion along Pennsylvania's portion of the Lake Erie shoreline.

Findings of three studies / documents, the Lake Erie - Shoreline Protection Structures Study, Development of a Predictive Model for Lake Erie Shoreline Stabilization Structures, and Groins - Their Applications and Limitations (Corps of Engineers Coastal Engineering Technical Note, CETN - III - 10, 3/81) have determined that disposal at the Federal Standard of -11 feet of water depth, will place the dredge material outside the breaker zone of the sediment transporting littoral drift system. As a result, this dredge material will move offshore, be lost in deeper water, and will not be available for needed beach replenishment.

The Buffalo COE's determined Federal Standard of -11 LWD, represents the least costly alternative to dredge and dispose of material. It is developed using historic cost estimates, dredging equipment capabilities, and historic disposal. However, the federal consistency regulations at 15 CFR Subpart C specifically point out that a federal agency cannot use the claim of lack of funding or insufficient appropriated funds as a basis for being fully consistent to the maximum extent practicable with an enforceable policy of a CZM management program.

The Buffalo COE's use of their determined Federal Standard of -11 LWD for disposal of dredge material is inconsistent with CZM Program's enforceable Coastal Hazard Areas and Dredging and Spoil Disposal Policies. These two policies address the placement of material dredged from Lake Erie and ensure that it will be placed back into the littoral drift system to prevent further beach and bluff erosion in Pennsylvania. In order for the COE's dredging / disposal practice to be consistent with the Pennsylvania CZM Program's policies, suitable material dredged from within Conneaut Harbor must be deposited along the shoreline immediately east of the Harbor, within the breaker zone, in water no deeper than 4 feet below the lake level as measured at the time of deposition. CZM will rely on its Dredging and Spoil Disposal Policy 2.1 and Coastal Hazard Areas Policy 1.2 to prevent unreasonable interference with the littoral drift system and ensure that dredging and spoil disposal in the coastal zones will be regulated to protect against damages to the public interest.

Furthermore, CZM can find no federal requirement that dredge material found suitable for use as beach nourishment must be used for beach nourishment. As a result, these federal activities preclude former littoral beach material from ever being replaced back into the littoral drift system, which would ultimately nourish Pennsylvania's beaches and protect its bluffs.

Finally, it must be noted that twice previously, in 1999 and 2004, that PA CZM has reviewed the Buffalo COE's proposed dredging / disposal projects at Conneaut Harbor for consistency with its enforceable policies. Under 15 CFR Subpart C – Consistency for Federal Agency Activities and the Federal CZM Act, CZM required in both projects that the material found suitable for beach nourishment be deposited on the downdrift side of Conneaut Harbor in less than 4 feet of water. The COE agreed with PA CZM in both projects.

Through 25+ years of experience, CZM has found that improperly designed (height and length) and constructed private shoreline protection structures, such as groins constructed in Pennsylvania, also interrupt the beach nourishing littoral currents located within the breaker zone by removing sand from the littoral drift system. Findings of the three studies / documents listed above are used by the Pennsylvania Department of Environmental Protection and CZM in their review of permit applications for proposed shoreline stabilization structures along the Lake Erie shoreline in Pennsylvania.

Through the interstate consistency provisions of 15 CFR Part 930 Subpart I - Consistency of Federal Activities Having Interstate Coastal Effects, CZM will review applications for federal permits in Ohio to determine if they will have reasonably foreseeable effects on the uses or resources of Pennsylvania's coastal zone. CZM will use the findings of the three studies / documents listed above to ensure that projects submitted for COE permits reflect proper construction and consistent placement of these structures in Ohio. Following guidance contained in these three studies / documents will ensure that federal permits and licenses issued for shoreline structures in Ohio are consistent with CZM's Coastal Hazard Areas Policy 1.2 and Dredging and Spoil Disposal Policy 2.1.

The PA CZM Program will review the COE's development of, or amendments to Nationwide Permits, State Programmatic General Permits, and Regional Permits to ensure that the criteria contained in federal permits for shoreline structures is not contrary to the findings of the three studies / documents listed above. This will ensure that federally permitted shoreline structures will not remove sand from the littoral drift system or interrupt the flow of littoral beach material from Ohio into Pennsylvania. CZM will rely on its Coastal Hazard Areas Policy 1.2 and Dredging and Spoil Disposal Policy 2.1 to assure proper planning, design, construction, maintenance and monitoring of any water obstruction or encroachment along Ohio's Lake Erie shoreline in order to prevent unreasonable interference with water flow, and to ensure that dredging and spoil disposal will be regulated to protect against damages to Pennsylvania's public interest.

During development of its interstate consistency proposal, CZM coordinated with the Buffalo District COE, the U.S. Coast Guard and the state of Ohio. In its coordination letter, CZM requested written comments within 30 days, and internally, CZM waited 60 days for the requested comments. The Buffalo District COE provided the only comments. The three COE comments are:

- “We believe the proposed changes to the Pennsylvania CRMP are outside the scope and intent of the Coastal Zone Management Act”.

CZM Response: CZM disagrees. The Coastal Zone Act Reauthorization Amendments of 1990 clarified that the federal consistency review trigger is coastal effects, regardless of the geographic location of the federal activity. Thus, federal consistency applies to all relevant federal actions, even when they occur outside the State’s coastal zone and in another state, if there will be effects.

- “In our opinion, there are no reasonably foreseeable actions with respect to Federal and non-Federal activities in the State of Ohio that would require Consistency Concurrence by the State of Pennsylvania”.

CZM Response: CZM disagrees. According to previous findings of the Buffalo District Corps of Engineer’s (COE) Section 111 Reconnaissance Report on Rehabilitation of Eroded Shoreline at Conneaut Harbor, Ohio, Preliminary Analysis of Shore Processes (4/4/77), large volumes of sand are being trapped by Conneaut Harbor. It concludes, “that the severe erosion of the shoreline east of the Conneaut shorearm is attributable to the Federal structure.” Furthermore, CZM’s long term monitoring of bluff recession along Pennsylvania’s Lake Erie shoreline supports the COE’s findings by showing that the highest bluff recession rates are in the section of shoreline and bluffs adjacent to the border with Ohio. Therefore, there is a direct cause and effect from Conneaut Harbor’s trapping of littoral beach material, and the high erosion and recession rates along Pennsylvania’s western Lake Erie shoreline. CZM believes that the “effects test” has been proven.

- “In addition, there appear to be several significant inconsistencies between Pennsylvania’s proposed policy changes and existing policies under Ohio Department of Natural Resources (ODNR) Coastal Management Program.”

CZM Response: The Pennsylvania CZM Program is not proposing new policies or policy changes with its addition of interstate consistency. The two pertinent enforceable policies CZM will apply to federal actions in Ohio have been in use for 25+ years. Furthermore, since the Buffalo COE did not list or discuss the several significant inconsistencies noted by them, they were not addressed in this RPC. Finally, ODNR has also been provided an opportunity to respond to CZM’s proposed program changes. ODNR did not respond with any comments.

The addition of interstate consistency will not constitute a major change to Pennsylvania’s CZM Program. No new policies will be added. CZM will rely on existing program policies. Through this RPC a new subsection (previously discussed) titled “*Consistency for Federal Actions Having Interstate Coastal Effects*” will be added to Chapter 5 of CZM’s FEIS. This subsection discusses Interstate Consistency and contains “lists” of federal actions CZM intends to review, along with a general description of the geographic areas in Ohio, within which these federal actions will be subject to CZM’s review.

CZM has met several federal requirements necessary to add interstate consistency to its federally approved Program. This RPC will meet the final requirement and add the interstate consistency review of listed federal actions occurring in the state of Ohio to Pennsylvania’s CZM Program.

SUMMARY AND CONCLUSION –Addition of Interstate Consistency – Chapter 5

Since 1980 CZM has been attempting to prevent beach and bluff erosion along Pennsylvania's Lake Erie Coastal Zone through its review of state and federal actions. CZM has determined that certain federal actions occurring in Ohio have reasonably foreseeable effects on uses or natural resources (which includes public interests) of Pennsylvania's Lake Erie coastal zone. CZM has shown through previous discussions that these "listed" federal actions are causing or are reasonably foreseeable to cause beach and bluff erosion along Pennsylvania's Lake Erie shoreline.

Recent amendments to the Coastal Zone Management Act of 1972 created a new subpart at 15 CFR Part 930, titled, Subpart I - Consistency for Federal Activities Having Interstate Coastal Effects. Subpart I allows one coastal state to review federal actions occurring totally within another state, if that action will have reasonably foreseeable effects on the uses or resources of the first state. After certain federal requirements are met, a coastal state can apply interstate consistency. This RPC has satisfied those federal requirements by "listing" federal actions CZM intends to review and by including a general description of the geographic areas in Ohio within which these federal actions will be subject to CZM's review. CZM has also coordinated with affected state and federal agencies in the development of its interstate consistency review process.

Through this RPC a new subsection titled "*Consistency for Federal Actions Having Interstate Coastal Effects*" is being added to Chapter 5 of CZM's FEIS. This subsection contains "lists" of federal actions CZM intends to review and includes a general description of the geographic area in Ohio within which these federal actions will be subject to CZM's review.

OCRM's Program Change Guidance (July 1996) states that a substantial change is a high threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources.

This program change will not add new or revise existing enforceable policies to Pennsylvania's CZM Program. CZM will rely on existing policies contained in the originally approved Program over 25 year ago. The addition of interstate consistency to the CZM Program will not effect a change in uses originally subject to management, does not establish or create new special management areas or effect any changes in boundaries, authorities, or organization of the CZM Program, and does not involve any substantial changes to Pennsylvania's CZM Program. Based on the previous discussion and impact analysis of this program change, we have determined that this change further details, and is a routine change to Pennsylvania's CZM Program.

2003 Regulatory Changes

INTRODUCTION – GENERAL REGULATORY CHANGES

CZM's enforceable policies are based on Commonwealth agencies' regulations, which were either incorporated into this Program at the time of original CZM Program approval in 1980, or were subsequently added through the Routine Program Change (RPC) process. However, over time these regulations are revised. These regulatory revisions must first be approved by OCRM through the RPC process before they become part of Pennsylvania's approved CZM Program. The following section discusses changes to regulations currently networked into the Pennsylvania CZM Program.

58 PA CODE CHAPTER 75 (Amended July 2003)

Title 58 Chapter 75 protects Pennsylvania's Endangered, Threatened and Candidate species. Chapter 75 is a list of fishes, reptiles, amphibians and aquatic organisms that the Pennsylvania Fish and Boat Commission (PA F&BC) has determined over various years of study, require protection. The species on these lists have declined in distribution and abundance to levels resulting in a determination that these species are endangered (§ 75.1), threatened (§75.2) or candidate (§75.3) in the Commonwealth.

In 1990, the United States Department of Interior, Fish and Wildlife Service, designated *Alasmidonta heterodon* (dwarf wedgemussel) as federally endangered in their entire range. This species of freshwater mussel is known to occur in several states including Pennsylvania. Until recently, the dwarf wedgemussel was considered extirpated from its former range in the Delaware River drainage. However, during mussel surveys of the Upper Delaware Scenic and Recreation River conducted by the United States Geological Survey, the dwarf wedgemussel was discovered at six locations in the Upper Delaware River. Subsequent surveys in 2001 and 2002 have documented additional occurrences in the Upper Delaware River Basin.

Section 102 of the Fish and Boat Code (30 Pa.C.S.) (relating to definitions) defines endangered species as "all species and subspecies of fish which (1) have been declared by the Secretary of the United States, Department of Interior to be threatened with extinction and appear on the Endangered Species List or the Native Endangered Species List published in the *Federal Register*. Because the dwarf wedgemussel is a listed federally endangered species, and has been recently rediscovered in this Commonwealth, the PA F& BC has added it to Pennsylvania's list of endangered species as set forth in the Fish and Boat Code. A species on this state list is afforded additional protection under Chapter 75.

ANALYSIS OF IMPACT – Chapter 75 Regulatory Changes

The dwarf wedgemussel, is a federally endangered species, and several surveys have found it existing in the Delaware River Basin. As defined by Section 102 of the Pennsylvania Fish and Boat Code, a federal endangered specie is also a state endangered species. As a result, the PA F & BC has formerly added the dwarf wedgemussel to Chapter 75, the Commonwealth's list of endangered fish, reptiles, amphibians and aquatic organisms that require state protection.

Chapter 75 was added to Pennsylvania's CZM Program policies in 1993 via RPC VI. Since 1993, the PA F & BC have added new species to Chapter 75. Subsequently, CZM revised its Program to manage these added species through RPC VII (in 1996), RPC VII (in 1997), and RPC X (in 2000). These Program changes have been approved by OCRM.

Chapter 75 is currently contained in Policy IV-1 and IV-1.1: Wetlands found on page II-2-16 of CZM's FEIS. These policies preserve and protect Pennsylvania's native fish including habitat, which may be home to Pennsylvania's Species of Special Concern listed in Chapter 75.

The CZM Program has been assisting the PA F & BC in their protection of Species of Special Concern listed in Chapter 75 since 1993. By incorporating the Chapter 75 regulatory change into the Pennsylvania CZM Program, the Program will be able to provide additional protection to the recently listed dwarf wedgemussel during CZM's federal and state consistency reviews. This program change falls within the existing state authority above (Chapter 75). The regulatory change merely adds the dwarf wedgemussel specie to an authority currently in the CZM Program.

SUMMARY AND CONCLUSION – Chapter 75 Regulatory Changes

The dwarf wedgemussel, a federally endangered species has recently been rediscovered in this Commonwealth, and specifically in the Upper Delaware River Basin. As a result, the PA F & BC has added the dwarf wedgemussel to Chapter 75, the Commonwealth's list of endangered fish, reptiles, amphibians and aquatic organisms that require protection. Pennsylvania's Delaware Estuary Coastal Zone is located in the Lower Delaware River Basin. It is logical to assume that colonies of dwarf wedgemussel could eventually colonize downriver, in areas of Pennsylvania's Delaware Estuary Coastal Zone.

The CZM Program has been assisting in the PA F & BC in its protection of Species of Special Concern since 1993. CZM has also added other protected species to the Program via previous RPCs. Incorporation of this Chapter 75 regulatory change into the Pennsylvania CZM Program will provide CZM with the authority to assist in the protection of this federal and state protected species during its federal and state consistency reviews.

OCRM's Program Change Guidance (July 1996) states that a substantial change is a high threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as

whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources. Although the addition of the dwarf wedgemussel is a change in enforceable policies related to **Uses Subject to Management**, and CZM Program **Authorities** currently in the Program, the change is not substantial enough to be considered an amendment. As such, CZM is submitting this as a routine program change. This program change is in keeping with the Pennsylvania CZM Program's, and the national CZM objectives and policies.

58 PA CODE CHAPTERS 71 and 73 (Amended September 2003)

The Pennsylvania Fish & Boat Commission's (PA F & BC) regulations at Title 58 Chapter 71 regulates the propagation and introduction of fish into Commonwealth waters, while Title 58 Chapter 73 regulates the possession and transportation of live fish into this Commonwealth. Both Chapters contain an identical list (§§ 71.6(d) and 73.3(d), respectively) of species of fish deemed by the PA F & BC to be nuisance species. These identical lists contain only one species of fish, the Snakehead (all species), which has been found in an inland lake in the Delaware Estuary Coastal Zone.

The September 2003 regulatory changes will add the following fish and mussels to these two lists:

- Black carp (*Mylopharyngodon piceus*),
- Bighead carp (*Hypophtalmichtys nobilis*),
- Silver carp (*Hypophtalmichtys molitrix*),
- Zebra mussel (*Dreissena polymorpha*),
- Quagga mussel (*Dreissena bugensis*),
- Round goby (*Neogobius melanostomus*),
- Tube-nose goby (*Proterorhinus marmoratus*),
- European rudd (*Scardinius erythrophthalmus*).

In addition, while it is illegal under Commonwealth laws and regulations for anyone to release live black carp, silver carp, bighead carp, zebra mussels, quagga mussels or round gobies into Commonwealth waters, it is still legal to possess, transport, offer for sale or purchase these nuisance species. Accordingly, the PA F & BC regulatory revisions at §§ 71.6(d) and 73.3(d) will make it unlawful to possess, introduce, import and transport these species in this Commonwealth.

Black carp (*Mylopharyngodon piceus*), bighead carp (*Hypophtalmichtys nobilis*) and silver carp (*Hypophtalmichtys molitrix*) are native to Asia. They are not native to this Commonwealth. These species were originally imported by fish farmers into waters of several states in the lower Mississippi River Valley. Black carp are

mollusk eaters imported to control snails in culture ponds. Silver and bighead carp are plankton feeders, which have been cultured for sale as food fish in specialty food markets. Because black carp consume mollusks, there is concern that if released they would prey on native mussel populations. In July 2002, the United States Fish and Wildlife Service issued a notice of proposed rulemaking to list the black carp as an injurious fish species. Silver and bighead carp are capable of attaining weights of 60 and 90 pounds, respectively.

Because they forage on phytoplankton and zooplankton, there is concern that food sources for forage fishes will be reduced and aquatic food chains upset. Bighead carp have escaped to the wild and have made their way towards the Great Lakes from the Upper Mississippi River system. Last year, a bighead carp was found in Lake Erie and several were found in other Great Lakes. It has recently been determined that this species can thrive and reproduce in a wider range of water temperatures and habitats than previously believed.

Several years ago, the PA F & BC's Bureaus of Fisheries and Law Enforcement became aware that a fish dealer from Arkansas was transporting Asian carp through this Commonwealth to live fish markets in New York. The investigation revealed that the trucks were stopping at a stream in southcentral Pennsylvania to discharge tank water and add fresh water from the stream. The fish dealer and the hauler were notified that these activities were not lawful. This example emphasizes how easily injurious nonnative species could be released into Commonwealth waters.

The zebra mussel (*Dreissena polymorpha*) and the quagga mussel (*Dreissena bugensis*) are well known non-native species introduced to the Great Lakes and Lake Erie from ballast water discharges in the late 1980s. The zebra mussel also has infiltrated this Commonwealth by means of the Ohio River in southwest Pennsylvania. Recently, it was found in several tributaries to the upper Allegheny River and in the Susquehanna River. Transfer of this species to inland waters is usually unintentional and likely the result of attachment to recreational boats. However, there is evidence that some persons may have intentionally transported zebra mussels into flooded quarries in southeastern Pennsylvania where SCUBA diving occurs, to aid in clearing up the water. These species out compete and smother native mussels, foul water intakes and dramatically alter the water quality of areas they invade.

The round goby (*Neogobius melanostomus*) is a more recent invader to Lake Erie and the other Great Lakes. Population densities of this species have dramatically increased in Lake Erie reaching densities in some areas of over 3,000 gobies/acre. Currently, there is no evidence to suggest that round gobies are present in any inland Commonwealth waters. However, they have caused considerable changes to the predator-prey relationships in Lake Erie. This species has demonstrated that it can out compete and displace native darters and sculpins. They can adapt to a variety of habitats and have the ability to spawn up to six times per year. This species represents a serious threat to native fish populations in inland waters. Additionally, another goby species, the tubenose goby (*Proterorhinus marmoratus*), has recently appeared in Lake Erie.

The Mississippi Interstate Cooperative Resource Association, of which the Commonwealth is a member, has publicly stated its opposition to the use or release of Asian carp, particularly the black carp. At its March 2003 meeting, members of the Lake Erie Committee of the Great Lakes Fishery Commission agreed that member states should move forward with regulations that specifically prohibit the possession, transport and introduction of the aforementioned Asian carp species. On February 7, 2003, member state Michigan enacted new regulations that prohibit the possession and transportation of the aforementioned species plus several additional species.

The European rudd, a member of the minnow family, is native to the waters of western Europe and Asia. They have been reported to occur in at least 20 states. Documented sightings in this Commonwealth previously have been limited to a report of a single rudd captured in Lake Winola, Wyoming County, in 1991. However, several rudd were captured on May 22, 2003, in the waters of Presque Isle Bay off of Lake Erie by a team of biologists from the Department of Environmental Protection and the Erie County Department of Health. A Commission biologist verified the identification. This find confirms that this species does indeed inhabit Commonwealth waters of Lake Erie.

Rudd are identified by the deep red coloration of their fins. In addition, the iris around the pupil of their eyes is red. Large, golden-colored scales cover their body. Rudd have reportedly reached lengths of up to 17 inches, but the average rudd is unlikely to exceed 12--14 inches. Rudd are similar in appearance to the commonly occurring golden shiner (*Notemigonus chrysoleucas*), which is found throughout this Commonwealth and is a staple of bait shops. Golden shiners, however, are native to this Commonwealth. The golden shiner can reach lengths similar to the rudd and has lighter golden colored scales. However, golden shiners lack the rudd's red iris, red fins and scales on the keel or belly area between the pelvic fins and anus.

Research has shown that rudd can hybridize with golden shiners. It is unknown what impact, if any, the hybridizations may have on native populations. Rudd and golden shiners are both known to consume aquatic invertebrates. Thus, rudd may also compete with native species for food resources. Without specific research to rely on, it is difficult to speculate on the impacts that rudd may have on native species in this Commonwealth. It is believed that most introductions of rudd in the United States resulted from unused or released bait.

ANALYSIS OF IMPACT – Chapters 71 and 73 Regulatory Changes

Some invasive species in the Lake Erie and Delaware Estuary Coastal Zones, and elsewhere in the Commonwealth have caused considerable changes to the predator-prey relationships, have fouled water intakes, and have dramatically altered the water quality of areas they invade. Several interstate fishery commissions, of which the PA F & BC is a member, have agreed that more than just prohibiting the release of these species must be done. These commissions have identified prolific species and have agreed to prohibit the transport, sale and purchase of these species these within their states. In fulfillment of this agreement, the PA F & BC has revised Title 58 §§ 71.6(d) and 73.3(d) by adding

eight new aquatic species, and making it illegal to possess, transport, or offer for sale or purchase these species.

These eight aquatic species have been found in both the Delaware Estuary and Lake Erie coastal zones. In an effort to assist the Commonwealth in the regulation of nuisance species, the CZM Program is incorporating these regulatory changes to its Ocean Resources Policy 11. Ocean Resources Policy 11 was formally added to the CZM Program in 2002, through RPC XI. Chapters 71 and 73 were also added as part of the Policy's Enforceable Authorities. CZM's Ocean Resources Policy is found in Chapter 2 – Coastal Policy Framework of CZM's FEIS. Chapter 2 begins on page II-2-1. This policy commits the Pennsylvania CZM Program to actively assist other Commonwealth agencies in preventing aquatic nuisance species from being introduced into, spread within, or transferred out of the Commonwealth. For several years the CZM Program has assisted the PA F & BC and other state agencies in their efforts to prevent the spread of aquatic nuisance species in Pennsylvania's coastal zones and elsewhere. By incorporating these regulatory changes into Pennsylvania's CZM Program, the Program will be able to provide additional protection to this Commonwealth and its coastal zones, during the Program's federal and state consistency reviews. Not incorporating these regulatory changes into the Ocean Resources Policy's authorities will not weaken the approved Program. However, since many of these nine species listed in Title 58 §§ 71.6(d) and 73.3(d) are already found within coastal waters, it is logical to strengthen the Program by incorporating these regulatory changes into the Program's Ocean Resources Policy.

SUMMARY AND CONCLUSION – Chapters 71 and 73 Regulatory Changes

Prior to September 2003 the regulations at Title 58 §§ 71.6(d) and 73.3(d) made it illegal to release all species of Snakehead fish into Commonwealth waters. However, it was still legal to possess, transport, or offer for sale or purchase this species. In some instances, the possession, importation, transportation and sale of these species led to intentional or accidental release into Commonwealth waters. The September 2003 regulatory changes address this issue, and further emphasizes that it is now unlawful to possess, introduce, import and transport this species of fish in this Commonwealth. In addition, as fulfillment of an agreement made with several interstate fishery commissions, the PA F & BC has added eight new aquatic species of fish and mussels deemed by these commissions to be nuisance species to §§ 71.6(d) and 73.3(d).

Several state agencies including the CZM Program are in a position, and have the necessary policies and regulations, to protect this Commonwealth from harm caused by the spread of invasive species. Incorporation of the Chapter 71 and 73 regulatory changes will strengthen the CZM Program and enable it to provide additional protection to coastal and other Commonwealth waters from the spreading of aquatic nuisance species during the Program's federal and state consistency reviews.

OCRM's Program Change Guidance (July 1996) states that a substantial change is a high-threshold change based on case-by-case determination. Such a determination is made by reviewing indicators of substantial change, such as

whether new or revised enforceable policies address coastal uses or resources not previously managed, or major changes in the way a state coastal program manages coastal uses or resources

The amended regulations are currently in use throughout the Commonwealth. In addition, Chapters 71 and 73 are also authorities currently networked in Pennsylvania's CZM Program. Incorporating the revised regulations will strengthen the Program. These changes are minor and in keeping with the Pennsylvania CZM Program's and the national CZM objectives and policies.

The addition of these regulatory revisions is a minor change to enforceable policies related to **Uses Subject to Management** and CZM Program's **Authorities**. The addition of these regulatory revisions to authorities currently networked into the CZM Program does not reach a threshold to be considered as substantial. Based on the previous discussion and impact analysis of the amendments to Chapters 71 and 73, we have determined that these changes to the Pennsylvania CZM Program are routine program changes.

2003 REGULATORY CHANGES REQUIRED **UNDER THE FEDERAL CLEAN AIR AND** **CLEAN WATER ACTS**

There were no changes in calendar year 2003

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For more information, visit CZM's Web site at:
<http://www.dep.state.pa.us/river/czmp.htm>
or visit DEP's Web site at www.depweb.state.pa.us,
Keyword: "Coastal Zone"