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Francis X. Cameron

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NEPA AND THE CZMA: THE ENVIRONMENTAL IMPACT STATEMENT AND SECTION 306 GUIDELINES

FRANCIS X. CAMERON*

Widespread public concern about the environment during the late 1960's led to the enactment of several important federal laws dealing with environmental issues, including the National Environmental Policy Act of 1969 (NEPA) and the Coastal Zone Management Act of 1972 (CZMA). Relationships among the various statutes are illustrated by the need to apply NEPA federal decisionmaking requirements to the state coastal zone management programs given a federal imprimatur and federal financial aid by the CZMA. The National Oceanic and Atmospheric Administration (NOAA) recently decided to delay the consideration of environmental impact directed by NEPA until the approval stage for individual state plans, rather than complying with NEPA during the development of general guidelines for approving state programs. Appraised in light of the standards developed under NEPA, giving due consideration to the fundamental purposes of that Act, NOAA's deferral of the environmental issues was appropriate. NOAA's determination, however, calls for consideration of the practicality of complying with NEPA requirements when individual states submit their programs for approval.

NEPA APPLIED TO THE CZMA

NEPA, which has been termed “the most important and far reaching environmental and conservation measure ever enacted by the Congress,” requires federal agencies to prepare environmental impact statements for proposed actions, examining reasonable alternatives and disclosing all information relevant to the decision-making process. These requirements were intended to foster more rational decisionmaking concerning the national goal of environ-

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*B.A., J.D., University of Pittsburgh; M.M.A., University of Rhode Island. Assistant Professor of Marine Affairs, University of Rhode Island.

mental protection through the use of improved planning, development of more comprehensive information, increased public participation, and consultation.6

While NEPA generally has been applied only to individual, site-specific projects such as powerplant or dam construction,7 the CZMA is designed primarily to promote the development of a decisionmaking and management process. Its central concerns are “the increasing pressures on the coastal zone as a result of man’s various and often competing uses of coastal resources; the harmful environmental impacts of past unmanaged uses of the coastal zone; the urgent need to protect natural systems in the coastal zone, as well as its developmental potentials; and the need to give complete consideration to ecological, cultural, historic, and aesthetic values as well as to needs for economic development.”8 Instead of imposing substantive federal controls on specific land and water uses, the Act seeks to establish a framework and institutions for rational decision-making. This process approach to coastal zone management focuses upon the state level, reflecting the Act’s fundamental intent to shift control over coastal development from local to state governments.

Two incentives are provided to encourage state participation in the coastal zone program. The first is financial, the federal government paying up to two-thirds of the cost of a state management program. The CZMA provides for “management program development grants” in section 3059 to assist the state to develop its own


9. Section 305 provides:

(a) The Secretary [of Commerce] is authorized to make annual grants to any coastal state for the purpose of assisting in the development of a management program for the land and water resources of its coastal zone.

(b) Such management program shall include:

(1) an identification of the boundaries of the coastal zone subject to the management program;

(2) a definition of what shall constitute permissible land and water
coastal zone management program. Once a state has developed its program and received approval from the Secretary of Commerce, it becomes eligible for "administrative grants" authorized by section 306\textsuperscript{11} to implement its program.\textsuperscript{12} The second incentive is a provision for state control over federal activities within the state's coastal zone, section 307(c)\textsuperscript{13} providing that federal agency activities must be consistent, to the maximum extent practicable, with the state coastal management program.

uses within the coastal zone which have a direct and significant impact on the coastal waters;
(3) an inventory and designation of areas of particular concern within the coastal zone;
(4) an identification of the means by which the state proposes to exert control over the land and water uses referred to in paragraph (2) of this subsection, including a listing of relevant constitutional provisions, legislative enactments, regulations, and judicial decisions;
(5) broad guidelines on priority of uses in particular areas, including specifically those uses of lowest priority;
(6) a description of the organizational structure proposed to implement the program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

10. Id. § 1454(d).
11. Id. § 1455(a) provides: "The Secretary [of Commerce] is authorized to make annual grants to any coastal state for not more than 66 $2/3$ per centum of the costs of administering the state's management program, if he approves such program in accordance with subsection (c) of this section. Federal funds received from other sources shall not be used to pay the state's share of costs." Allocation of grants is provided for in subsection (b), and subsections (c) through (e) specify the requirements that must be met before the Secretary may approve any state's plan. Id. §§ 1455(b)-(e).
13. 16 U.S.C. § 1456(c) (Supp. II, 1972) provides:
(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.
(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.
(3) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program.
To qualify for section 306 implementation grants and to benefit from the section 307 "federal consistency" provision, a state must have an approved coastal zone management program which complies with the section 306 guidelines\(^\text{14}\) established by the NOAA Office of Coastal Zone Management. The section 306 guidelines require that each state designate the boundaries of its coastal zones,\(^\text{15}\) the permissible land and water uses within the coastal zones that have a direct and significant effect on coastal waters,\(^\text{16}\) the geographic areas of particular concern,\(^\text{17}\) and priority uses within these geographic areas.\(^\text{18}\) They also require the state to take into account the national interest in the siting of facilities,\(^\text{19}\) to ensure that local governments cannot exclude arbitrarily uses of regional or statewide concern,\(^\text{20}\) and to develop the organizational structures for implementation of the management program.\(^\text{21}\)

Promulgation of the section 306 guidelines necessitated consideration of the applicability of NEPA to the CZMA. Because NEPA seeks to incorporate environmental considerations into the planning process,\(^\text{22}\) and because strict compliance with NEPA is required to


\(^{15}\) Id. at 1686.

\(^{16}\) Id. at 1686-87.

\(^{17}\) Id. at 1687. Areas of particular concern under this section include, at a minimum:

1. Areas of unique, scarce, fragile or vulnerable natural habitat, physical feature, historical significance, cultural value and scenic importance;

2. Areas of high natural productivity or essential habitat for living resources, including fish, wildlife and the various trophic levels in the food web critical to their well-being;

3. Areas of substantial recreational value and/or opportunity;

4. Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;

5. Areas of unique geologic or topographic significance to industrial or commercial development;

6. Areas of urban concentration where shoreline utilization and water uses are highly competitive;

7. Areas of significant hazard if developed, due to storms, slides, floods, erosion, settlement, etc.; and

8. Areas needed to protect, maintain or replenish coastal lands or resources, including coastal flood plains, aquifer recharge areas, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

\(^{18}\) Id.

\(^{19}\) Id. at 1687-88.

\(^{20}\) Id. at 1688.

\(^{21}\) Id. at 1689.

the "fullest extent possible," environmental considerations must be taken into account from the beginning of the federal decision-making process. This requirement has been reflected in several court cases and in the Council on Environmental Quality (CEQ) guidelines for preparation of impact statements. Early consideration of environmental factors also is emphasized in the CEQ guidelines regarding the use of program or generic impact statements and impact statements for new legislation, federal policy formulation, major federal programs, and the preparation of other guidelines to assure evaluation of environmental issues that otherwise may be foreclosed by the time specific projects are planned. Applying these policies to the CZMA approval procedure requires determining whether a programmatic impact statement should be prepared when developing section 306 federal approval guidelines, rather than delaying preparation until an individual state submits an application for approval of its coastal zone management program. NOAA officials, in consultation with the CEQ, have decided not to prepare a programmatic environmental impact statement.

23. Id. § 4332. In Calvert Cliffs' Coordinating Comm., Inc. v. AEC, 449 F.2d 1109, 1114 (D.C. Cir. 1971), the court, recognizing this statutory mandate, held that AEC rules governing licensing proceedings failed to comply with the procedural directions of NEPA, and, accordingly, remanded the license determination.


26. Id. § 1500.1(a).

27. Id. § 1500.5.

28. The decision was a reversal of NOAA's previous intention:

The initial decision to prepare a programmatic environmental impact statement was reached after due consideration. However, upon still further review, and after additional discussion with other interested Federal, State, and private parties, NOAA has now determined that substantive information upon which such an environmental impact statement would be based will not be available until States have submitted their proposed management programs for Federal review and, therefore, that the preparation of such a statement at this time
deferring application of NEPA's requirements to the approval decision for individual state coastal zone management programs. This decision not to prepare a programmatic impact statement will not subvert the intent and objectives of NEPA; rather, the determination enhances the complementary nature of NEPA and the CZMA, adding an element of substantive federal review of state decisions that would not exist if the NEPA requirements were not imposed on the individual state plans.

**The Programmatic Impact Statement**

Section 102(2)(C) of NEPA requires that, for each "major Federal [action] significantly affecting the quality of the human environment," an environmental impact statement shall be prepared.\(^{29}\) Judicial decisions interpreting this provision indicate that the "courts have broadly construed the[se] key phrases . . . to include the maximum number of federal actions,"\(^{30}\) and "have tended towards the widest possible scope of application."\(^{31}\) Clearly, NEPA is applicable to federal activities under the CZMA since, although NOAA's actions are intended to benefit the environment, implementation of the legislation may have adverse environmental effects, and NEPA applies to actions "affecting" the environment, whether harmful or beneficial.\(^{32}\) NOAA thus must prepare an environmental impact statement on the coastal zone management pro-

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\(^{31}\) F. ANDERSON, supra note 5, at 279.

\(^{32}\) 40 C.F.R. § 1500.6(b) (1974).
program; the significant questions concern the timing and form of this statement.

Two timing alternatives were available to NOAA. A program statement could be prepared in connection with the writing of the section 306 program approval regulations, or an individual environmental impact statement could be developed for each state when it seeks approval of its management program prior to the expenditure of any federal funds. NOAA opted initially for a program statement on the section 306 guidelines. On August 22, 1974, it published notice in the Federal Register stating that the section 306 approval regulations and their subsequent implementation "have the potential for causing a significant impact on the environment," and that an environmental impact statement should be prepared at this stage. The purpose of this impact statement would be to "present for review the major options, alternatives, and policy issues considered by this Office in the development of the proposed approval criteria, related program components, and the overall program." NOAA reasoned that, because the federal criteria for approving state management programs would provide the standards within which the states would develop their coastal zone programs, the time of promulgation of these guidelines would be an appropriate stage at which to prepare an impact statement. Additionally, it was felt that a programmatic impact statement possibly could supplant the need for further impact statements when state programs were reviewed for federal approval. But, having determined that the "substantive information upon which [the programmatic] impact statement would be based will not be available until States have submitted their proposed management programs for Federal review and, therefore, that the preparation of such a statement at this time would be premature and would serve no useful purpose," NOAA reversed its initial decision, requiring instead an individual impact statement for each state program when it is submitted for federal approval. Bolstering this reevaluation was the realization that, even if a programmatic environmental impact statement was

33. See note 28 supra & accompanying text.
35. Id.
37. Id.
38. Id.
prepared, NEPA would require further impact statements for each state program. 39

Early implementation of NEPA's requirements by use of a program statement is related directly to the proper scope of an impact statement. Early preparation of the statement promotes the critical goal of NEPA, consideration of the environment in project planning. A General Accounting Office (GAO) report noted that one major defect in agency compliance with NEPA was the postponement of environmental considerations until too late in the planning process. 40 The environmental impact statement too often was appended after a decision had been reached, after the commitment of time, money, and other resources to the completion of a contemplated project. 41 The CEQ has attempted to remedy this problem by directing federal agencies to prepare the impact statement early to assure its intended use as a decisionmaking tool. 42 Moreover, there is evi-

39. After consultation with the CEQ, and pursuant to its recommendation, this requirement of NEPA, which led to the decision not to write a programmatic statement, became clear. The CEQ is authorized by an executive order to implement NEPA by establishing guidelines for the preparation of impact statements. Exec. Order No. 11,514, § 3(b), 3 C.F.R. 722 (Supp. 1974), 42 U.S.C. § 4321 (1970). From both a policy and a legal viewpoint, therefore, the CEQ determination should carry substantial weight in any judicial challenge to the NOAA decision not to prepare a programmatic impact statement. "In view of the language creating CEQ and the subsequent Executive Order, it would, at the least, seem reasonable to conclude that vis-a-vis other agencies CEQ is the agency which could properly be vested with the power to determine the extent of NEPA's applicability." Recent Development, Ely v. Velde: The Application of Federal Environmental Policy to Revenue Sharing Programs, 1972 Duke L.J. 657, 677. See also Morningside-Lenox Park Ass'n v. Volpe, 334 F. Supp. 132 (N.D. Ga. 1971); National Helium Corp. v. Morton, 326 F. Supp. 161 (D. Kan.), aff'd, 485 F.2d 650 (10th Cir. 1971); Environmental Defense Fund, Inc. v. Corps of Eng'rs, 325 F. Supp. 728 (E.D. Ark. 1971).


41. Although various federal agencies have been reluctant to provide environmental impact statements early in the decisional process, the courts rather consistently have required that the statements be prepared and evaluated sufficiently early to avoid excessive expenditures on projects that may require changes once environmental factors are considered. See, e.g., Arlington Coalition on Transp. v. Volpe, 458 F.2d 1323, 1332-34 (4th Cir. 1972) (injunction issued to halt work on highway despite Secretary of Transportation's agreement to file environmental impact statement while work on the project continued); Lathan v. Volpe, 455 F.2d 1111, 1121 (9th Cir. 1971) (compliance with NEPA required prior to final approval of highway project); Northside Tenants' Rights Coalition v. Volpe, 346 F. Supp. 244, 249 (E.D. Wis. 1972) (argument that highway construction should be allowed to continue pending filing of NEPA statement rejected because continued construction might increase costs to the point that the cost of corrective action would become prohibitive).

42. The CEQ guidelines recognize that agency decisions must take into account environ-
evidence of congressional intent that NEPA apply not only to actual construction, but also to "project proposals, proposals for new legislation, regulations, policy statements, or expansion or revision of ongoing programs..." Agencies thus must prepare broad program statements to cover the early stages of decisionmaking. The requirement of strict compliance with NEPA also has led courts to hold that the environmental impact statement must be undertaken as early as possible: "at every important stage in the decisionmaking process concerning a particular action—at every stage where an overall balancing of environmental and nonenvironmental factors is appropriate and where alterations might be made in the proposed action to minimize environmental costs." The court in *Citizens for Clean Air v. Corps of Engineers* emphasized more clearly the need for early compliance:

> Where several permits or approvals are required for a project, NEPA requires a § 102 review at the point where action is "distinctive and comprehensive." Once a project has reached a coherent stage of development it requires an environmental impact study. The comprehensive review contemplated by the Act can only be efficacious if undertaken as early as possible.

More recently, the court in *Scientists' Institute for Public Information, Inc. v. AEC* required the Atomic Energy Commission to prepare a statement on its research and development program for the Liquid Metal Fast Breeder Reactor. Because the entire program

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44. 40 C.F.R. § 1500.6(d)(1) (1974).
45. Calvert Cliffs' Coordinating Comm., Inc. v. AEC, 449 F.2d 1109, 1118 (D.C. Cir. 1971).
47. *Id.* at 708. See also cases cited note 24 supra. For a more complete exposition of the judicial decisions on the timing of an impact statement, see F. Anderson, *supra* note 5, at 179-86. An excellent analysis of the environmental impact statement and policy-level decisionmaking may be found in Comment, *The National Environmental Policy Act Applied to Policy-Level Decisionmaking*, 3 Ecology L.Q. 799 (1973).
would entail large expenditures of money and would have a great influence on the future generation of electric power, the court found that it was essential to prepare an impact statement early in the process. Regarding the time of the statement, the court directed: "Statements must be written late enough in the development process to contain meaningful information, but they must be written early enough so that whatever information is contained can practically serve as an input into the decision making process." Early statements, therefore, are necessary to prevent foreclosure of basic program options; late preparation does not fulfill the NEPA goals of aiding agency decisionmaking and fully informing the public of the environmental consequences of a proposed action.

But do these policy reasons demand a program statement on the CZMA section 306 guidelines? Because development and implementation of individual state coastal zone programs must be structured within these guidelines, the guideline-formulation stage might appear to be a logical time to apply the NEPA requirements. To require a statement at this early stage, however, ignores not only the different physical, socio-economic, legal, and administrative situations in each state that will determine how its program develops, but also the important environmental purposes of the CZMA as an effort to encourage comprehensive planning in the coastal areas of the United States.

The timing of an impact statement must be considered in light of the intent of NEPA to assure decisionmakers and the public of adequate information about the potential environmental effects of a contemplated project. Frederick R. Anderson, Executive Director of the Environmental Law Institute, has stated that a "statement's adequacy, in the end, is measured by its functional usefulness in decisionmaking," and that the "important question with respect to timing . . . is not when a particular action should be covered, but whether that action's antecedents would more usefully be covered." Unique factual contexts will determine how each state develops its coastal zone management program. For example, because

49. Id. at 1094. The court concluded that the agency, because of its expertise should have the initial and primary responsibility for determining the appropriate point at which a technology development program would require an impact statement. Id.


51. Id. at 327.
the boundaries of the inland coastal zone will differ from state to state depending on physical, demographic, and jurisdictional factors, NOAA cannot evaluate key environmental issues effectively until the state programs are submitted for approval. Lack of specific information also would prevent NOAA from assessing the impact of the entire national coastal zone management program at the section 306 guideline stage.

A program statement, without the substantive state information, would be "too general to prove useful,"52 having no "functional usefulness" to the NOAA decisionmakers. Requiring an impact statement before specific information was available would be a meaningless exercise, what the Court of Appeals for the District of Columbia Circuit has characterized as a "crystal ball" inquiry.53 Besides the likelihood that the time and money committed to draft a programmatic impact statement would not result in any of the substantial benefits that NEPA was designed to produce,54 the general nature of such a program statement could provide an opportunity for opponents of the CZMA to delay implementation of the entire coastal zone management program by time-consuming litigation.55

52. Memorandum from Timothy Atkeson, General Counsel, CEQ, to Agency NEPA Liaison re: "Recommendations for Improving Agency NEPA Procedures," (May 16, 1972), in Hearings on the Administration of the National Environmental Policy Act Before the Subcomm. on Fisheries and Wildlife Conservation of the House Comm. on Merchant Marine and Fisheries, 92d Cong., 2d Sess., ser. 92-24, at 390 (1972). Atkeson adds, however, that "an excessively narrow definition is likely to result in impact statements that ignore the cumulative effects of a number of individually small actions, or that come so late in the process that basic program decisions are no longer open for review." Id. at 390-91.


54. Although "[c]onsiderations of administrative difficulty, delay or economic cost will not suffice to strip [NEPA section 102] of its fundamental importance," Calvert Cliffs' Coordinating Comm., Inc. v. AEC, 449 F.2d 1109, 1115 (D.C. Cir. 1971), the fact that a programmatic impact statement would not have much value for agency decisionmaking would make cost, time, and delay proper and important considerations in deciding not to prepare a programmatic statement. As one court has indicated, section 102(2) of NEPA, setting forth the procedural requirements of the Act, is properly interpreted in the framework of reasonableness. Environmental Defense Fund, Inc. v. Corps. of Eng'rs, 470 F.2d 289, 297 (8th Cir. 1972). See Note, Threshold Determinations Under Section 102(C) of NEPA: The Case for "Reasonableness" as a Standard for Judicial Review, 16 WM. & MARY L. REV. 107 (1974).

55. As Professor Anderson has noted, however, the standing requirement under NEPA has been refined in two ways to prevent dilatory tactics on the part of corporate litigants. First, the direct-injury requirement is satisfied by an allegation of an injury to plaintiff's right to know and participate in the threshold decision, thus avoiding delay that could arise from a challenge to the standing of environmentalists to seek compliance with NEPA. Secondly,
Once the nature and purpose of the CZMA are considered, the failure to prepare a program statement for the section 306 guidelines does not appear inconsistent with the purposes of NEPA. The need for the CZMA is expressed in section 302(c) of that Act:

The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

Section 302(e) emphasizes that "important ecological, cultural, historic and aesthetic values in the coastal zone which are essential to the well being of all citizens are being irretrievably damaged or lost." The basic conservation purpose of the CZMA also is stated clearly in the legislative history. House and Senate reports each stressed the danger to coastal zone resources from constantly increasing development pressures, the latter report noting "the failure of the State and local governments to deal adequately with the pressures for economic development within the coastal zone at the expense of other values."

Thus, the Act encourages "planning and sound decisionmaking as a means to preserve and protect the natural biological and physical resources of the coastal zone." The basic environmental protection
focus of the CZMA has been incorporated into the section 306 guidelines:

Management programs will be evaluated in light of the Congressional findings and policies contained in Sections 302 and 303 of the Act. These sections make it clear that Congress, in enacting the legislation, was concerned about the environmental degradation, damage to natural and scenic areas, loss of living marine resources and wildlife, decreasing open space for public use and shoreline erosion being brought about by population growth and economic development. The Act thus has a strong environmental thrust stressing the "urgent need to protect and give high priority to natural systems in the coastal zone."\(^6\)

In *Natural Resources Defense Council, Inc. v. Morton*\(^6\) the Court of Appeals for the District of Columbia Circuit outlined the congressional purpose underlying NEPA's enactment:

What NEPA infused into the decision-making process in 1969 was a directive as to environmental impact statements that was meant to implement the Congressional objectives of Government coordination, a comprehensive approach to environmental management, and a determination to face problems of pollution "while they are still of manageable proportions and while alternative solutions are still available" rather than persist in environmental decision-making wherein "policy is established by default and inaction" and environmental decisions "continue to be made in small but steady increments" that perpetuate the mistakes of the past without being dealt with until "they reach crisis proportions."\(^6\)

Because the state coastal zone management programs will be evaluated in light of the congressional goal, protection of the natural systems of the coastal zone through sound decisionmaking and com-

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62. NOAA Coastal Zone Management Approval Regulations, 15 C.F.R. § 923.4, Comment (1975). The Natural Resources Defense Council, however, has claimed that these guidelines fail to implement the conservation purpose of the Act by adopting "a neutral land and water use position in which the federal role will be largely to insure that states have employed reasonable procedures in reaching specific use decisions." Comment of the NRDC, Inc. on NOAA's Proposed Regulations on Coastal Zone Management Program Grant Approval 2, Oct. 24, 1974.

63. 458 F.2d 827 (D.C. Cir. 1972).

64. *Id.* at 836 (citation omitted).
prehensive planning, the NEPA objective of a "comprehensive approach to environmental management" will be reflected in the section 306 guidelines. The state programs also will be evaluated on the basis of how they address the issue of "interagency and intergovernmental cooperation, coordination and institutional arrangements," thereby reflecting the NEPA objective of "government coordination." The emphasis of the CZMA and the guidelines on the development of sound state decisionmaking and planning procedures to achieve natural resource conservation and management will ensure that the state policies for coastal resources are not "established by default and inaction." Indeed, this assurance is the primary purpose of the CZMA. Additionally, the period of comment on the section 306 criteria afforded an opportunity for public participation in the decisionmaking process, as well as an opportunity to consider alternatives to the proposed criteria.

The combination of the lack of specific substantive information with which to evaluate environmental considerations, the CZMA's comprehensive environmental management purpose, and the process-oriented nature of the CZMA eliminates the need for a programmatic impact statement for the section 306 guidelines. It is extremely important, however, that individual state coastal zone programs be subjected to the impact statement evaluation process, and NOAA must ensure the effectiveness of this process. A brief review of some aspects of individual state impact statements will assist the effort to make them the useful tools contemplated by NEPA.

THE STATE ENVIRONMENTAL IMPACT STATEMENT

The section 306 guidelines require that an environmental impact statement be prepared and circulated on each individual state's application. By having NOAA, a federal agency, prepare the statements from information submitted by the individual states, it is

66. A total of 32 states, agencies, organizations, and individuals responded to the opportunity for commenting on the proposed guidelines, with 23 of them recommending changes. For the nature of the seven alterations adopted pursuant to these suggestions, see 40 Fed. Reg. 1683 (1975).
67. "Process" here refers to development of state planning, decisionmaking, and management structures for the coastal zone.
possible to avoid the controversy over the extent to which responsibility for preparation of an impact statement may be delegated to a nonfederal party. 69 Much of the data generated in developing a state's program also can be used to draft the impact statement. State information gathering thus can serve a dual purpose, while NOAA retains responsibility for full evaluation of the information submitted and for the objectivity and adequacy of the impact statement. 70

Environmental assessment information will be submitted and reviewed with the state management program application. 71 NOAA's Office of Coastal Zone Management presently is developing a methodology to evaluate this information and to guide the states regarding the form in which the data should be submitted. To date, no state has received final approval of a coastal management program under the Coastal Zone Management Act. The precise form for submitting environmental assessment information therefore remains unclear, but the informational format will depend in part upon the type of program undertaken by the state: some state programs will be site-specific plans with implementing mechanisms; others will be policy and procedure programs establishing criteria for the use of specific coastal resources; and others could be a combination of these two approaches.

Notwithstanding the different program alternatives, all impact statements must satisfy certain NEPA criteria, 72 the most impor-

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69. Compare Greene County Planning Bd. v. FPC, 455 F.2d 412, 420 (2d Cir. 1972), cert. denied, 409 U.S. 649 (1972) (improper delegation to state power commission), and Conservation Soc'y v. Secretary, 362 F. Supp. 627 (D. Vt. 1973) (improper delegation to state highway commission), with Life of the Land v. Brinegar, 485 F.2d 460, 467-68 (9th Cir. 1973) (statement prepared by private firm in conjunction with FAA valid) and Citizens Environmental Council v. Volpe, 484 F.2d 870 (10th Cir. 1973) (adoption of state highway commission statement by Secretary of Transportation valid).


71. A state's coastal zone management program, submitted for approval by the Secretary of Commerce, will provide the substantive information in the preparation of "separate and individual" environmental impact statements by the Office of Coastal Zone Management, NOAA. 39 Fed. Reg. 42,696 (1974).

72. 42 U. S. C. § 4332(2)(C) provides:
tant of which require identification of the environmental effects of the proposal and its alternatives. To fulfill NEPA's requirements, the state environmental assessment should provide information on the environmental impacts of various segments of the state program, on available alternative plans, and on the environmental impacts of those alternatives. One inevitable problem will concern the proper manner of applying NEPA to what is essentially a policy- and process-oriented, rather than a specific, substantive action. Difficulty also may arise concerning the proper degree of detail to be included in the environmental assessment and impact statement. Some flexibility apparently exists for the preparation of impact statements, and agencies can tailor them to fit the particular types of problems addressed. The CEQ guidelines on the preparation of

(2) all agencies of the Federal Government shall—

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short term uses of man's environment and the maintenance and enhancement of long term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.


74. See Scientists' Institute for Public Information, Inc. v. AEC, 481 F.2d 1079, 1091-92 (D.C. Cir. 1973) ("The issues, format, length and detail of impact statements for actions as diverse as [short highway segments and broad technological development] must of course differ. NEPA is not a paper tiger, but neither is it a straight jacket.") NEPA impact statements, unlike ordinary bureaucratic paperwork, must be prepared individually. Consequently, they vary "from relatively short and simple analyses of the environmental effects of smaller projects to complex multi-volume works for projects of multi-billion-dollar dimensions." Id.

75. The Court of Appeals for the Eighth Circuit supplied a slightly more comprehensive guide for reviewing an impact statement:

The complete impact statement must contain more than a catalog of environmental facts . . . . The agency must also "explicate fully its course of inquiry, its analysis and its reasoning." Thus the complete formal impact statement represents an accessible means for opening up the agency decision-making process and subjecting it to critical evaluation by those outside the agency, including the public.
impact statements also indicate that no precise level of detail is universally required: "The amount of detail provided in [descriptions of proposed actions, alternatives, and effects] should be commensurate with the extent and expected impact of the action and with the amount of information required at the particular level of decisionmaking (planning, feasibility, design, etc.)." 76

To assess the adequacy of a statement to satisfy NEPA’s fundamental informational and decisionmaking objectives, a “rule of reason” will be used. “Congress, we must assume, intended and expected the courts to interpret NEPA in a reasonable manner in order to effectuate its obvious purposes and objectives.” 77 Therefore, the state environmental assessments and the federal impact statements should use the simplest possible method to comply with the impact statement requirements, while still providing sufficient information on the environmental impacts of the action to inform the public fully and to permit NOAA to make an intelligent decision.

The individual impact statement should inventory the state’s coastal zone resources to provide a data base for evaluation of the environmental impacts of proposed actions. An appendix, citing reference material such as published state documents concerning its coastal zone, also should be included. Most of the impact statement, however, should deal with the choices made by the state to select elements of its coastal zone program, the environmental ef-

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Finally the formal impact statement supplies a convenient record for courts to use in reviewing agency decisions on the merits to determine if they are in accord with the substantive policies of NEPA.


77. Environmental Defense Fund, Inc. v. Corps of Eng’rs, 342 F. Supp. 1211, 1217 (E.D. Ark. 1972). The courts have attempted to develop guidelines for the appropriate contents of an environmental impact statement and the amount of detail required, but have reached no consensus. Perhaps the simplest but most effective standard was provided by the Court of Appeals for the Fifth Circuit: “The detail required is that which is sufficient to enable those who did not have a part in its compilation to understand and consider meaningfully the factors involved.” Environmental Defense Fund, Inc. v. Corps of Eng’rs, 492 F.2d 1123, 1136 (5th Cir. 1974). A similar but somewhat narrower view was adopted by the Court of Appeals for the Seventh Circuit: “The detailed statement of the environmental consequences . . . must be sufficiently detailed to allow a responsible executive to arrive at a reasonably accurate decision regarding the environmental benefits and detriments to be expected from program implementation.” Sierra Club v. Froehlke, 486 F.2d 946, 950 (7th Cir. 1973), quoting Environmental Defense Fund, Inc. v. Hardin, 325 F. Supp. 1401, 1403-04 (D.D.C. 1971).
fects of those choices, alternatives to the choices made, the environmental effects of those alternatives, and any additional considerations that influenced the decision, including socio-economic, technical, political, legal, and administrative factors. Key environmental issues will include the following: the choice of the coastal zone boundary; the consideration given to sources of environmental impacts outside the zone; the likelihood that the designation of the boundary will push environmental consequences inland from the zone; the areas chosen as geographic areas of particular concern; the established permissible uses, their priority and environmental effects; the consideration given to possible cumulative effects; the possible resulting irreversible commitments of coastal resources; the management approach selected and the development controls to be used; and the methods chosen for intergovernmental coordination and their environmental effects. Additionally, alternatives to each of these choices must be evaluated in terms of their environmental consequences. Simply put, the environmental impact statement will require assessment of the various choices the state made in developing its program and listing of the alternatives to those choices. This compendium of environmental and non-environmental information will enable NOAA to arrive at a "balanced" decision.

Much of the information generated in the program development process will be relevant to the impact statement requirements; what NEPA adds to this process is a mandate that environmental factors must be articulated and considered in the process of developing the program. By this mandate, NEPA injects an element of substantive federal review into the state coastal zone management programs. Although the CZMA and similar legislation, such as the proposed national land-use-policy-assistance bill, have strong environmental...

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78. For a detailed guide to the process of state program development that would prove useful in connection with the impact statement requirement, see COASTAL ZONE MANAGEMENT INSTITUTE, THE PROCESS OF PROGRAM DEVELOPMENT (1974).


80. See S. 984, 94th Cong., 1st Sess. (1975); S. 268, 93d Cong., 1st Sess. (1973); S. 992, 92d Cong., 1st Sess. (1971); H.R. 3510, 94th Cong., 1st Sess. (1975); H.R. 10,294, 93d Cong., 1st Sess. (1973); H.R. 4332, 92d Cong., 1st Sess. (1971). Although the Department of Interior is developing a similar bill, currently in the draft stage, to require land use planning at the state level, 5 BNA ENVIRONMENT REP. 1395-96 (Jan. 10, 1975), the Ford administration is on record as opposing federal land use legislation at this time "not because of any 'basic philosophical differences' but because of its opposition to any new non-energy spending programs. . . ." Id. at 1823 (Mar. 21, 1975). See id. at 1879 (Mar. 28, 1975).
tal purposes, they adopt an essentially neutral process-oriented approach to land and water resource management. The role of the federal government is to ensure that the states have developed reasonable methods to plan and regulate the use of coastal resources, rather than to review substantively the quality of specific resource use decisions. Possibly, a state-established procedure for inventoring and controlling the use of coastal wetlands might satisfy the CZMA's requirements, although it favored heavy development of those wetlands. NEPA, however, requires federal agencies to consider environmental factors in agency determination; NOAA thus must evaluate such environmental aspects when it decides whether states have developed reasonable procedures for regulating coastal resource use. Although NEPA "does not confer unlimited power on agencies" to expand their statutory authority, it could be used to augment existing authority. Using NEPA to supplement the CZMA would add a degree of substantive federal review, allowing NOAA to look beyond procedures to evaluate the quality of state decisions. But NEPA adds only a degree of substantive review, and it would not justify expanding NOAA's authority, for example, to issue directives to states to develop specific land and water use plans for their coastal zones.

81. The comment to section 923-4 of the section 306 guidelines indicates the scope of the federal government's review of state programs:

Evaluation of the statutory requirements established in this subpart will concentrate primarily on the adequacy of State processes in dealing with key coastal problems and issues. It will not, in general, deal with the wisdom of specific land and water use decisions, but rather with a determination that in addressing those problems and issues, the State is aware of the full range of present and potential needs and uses of the coastal zone, and has developed procedures, based on scientific knowledge, public participation, and unified governmental policies, for making reasoned choices and decisions.


82. ENVIRONMENTAL LAW, supra note 50, at 291-93.

83. 40 C.F.R. § 1500.4 (1974) provides in part:

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. In accordance with this purpose, agencies should continue to review their policies, procedures, and regulations and to revise them as necessary to ensure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 is meant to make clear that every agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

84. For example, NOAA could look beyond a state's processes by determining the adequacy of protection afforded by those procedures for preservation of critical areas.
CONCLUSION

Both NEPA and CZMA are significant federal attempts to achieve sound environmental planning and management. NEPA was designed to accomplish this goal on the federal level, while the CZMA focuses on state government efforts to preserve a particular aspect of this nation’s natural resources. The application of one federal statute’s requirements to the procedures of the other was handled appropriately by the decision of NOAA to require environmental impact statements when each state submits its coastal zone management program for federal approval. Not only did this decision avoid the difficulties inherent in an attempt to draft a broader program statement when general approval guidelines were established, but it also has enabled NOAA, through a carefully considered impact statement for each state’s program, to add an element of substantive federal review to state resource decisions. In this manner, these two statutes have been allowed to converge on a course that can preserve the vital coastal regions of the United States.