

LOUISIANA COASTAL LAW

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THE FEDERAL COASTAL ZONE MANAGEMENT ACT OF 1972

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by
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On October 28, 1972, President Nixon signed the Coastal Zone Management Act of 1972, perhaps the most significant environmental management measure to come out of Congress this year. If the Act is properly funded and implemented, Louisiana and all other coastal states and territories will be encouraged to develop tools for the long-term planning and management of invaluable and irreplaceable coastal resources.

LCL presents this expanded issue dealing exclusively with a description and interpretation of the new law.

HISTORICAL FACTORS. Over the past five or ten years many events have heightened attention to the U.S. coastal areas and created demands for more aggressive governmental action. Oil pollution on California's coast, particularly the Santa Barbara channel, raised considerable nationwide concern for the coastal regions. Construction of second homes, apartments and hotels in coastal areas has grown rapidly in recent years. Many coastal communities and industries have grown with haphazard planning and insufficient environmental controls. Bays, harbors and estuaries have been polluted. Wetlands and marshes have been dredged and filled at an alarming rate. As demands on the coastal region have grown, increasing conflicts between users have arisen.

Paralleling the concern for environmental quality was a concern by many over the lack of a concerted U. S. program for harvesting the valuable resources of the world's oceans. It was argued that the United States should increase its ocean resource activities and develop a national oceans policy. Legislation in 1966 created a special commission, known as the Stratton Commission, to study and recommend a national oceans policy. At the same time, the national Sea Grant Program was initiated -- providing grants to universities and other programs to conduct research in coastal and marine resource activities. The Stratton Commission's final recommendations (1969) suggested a federal coastal zone management program. Environmental concerns of recent years have added weight to that recommendation. The combined forces of those pushing for a national oceans program and those concerned with the protection of the coastal environment have borne fruit in the Coastal Zone Management Act of 1972.

Coastal zone management has been going on for a long time and at all levels of government--federal, state and local. However, traditional coastal zone management efforts have suffered from three major problems. First, they separated projects, such as port development, draining of wetlands and growth of new communities from controls over the projects, such as dredging controls, water quality controls and land use restrictions. Different agencies and personnel dealt with separate incidents of control and controls normally came long after the projects had been planned. Secondly, traditional coastal zone management focused on a single resource at a time, such as fish, agriculture, ground water, oil production, etc. Thirdly, traditional coastal zone management activities lacked specific long-term and short-term goals. Since there were no goals, governments and private individuals competed amongst themselves for short-term advantage. Many of these problems are addressed in the Coastal Zone Management Act of 1972.

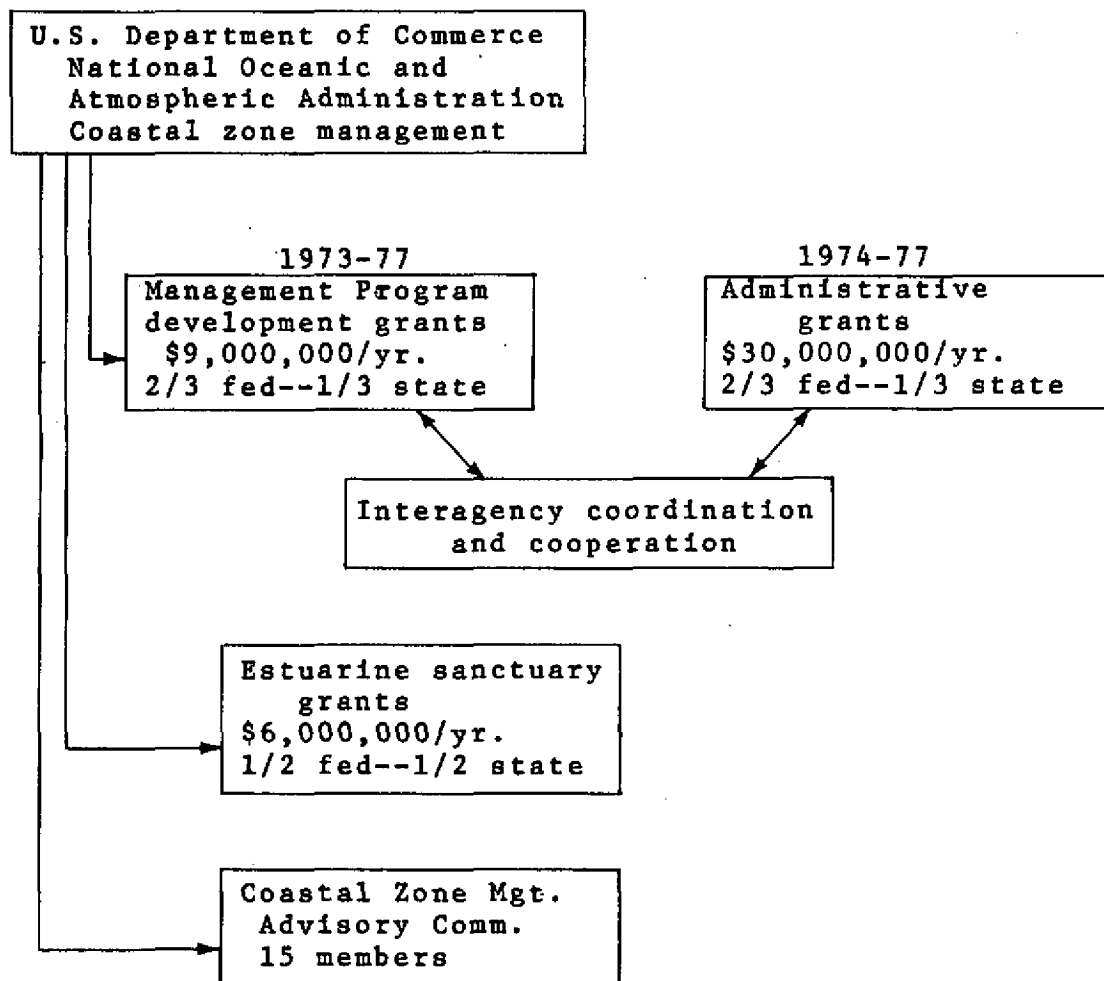
OVERVIEW. Under the Act, state governments are the focal point for coastal zone management. To assist the states in their work, a two stage federal granting program is established. Grants to assist the state in developing a management program are followed by grants to assist the state in administering that program.

The coastal zone management program will be administered by NOAA (National Oceanic and Atmospheric Administration) in the U. S. Department of Commerce, thus permitting full coordination with other ocean related programs such as the National Sea Grant program.

Only those coastal lands which have a direct and significant impact on coastal waters may be regulated under the coastal zone management act, thus insuring compatibility with future land use legislation.

The legislation does not require state participation. The incentive to participate is the desire for federal money. As an additional incentive a participating state has an advantage in dealing with the federal government if it has an approved coastal zone management program since all federal projects and permits must conform to the state's approved management program. If there is no approved management program, a federal project could be commenced against state wishes.

FEDERAL PROGRAMS UNDER C.Z.M. ACT



Under the federal program states first receive planning grants to develop a management program. Once the management program is approved, states receive administrative grants. The Secretary of Commerce exercises continual approval authority over both the creation and administration of state's coastal zone management program. If the Secretary believes the purposes of the Act are not being met, grants to that state may be discontinued.

Under the interagency coordination and cooperation provisions, the views of affected agencies must have been considered by the state prior to the Secretary's approval of the management program. Once the management program is approved, federal agency activities must be consistent with the coastal management program of that state, to the maximum extent practicable. Applicants for federal licenses or permits must get a certification from the state that the activity needing the federal license or permit is consistent with the approved management program. State or local projects receiving federal assistance must be consistent with the approved management program.

Grants are available to assist states acquire "estuarine sanctuaries" for long-term scientific observation and analysis.

A coastal zone management advisory committee of 15 members is created to assist in the development of the federal coastal zone management program.

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STATE REQUIREMENTS UNDER C.Z.M. ACT

States develop management programs:

". . . a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the coastal state . . . setting forth objectives, policies and standards to guide public and private uses of lands and waters in the coastal zone."

Management programs must include:

Boundaries of the coastal zone subject to management program

Inventory of areas of particular concern

Broad guidelines on priority of uses in areas of particular concern

List of permissible land and water uses which have a direct and significant impact on coastal waters

Governmental structure to implement management program, plus description of interrelationships of various levels of government

Controls over permissible land and water uses including legal means to:

- regulate land and water use
- control development in coastal zone
- resolve conflicts among competing users
- acquire property interests

One or more of following general techniques:

- state standards and criteria, local implementation, state administrative review and enforcement
- state land & water use planning & recreation
- state veto power over all projects and land and water use regulations

Under this act the state's management program must address the method of control over land and water use in the coastal zone. It must define what those land and water uses should be. States may develop a management program in segments to devote immediate attention to those coastal areas urgently needing management programs. Public hearings must be held in the development of the management program. The governor must approve the management program. A single state agency must receive and administer the grants for the program. Local governments, interstate agencies, and areawide agencies must participate in the development of the coastal management program. States must recognize the national interest in considering the siting of facilities to meet requirements which are other than local in nature. The management program must provide procedures for designating certain areas for preservation or restoration. Finally, the air pollution and water pollution control portions of the management program must be those required under existing federal environmental acts.

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DEFINITION OF COASTAL ZONE UNDER C.Z.M. ACT

"Coastal Zone" includes:

coastal waters

- measurable quantity of sea water
- sounds, bays, lagoons, bayous, ponds, estuaries

adjacent shorelands and shorelines, transitional and intertidal areas, salt marshes, wetlands and beaches

"Coastal Zone" extends:

seaward to limit of U.S. territorial sea (Great Lakes to U.S. International boundary)

inland only to extent necessary to control shorelands, uses of which have a direct and significant impact on coastal waters

"Coastal Zone" excludes lands federally owned or controlled

The "coastal zone" as defined in the act uses the term coastal waters as a key component. Controls over land and water uses are permitted only where there is a direct and significant impact on coastal waters. Thus, coastal management programs may only address uses which have an impact on features of the coastal zone which are unique to it--estuaries, bays, lagoons, beaches, etc. The definition will be subject to interpretation but the intent is clear that only those resources close to the oceans fall within the purview of the Act. This is designed to insure compatibility with land use legislation--which is expected to be passed in the next session of Congress.

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INTERPRETIVE COMMENTS. Louisiana and other coastal states should keep some salient points in mind about the federal coastal zone management legislation. Firstly, the act relates primarily to laws and government agency organization at the state and local levels. Hence, specific state legislative action and perhaps judicial interpretations will be necessary to comply with the act. Secondly, the act does not tell a state what it should do in the coastal zone, it only encourages state government to be involved directly in the coastal decision-making process. The act does not specify the types of uses preferred in the coastal zone. A state could emphasize preservation or development. Thirdly, defining "shorelands" and the landward extent of the coastal zone will be a difficult task. States should strive for a landward boundary that can be administered (i.e., considers boundaries of existing governmental planning units) and a landward boundary which is identifiable (can be delineated clearly and precisely on a map). Fourthly, each state should take advantage of coastal management work already done by agencies and universities in the state. The federal act should be flexible enough to accommodate and enhance state efforts that have preceded it. Fifthly, states should plan a coastal management program which is compatible with a state land use management program. Land use controls will probably be required under federal law in the near future. Hence, the definition of the landward extent of the coastal zone is less important when a state views coastal and land use management together. However, for purposes of requesting grants from the federal government, distinctions will have to be made at the outset between coastal and land use management. Finally, a state need not apply for grants under the program nor develop a coastal management plan. It could ignore the federal program. However, this would leave state government ill-equipped to deal with federally funded or controlled activities in its own coastal zone. It would also deny to its coastal zone citizens the potential benefits available by a state-level overview of economic and environmental activities in the coastal zone.

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