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3. Hazard Mitigation

Section 404 of the Stafford Act authorizes grants (75% Federal; 25% non-Federal) for governments and qualifying nonprofit organizations for use in pre-disaster mitigation. In the past, a state that was victim to a disaster and had received a Presidential Disaster Declaration was entitled to 15 percent of the total amount spent in disaster relief for Hazard Mitigation, administered under the Hazard Mitigation Grant Program (HMGP). During the 106th Congress, the Subcommittee on Oversight, Investigations and Emergency Management held two hearings on this program and found that while there were significant benefits to the program, it was also subject to significant waste. Since that time, FEMA has worked to remedy the program and the distribution of funds, and has put forward a proposal to begin to shift the emphasis of its pre-disaster mitigation spending from a post-disaster formulaic model, to a pre-disaster competitive award system. The Subcommittee will continue to monitor this issue and provide input to ensure a smooth transition and an equitable distribution of funds.

A Value Capture Property Tax for Financing Beach Nourishment Projects: An Application to Delaware's Ocean Beaches*

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Abstract: We propose and apply a value capture property tax for financing beach nourishment projects. Our application is to beaches in the state of Delaware. Using a hedonic price function we estimate the implicit value of proximity to the beach. Using these results we then infer a property tax schedule that taxes homeowners roughly in proportion to the benefits they receive from the projects. We argue that the tax is equitable in the sense that tax burden and project benefits are aligned. We argue that it is efficient

in the sense that homeowners face the real cost of maintaining beaches that protect and improve their property.

Proposed Running Head: A Value Capture Beach Tax
Key Words: beaches, taxes, hedonic

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1. Introduction

Beaches in the United States are routinely widened or "nourished" using sand from external sources. This is especially true along the east coast. In most cases, large pumping projects transport sand from the nearby ocean floor to the beach. Bulldozers and other heavy equipment then move the sand into place. These projects are costly and controversial. By one estimate the federal government will spend more than $6 billion over the next fifty years to widen beaches. In the State of Delaware alone, nearly $2 million is spent annually to widen beaches. The typical justification given for such projects is the large tourist economy supported by the beaches and the added storm protection wide beaches provide. In the absence of the widening projects the beaches erode making them less desirable for recreation and less effective as a buffer against storm events.

The projects are controversial, in part, because they are temporary fixes. The newly placed sand ultimately washes away requiring that these projects be repeated every few years or so. Some argue that there are less expensive long run alternatives such as allowing beaches to migrate or retreat inland naturally (removing structures as it goes) or using an engineering solution such as an offshore breakwater. From an economic standpoint, this is an empirical question: which of the management options is the least costly for society? See Parsons and Powell (2001) for an analysis and discussion along these lines.

Another reason the projects are controversial is that they are usually financed in such a way that those benefiting most from the projects often pay only a small fraction of the cost. Most beach widening projects are financed using some mix of federal and state tax dollars. When the Army Corps of Engineers is involved, which is true for most projects of any significance, 65% of the expense is paid for out of federal tax dollars. The remaining 35% is covered by the state, usually from general revenues, bond issues, or a special tax. In Delaware, for example, hotels and motels are required to levy a special tax on guests. The revenue from that tax is earmarked for beach management projects.

The controversial aspect of these methods of financing is that the beneficiaries tend to be "local" while those bearing the cost tend to be "non-local". The benefits tend to fall on residents, property owners, and shop owners in the beach communities as well as on nonresident beach users – either vacationers or people taking day trips to the beach. Only the latter group is non-local.[17] The costs, on the other hand, tend to fall on the general taxpayer and individuals who rarely, if ever, use the beach. The federal tax clearly falls on the general population and the state tax, more often than not, is unrelated to beach use. For example, the special hotel tax in Delaware is only slightly tied to beach use because most hotel and motel visits in the state are outside the beach communities.

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[17] How benefits are distributed among property owners in the beach community and vacationers depends on market conditions and what is assumed about beach management in the absence of rebuilding. If land markets are such that property owners are able to charge higher rates for use of their beaches houses and hotels when beaches are improved, it is possible that vacationers realize little or no increase in consumer surplus. The value of a trip to the beach rises, but so does the lodging expense. At one extreme the rise in rates offsets all of the vacationers added benefits. (An individual's willingness to pay for the wider beach is equal to rise in the lodging rate.) In this case the property owner realizes most of the recreation/amenity benefit. Individuals taking day trips only to the beach would still capture the full surplus. If land markets are such that rates do not adjusted or partially adjust in response to a wider beach, then vacationers taking overnight trips as well as those taking day trips benefit from the project.

Another imbalance exists among the local beneficiaries. Common sense tells us that those who locally benefit most from the rebuilding projects are those residing or owning property closest to the beach. They realize larger recreation/amenity benefits and larger storm protection benefits. While there are likely to be exceptions, it is usually safe to say that the further one gets from the beach the lower the benefits are from the project. In recognition of this disparity some private beach communities that rebuild their own beaches finance their projects through taxes on property owners. Those tax structures sometimes impose a higher tax on homeowners residing closer to the beach. In one private beach community in Delaware, for example, individuals owning beachfront property pay twice the tax of those without beachfront property.

The preferred means of financing a public beach nourishment project, if equity is the goal, is likely to be some combination of local property taxes and beach access fees (see for example Black, Donnelly, and Settle (1990)). The property tax would be designed to capture the benefits that flow to local beneficiaries (residents, property owners, and shop owners in the community). The beach access fees would be designed to capture the benefits that flow to nonresident beach users.

The purpose of this paper is to demonstrate a practical method for establishing one of these two tax instruments -- a beach tax on coastal property. It taxes residents closer to the beach more than those further away and, in principle, makes the overall burden more local. We call it a value capture tax because it "captures" some of the value of nourishment projects capitalized into property values near the beach. Ideally, it would be used in tandem with a beach access fee. We do not, however, propose a method for establishing the access fee or the targeted contributions form these two sources. Our focus is on the design of the property tax. In principle, value capture taxing can be applied in any case where a public project leads to increases in nearby property values. For an application to subway transit in New York City as well as a nice discussion of the concept of value capture see Anas and Armstrong (1983). Pompe and Rinehart (1999) were the first to apply the principle to beach nourishment. Their application is to a private beach community in South Carolina.

We estimate our tax schedule using a hedonic price function estimated with data on housing transactions in coastal Delaware. First, we estimate the value of proximity to the beach implicit in coastal housing markets. Then, assuming the value of nourishment projects are capitalized into property values in roughly the same proportions as proximity value, we construct a property tax gradient. For example, if property located on the beach is twice the value of similar property located somewhat inland, the former is assumed to gain twice as much benefit from a nourishment project as the latter. The tax schedule is set so that they pay twice the tax.

Our value capture tax addresses the local/non-local imbalance by directing taxes toward coastal communities and addresses the imbalance within a coastal community by taxing residents closer to the beach more heavily than those further away. For this reason we claim that the tax is more equitable – those who benefit more pay more. The tax is also more efficient than current methods of finance. Under current methods, individuals who own property on or near the coast pay less than the full social cost of taking up residence near a beach. The maintenance of an eroding beach is a public good providing recreational and storm-protection benefits to residents in the adjacent housing market. Under current financing schemes individuals owning or considering the purchase of property near the beach treat that maintenance as a free good. This provides an adverse incentive to build on the coast, improve existing structures on the coast, and perhaps to even live somewhat closer to the beach than might be the case if property owners on the coastal paid the real cost of living there. The tax proposed here attempts to "internalize" these costs into the private costs of property owners and thereby enhance efficiency.

Again, we assume that the tax would be used in tandem with a beach access fee where the beach tax would be targeted to capture the benefits that flow locally and the access fee would be used to target nonresident beach users. Defining the share to be paid by each group is important but not the subject of this paper. We limit our attention to the design of the beach tax and discuss how it would be used along with beach access fees.

Our method is laid out in section 2. The application to Delaware beaches is in section 3. And, we have some closing remarks in Section 4.

2. Method

2.1 *Hedonic Price Function*

There is little doubt that coastal housing markets capitalize proximity to the beach in property values -- all else constant houses closer to the beach sell for more than houses further away. Casual observation and evidence in the literature suggest a nonlinear decline in proximity value as you move in land. Proximity value is large for houses adjacent to the beach, declines as you move inland, and eventually levels off at no noticeable effect. This basic relationship has been estimated in hedonic price functions by Milon, Gressel, and Mulkey (1984) and Pompe and Rinehart (1999).

In our application we consider a hedonic price function of the form[18]

$$(1) \qquad P_i = \gamma + \alpha_s \mathbf{x}_i + \alpha_0 of_i + \alpha_1 z1_i + \alpha_2 z2_i + \alpha_3 z3_i + \alpha_4 z4_i + \varepsilon_i$$

P_i is the price of house *i*.

$\mathbf{x}_i$ is a vector of structural and neighborhood characteristics for house *i* such as square footage, number of bathrooms, presence of a fireplace, and beach community.

of_i is a dummy variable equal to 1 if the house *i* has ocean frontage and 0 if not.

$z1_i - z4_i$ are zonal dummies where $zk_i = 1$ if the house is located in zone *k* and 0 if not. The zones are increasing in distance from the beach, zone 1 (*z1*) is closer to the beach than zone 2 (*z2*) and so forth. Since every house must be in a zone, we have excluded zone 5 (the most distant zone) from the regression.

γ, α_s, and $\alpha_0 - \alpha_4$ are unknown parameters.

ε_i is an error term.

The first derivative of the hedonic with respect to any one of the zonal dummies ($z1_i$ - $z4_i$) is a measure of the implicit value (capitalized value) of proximity to the beach. For zone *k* the implicit value of proximity is

$$(2) \qquad \frac{\partial P_i}{\partial zk_i} = \alpha_k .$$

Since zone 5 is the excluded in the regression, this derivative is the value of having a house, all else constant, in zone *k* versus having one in zone 5. Since zone 5 is the most distant zone, we expect $\alpha_1 > \alpha_2 > \alpha_3 > \alpha_4 > 0$. Any zone closer to the beach gives a higher value than zone 5 and the values increase as you move closer to the beach. Along the same lines, the implicit value of ocean frontage is the first derivative of the hedonic with respect to of_i which is α_0.[19]

Our value capture tax is derived directly from the coefficients on the zonal dummies in the hedonic and is based on the assumption that the closer you live to the beach the more you benefit from beach nourishment projects. Specifically, *we assume that nourishment projects confer benefits on property owners in approximately the same proportion as the capitalized proximity value.* We refer to this as our "proportionality assumption". Consider a simple example. House A is located near the beach and has beach frontage. House B is located further from the beach and has no frontage. The proximity value of A is twice that of B. If the beach is nourished we assume that A's benefits are twice that of B's.

2.2 *Tax Schedule*

The tax schedule is derived in four basic steps. *First*, a baseline zone is selected. We use zone 1 in our application. *Second*, a tax index is constructed. This index is just the proximity value of each zone

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[18] Palmquist (forthcoming) and Taylor (forthcoming) cover the theory and issues surrounding the estimation of hedonic price models.

[19] We consider (and present in the next section) a log-linear form as well -- where P_i is logged in eq. (1). We also considered forms where proximity was entered as a continuous variable. The results did not change appreciably over our step-wise specification.

relative to the baseline zone. For any zone *k* this is just the ratio of its proximity value to the proximity value of zone 1

$$(3) \qquad I_k = \frac{\alpha_k}{\alpha_1}.$$

Since proximity values decline as you move inland, it follows that $1 = I_1 > I_2 > I_3 > I_4 > 0$. Oceanfront property, which is always located in zone 1, has the index

$$(4) \qquad I_{of} = \frac{\alpha_0 + \alpha_1}{\alpha_1}.$$

where $I_{of} > I_1 = 1$. In all cases, the index tells us the value of proximity in any zone relative to zone 1. The ocean front index tells us the implicit value of having ocean frontage in zone 1 versus not having ocean frontage in zone 1. By our "proportionality assumption", it also tells us the implicit value of nourishment in any zone relative to zone 1. Eqs. (3) and (4) then are the tax indexes.

Third, a baseline tax rate is constructed for a nourishment project. The baseline tax is the value of t_j that solves the equation

$$(5) \qquad TC_j = \{I_{of} h_{of} + I_1 h_1 + I_2 h_2 + I_3 h_3 + I_4 h_4\} \cdot t_j.$$

TC_j is the total cost of nourishment project *j*, I_k is the index defined above for zone *k*, and h_k is the number of houses in zone *k*. All areas of the coast affected by the project are assumed to be included in the count of houses. $TC_j, I_k,$ and h_k are known. Solving for t_j gives

$$(6) \qquad t_j = \frac{TC_j}{I_{of} h_{of} + I_1 h_1 + I_2 h_2 + I_3 h_3 + I_4 h_4}$$

The baseline tax then increases with the size of the nourishment project (TC_j) and decreases with number of houses in any zone $(h_{of}, h_1 - h_4)$.

Fourth, a tax rate per house for each zone (a tax schedule) is calculated. For zone *k* the tax rate per house is

$$(7) \qquad v_k = I_k \cdot t_j$$

The tax rate for a house in zone 1 (our baseline zone) is t_j (the baseline tax). The rates then decline steadily as you move inland. This tax schedule has two important properties. One, it covers the entire cost of the project since eq. (5) must hold. And two, property owners pay taxes in proportional to their proximity value which is assumed to approximate their value of the nourishment project. In this way the tax is "capturing" some of the capitalized value of nourishment to finance the projects. Notice that as the number of houses in any zone increases, the baseline tax rate decreases and does so in such a way that ratio of taxes per house between any two zones is unchanged.
Naturally, adding houses closer to the beach lowers the baseline tax rate more than adding houses further away.

If the financing is to be split between local and non-local and the predetermined percent to be covered locally is ρ, the baseline tax is $\rho \cdot t_j$. A similar fixed factor can be applied if property taxes and beach access fees are to be used together as suggested by Black, Donnelly, and Settle (1990) to finance

a project. An analysis determining the right division must precede the analysis here to determine ρ. In Black, Donnelly and Settle's case ρ was somewhere in the range .84 to .94.

3. Application

There are approximately 25 miles of sandy beaches in Delaware. Better than half is developed with single family houses. The beaches are a major tourist attraction in the state. As mentioned earlier, the state spends approximately $2 million annually widening beaches along this shoreline. Using housing transaction data from 1992, aerial photos of the beach communities, and data on several nourishment projects over the last decade, we have estimated several tax schedules following the approach outlined in the previous section.

The transactions data are from state tax records and include actual sale prices and housing characteristics. This was a convenient data set. It was compiled and used by Parsons and Powell (2001). Needless to say, it would be useful to consider our analysis with more recent data. It is worth noting, however, that since our concern is with the relative values of houses near the beach and not absolute values, the 1992 data are not unreasonable. Absolute values are clearly not stable over the last decade, but relative values may be.

The variables used in the hedonic are shown in Table 1 along with descriptive statistics. The zones are defined in Table 2. As shown, the average price of a house sold in 1992 was about $220,000. The characteristics include square footage, age, number of bathrooms, presence of fireplace, and presence of garage. We also include six community dummy variables to account for differences in the beach communities. The housing transactions are fairly evenly distributed across the zones. About 6% of the houses are oceanfront properties.

The regression results are in Table 3. We estimated linear and a log-linear (log *P* as the dependent variable) models. In both cases, housing prices decrease with age and increase with square footage, number of baths, fireplace, and garage. Among the community variables, Rehoboth (the excluded dummy) has the highest implicit price. South Bethany has the lowest.

The variables of key interest are the beach proximity variables: *z1 – z4* (the four zones) and *of* (ocean frontage). Recall that the zones increase in distance from the beach as you move from *z1* to *z5* and that, *z5*, the most distance zone, is the excluded from the regression. As expected, all the zone coefficients are positive and decline as we move inland. The linear model implies that having a house in zone 1 versus zone 5 increased its value by $131,400. If the house also has ocean frontage add another $132,260. A house in zone 2, 3, and 4 was worth $84,270, $73,550, and $31,980 more than a similar house in zone 5. The log-linear model implies that having a house in zone 1 versus zone 5, all else constant, increases its value by 54% . Zones 2, 3, and 4 increased the value by 30%, 28%, and 11%. Ocean frontage increases the value of house by 42%.

We consider four major nourishment projects in our application. These are shown in Table 4. We refer to the projects as *Southern Coast 1989, Southern Coast 1992, Whole Coast 1994,* and *Whole Coast 1998.* Each project applies to more than one beach. Since costs are known for the individual beaches, we compute a separate tax schedule for each community using these data. The costs presented in Table 4 are the TC_j's in eqs. (5) and (6) and are in nominal dollars for the year of the project. The most expensive of these (in real and nominal dollars) is *Whole Coast 1998* at $6.7 million (98$).

For each project area we counted the number of houses in each zone adjacent to the beach or beaches being widened. Although our hedonic only includes single family houses, the count of structures includes commercial properties and condos. The implication here is that proximity value for these properties decline at a rate similar to that realized in the housing market. Our analysis ignores vacant lots altogether. In principle, these could be taxed as well. Table 5 shows the count of houses and other structures by zone in 1997.[20] These are the h_k's in eqs. (5) and (6).

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[20] The count of houses was not adjusted for the actual year of the project. This probably implies some understatement of individual tax rates in the years before 1997, and some overstate in the years after. The adjustment for 1998 is probably minimal.

The tax index for the linear and the log-linear regression are shown in Table 6 and in Figure 1. These are the I_k in eqs. (3) - (7). For the linear model, the index is merely a ratio of zonal coefficients where zone 1 is the base. For the log-linear model implicit zonal prices vary with the value of a house since the implicit price of zone *k* takes the form

$$(8) \qquad \frac{\partial P_i}{\partial z_k} = \alpha_k \hat{P}_i$$

where $\hat{P}_i$ is the fitted value for house *i* using the estimated hedonic in eq. (1). There are a few different strategies for constructing the indexes I_k from the log-linear model. One is to calculate implicit prices for each zone according to eq. (8) and use a constant value for $\hat{P}_i$. For example $\hat{P}_i$ might be the sample average house value. This approach ignores that fact that houses closer to the beach tend to be larger and ignores what the non-linearity in the model implies – larger houses tend to have higher proximity value. An alternative approach, and the one we use, is to is calculate implicit prices using the median fitted value of the housing price in each zone. As shown in Table 5 and Figure 1, the log-linear form constructed in this way, tends to load more of the tax burden on oceanfront properties relative to other properties.

Using the cost figures from Table 4, housing counts from Table 5, and the indexes in Table 6, the tax gradient for each beach community for each project was calculated using eqs. (6) and (7). The resulting tax rates are shown in Table 7. The taxes are reported in nominal dollars for the year of the project. The log-linear model was used in this application. The tax is a one-time property tax set for the year of the project. It is a trivial calculation to spread the tax over several years if that is desired. The average one-time property tax on ocean front property for the most recent nourishment project, the *Whole Coast 1998* project, is $2014. For a house in zone 1 without frontage, the tax is $775. It drops as you move inland to $356 for zone 2, $333 for zone 3, and $170 for zone 4. *This assumes that the entire project is paid for locally with property taxes.* If the local community pays some agreed upon fraction of the total, say ρ, then each of tax rates is simply multiplied by ρ to arrive at the appropriate rate. If, for example, property taxes were used in tandem with beach access fees, the beach fees would be used to fund *1-* ρ of the total cost.

The variability in taxes across the community for a given project is rather large. Again, for the most recent project the one-time tax on ocean front properties ranges from a high of $10,302 in North Shores to a low of $397 in Sea Colony, both private communities. The former is a lightly populated beach community just north of Rehoboth. The latter is large condo complex located in the southern part of the state. The highest tax rate schedule in 1998 for property adjacent to a publicly owned beach is South Bethany. Going from oceanfront property in zone 1 to zone 4 the one-time rates in South Bethany would be: $2,345, $902, $415, $388, and $198. The lowest tax schedule for a public beach is Rehoboth: $1,413, $544, $250, $234, and $120. These are one-time taxes that would come approximately every 3 to 5 years and could be spread over this period if desired. And again, these rates assume that the entire project is paid for out of property taxes.

4. Conclusion

With value capture property taxes individuals pay taxes in proportion to the benefits received and face something closer the real cost of living near the beach. We have proposed a value capture tax and applied it to beach communities along Delaware's ocean coast. The results applied to nourishment project in 1998 give a property tax-rate of about $2300 per house for oceanfront property assuming property taxes are used to finance the entire project. For houses near the coast but without ocean frontage the tax is about $900. Moving inland by zone, each zone being 550 feet wide, the tax drops to $540, $250, $230, and finally $120. These taxes are likely to reoccur every 3 to 5 years. The rates, of course, will varying with the cost of the project, number of houses, and, in the long run, by longevity of the nourishment project. It is important to note that houses in these beach communities in 1998 typically sold in the range of $350,000 to $1,000,000.

The method, in principle, is transferable to other coastal areas. At the simplest level one could merely transfer our index as it stands to other regions. If one has data on the total cost of another project and the count of houses in the relevant zones, then eq. (6) could be computed using our I_k in Table 6 to arrive at a baseline tax. Eq. (7) would then be used to calculate the rate schedule by zone. A preferred approach would be to estimate a new hedonic using data in the new area. Proximity value gradients may be different, the most distant zone to include for taxation may be different, and it may even be possible to estimate the value of nourishment directly using an equation like eq. (8).

Finally, there are a number of ways our analysis could be modified and improved if applied elsewhere. The tax could be set per square foot, instead of per house. (Our data set had no measure of lot size.) Larger lots would be taxed more and vacant lots could be included in the rate schedule. Separate analyses could be done for vacant lots, condos, and commercial property. Expanding the tax zones further inland spreads the tax burden and may be warranted if property value data support it. If there is sufficient variation in beach width and nourishment history along the coast, one could estimate the value of nourishment projects directly capitalized into property values and the proportionality assumption need not be used (see for example Pompe and Rinehart's application (1999).

As pressure rises to move away from federal and state financing of beach nourishment projects and toward more locally-based financing, the application of a value capture tax may become a financial instrument many states and local communities should consider.

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Table 1: Variable Names, Definitions, and Sample Means

Name	Description	Mean
PRC	Price of house in thousands of 1992$	$221.2 1
LSQFT	Natural log of square feet of living space	7.22
AGE	Age of house in years	14.99
BATH	Number of bathrooms	2.15
FIRE	= 1 if fireplace present, 0 otherwise	.60

CAR	= 1 if garage present, 0 therwise	.05
DEWEY	= 1 if located in Dewey, 0 otherwise	.16
FENWICK	= 1 if located in Fenwick Is., 0 otherwise	.02
SBETH	= 1 if located in So. Bethany, 0 otherwise	.13
BETHANY	= 1 if located in Bethany, 0 otherwise	.19
NBETH	= 1 if located in No. Bethany, 0 otherwise	.06
REHOBOTH	= 1 if located in Rehoboth, 0 otherwise	.43
OF	= 1 if oceanfront property, 0 otherwise	.06
Z1	= 1 if located in zone 1, 0 otherwise	.23
Z2	= 1 if located in zone 2, 0 otherwise	.21
Z3	= 1 if located in zone 3, 0 otherwise	.21
Z4	= 1 if located in zone 4, 0 otherwise	.20
Z5	= 1 if located in zone 5, 0 otherwise	.06

Table 2: ***Definition of Zones***

Zone	Distance to the Beach
z1	< 500 feet
z2	550 - 1500 feet
z3	1500 - 2500 feet
z4	2500 – 3500 feet
z5	> 3500 feet

Table 3: Regression Results

	Linear Model		Log-Linear Model	
Variable	***Coefficient***	***T-statistic***	***Coefficient***	***T-statistic***
Constant	-273.63	2.9	3.711	10.2
LSQFT	48.61	3.6	.170	3.27
AGE	-1.45	2.0	-.009	3.25
BATH	48.00	7.8	.133	5.6
FIRE	31.03	3.9	.126	4.1
CAR	21.24	1.1	.065	0.9
DEWEY	-62.36	4.5	-.330	6.3
FENWICK	-33.16	1.1	-.191	1.6
SBETH	-97.59	6.4	-.446	7.7
BETHANY	-52.74	3.9	-.364	7.1
NBETH	-55.62	2.6	-.294	3.5
OF	132.26	6.7	.419	5.4
Z1	131.40	7.8	.541	10.1
Z2	84.27	5.4	.303	6.3
Z3	73.55	4.7	.280	5.0
Z4	31.98	2.1	.112	2.0
N	266		266	
R^2	.71		.72	

Table 4: *Beach Nourishment Projects in Delaware*

Project: Community	***Volume of Sand in Cubic Yards***	Cost in Nominal Dollars for Year of the Project
Southern Coast 1989:		
Fenwick Island	333,500	$1,572,993
South Bethany	231,600	1,307,303
Middlesex	63,700	357,905*
Sea Colony	132,600	770,058*
Bethany	284,500	1,630,241
Total:	***1,045,900***	***5,638,500***
Southern Coast 1992:		
Fenwick Island	144,900	716,916
South Bethany	192,749	905,786
Bethany	219,735	1,037,303
Total:	***557,384***	***2,660,005***
Whole Coast 1994:		
Fenwick Island	8,236	32,396
South Bethany	98,419	452,165
Bethany	184,452	838,953
Indian Beach	4,778	20,435*
North Indian Beach	20,992	61,400*
Dewey	592,878	2,402,230
Total:	***909,755***	***3,807,579***
Whole Coast 1998:		
Fenwick Island	56,100	457,000
South Bethany	168,900	707,635
Sea Colony	128,000	408,778*
Bethany	321,700	1,321,572
Dewey	453,500	1,948,000
Rehoboth	274,300	1,087,750
North Shores	188,000	705,798*
Total:	***1,590,500***	***6,663,066***

*** Paid for by private beach community.**

Table 5: ***Housing Units Per Zone by Community in 1997***

Community	of	Zone1	Zone2	zone3	zone4	zone5
North Shores	24	81	45	27	11	----
Rehoboth	309	562	731	567	253	239
Dewey	177	514	543	386	221	207
North Indian Beach	15	45	83	----	----	----
Indian	8	24	45	----	----	----
Bethany	89	224	521	342	231	----
Sea Colony	995	----	----	136	159	----
Middlesex	22	37	45	2	----	----
South Bethany	90	246	337	281	130	----
Fenwick Island	103	126	377	29	----	----

Table 6: Tax Index (I_k)

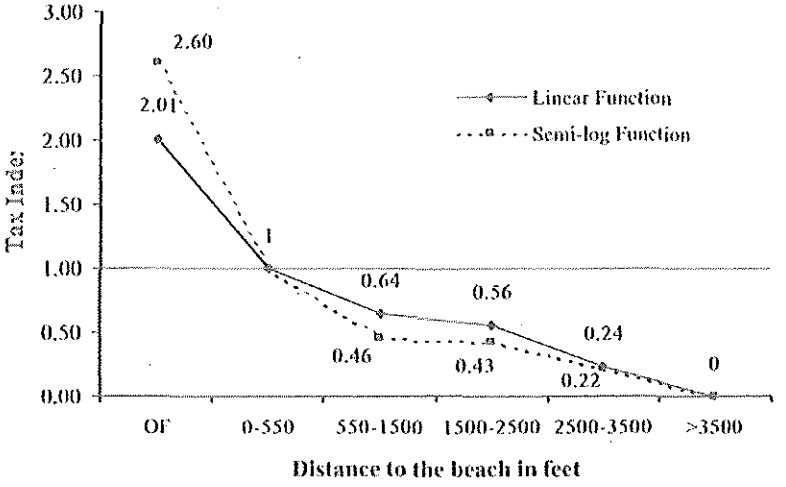
	Linear Model	Log-Linear Model
I_{OF}	2.01	2.60
I_1 w/o OF	1.00	1.00
I_2	0.64	0.46
I_3	0.56	0.43
I_4	0.24	0.22
I_5	0.00	0.00

Table 7: *Value Capture Beach Tax Per Residence*

Project: Community	*Oceanfront*	Zone 1	Zone 2	Zone3	Zone 4
Southern Coast 1989:					
Fenwick Island	$7,055	$2,714	$1,248	$1,167	$597
South Bethany	4,333	1,667	767	717	367
Middlesex*	8,039	3,092	1,422	1,329	680
Sea Colony*	747	287	132	124	63
Bethany	4,747	1,826	840	785	402
Average:	***$2,901***	***$1,116***	***$513***	***$480***	***$245***
Southern Coast 1992:					
Fenwick Island	$3,215	$1,237	$569	$532	$272
South Bethany	3,002	1,155	531	497	254
Bethany	3,020	1,162	534	500	256
Average:	***$3,064***	***$1,179***	***$542***	***$507***	***$259***
Whole Coast 1994:					
Fenwick Island	$145	$56	$26	$24	$12
South Bethany	1,499	576	265	248	127
Bethany	2,443	940	432	404	207
Indian Beach*	811	312	144	134	69
North Indian Beach*	1,307	503	231	216	111
Dewey	4,342	1,670	768	718	367
Average:	***$2,549***	***$980***	***$451***	***$422***	***$216***
Whole Coast 1998:					
Fenwick Island	$2,050	$788	$363	$339	$173
South Bethany	2,345	902	415	388	198
Sea Colony*	397	153	70	66	34
Bethany	3,848	1,480	681	636	326
Dewey	3,521	1,354	623	582	298
Rehoboth	1,413	544	250	234	120
North Shores*	10,302	3,962	1,823	1,704	872
Average:	***$2,014***	***$775***	***$356***	***$333***	***$170***

***Private beach communities.**

Figure 1: Tax Index



§ 1451. Congressional findings (Section 302)

The Congress finds that--

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone.

(b) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation.

(c) 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.

(d) The habitat areas of the coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

(f) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities in the Great Lakes, territorial sea, exclusive economic zone, and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters;

(g) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

(h) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate

(i) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(j) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.

(l) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

(m) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the development of state ocean resource plans as part of their federally approved coastal zone management programs.

§ 1452. Congressional declaration of policy (Section 303)

The Congress finds and declares that it is the national policy--

(1) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations;

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development, which programs should at least provide for--

(A) the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone,

(B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence, and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands,

(C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters,

(D) priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists,

(E) public access to the coasts for recreation purposes,

(F) assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features,

(G) the coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources,

(H) continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies,

(I) the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking,

(J) assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies, and

(K) the study and development, in any case in which the Secretary considers it to be appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise; and

(3) to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decisionmaking;

(4) to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this title;

(5) to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and

(6) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.

§ 1453. Definitions (Section 304)

For the purposes of this title--

(1) The term 'coastal zone' means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands,

transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917 (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705), as applicable. 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, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(2) The term 'coastal resource of national significance' means any coastal wetland, beach, dune, barrier island, reef, estuary, or fish and wildlife habitat, if any such area is determined by a coastal state to be of substantial biological or natural storm protective value.

(3) The term 'coastal waters' means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (B) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(4) The term 'coastal state' means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa.

(5) The term 'coastal energy activity' means any of the following activities if, and to the extent that (A) the conduct, support, or facilitation of such activity requires and involves the siting, construction, expansion, or operation of any equipment or facility; and (B) any technical requirement exists which, in the determination of the Secretary, necessitates that the siting, construction, expansion, or operation of such equipment or facility be carried out in, or in close proximity to, the coastal zone of any coastal state;

(i) Any outer Continental Shelf energy activity.
(ii) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas.
(iii) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deepwater port, as defined in section 3(10) of the Deepwater Port Act of 1974 (33 USC 1502(10)) [33 USC § 1502(10)].

For purposes of this paragraph, the siting, construction, expansion, or operation of any equipment or facility shall be 'in close proximity to' the coastal zone of any coastal state if such siting, construction, expansion, or operation has, or is likely to have, a significant effect on such coastal zone.

(6) The term 'energy facilities' means any equipment or facility which is or will be used primarily--

(A) in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or
(B) for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in subparagraph (A). The term includes, but is not limited to (i) electric generating plants; (ii) petroleum refineries and associated facilities; (iii) gasification plants; (iv) facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (v) uranium enrichment or nuclear fuel processing facilities; (vi)

oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities including deepwater ports, for the transfer of petroleum; (viii) pipelines and transmission facilities; and (ix) terminals which are associated with any of the foregoing.

(6a) The term 'enforceable policy' means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.

(7) The term 'estuary' means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(8) The term 'estuarine sanctuary' means a research area which may include any part or all of an estuary and any island, transitional area, and upland in, adjoining, or adjacent to such estuary, and which constitutes to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(9) The term 'Fund' means the Coastal Zone Management Fund established under section 308(b) [16 USC § 1456a(b)].

(10) The term 'land use' means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 307(g) [16 USC § 1456(g)].

(11) The term 'local government' means any political subdivison of, or any special entity created by, any coastal state which (in whole or part) is located in, or has authority over, such state's coastal zone and which (A) has authority to levy taxes, or to establish and collect user fees, or (B) provides any public facility or public service which is financed in whole or part by taxes or user fees. The term includes, but is not limited to, any school district, fire district, transportation authority, and any other special purpose district or authority.

(12) The term 'management program' includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(13) The term 'outer Continental Shelf energy activity' means any exploration for, or any development or production of, oil or natural gas from the outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)) [43 USC § 1331(a)]), or the siting, construction, expansion, or operation of any new or expanded energy facilities directly required by such exploration, development, or production.

(14) The term 'person' means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state; the Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government.

(15) The term 'public facilities and public services' means facilities or services which are financed, in whole or in part, by any state or political subdivision thereof, including, but not limited to, highways and secondary roads, parking, mass transit, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care. Such term may also include any other facility or service so financed which the Secretary finds will support increased population.

(16) The term 'Secretary' means the Secretary of Commerce.

(17) The term 'special area management plan' means a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies; standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone.

(18) The term 'water use' means a use, activity, or project conducted in or on waters within the coastal zone.

§ 1454. Management program development grants (Section 305)

(a) In fiscal years 1997, 1998, and 1999, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306 [16 USC § 1455]. The amount of any such grant shall not exceed $ 200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state pursuant to this subsection, no subsequent grant shall be made to that coastal state pursuant to this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than four grants pursuant to this subsection.

(b) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306 [16 USC § 1455].

§ 1455. Administrative grants (Section 306)

(a) The Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-State contributions for the applicable fiscal year:

(1) For those States for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], 1 to 1 for any fiscal year.

(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

(b) The Secretary may make a grant to a coastal state under subsection (a) only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this title and has been approved in accordance with subsection (d).

(c) Grants under this section shall be allocated to coastal states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(d) Before approving a management program submitted by a coastal state, the Secretary shall find the following:

(1) The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 [16 USC § 1452].

(2) The management program includes each of the following required program elements:

(A) An identification of the boundaries of the coastal zone subject to the management program.

(B) A definition of what shall constitute permissible land uses and water users within the coastal zone which have a direct and significant impact on the coastal waters.

(C) An inventory and designation of areas of particular concern within the coastal zone.

(D) An identification of the means by which the State proposes to exert control over the land uses and water uses referred to in subparagraph (B), including a list of relevant State constitutional provisions, laws, regulations, and judicial decisions.

(E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(F) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process.

(G) A definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

(I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

(3) The State has--

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone--
(i) existing on January 1 of the year in which the State's management program is submitted to the Secretary; and
(ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that--

(i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;
(ii) within the 30-day period commencing on the date of receipt of that notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and
(iii) the management agency, if any comments are submitted to it within the 30-day period by any local government--

(I) shall consider the comments;
(II) may, in its discretion, hold a public hearing on the comments; and
(III) may not take any action within the 30-day period to implement the management program decision.

(4) The State has held public hearings in the development of the management program.

(5) The management program and any changes thereto have been reviewed and approved by the Governor of the State.

(6) The Governor of the State has designated a single State agency to receive and administer grants for implementing the management program.

(7) The State is organized to implement the management program.

(8) The management program provides 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. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.

(9) The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational ecological, historical, or esthetic values.

(10) The State, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power–

(A) to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and
(B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(11) The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.
(B) Direct State land and water use planning and regulation.
(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(12) The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

(13) The management program provides for--

(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and
(B) specific and enforceable standards to protect such resources.

(14) The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.

(15) The management program provides a mechanism to ensure that all State agencies will adhere to the program.

(16) The management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 [16 USC § 1455b].

(e) A coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this section, subject to the following conditions:

(1) The State shall promptly notify the Secretary of any proposed amendment, modification, or other program change and submit it for the Secretary's approval. The Secretary may suspend all or part of any grant made under this section pending State submission of the proposed amendments, modification, or other program change.

(2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the State whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal state that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

(3) (A) Except as provided in subparagraph (B), a coastal state may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this subsection.

(B) The Secretary, after determining on a preliminary basis, that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the State to expend funds awarded under this section to begin implementing the proposed amendment, modification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of section 307 [16 USC § 1456].

§ 1455a. Coastal resource improvement program (Section 306A)

(a) Definitions. For purposes of this section--

(1) The term 'eligible coastal state' means a coastal state that for any fiscal year for which a grant is applied for under this section--

(A) has a management program approved under section 306 [16 USC § 1455]; and
(B) in the judgment of the Secretary, is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 303(2)(A) through (K) [16 USC § 1452(2)(A)--(K)].

(2) The term 'urban waterfront and port' means any developed area that is densely populated and is being used for, or has been used for, urban residential recreational, commercial, shipping or industrial purposes.

(b) Resource management improvement grants. The Secretary may make grants to any eligible coastal state to assist that state in meeting one or more of the following objectives:

(1) The preservation or restoration of specific areas of the state that (A) are designated under the management program procedures required by section 306(d)(9) [16 USC § 1455(d)(9)] because of their conservation recreational,
ecological, or esthetic values, or (B) contain one or more coastal resources of national significance, or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned
reef tracts.
(2) The redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated in the state's management program pursuant to section 306(d)(2)(C) [16 USC § 1455(d)(2)(C)] as areas of particular concern.
(3) The provision of access to public beaches and other public coastal areas and to coastal waters in accordance with the planning process required under section 306(d)(2)(G) [16 USC § 1455(d)(2)(G)].
(4) The development of a coordinated process among State agencies to regulate and issue permits for aquaculture facilities in the coastal zone.

(c) Uses, terms and conditions of grants.

(1) Each grant made by the Secretary under this section shall be subject to such terms and conditions as may be appropriate to ensure that the grant is used for purposes consistent with this section.

(2) Grants made under this section may be used for--

(A) the acquisition of fee simple and other interests in land;
(B) low-cost construction projects determined by the Secretary to be consistent with the purposes of this section, including but not limited to, paths, walkways, fences, parks, and the rehabilitation of historic buildings and structures; except that not more than 50 per centum of any grant made under this section may be used for such construction projects;
(C) in the case of grants made for objectives described in subsection (b)(2)--

(i) the rehabilitation or acquisition of piers to provide increased public use, including compatible commercial activity,
(ii) the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety or increasing public access and use, and
(iii) the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas, but activities provided for under this paragraph shall not be treated as construction projects subject to the limitations in paragraph (B);

(D) engineering designs, specifications, and other appropriate reports; and

(E) educational, interpretive, and management costs and such other related costs as the Secretary determines to be consistent with the purposes of this section.

(d) Maximum amount of grants.

(1) The Secretary may make grants to any coastal state for the purpose of carrying out the project or purpose for which such grants are awarded, if the state matches any such grant according to the following ratios of Federal to state contributions for the applicable fiscal year: 4 to 1 for fiscal year 1986; 2.3 to 1 for fiscal year 1987; 1.5 to 1 for fiscal year 1988; and 1 to 1 for each fiscal year after fiscal year 1988.

(2) Grants provided under this section may be used to pay a coastal state's share of costs required under any other Federal program that is consistent with the purposes of this section.

(3) The total amount of grants made under this section to any eligible coastal state for any fiscal year may not exceed an amount equal to 10 per centum of the total amount appropriated to carry out this section for such fiscal year.

(e) Allocation of grants to local governments and other agencies. With the approval of the Secretary, an eligible coastal state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 [42 USC § 3334], a regional agency, or an interstate agency, a portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.

(f) Other technical and financial assistance. In addition to providing grants under this section, the Secretary shall assist eligible coastal states and their local governments in identifying and obtaining other sources of available Federal technical and financial assistance regarding the objectives of this section.

§ 1455b. Protecting coastal waters (Section 6217)

(a) In general.

(1) Program development. Not later than 30 months after the date of the publication of final guidance under subsection (g), each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455] shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

(2) Program coordination. A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and 1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972 [16 USC §§ 1651 et seq.], as amended by this Act. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act [33 USC § 1329], as the program under that section relates to land and water uses affecting coastal waters.

(b) Program contents. Each State program under this section shall provide for the implementation, at a minimum, of management measures in conformity with the guidance

published under subsection (g), to protect coastal waters generally, and shall also contain the following:

(1) Identifying land uses. The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of--

(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes; or

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

(2) Identifying critical coastal areas. The identification of, and a continuing process for identifying, critical coastal areas adjacent to coastal waters referred to in paragraph (1)(A) and (B), within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those provided for in subsection (g).

(3) Management measures. The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.

(4) Technical assistance. The provision of technical and other assistance to local governments and the public for implementing the measures referred to in paragraph (3), which may include assistance in developing ordinances and
regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

(5) Public participation. Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.

(6) Administrative coordination. The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and
enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.

(7) State coastal zone boundary modification. A proposal to modify the boundaries of the State coastal zone as the coastal management agency of the State determines is necessary to implement the recommendations made pursuant to subsection (e). If the coastal management agency does not have the authority to modify such boundaries, the program shall include recommendations for such modifications to the appropriate State authority.

(c) Program submission, approval, and implementation.

(1) Review and approval. Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if--

(A) the Secretary determines that the portions of the program under the authority of the Secretary meet the requirements of this section and the Administrator concurs with that determination; and

(B) the Administrator determines that the portions of the program under the authority of the Administrator meet the requirements of this section and the Secretary concurs with that determination.

(2) Implementation of approved program. If the program of a State is approved in accordance with paragraph (1), the State shall implement the program, including the management measures included in the program pursuant to subsection (b), through--

(A) changes to the State plan for control of nonpoint source pollution approved under section 319 of the Federal Water Pollution Control Act [33 USC § 1329]; and
(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], as amended by this Act.

(3) Withholding coastal management assistance. If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], as follows:

(A) 10 percent for fiscal year 1996.
(B) 15 percent for fiscal year 1997.
(C) 20 percent for fiscal year 1998.
(D) 30 percent for fiscal year 1999 and each fiscal year thereafter.
The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

(4) Withholding water pollution control assistance. If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act [33 USC § 1329], for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

(A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.
(B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year1996.
(C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year1997.
(D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.
The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

(d) Technical assistance. The Secretary and the Administrator shall provide technical assistance to coastal States and local governments in developing and implementing programs under this section. Such assistance shall include--

(1) methods for assessing water quality impacts associated with coastal landuses;
(2) methods for assessing the cumulative water quality effects of coastal development;
(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal States and local governments in identifying, developing, and implementing pollution control measures; and
(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

(e) Inland coastal zone boundaries.

(1) Review. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the effective date of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(2) Recommendation. If the Secretary, in consultation with the Administrator, finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to
protect coastal waters, the Secretary, in consultation with the Administrator, shall recommend appropriate modifications in writing to the affected State.

(f) Financial assistance.

(1) In general. Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], the Secretary, in consultation with the Administrator, may provide grants to the State for use for developing a State program under this section.

(2) Amount. The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

(3) State share. The State share of the cost of an activity carried out with a grant under this subsection shall be paid from amounts from non-Federal sources.

(4) Allocation. Amounts available for grants under this subsection shall be allocated among States in accordance with regulations issued pursuant to section 306(c) of the Coastal Zone Management Act of 1972 [16 USC § 1455(c)], except that the Secretary may use not more than 25 percent of amounts available for such grants to assist States which the Secretary, in consultation with the Administrator, determines are making exemplary progress in preparing a State
program under this section or have extreme needs with respect to coastal water quality.

(g) Guidance for coastal nonpoint source pollution control.

(1) In general. The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for
specifying management measures for sources of nonpoint pollution in coastalwaters.

(2) Content. Guidance under this subsection shall include, at a minimum--

(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;
(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;
(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;
(D) quantitative estimates of the pollution reduction effects and costs of the measures;
(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and
(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

(3) Publication. The Administrator, in consultation with the Secretary, shall publish--

(A) proposed guidance pursuant to this subsection not later than 6 months after the date of the enactment of this Act [enacted Nov. 5, 1990]; and

(B) final guidance pursuant to this subsection not later than 18 months after such effective date.

(4) Notice and comment. The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

(5) Management measures. For purposes of this subsection, the term "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(h) Authorizations of appropriations.

(1) Administrator. There is authorized to be appropriated to the Administrator for use for carrying out this section not more than $ 1,000,000 for each of fiscal years 1992, 1993, and 1994.

(2) Secretary.

(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of 1972 [16 USC § 1464(a)(4)], as amended by this Act, not more than $ 1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than--

(i) $ 6,000,000 for fiscal year 1992;
(ii) $ 12,000,000 for fiscal year 1993;
(iii) $ 12,000,000 for fiscal year 1994; and
(iv) $ 12,000,000 for fiscal year 1995.

(i) Definitions. In this section--

(1) the term 'Administrator' means the Administrator of the Environmental Protection Agency;
(2) the term 'coastal State' has the meaning given the term 'coastal state' under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);
(3) each of the terms 'coastal waters' and 'coastal zone' has the meaning that term has in the Coastal Zone Management Act of 1972 [16 USC §§ 1651 et seq.];
(4) the term 'coastal management agency' means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972 [16 USC § 1455(d)(6)];
(5) the term 'land use' includes a use of waters adjacent to coastal waters; and
(6) the term 'Secretary' means the Secretary of Commerce.

§ 1456. Coordination and cooperation (Section 307)

(a) Federal agencies. In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) Adequate consideration of views of Federal agencies. The Secretary shall not approve the management program submitted by a state pursuant to section 306 [16 USC § 1455] unless the views of Federal agencies principally affected by such program have been adequately considered.

(c) Consistency of Federal activities with state management programs; certification.

(1) (A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of title 28, United States Code, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 306(d)(6) [16 USC § 1455(d)(6)] at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.

(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 the enforceable policies of approved state management programs.

(3) (A) 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, in or outside of the coastal zone, affecting any land or water use or natural resource of 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 enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state of its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 306 [16 USC § 1455], any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use or natural resource of the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with the enforceable policies of such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until–

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

(d) Applications of local governments for Federal assistance; relationship of activities with approved management programs. State and local governments submitting applications for Federal assistance under other Federal programs, in or outside of the coastal zone, affecting any land or water use of natural resource of the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Inter-governmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with the enforceable policies of a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security.

(e) Construction with other laws. Nothing in this title shall be construed--

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Construction with existing requirements of water and air pollution programs. Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) Concurrence with programs which affect inland areas. When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 of this title [16 USC § 1455], includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

(h) Mediation of disagreements. In case of serious disagreement between any Federal agency and a coastal state--

(1) in the development or the initial implementation of a management program under section 305 [16 USC § 1454]; or
(2) in the administration of a management program approved under section 306 [16 USC § 1455];
the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

(i) Federal fee.

(1) With respect to appeals under subsections (c)(3) and (d) which are submitted after the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], the Secretary shall collect an application fee of not less than $200 for minor appeals and not less than $500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee.

(2) (A) The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c).

(B) If the Secretary waives the application fee under paragraph (1) for an applicant, the Secretary shall waive all other fees under this subsection for the applicant.

(3) Fees collected under this subsection shall be deposited into the Coastal Zone Management Fund established under section 308 [16 USC § 1456a].

§ 1456a. Coastal Zone Management Fund (Section 308)

(a) (1) The obligations of any coastal state or unit of general purpose local government to repay loans made pursuant to this section as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], and any repayment schedule established pursuant to this title as in effect before that date of enactment, are not altered by any provision of this title. Such loans shall be repaid under authority of this subsection and the Secretary may issue regulations governing such repayment. If the Secretary finds that any coastal state or unit of local government is unable to meet its obligations pursuant to this subsection because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such State or unit, take any of the following actions:

(A) Modify the terms and conditions of such loan.
(B) Refinance the loan.
(C) Recommend to the Congress that legislation be enacted to forgive the loan.

(2) Loan repayments made pursuant to this subsection shall be retained by the Secretary as offsetting collections, and shall be deposited into the Coastal Zone Management Fund established under subsection (b).

(b) (1) The Secretary shall establish and maintain a fund, to be known as the 'Coastal Zone Management Fund,' which shall consist of amounts retained and deposited into the Fund under subsection (a) and fees deposited into the Fund under section 307(i)(3) [16 USC § 1456(i)(3)].

(2) Subject to amounts provided in appropriation Acts, amounts in the Fund shall be available to the Secretary for use for the following:

(A) Expenses incident to the administration of this title, in an amount not to exceed for each of fiscal years 1997, 1998, and 1999 the higher of--

(i) $ 4,000,000; or
(ii) 8 percent of the total amount appropriated under this title for the fiscal year.

(B) After use under subparagraph (A)--

(i) projects to address management issues which are regional in scope, including interstate projects;
(ii) demonstration projects which have high potential for improving coastal zone management, especially at the local level;
(iii) emergency grants to State coastal zone management agencies to address unforeseen or disaster-related circumstances;
(iv) appropriate awards recognizing excellence in coastal zone management as provided in section 314 [16 USC § 1460];
(v) program development grants as authorized by section 305 [16 USC § 1454], in an amount not to exceed $ 200,000 for each of fiscal years 1997, 1998, and 1999; and
(vi) to provide financial support to coastal states for use for investigating and applying the public trust doctrine to implement State management programs approved under section 306 [16 USC § 1455].

(3) On December 1, of each year, the Secretary shall transmit to the Congress an annual report on the Fund, including the balance of the Fund and an itemization of all deposits into and disbursements from the Fund in the preceding fiscal year.

§ 1456b. Coastal Zone Enhancement Grants (Section 309)

(a) For purposes of this section, the term 'coastal zone enhancement objective' means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

(3) Attaining increased opportunities for public access, taking into account current and future public access needs, to coastal areas of recreational, historical, aesthetic, ecological, or cultural value.

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

(9) Adoption of procedures and policies to evaluate and facilitate the siting of public and private aquaculture facilities in the coastal zone, which will enable States to formulate, administer, and implement strategic plans for marine aquaculture.

(b)(1) Subject to the limitations and goals established in this section, the Secretary may make grants to coastal states to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(2) (A) In addition to any amounts provided under section 306 [16 USC § 1455], and subject to the availability of appropriations, the Secretary may make grants under this subsection to States for implementing program changes approved by the Secretary in accordance with section 306(e) [16 USC § 1455(e)].

(B) Grants under this paragraph to implement a program change may not be made in any fiscal year after the second fiscal year that begins after the approval of that change by the Secretary.

(c) The Secretary shall evaluate and rank State proposals for funding under this section, and make funding awards based on those proposals, taking into account the criteria established by the Secretary under subsection (d). The Secretary shall ensure that funding decisions under this section take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(d) Within 12 months following the date of enactment of this section [enacted Nov. 5, 1990], and consistent with the notice and participation requirements established in section 317 [16 USC § 1463], the Secretary shall promulgate regulations concerning coastal zone enhancement grants that establish--

(1) specific and detailed criteria that must be addressed by a coastal state (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State) as part of the State's development and implementation of coastal zone enhancement objectives;

(2) administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and

(3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

(e) A State shall not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(f) Beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 306 and 306A of this title [16 USC §§ 1455, 1455a] shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

(g) If the Secretary finds that the State is not undertaking the actions committed to under the terms of the grant, the Secretary shall suspend the State's eligibility for further funding under this section for at least one year.

§ 1456c. Technical assistance (Section 310)

(a) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support the development and implementation of State coastal management program amendments under section 309 [16 USC § 1456b], and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(b)(1) The Secretary shall provide for the coordination of technical assistance, studies, and research activities under this section with any other such activities that are conducted by or subject to the authority of the Secretary.

(2) The Secretary shall make the results of research and studies conducted pursuant to this section available to coastal states in the form of technical assistance publications, workshops, or other means appropriate.

(3) The Secretary shall consult with coastal states on a regular basis regarding the development and implementation of the program established by this section.

§ 1457. Public hearings (Section 311)

All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

§ 1458. Review of performance (Section 312)

(a) Evaluation of adherence with terms of grants. The Secretary shall conduct a continuing review of the performance of coastal states with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 303(2)(A) through (K) [16 USC § 1452(2)(A)-(K)], and adhered to the terms of any grant, loan, or cooperative agreement funded under this title.

(b) Public participation. In evaluating a coastal state's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within 120 days after the last public meeting held in the State being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.

(c) Interim sanctions.

(1) The Secretary may suspend payment of any portion of financial assistance extended to any coastal state under this title, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to (A) the management program or a State plan developed to manage a national estuarine reserve established under section 315 of this title [16 USC § 1461], or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement funded under this title.

(2) Financial assistance may not be suspended under paragraph (1) unless the Secretary provides the Governor of the coastal state with--

(A) written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal state to take the actions referred to in subparagraph (A).

(3) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(d) Final sanctions. The Secretary shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that State under this title as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state has failed to take the actions referred to in subsection (c)(2)(A).

(e) Notice and hearing. Management program approval and financial assistance may not be withdrawn under subsection (d), unless the Secretary gives the coastal state notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under this subsection (d), the Secretary shall provide the coastal state with written specifications of the actions that should be taken, or not engaged in, by the state in order that such withdrawal may be canceled by the Secretary.

(f) [Repealed]

§ 1459. Records and audit (Section 313)

(a) Maintenance of records by recipients of grants or financial assistance. Each recipient of a grant under this title or of financial assistance under section 308 [16 USC § 1456a], as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990], shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant and of the proceeds of such assistance, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.
(b) Access by Secretary and Comptroller General to records, books, etc., of recipients of grants or financial assistance for audit and examination. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall--

(1) after any grant is made under this title or any financial assistance is provided under section 308 [16 USC § 1456a], as in effect before the date of the enactment of the Coastal Zone Act Reauthorization Amendments of 1990 [enacted Nov. 5, 1990]; and

(2) until the expiration of 3 years after--

(A) completion of the project, program, or other undertaking for which such grant was made or used, or
(B) repayment of the loan or guaranteed indebtedness for which such financial assistance was provided, have access for purposes of audit and examination to any record, book, document, and paper which belongs to or is used or controlled by, any recipient of the grant funds or any person who entered into any transaction relating to such financial assistance and which is pertinent for purposes of determining if the grant funds or the proceeds of such financial assistance are being, or were, used in accordance with the provisions of this title.

§ 1460. Walter B. Jones Excellence in Coastal Zone Management Awards (Section 313)

(a) The Secretary shall, using sums in the Coastal Zone Management Fund established under section 308 [16 USC § 1456a] and other amounts available to carry out this title (other than amounts appropriated to carry out sections 305, 306, 306A, 309, 310, and 315 [16 USC §§ 1454, 1455, 1455a, 1456b, 1456c, and 1461]), implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.

(b) The Secretary shall elect annually--

(1) one individual, other than an employee or officer of the Federal Government, whose contribution to the field of coastal zone management has been the most significant;

(2) 5 local governments which have made the most progress in developing and implementing the coastal zone management principles embodied in this title [16 USC §§ 1451 et seq.]; and

(3) up to 10 graduate students whose academic study promises to contribute materially to development of new or improved approaches to coastal zone management.

(c) In making selections under subsection (b)(2) the Secretary shall solicit nominations from the coastal states, and shall consult with experts in local government planning and land use.

(d) In making selections under subsection (b)(3) the Secretary shall solicit nominations from coastal states and the National Sea Grant College Program.

(e) Using sums in the Coastal Zone Management Fund established under section 308 [16 USC § 1456a] and other amounts available to carry out this title (other than amounts appropriated to carry out sections 305, 306, 306A, 309, 310, and 315 [16 USC §§ 1454, 1455, 1455a, 1456b, 1456c, and 1461]), the Secretary shall establish and execute appropriate awards, to be known as the "Walter B. Jones Awards", including--

(1) cash awards in an amount not to exceed $ 5,000 each;
(2) research grants; and
(3) public ceremonies to acknowledge such awards.

§ 1461. National Estuarine Research Reserve System (Section 315)

(a) Establishment of the System. There is established the National Estuarine Research Reserve System (hereinafter referred to in this section as the "System") that consists of--

(1) each estuarine sanctuary designated under this section as in effect before the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985 [enacted Apr. 7, 1986]; and

(2) each estuarine area designated as a national estuarine reserve under subsection (b).

Each estuarine sanctuary referred to in paragraph (1) is hereby designated as a national estuarine reserve.

(b) Designation of national estuarine reserves. After the date of the enactment of the Coastal Zone Management Reauthorization Act of 1985 [enacted Apr. 7, 1986], the Secretary may designate an estuarine area as a national estuarine reserve if--

(1) the Governor of the coastal state in which the area is located nominates the area for that designation; and
(2) the Secretary finds that--

(A) the area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(B) the law of the coastal state provides long-term protection for reserve resources to ensure a stable environment for research;

(C) designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation; and

(D) the coastal state in which the area is located has complied with the requirements of any regulations issued by the Secretary to implement this section.

(c) Estuarine research guidelines. The Secretary shall develop guidelines for the conduct of research within the System that shall include–

(1) a mechanism for identifying, and establishing priorities among, the coastal management issues that should be addressed through coordinated research within the System;

(2) the establishment of common research principles and objectives to guide the development of research programs within the System;

(3) the identification of uniform research methodologies which will ensure comparability of data, the broadest application of research results, and the maximum use of the System for research purposes;

(4) the establishment of performance standards upon which the effectiveness of the research efforts and the value of reserves within the System in addressing the coastal management issues identified in paragraph (1) may be measured; and

(5) the consideration of additional sources of funds for estuarine research than the funds authorized under this Act, and strategies for encouraging the use of such funds within the System, with particular emphasis on mechanisms established under subsection (d).

In developing the guidelines under this section, the Secretary shall consult with prominent members of the estuarine research community.

(d) Promotion and coordination of estuarine research. The Secretary shall take such action as is necessary to promote and coordinate the use of the System for research purposes including--

(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting estuarine research, give priority consideration to research that uses the System; and

(2) consulting with other Federal and State agencies to promote use of one or more reserves within the System by such agencies when conducting estuarine research.

(e) Financial assistance.

(1) The Secretary may, in accordance with such rules and regulations as the Secretary shall promulgate, make grants--

(A) to a coastal state--

(i) for purposes of acquiring such lands and waters, and any property interests therein, as are necessary to ensure the appropriate long-term management of an area as a national estuarine reserve,
(ii) for purposes of operating or managing a national estuarine reserve and constructing appropriate reserve facilities, or
(iii) for purposes of conducting educational or interpretive activities; and

(B) to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c).

(2) Financial assistance provided under paragraph (1) shall be subject to such terms and conditions as the Secretary considers necessary or appropriate to protect the interests of the United States, including requiring coastal states to execute suitable title documents setting forth the property interest or interests of the United States in any lands and waters acquired in whole or part with such financial assistance.

(3) (A) The amount of the financial assistance provided under paragraph (1)(A)(i) with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less.

(B) The amount of the financial assistance provided under paragraph (1)(A) (ii) and (iii) and paragraph (1)(B) may not exceed 70 percent of the costs incurred to achieve the purposes described in those paragraphs with respect to a reserve; except that the amount of the financial assistance provided under paragraph (1)(A)(iii) may be up to 100 percent of any costs for activities that benefit the entire System.

(C) Notwithstanding subparagraphs (A) and (B), financial assistance under this subsection provided from amounts recovered as a result of damage to natural resources located in the coastal zone may be used to pay 100 percent of the costs of activities carried out with the assistance.

(f) Evaluation of system performance.

(1) The Secretary shall periodically evaluate the operation and management of each national estuarine reserve, including education and interpretive activities, and the research being conducted within the reserve.

(2) If evaluation under paragraph (1) reveals that the operation and management of the reserve is deficient, or that the research being conducted within the reserve is not consistent with the research guidelines developed under subsection (c), the Secretary may suspend the eligibility of that reserve for financial assistance under subsection (e) until the deficiency or inconsistency is remedied.

(3) The Secretary may withdraw the designation of an estuarine area as a national estuarine reserve if evaluation under paragraph (1) reveals that--

(A) the basis for any one or more of the findings made under subsection (b)(2) regarding that area no longer exists; or

(B) a substantial portion of the research conducted within the area, over a period of years, has not been consistent with the research guidelines developed under subsection (c).

(g) Report. The Secretary shall include in the report required under section 316 [16 USC § 1462] information regarding--

(1) new designations of national estuarine reserves;
(2) any expansion of existing national estuarine reserves;
(3) the status of the research program being conducted within the System; and
(4) a summary of the evaluations made under subsection (f).

§ 1462. Coastal Zone Management Reports (Section 316)

(a) Biennial reports. The Secretary shall consult with the Congress on a regular basis concerning the administration of this title and shall prepare and submit to the President for transmittal to the Congress a report summarizing the administration of this title during each period of two consecutive fiscal years. Each report, which shall be transmitted to the Congress not later than April 1 of the year following the close of the biennial period to which it pertains, shall include, but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved, and a statement of the reasons for such action; (5) a summary of evaluation findings prepared in accordance with subsection (a) of section 312 [16 USC § 1458(a)], and a description of any sanctions imposed under subsections (c) and (d) of section 312 [16 USC § 1458]; (6) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 307 [16 USC § 1456(c), (d)], are not consistent with an applicable approved state management program; (7) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (8) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (9) a summary of outstanding problems arising in the administration of this title in order of priority; (10) a description of the economic, environmental, and social consequences of energy activity affecting the coastal zone and an evaluation of the effectiveness of financial assistance under section 308 [16 USC § 1456a] in dealing with such consequences; (11) a description and evaluation of applicable interstate and regional planning and coordination mechanisms developed by the coastal states; (12) a summary and evaluation of the research, studies, and training conducted in support of coastal zone management; and (13) such other information as may be appropriate.

(b) Recommendations for legislation. The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

(c) Review of other Federal programs; report to Congress.

(1) The Secretary shall conduct a systematic review of Federal programs, other than this title, that affect coastal resources for purposes of identifying conflicts between the objectives and administration of such programs and the purposes and policies of this title. Not later than 1 year after the date of the enactment of this subsection [enacted Oct. 17, 1980], the Secretary shall notify each Federal agency having appropriate jurisdiction of any conflict between its program and the purposes and policies of this title identified as a result of such review.

(2) The Secretary shall promptly submit a report to the Congress consisting of the information required under paragraph (1) of this subsection. Such report shall include recommendations for changes necessary to resolve existing conflicts among Federal laws and programs that affect the uses of coastal resources.

§ 1463. Rules and Regulations (Section 317)

The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code [5 USC § 553], after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

§ 1464. Authorization of appropriations (Section 318)

(a) Sums appropriated to Secretary. There are authorized to be appropriated to the Secretary, to remain available until expended--

(1) for grants under sections 306, 306A, and 309 [16 USC §§ 1455, 1455a, 1456b]--

(A) $ 47,600,000 for fiscal year 1997;
(B) $ 49,000,000 for fiscal year 1998; and
(C) $ 50,500,000 for fiscal year 1999; and

(2) for grants under section 315 [16 USC § 1461]--

(A) $ 4,400,000 for fiscal year 1997;
(B) $ 4,500,000 for fiscal year 1998; and
(C) $ 4,600,000 for fiscal year 1999.

(b) Limitations. Federal funds received from other sources shall not be used to pay a coastal state's share of costs under section 306 or 309 [16 USC § 1455 or 1456b].

(c) Reversion of grants to Secretary. The amount of any grant, or portion of a grant, made to a State under any section of this Act which is not obligated by such State during the fiscal year, or during the second fiscal year after the fiscal year, for which it was first authorized to be obligated by such State shall revert to the Secretary. The Secretary shall add such reverted amount to those funds available for grants under the section for such reverted amount was originally made available.

(d) [Redesignated]

§ 1465. Appeals to the Secretary (Section 319)

(a) Notice. The Secretary shall publish in the Federal Register a notice indicating when the decision record has been closed on any appeal to the Secretary taken from a consistency determination under section 307(c) or (d)[16 USC § 1456(c) or (d)]. No later than 90 days after the date of publication of this notice, the Secretary shall--

(1) issue a final decision in the appeal; or

(2) publish a notice in the Federal Register detailing why a decision cannot be issued within the 90-day period.

(b) Deadline. In the case where the Secretary publishes a notice under subsection (a)(2), the Secretary shall issue a decision in any appeal filed under section 307 no later than 45 days after the date of the publication of the notice.

(c) Application. This section applies to appeals initiated by the Secretary and appeals filed by an applicant.

Coastal Zone Enchancement Reauthorization (108-s.218),
to amend *Coastal Zone Management Act of 1972* (P.L. 92-583;16 USC 1451-65),
as amended through the *Coastal Zone Protection Act of 1996* (P.L. 104-150; 16 USC 1451-65)

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Coastal Zone Enhancement Reauthorization of 2003'.

SEC. 2. AMENDMENT OF COASTAL ZONE MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

SEC. 3. FINDINGS.

Section 302 (16 U.S.C. 1451) is amended--

(1) by redesignating paragraphs (a) through (m) as paragraphs (1) through (13);
(2) by inserting 'ports,' in paragraph (3) (as so redesignated) after 'fossil fuels,';
(3) by inserting 'including coastal waters and wetlands,' in paragraph (4) (as so redesignated) after 'zone,';
(4) by striking 'therein,' in paragraph (4) (as so redesignated) and inserting 'dependent on that habitat,';
(5) by striking 'well-being' in paragraph (5) (as so redesignated) and inserting 'quality of life';
(6) by striking paragraph (11) (as so redesignated) and inserting the following:
'(11) Land and water uses in the coastal zone and coastal watersheds may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from activities in these areas must be improved.'; and
(7) by adding at the end thereof the following:
'(14) There is a need to enhance cooperation and coordination among states and local communities, to encourage local community-based solutions that address the impacts and pressures on coastal resources and on public facilities and public service caused by continued coastal demands, and to increase state and local capacity to identify public infrastructure and open space needs and develop and implement plans which provide for sustainable growth, resource protection and community revitalization.'.

SEC. 4. POLICY.

Section 303 (16 U.S.C. 1452) is amended--

(1) by striking 'the states' in paragraph (2) and inserting 'state and local governments';
(2) by striking 'waters,' each place it appears in paragraph (2)(C) and inserting 'waters and habitats,';
(3) by striking 'agencies and state and wildlife agencies; and' in paragraph (2)(J) and inserting 'and wildlife management; and';
(4) by inserting 'other countries,' after 'agencies,' in paragraph (5);
(5) by striking 'and' at the end of paragraph (5);
(6) by striking 'zone.' in paragraph (6) and inserting 'zone;'; and
(7) by adding at the end thereof the following:
'(7) to create and use a National Estuarine Research Reserve System as a Federal, state, and community partnership to support and enhance coastal management and stewardship; and
'(8) to encourage the development, application, and transfer of innovative coastal and estuarine environmental technologies and techniques for the long-term conservation of coastal ecosystems.'.

SEC. 5. CHANGES IN DEFINITIONS.

Section 304 (16 U.S.C. 1453) is amended--

(1) by striking 'and the Trust Territories of the Pacific Islands,' in paragraph (4);
(2) by striking paragraph (8) and inserting the following:

'(8) The term 'estuarine reserve' means a coastal protected area which may include any part or all of an estuary and any island, transitional area, and upland in, adjoining, or adjacent to the estuary, and which constitutes to the extent feasible a natural unit, established to provide long-term opportunities for conducting scientific studies and educational and training programs that improve the understanding, stewardship, and management of estuaries.'; and

(3) by adding at the end thereof the following:

'(19) The term 'coastal nonpoint pollution control strategies and measures' means strategies and measures included as part of the coastal nonpoint pollution control program under section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1455b).

'(20) The term 'qualified local entity' means--

'(A) any local government;

'(B) any areawide agency referred to in section 204(a)(1) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334 (a)(1));

'(C) any regional agency;

'(D) any interstate agency;

'(E) any nonprofit organization; or

'(F) any reserve established under section 315.'.

SEC. 6. REAUTHORIZATION OF MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

Section 305 (16 U.S.C. 1454) is amended to read as follows:

'SEC. 305. MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

'(a) STATES WITHOUT PROGRAMS- In fiscal years 2004 and 2005, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed $200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state under this subsection, no subsequent grant may be made to that coastal state under this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than 4 grants under this subsection.

'(b) SUBMITTAL OF PROGRAM FOR APPROVAL- A coastal state that has completed the development of its management program shall submit the program to the Secretary for review and approval under section 306.'.

SEC. 7. ADMINISTRATIVE GRANTS.

(a) PURPOSES- Section 306(a) (16 U.S.C. 1455(a)) is amended by inserting 'including developing and implementing coastal nonpoint pollution control program components,' after 'program,'.

(b) EQUITABLE ALLOCATION OF FUNDING- Section 306(c) (16 U.S.C. 1455(c)) is amended by adding at the end thereof 'In promoting equity, the Secretary shall consider the overall change in grant funding under this section from the preceding fiscal year and minimize the relative increases or decreases among all the eligible States. The Secretary shall ensure that each eligible State receives increased funding under this section in any fiscal year for which the total amount appropriated to carry out this section is greater than the total amount appropriated to carry out this section for the preceding fiscal year.

(c) ACQUISITION CRITERIA- Section 306(d)(10)(B) (16 U.S.C. 1455(d)(10)(B)) is amended by striking 'less than fee simple' and inserting 'other'.

SEC. 8. COASTAL RESOURCE IMPROVEMENT PROGRAM.

Section 306A (16 U.S.C. 1455a) is amended--

(1) by inserting 'or other important coastal habitats' in subsection (b)(1)(A) after '306(d)(9)';

(2) by inserting 'or historic' in subsection (b)(2) after 'urban';
(3) by adding at the end of subsection (b) the following:
'(5) The coordination and implementation of approved coastal nonpoint pollution control plans.
'(6) The preservation, restoration, enhancement or creation of coastal habitats.';
(4) by striking 'and' after the semicolon in subsection (c)(2)(D);
(5) by striking 'section.' in subsection (c)(2)(E) and inserting 'section;';
(6) by adding at the end of subsection (c)(2) the following:
'(F) work, resources, or technical support necessary to preserve, restore, enhance, or create coastal habitats; and
'(G) the coordination and implementation of approved coastal nonpoint pollution control plans.'; and
(7) by striking subsections (d), (e), and (f) and inserting after subsection (c) the following:
'(d) Source of Federal Grants; State Matching Contributions-
'(1) IN GENERAL- If a coastal state chooses to fund a project under this section, then--
'(A) it shall submit to the Secretary a combined application for grants under this section and section 306;
'(B) it shall match the combined amount of such grants in the ratio required by section 306(a) for grants under that section; and
'(C) the Federal funding for the project shall be a portion of that state's annual allocation under section 306(a).
'(2) USE OF FUNDS- Grants provided under this section may be used to pay a coastal state's share of costs required under any other Federal program that is consistent with the purposes of this section.
'(e) ALLOCATION OF GRANTS TO QUALIFIED LOCAL ENTITY- With the approval of the Secretary, the eligible coastal state may allocate to a qualified local entity a portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.
'(f) ASSISTANCE- The Secretary shall assist eligible coastal states in identifying and obtaining from other Federal agencies technical and financial assistance in achieving the objectives set forth in subsection (b).'.

SEC. 9. COASTAL ZONE MANAGEMENT FUND.

(a) TREATMENT OF LOAN REPAYMENTS- Section 308(a)(2) (16 U.S.C. 1456a(a)(2)) is amended to read as follows:
'(2) Loan repayments made under this subsection--
'(A) shall be retained by the Secretary and deposited into the Coastal Zone Management Fund established under subsection (b); and
'(B) subject to amounts provided in Appropriations Acts, shall be available to the Secretary for purposes of this title and transferred to the Operations, Research, and Facilities account of the National Oceanic and Atmospheric Administration to offset the costs of implementing this title.'.
(b) USE OF AMOUNTS IN FUND- Section 308(b) (16 U.S.C. 1456a(b)) is amended by striking paragraphs (2) and (3) and inserting the following:
'(2) Subject to Appropriation Acts, amounts in the Fund shall be available to the Secretary to carry out the provisions of this Act.'.

SEC. 10. COASTAL ZONE ENHANCEMENT GRANTS.

Section 309 (16 U.S.C. 1456b) is amended--
(1) by striking subsection (a)(1) and inserting the following:
'(1) Protection, restoration, enhancement, or creation of coastal habitats, including wetlands, coral reefs, marshes, and barrier islands.';
(2) by inserting 'and removal' after 'entry' in subsection (a)(4);

(3) by striking 'on various individual uses or activities on resources, such as coastal wetlands and fishery resources.' in subsection (a)(5) and inserting 'of various individual uses or activities on coastal waters, habitats, and resources, including sources of polluted runoff.';
(4) by adding at the end of subsection (a) the following:
'(10) Development and enhancement of coastal nonpoint pollution control program components, including the satisfaction of conditions placed on such programs as part of the Secretary's approval of the programs.
'(11) Significant emerging coastal issues as identified by coastal states, in consultation with the Secretary and qualified local entities.';
(5) by striking 'proposals, taking into account the criteria established by the Secretary under subsection (d).' in subsection (c) and inserting 'proposals.';
(6) by striking subsection (d) and redesignating subsection (e) as subsection (d);
(7) by striking 'section, up to a maximum of $10,000,000 annually' in subsection (f) and inserting 'section.'; and
(8) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 11. COASTAL COMMUNITY PROGRAM.

The Act is amended by inserting after section 309 the following:

'SEC. 309A. COASTAL COMMUNITY PROGRAM.

'(a) COASTAL COMMUNITY GRANTS- The Secretary may make grants to any coastal state that is eligible under subsection (b)--
'(1) to assist coastal communities in assessing and managing growth, public infrastructure, and open space needs in order to provide for sustainable growth, resource protection and community revitalization;
'(2) to provide management-oriented research and technical assistance in developing and implementing community-based growth management and resource protection strategies in qualified local entities;
'(3) to fund demonstration projects which have high potential for improving coastal zone management at the local level;
'(4) to assist in the adoption of plans, strategies, policies, or procedures to support local community-based environmentally-protective solutions to the impacts and pressures on coastal uses and resources caused by development and sprawl that will--
'(A) revitalize previously developed areas;
'(B) undertake conservation activities and projects in undeveloped and environmentally sensitive areas;
'(C) emphasize water-dependent uses; and
'(D) protect coastal waters and habitats; and
'(5) to assist coastal communities to coordinate and implement approved coastal nonpoint pollution control strategies and measures that reduce the causes and impacts of polluted runoff on coastal waters and habitats.
'(b) ELIGIBILITY- To be eligible for a grant under this section for a fiscal year, a coastal state shall--
'(1) have a management program approved under section 306; and
'(2) in the judgment of the Secretary, be making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 303(2)(A) through (K).
'(c) Allocations; Source of Federal Grants; State Matching Contributions-
'(1) ALLOCATION- Grants under this section shall be allocated to coastal states as provided in section 306(c).
'(2) APPLICATION; MATCHING- If a coastal state chooses to fund a project under this section, then--
'(A) it shall submit to the Secretary a combined application for grants under this section and section 306; and

'(B) it shall match the amount of the grant under this section on the basis of a total contribution of section 306, 306A, and this section so that, in aggregate, the match is 1:1.

'(d) Allocation of Grants to Qualified Local Entity-

'(1) IN GENERAL- With the approval of the Secretary, the eligible coastal state may allocate to a qualified local entity amounts received by the state under this section.

'(2) ASSURANCES- A coastal state shall ensure that amounts allocated by the state under paragraph (1) are used by the qualified local entity in furtherance of the state's approved management program, specifically furtherance of the coastal management objectives specified in section 303(2).

'(e) ASSISTANCE- The Secretary shall assist eligible coastal states and qualified local entities in identifying and obtaining from other Federal agencies technical and financial assistance in achieving the objectives set forth in subsection (a).'.

SEC. 12. TECHNICAL ASSISTANCE.

Section 310(b) (16 U.S.C. 1456c(b)) is amended by adding at the end thereof the following:

'(4) The Secretary may conduct a program to develop and apply innovative coastal and estuarine environmental technology and methodology through a cooperative program. The Secretary may make extramural grants in carrying out the purpose of this subsection.'.

SEC. 13. PERFORMANCE REVIEW.

Section 312(a) (16 U.S.C. 1458(a)) is amended by inserting 'coordinated with National Estuarine Research Reserves in the state' after '303(2)(A) through (K),'.

SEC. 14. WALTER B. JONES AWARDS.

Section 314 (16 U.S.C. 1460) is amended--

(1) by striking 'shall, using sums in the Coastal Zone Management Fund established under section 308' in subsection (a) and inserting 'may, using sums available under this Act';

(2) by striking 'field.' in subsection (a) and inserting the following: 'field of coastal zone management. These awards, to be known as the 'Walter B. Jones Awards', may include--

'(1) cash awards in an amount not to exceed $5,000 each;

'(2) research grants; and

'(3) public ceremonies to acknowledge such awards.';

(3) by striking 'shall elect annually--' in subsection (b) and inserting 'may select annually if funds are available under subsection (a)--'; and

(4) by striking subsection (e).

SEC. 15. NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM.

(a) Section 315(a) (16 U.S.C. 1461(a)) is amended by striking 'consists of--' and inserting 'is a network of areas protected by Federal, state, and community partnerships which promotes informed management of the Nation's estuarine and coastal areas through interconnected programs in resource stewardship, education and training, and scientific understanding consisting of--'.

(b) Section 315(b)(2)(C) (16 U.S.C. 1461(b)(2)(C)) is amended by striking 'public education and interpretation; and'; and inserting 'education, interpretation, training, and demonstration projects; and'.

(c) Section 315(c) (16 U.S.C. 1461(c)) is amended--

(1) by striking 'RESEARCH' in the subsection caption and inserting 'Research, Education, and Resource Stewardship';

(2) by striking 'conduct of research' and inserting 'conduct of research, education, and resource stewardship';

(3) by striking 'coordinated research' in paragraph (1)) and inserting 'coordinated research, education, and resource stewardship';

(4) by striking 'research' before 'principles' in paragraph (2);
(5) by striking 'research programs' in paragraph (2) and inserting 'research, education, and resource stewardship programs';
(6) by striking 'research' before 'methodologies' in paragraph (3);
(7) by striking 'data,' in paragraph (3) and inserting 'information,';
(8) by striking 'research' before 'results' in paragraph (3);
(9) by striking 'research purposes;' in paragraph (3) and inserting 'research, education, and resource stewardship purposes;';
(10) by striking 'research efforts' in paragraph (4) and inserting 'research, education, and resource stewardship efforts';
(11) by striking 'research' in paragraph (5) and inserting 'research, education, and resource stewardship'; and
(12) by striking 'research' in the last sentence.

(d) Section 315(d) (16 U.S.C. 1461(d)) is amended--
(1) by striking 'ESTUARINE RESEARCH- ' in the subsection caption and inserting 'Estuarine Research, Education, and Resource Stewardship- ';
(2) by striking 'research purposes' and inserting 'research, education, and resource stewardship purposes';
(3) by striking paragraph (1) and inserting the following:
'(1) giving reasonable priority to research, education, and stewardship activities that use the System in conducting or supporting activities relating to estuaries; and';
(4) by striking 'research.' in paragraph (2) and inserting 'research, education, and resource stewardship activities.'; and
(5) by adding at the end thereof the following:
'(3) establishing partnerships with other Federal and state estuarine management programs to coordinate and collaborate on estuarine research.'.

(e) Section 315(e) (16 U.S.C. 1461(e)) is amended--
(1) by striking 'reserve,' in paragraph (1)(A)(i) and inserting 'reserve; and';
(2) by striking 'and constructing appropriate reserve facilities, or' in paragraph (1)(A)(ii) and inserting 'including resource stewardship activities and constructing reserve facilities; and';
(3) by striking paragraph (1)(A)(iii);
(4) by striking paragraph (1)(B) and inserting the following:
'(B) to any coastal state or public or private person for purposes of--
'(i) supporting research and monitoring associated with a national estuarine reserve that are consistent with the research guidelines developed under subsection (c); or
'(ii) conducting educational, interpretive, or training activities for a national estuarine reserve that are consistent with the education guidelines developed under subsection (c).';
(5) by striking 'therein or $5,000,000, whichever amount is less.' in paragraph (3)(A) and inserting 'therein. Non-Federal costs associated with the purchase of any lands and waters, or interests therein, which are incorporated into the boundaries of a reserve up to 5 years after the costs are incurred, may be used to match the Federal share.';
(6) by striking 'and (iii)' in paragraph (3)(B);
(7) by striking 'paragraph (1)(A)(iii)' in paragraph (3)(B) and inserting 'paragraph (1)(B)';
(8) by striking 'entire System.' in paragraph (3)(B) and inserting 'System as a whole.'; and
(9) by adding at the end thereof the following:
'(4) The Secretary may--
'(A) enter into cooperative agreements, financial agreements, grants, contracts, or other agreements with any nonprofit organization, authorizing the organization to solicit donations to carry out the purposes and policies of this section, other than general administration of reserves or the System and which are consistent with the purposes and policies of this section; and

'(B) accept donations of funds and services for use in carrying out the purposes and policies of this section, other than general administration of reserves or the System and which are consistent with the purposes and policies of this section. Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States for the purpose of carrying out this section.'.

(f) Section 315(f)(1) (16 U.S.C. 1461(f)(1)) is amended by inserting 'coordination with other state programs established under sections 306 and 309A,' after 'including'.

SEC. 16. COASTAL ZONE MANAGEMENT REPORTS.

Section 316 (16 U.S.C. 1462) is amended--

(1) by striking 'to the President for transmittal' in subsection (a);

(2) by striking 'zone and an evaluation of the effectiveness of financial assistance under section 308 in dealing with such consequences;' and inserting 'zone;' in the provision designated as (10) in subsection (a);

(3) by inserting 'education,' after the 'studies,' in the provision designated as (12) in subsection (a);

(4) by striking 'Secretary' in the first sentence of subsection (c)(1) and inserting 'Secretary, in consultation with coastal states, and with the participation of affected Federal agencies,';

(5) by striking the second sentence of subsection (c)(1) and inserting the following: 'The Secretary, in conducting such a review, shall coordinate with, and obtain the views of, appropriate Federal agencies.';

(6) by striking 'shall promptly' in subsection (c)(2) and inserting 'shall, within 4 years after the date of enactment of the Coastal Zone Management Act of 2001,'; and

(7) by adding at the end of subsection (c)(2) the following: 'If sufficient funds and resources are not available to conduct such a review, the Secretary shall so notify the Congress.'.

SEC. 17. AUTHORIZATION OF APPROPRIATIONS.

Section 318 (16 U.S.C. 1464) is amended--

(1) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

'(1) for grants under sections 306, 306A, and 309--

'(A) $83,500,000 for fiscal year 2004;

'(B) $87,000,000 for fiscal year 2005;

'(C) $90,500,000 for fiscal year 2006;

'(D) $94,000,000 for fiscal year 2007; and

'(E) $97,500,000 for fiscal year 2008;

'(2) for grants under section 309A--

'(A) $27,000,000 for fiscal year 2004;

'(B) $28,000,000 for fiscal year 2005;

'(C) $29,000,000 for fiscal year 2006;

'(D) $30,000,000 for fiscal year 2007; and

'(E) $30,000,000 for fiscal year 2008;

of which $10,000,000, or 35 percent, whichever is less, shall be for purposes set forth in section 309A(a)(5);

'(3) for grants under section 315--

'(A) $13,000,000 for fiscal year 2004;

'(B) $14,000,000 for fiscal year 2005;

'(C) $15,000,000 for fiscal year 2006;

'(D) $16,000,000 for fiscal year 2007; and

'(E) $17,000,000 for fiscal year 2008;

'(4) for grants to fund construction projects at estuarine reserves designated under section 315, $12,000,000 for each of fiscal years 2004, 2005, 2006, 2007, and 2008; and

'(5) for costs associated with administering this title, $6,500,000 for fiscal year 2004 and such sums as are necessary for fiscal years 2005-2008.';

(2) by striking '306 or 309.' in subsection (b) and inserting '306.';
(3) by striking 'during the fiscal year, or during the second fiscal year after the fiscal year, for which' in subsection (c) and inserting 'within 3 years from when';
(4) by striking 'under the section for such reverted amount was originally made available.' in subsection (c) and inserting 'to states under this Act.'; and
(5) by adding at the end thereof the following:

'(d) PURCHASE OF OTHERWISE UNAVAILABLE FEDERAL PRODUCTS AND SERVICES- Federal funds allocated under this title may be used by grantees to purchase Federal products and services not otherwise available.

'(e) RESTRICTION ON USE OF AMOUNTS FOR PROGRAM, ADMINISTRATIVE, OR OVERHEAD COSTS- Except for funds appropriated under subsection (a)(5), amounts appropriated under this section shall be available only for grants to states and shall not be available for other program, administrative, or overhead costs of the National Oceanic and Atmospheric Administration or the Department of Commerce.'.

SEC. 18. SENSE OF CONGRESS.

It is the sense of Congress that the Undersecretary for Oceans and Atmosphere should re-evaluate the calculation of shoreline mileage used in the distribution of funding under the Coastal Zone Management Program to ensure equitable treatment of all regions of the coastal zone, including the Southeastern States and the Great Lakes States.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coastal Barrier Resources Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS. – The Congress finds that– (1) coastal barriers along the Atlantic and Gulf coasts of the United States and the adjacent wetlands, marshes, estuaries, inlets and nearshore waters provide–
(A) habitats for migratory birds and other wildlife; and (B) habitats which are essential spawning, nursery, nesting, and feeding areas for commercially and recreationally important species of finfish and shellfish, as well as other aquatic organisms such as sea turtles;
(2) coastal barriers contain resources of extraordinary scenic, scientific, recreational, natural, historic, archeological, cultural, and economic importance; which are being irretrievably damaged and lost due to development on, among, and adjacent to, such barriers; (3) coastal barriers serve as natural storm protective buffers and are generally unsuitable for development because they are vulnerable to hurricane and other storm damage and because natural shoreline recession and the movement of unstable sediments undermine manmade structures; (4) certain actions and programs of the Federal Government have subsidized and permitted development on coastal barriers and the result has been the loss of barrier resources, threats to human life, health, and property, and the expenditure of millions of tax dollars each year; and (5) a program of coordinated action by Federal, State, and local governments is critical to the more appropriate use and conservation of coastal barriers.

(b) PURPOSE. – The Congress declares that it is the purpose of this Act to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts by restricting future Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers, by establishing a Coastal Barrier Resources System, and by considering the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved.

SEC. 3. DEFINITIONS.

For purposes of this Act–

(1) The term "undeveloped coastal barrier" means–
(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that–
(i) consists of unconsolidated sedimentary materials,
(ii) is subject to wave, tidal, and wind energies, and

(iii) protects landward aquatic habitats from direct wave attack; and

(B) all associated aquatic habitats, including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters; but only if such feature and associated habitats

(i) contain few manmade structures and these structures, and man's activities on such feature and within such habitats, do not significantly impede geomorphic and ecological processes, and

(ii) are not included within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization as defined in section 170(h)(3) of the Internal Revenue Code of 1954, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes.

(2) The term "Committees" refers to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate. (3) The term "financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance other than–

(A) general revenue-sharing grants made under section 102 of the State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. 1221);

(B) deposit or account insurance for customers of banks, savings and loan associations, credit unions, or similar institutions;

(C) the purchase of mortgages or loans by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(D) assistance for environmental studies, planning, and assessments that are required incident to the issuance of permits or other authorizations under Federal law; and

(E) assistance pursuant to programs entirely unrelated to development, such as any Federal or federally assisted public assistance program or any Federal old- age survivors or disability insurance program. Effective October 1, 1983, such term includes flood insurance described in section 1321 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4028).

(4) The term "Secretary" means the Secretary of the Interior.

(5) The term "System unit" means any undeveloped coastal barrier, or combination of closely-related undeveloped coastal barriers, included within the Coastal Barrier Resources System established by section 4.

SEC. 4. THE COASTAL BARRIER RESOURCES SYSTEM.

(a) ESTABLISHMENT. –

(1) There is established the Coastal Barrier Resources System which shall consist of those undeveloped coastal barriers located on the Atlantic and Gulf coasts of the United States that are identified and generally depicted on the maps that are entitled "Coastal Barrier Resources System", numbered A01 through T12, and dated September 30, 1982.

(2) Any person or persons or other entity owning or controlling land on an undeveloped coastal barrier, associated landform or any portion thereof not within the Coastal Barrier Resources System established under paragraph (1) may, within one year after the date of enactment of this Act, elect to have such land included within the Coastal Barrier Resources System. This election shall be made in compliance with regulations established for this purpose by the Secretary not later than one hundred and eighty days after the date of enactment of this Act; and, once made and filed in accordance with the laws regulating the sale or other transfer of land or other real property of the State in which such land is located, shall have the same force and effect as if such land had originally been included within the Coastal Barrier Resources System.

(b) (1) As soon as practicable after the enactment of this Act, the maps referred to in paragraph (1) of subsection (a) shall be filed with the Committees by the Secretary, and each such map shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in each such map may be made. Each such map shall be on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service, Department of the Interior, and in other appropriate offices of the Service.

(2) As soon as practicable after the date of the enactment of this Act, the Secretary shall provide copies of the maps referred to in paragraph (1) of subsection (a) to the chief executive officer of

(A) each State and county or equivalent jurisdiction in which a system unit is located,

(B) each State coastal zone management agency in those States which have a coastal zone management plan approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) and in which a system unit is located, and

(C) each appropriate Federal agency.

(c) BOUNDARY MODIFICATIONS. –

(1) Within 180 days after the date of enactment of this Act, the Secretary may make such minor and technical modifications to the boundaries of system units as depicted on the maps referred to in paragraph (1) of subsection (a) as are consistent with the purposes of this Act and necessary to clarify the boundaries of said system units; except that, for system units within States which have, on the date of enactment, a coastal zone management plan approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455)–

(A) each appropriate State coastal zone management agency may within 90 days after the date of enactment of this Act, submit to the Secretary proposals for such minor and technical modifications; and

(B) the Secretary may, within 180 days after the date of enactment of this Act, make such minor and technical modifications to the boundaries of such system units.

(2) The Secretary shall, not less than 30 days prior to the effective date of any such boundary modification made under the authority of paragraph (1), submit written notice of such modification to (A) each of the Committees and (B) each of the appropriate officers referred to in paragraph (2) of subsection (b).

(3) The Secretary shall conduct, at least once every five years, a review of the maps referred to in paragraph (1) of subsection (a) and make, in consultation with the appropriate officers referred to in paragraph (2) of subsection (b), such minor and technical modifications to the boundaries of system units as are necessary solely to reflect changes that have occurred in the size or location of any system units as a result of natural forces.

(4) If, in the case of any minor and technical modification to the boundaries of system units made under the authority of this subsection, an appropriate chief executive officer of a State, county or equivalent jurisdiction, or State coastal zone management agency to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, or if the Secretary fails to adopt a modification pursuant to a proposal submitted by an appropriate State coastal zone management agency under paragraph (1)(A), the Secretary shall submit to the chief executive officer a written justification for his failure to make modifications consistent with such comments or proposals.

SEC. 5. LIMITATIONS ON FEDERAL EXPENDITURES AFFECTING THE SYSTEM.

(a) Except as provided in section 6, no new expenditures or new financial assistance may be made available under authority of any Federal law for any purpose within the Coastal Barrier Resources System, including, but not limited to–

(1) the construction or purchase of any structure, appurtenance, facility, or related infrastructure;

(2) the construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(3) the carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit. (b) An expenditure or financial assistance made available under authority of Federal law shall, for purposes of this Act, be a new expenditure or new financial assistance if–

(1) in any case with respect to which specific appropriations are required, no money for construction or purchase purposes was appropriated before the date of the enactment of this Act; or

(2) no legally binding commitment for the expenditure or financial assistance was made before such date of enactment.

SEC. 6. EXCEPTIONS.

(a) Notwithstanding section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures or financial assistance available within the Coastal Barrier Resources System for–

(1) any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body;

(2) the maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements;

(3) the maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly-owned or publicly-operated roads, structures, or facilities that are essential links in a larger network or system;

(4) military activities essential to national security;

(5) the construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto; and

(6) any of the following actions or projects, but only if the making available of expenditures or assistance therefor is consistent with the purposes of this Act:

(A) Projects for the study, management, protection and enhancement of fish and wildlife resources and habitats, including, but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

(B) The establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.). (D) Scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications.

(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146) and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

(F) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities.

(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

(b) For purposes of subsection (a)(2), a channel improvement or a related structure shall be treated as an existing improvement or an existing related structure only if all, or a portion, of the moneys for such an improvement or structure was appropriated before the date of the enactment of this Act.

SEC. 7. CERTIFICATION OF COMPLIANCE.

The Director of the Office of Management and Budget shall, on behalf of each Federal agency concerned, make written certification that each such agency has complied with the provisions of this Act during each fiscal year beginning after September 30, 1982. Such certification shall be submitted on an annual basis to the House of Representatives and the Senate pursuant to the schedule required under the Congressional Budget and Impoundment Control Act of 1974.

SEC. 8. PRIORITY OF LAWS.

Nothing contained in this Act shall be construed as indicating an intent on the part of the Congress to change the existing relationship of other Federal laws to the law of a State, or a political subdivision of a State, or to relieve any person of any obligation imposed by any law of any State, or political subdivision of a State. No provision of this Act shall be construed to invalidate any provision of State or local law unless there is a direct conflict between such provision and the law of the State, or political subdivision of the State, so that the two cannot be reconciled or consistently stand together. This Act shall in no way be interpreted to interfere with a State's right to protect, rehabilitate, preserve, and restore lands within its established boundary.

SEC. 9. SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

SEC. 10. REPORTS TO CONGRESS.

(a) IN GENERAL. – Before the close of the 3-year period beginning on the date of the enactment of this Act, the Secretary shall prepare and submit to the Committees a report regarding the System.

(b) CONSULTATION IN PREPARING REPORT. – The Secretary shall prepare the report required under subsection (a) in consultation with the Governors of the States in which System units are located and with the coastal zone management agencies of the States in which System units are located and after providing opportunity for, and considering, public comment.

(c) REPORT CONTENT. – The report required under subsection (a) shall contain–

(1) recommendations for the conservation of the fish, wildlife, and other natural resources of the System based on an evaluation and comparison of all management alternatives, and combinations thereof, such as State and local actions (including management plans approved under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.)), Federal actions (including acquisition for administration as part of the National Wildlife Refuge System), and initiatives by private organizations and individuals;

(2) recommendations for additions to, or deletions from, the Coastal Barrier Resources System, and for modifications to the boundaries of System units;

(3) a summary of the comments received from the Governors of the States, State coastal zone management agencies, other government officials, and the public regarding the System; and

(4) an analysis of the effect, if any, that general revenue sharing grants made under section 102 of the State and Local Fiscal Assistance Amendments of 1972 (31 U.S.C. 1221) have had on undeveloped coastal barriers.

SEC. 11. AMENDMENTS REGARDING FLOOD INSURANCE.

(a) Section 1321 of the National Flood Insurance Act of 1968 (42 U.S.C. 4028) is amended to read as follows:

"UNDEVELOPED COASTAL BARRIERS

"SEC. 1321. No new flood insurance coverage may be provided under this title on or after October 1, 1983, for any new construction or substantial improvements of structures located on any coastal barrier within the Coastal Barrier Resources System established by section 4 of the Coastal Barrier Resources Act. A federally insured financial institution may make loans secured by structures which are not eligible for flood insurance by reason of this section." (b) Section 341 (d)(2) of the Omnibus Budget and Reconciliation Act of 1981 (Public Law 97-35) is repealed.

SEC. 12. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Department of the Interior $1,000,000 for the period beginning October 1, 1982, and ending September 30, 1985, for purposes of carrying out sections 4 and 10.

Coastal Barrier Improvement Act of 1990 (P.L. 101-591; 16 U.S.C. 3501-3510)

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coastal Barrier Improvement Act of 1990".

SEC. 2. DEFINITION AMENDMENTS.

(a) UNDEVELOPED COASTAL BARRIER.-The Coastal Barrier Resources Act

is amended in section 3(1)(A) (16 U.S.C. 3502(1)(A))-(1) by striking clause (i); and (2) by redesignating clauses (ii) and (iii) as clauses (i) and (ii), respectively.

(b) SYSTEM MAPS; SYSTEM.-(1) REPEAL AND ADDITION OF DEFINITION.-Section 3(6) of the Coastal Barrier Resources Act (16 U.S.C. 3502(6)) is amended to read as follows: "(6) The term 'System' means the Coastal Barrier Resources System established by section 4(a).". (2) CONFORMING AMENDMENTS.-Section 5 of the Coastal Barrier Resources Act (16 U.S.C. 3504) is amended(A) in subsection (a), by striking "Coastal Barrier Resources";

(B) in subsection (b)(1), by striking "of the enactment of this Act" and inserting in lieu thereof "on which the relevant System unit or portion of the System unit was included within the System under this Act or the Coastal Barrier Improvement Act of 1990"; and (C) at the end of subsection (b)(2), by striking "of enactment".

(c) OTHERWISE PROTECTED AREAS.-Section 3(1) of the Act (16 U.S.C. 3502(1)) is amended(1) by striking "(i)" immediately before "contain few"; and (2) by inserting a period immediately following "ecological processes" and striking the balance of the sentence.

SEC. 3. COASTAL BARRIER RESOURCES SYSTEM, GENERALLY.

Section 4 of the Coastal Barrier Resources Act (16 U.S.C. 3503) is amended to read as follows:

"SEC. 4. ESTABLISHMENT OF COASTAL BARRIER RESOURCES SYSTEM.

"(a) ESTABLISHMENT.-There is established the Coastal Barrier Resources System, which shall consist of those undeveloped coastal barriers and other areas located on the coasts of the United States that are identified and generally depicted on the maps on file with the Secretary entitled 'Coastal Barrier Resources System', dated October 24, 1990, as such maps may be revised by the Secretary under section 4 of the Coastal Barrier Improvement Act of 1990.

"(b) SYSTEM MAPS.-The Secretary shall keep the maps referred to in subsection (a) on file and available for public inspection in the Office of the Director of the United States Fish and Wildlife Service, and in such other offices of that service as the Director considers appropriate. "(c) BOUNDARY REVIEW AND MODIFICATION.-At least once every 5 years, the Secretary shall review the maps referred to in subsection (a) and shall make, in consultation with the appropriate State, local, and Federal officials, such minor and technical modifications to the boundaries of System units as are necessary solely to reflect changes that have occurred in the size or location of any System unit as a result of natural forces.".

SEC. 4. TECHNICAL REVISION OF MAPS; MODIFICATION OF BOUNDARIES; ADDITIONS TO SYSTEM.

(a) TECHNICAL REVISION OF MAPS AND PROVISION TO STATE AND LOCAL GOVERNMENT.-Not later than 180 days after the date of the enactment of this Act, the Secretary shall

(1) make such technical revisions to the maps referred to in section 4(a) of the Coastal Barrier Resources Act (as amended by section 3 of this Act) as may be necessary to correct existing clerical and typographical errors in the maps; and

(2) provide copies of the maps, as so revised, to

(A) each State and each local government in which is located a unit of the System;

(B) the coastal zone management agency of each State

(i) in which is located a unit of the System; and (ii) which has a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455); and

(C) appropriate Federal agencies.

(b) RECOMMENDATIONS OF STATE AND LOCAL GOVERNMENTS FOR BOUNDARY MODIFICATIONS.-

(1) Not later than 1 year after the date of the enactment of this Act(A) a local government in which is located a unit of the System and which is in a State which has a coastal zone management program approved pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455); and (B) the coastal zone management agency of a State in which is located a unit of the System and which has such a program approved; may each submit to the Secretary recommendations for minor and technical modifications to the boundaries of existing units of the System located in that local government or State, respectively.

(2) If, if the case of any minor and technical modification to the boundaries of System units made under the authority of subsection (d) of this section, an appropriate chief executive officer of a State, county or equivalent jurisdiction, or State coastal zone management agency to which notice was given in accordance with this subsection files comments disagreeing with all or part of the modification and the Secretary makes a modification which is in conflict with such comments, or if the Secretary fails to adopt a modification pursuant to a proposal submitted by an appropriate State coastal zone management agency under paragraph (1) of this subsection, the Secretary shall submit to the chief

executive officer a written justification for the failure to make modifications consistent with such comments or proposals.

(c) ELECTIONS TO ADD TO SYSTEM.-

(1) PROVISION OF MAPS BY SECRETARY.-Not later than 180 days after the date of the enactment of this Act, the Secretary shall provide

(A) to each local government in which is located an undeveloped coastal barrier not included within the System; and

(B) to the Governor of each State in which such an area is located; maps depicting those undeveloped coastal barriers not included within the System located in that local government or State, respectively.

(2) ELECTIONS.-Not later than 18 months after the date of the enactment of this Act, a local government and the Governor of any State referred to in paragraph (1), and any qualified organization

(A) may each elect to add to the System, as a new unit or as an addition to an existing unit, any area of qualified coastal barrier (or any portion thereof) which is owned or held by the local government, State, or qualified organization, respectively;

(B) shall notify the Secretary of that election; and (C) shall submit to the Secretary a map depicting the area, if

(i) the area (or portion) is not depicted on a map provided by the Secretary under paragraph (1); or

(ii) the local government, State, or qualified organization was not provided maps under paragraph (1).

(3) EFFECTIVE DATE OF ELECTION.-An area elected by a local government, Governor of a State, or qualified organization to be added to the system under this subsection shall be part of the System effective on the date on which the Secretary publishes notice in the Federal Register under subsection (e)(1)(C) with respect to that election.

(d) ADDITION OF EXCESS FEDERAL PROPERTY.-

(1) CONSULTATION AND DETERMINATION.-Prior to transfer or disposal of excess property under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) that may be an undeveloped coastal barrier, the Administrator of General Services shall consult with and obtain from the Secretary a determination as to whether and what portion of the property constitutes an undeveloped coastal barrier. Not later than one hundred and eighty days after the initiation of such consultation, the Secretary shall make and publish notice of such determination. Immediately upon issuance of a positive determination, the Secretary shall

(A) prepare a map depicting the undeveloped coastal barrier portion of such property; and (B) publish in the Federal Register notice of the addition of such property to the System.

(2) EFFECTIVE DATE OF INCLUSION.-An area to be added to the System under this subsection shall be part of the System effective on the date on which the Secretary publishes notice in the Federal Register under subsection (d)(1)(B) with respect to that area.

(3) REVISION OF MAPS.-As soon as practicable after the date on which a unit is added to the System under subsection (d)(2), the Secretary shall revise the maps referred to in section 4(a) of the Act (as amended by section 3 of this Act) to reflect each such addition.

(e) MODIFICATION OF BOUNDARIES, REVISION OF MAPS, AND PUBLICATION OF NOTICE.-

(1) IN GENERAL.-Not later than 2 years after the date of the enactment of this Act, the Secretary

(A) based on recommendations submitted by local governments and State coastal zone management agencies under subsection (b), may make such minor and technical modifications to the boundaries of existing units of the System as are consistent with the purposes of the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.) and are necessary to clarify the boundaries of those units;

(B) shall revise the maps referred to in section 4(a) of the Act (as amended by section 3 of this Act)-

(i) to reflect those modifications; and (ii) to reflect each election of a local government, Governor of a State, or qualified organization to add an area to the System pursuant to subsection (c); and

(C) shall publish in the Federal Register notice of each such modification or election.

(2) EFFECTIVE DATE OF MODIFICATIONS.-A modification of the boundaries of a unit of the System under paragraph (1)(A) shall take effect on the date on which the Secretary published notice in the Federal Register under paragraph (1)(C) with respect to that modification.

(f) NOTIFICATION REGARDING MODIFICATIONS AND ELECTIONS.-Not less than 30 days before the effective date of any modification of the boundaries of a unit of the System under subsection (d)(1)(A), or

of an election of a local government, Governor of a State, or qualified organization to add an area of qualified coastal barrier to the System pursuant to subsection (c) or of an addition to the System pursuant to subsection (d), the Secretary shall submit written notice of such modification or election to-

(1) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Environment and Public Works of the Senate; and

(2) appropriate State and Federal officials.

SEC. 5. EXCEPTIONS TO LIMITATIONS ON FEDERAL EXPENDITURES.

(a) EXCEPTIONS, GENERALLY.-Section 6 of the Coastal Barrier Resources Act (16 U.S.C. 3505) is amended to read as follows:

"SEC. 6. EXCEPTIONS TO LIMITATIONS ON EXPENDITURES.

"(a) IN GENERAL.-Notwithstanding section 5, the appropriate Federal officer, after consultation with the Secretary, may make Federal expenditures and may make financial assistance available within the System for the following:

"(1) Any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body.

"(2) The maintenance or construction of improvements of existing Federal navigation channels (including the Intracoastal Waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction.

"(3) The maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system.

"(4) Military activities essential to national security.

"(5) The construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto.

"(6) Any of the following actions or projects, if a particular expenditure or the making available of particular assistance for the action or project is consistent with the purposes of this Act:

"(A) Projects for the study, management, protection, and enhancement of fish and wildlife resources and habitats, including acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects.

"(B) Establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto.

"(C) Projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

"(D) Scientific research, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications.

"(E) Assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency.

"(F) Maintenance, replacement, reconstruction, or repair, but not the expansion (except with respect to United States route 1 in the Florida Keys), of publicly owned or publicly operated roads, structures, and facilities.

"(G) Nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.

"(b) EXISTING FEDERAL NAVIGATION CHANNELS.-For purposes of subsection (a)(2), a Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the System unit was included within the System.

"(c) EXPANSION OF HIGHWAYS IN MICHIGAN.-The limitations on the use of Federal expenditures or financial assistance within the System under subsection (a)(3) shall not apply to a highway

"(1) located in a unit of the System in Michigan; and

"(2) in existence on the date of the enactment of the Coastal Barrier Improvement Act of 1990.

"(d) SERVICES AND FACILITIES OUTSIDE SYSTEM.-

"(1) IN GENERAL.-Except as provided in paragraphs (2) and (3) of this subsection, limitations on the use of Federal expenditures or financial assistance within the System under section 5 shall not apply to expenditures or assistance provided for services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System (as depicted on the maps referred to in section 4(a)) which relate to an activity within that unit.

"(2) PROHIBITION OF FLOOD INSURANCE COVERAGE.-No new flood insurance coverage may be provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) for any new construction or substantial improvements relating to services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

"(3) PROHIBITION OF HUD ASSISTANCE.-

"(A) IN GENERAL.-No financial assistance for acquisition, construction, or improvement purposes may be provided under any program administered by the Secretary of Housing and Urban Development for any services or facilities and related infrastructure located outside the boundaries of unit T-11 of the System that facilitate an activity within that unit that is not consistent with the purposes of this Act.

"(B) DEFINITION OF FINANCIAL ASSISTANCE.-For purposes of this paragraph, the term 'financial assistance' includes any contract, loan, grant, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan, mortgage, or pool of mortgages.".

(b) CONFORMING AMENDMENT.-Subsection (d) of section 204 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (16 U.S.C. 3505 note) is repealed.

(c) APPLICATION OF EXISTING LOUISIANA EXCEPTION.-Section 5(a)(3) of the Coastal Barrier Resources Act (16 U.S.C. 3504(a)(3)) is amended by inserting "and LA07" after "S01 through S08".

SEC. 6. PACIFIC COASTAL BARRIER PROTECTION STUDY AND MAPS.

IN GENERAL.-

(1) STUDY.-Not later than 6 months after the date of the enactment of this Act, the Secretary shall prepare and submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Environment and Public Works of the Senate a study which examines the need for protecting undeveloped coastal barriers along the Pacific coast of the United States south of 49 degrees north latitude through inclusion in the System. Such study shall examine

(A) the potential for loss of human life and damage to fish, wildlife, other natural resources, and the potential for the wasteful expenditure of Federal revenues given the geological differences of the coastal barriers along the Pacific coast as opposed to those found along the Atlantic and Gulf coasts; and

(B) the differences in extreme weather conditions which exist along the Pacific coast as opposed to those found along the Atlantic and Gulf coasts.

(2) PREPARATION AND SUBMISSION OF MAPS.-

(A) As soon as practicable after the date of the enactment of this Act, the Secretary shall prepare maps identifying the boundaries of those undeveloped coastal barriers (as that term is defined in section 3(1) of the Coastal Barrier Resources Act (16 U.S.C. 3502(1)) of the United States bordering the Pacific Ocean south of 49 degrees north latitude.

(B) Not later than 12 months after the date of enactment of this Act, the Secretary shall submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committee on Environment and Public Works of the Senate maps identifying the boundaries of those undeveloped coastal barriers of the United States bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System.

SEC. 7. SPECIAL UNIT.

(a) DESIGNATION.-The southernmost portion of unit P-11 of the System, as depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act (as amended by this Act), located on Hutchinson Island north of St. Lucie inlet in Florida, is designated as the "Frank M. McGilvrey Unit". In revising those maps under section 4(a) of this Act, the Secretary shall so identify that unit.

(b) REFERENCES.-Any reference in a law, map, regulation, document, paper, or other record of the United States to the unit of the System referred to in subsection (a) is deemed to be a reference to the "Frank M. McGilvrey Unit" of the System.

SEC. 8. REPORT REGARDING COASTAL BARRIER MANAGEMENT.

(a) COASTAL BARRIERS TASK FORCE.-

(1) ESTABLISHMENT.-There is established an interagency task force to be known as the Coastal Barriers Task Force (hereinafter in this section referred to as the "Task Force").

(2) MEMBERSHIP.-The Task Force shall be composed of 11 individuals as follows:

(A) A designee of the Secretary of Agriculture.

(B) A designee of the Secretary of Commerce.

(C) A designee of the Secretary of Defense.

(D) A designee of the Secretary of Energy.

(E) A designee of the Secretary of Housing and Urban Development.

(F) A designee of the Secretary of the Interior.

(G) A designee of the Secretary of Transportation.

(H) A designee of the Secretary of the Treasury, who shall represent the Internal Revenue Service.

(I) A designee of the Administrator of the Environmental Protection Agency.

(J) A designee of the Director of the Federal Emergency Management Agency.

(K) A designee of the Administrator of the Small Business Administration.

(3) CHAIRPERSON.-The chairperson of the Task Force shall be the designee of the Secretary of the Interior.

(b) REPORT.-

(1) IN GENERAL.-Not later than the expiration of the 2-year period beginning on the date of the enactment of this Act, the Task Force shall submit to the Congress a report regarding the Coastal Barrier Resources System.

(2) CONTENTS.-The report required under paragraph (1) shall include the following:

(A) An analysis of the effects of any regulatory activities of the Federal Government on development within units of the System, for the period from 1975 to 1990.

(B) An analysis of the direct and secondary impacts of tax policies of the Federal Government on development (including development of second home and investment properties) within units of the System, for the period from 1975 to 1990.

(C) An estimate and comparison of the costs to the Federal Government with respect to developed coastal barriers on which are located units of the System, for the period from 1975 to 1990, which shall include costs of shore protection activities, beach renourishment activities, evacuation services, disaster assistance, and flood insurance subsidies under the National Flood Insurance Program.

(D) A determination of the number of structures for which flood insurance under the National Flood Insurance Program has been unavailable since the enactment of the National Flood Insurance Act of 1968 because of the prohibition, under section 1321 of such Act, of the provision of insurance for structures located on coastal barriers within the System.

(E) An estimate of the number of existing structures located on coastal barriers that are included within the System because of the expansion of the System under this Act and the amendments made by this Act.

(F) A summary of the opinions and comments expressed pursuant to paragraph (3).

(G) Recommendations for Federal policies and legislative action with respect to developed and undeveloped coastal barriers to promote the protection of coastal barriers and minimize activities of the Federal Government that contribute to the destruction and degradation of coastal barriers.

(3) HEARINGS.-In carrying out its responsibilities under this subsection, the Task Force shall hold hearings to provide opportunity for State and local governments and members of the public to express their opinions and comment on Federal policy regarding coastal barriers.

(c) TERMINATION.-The Task Force shall terminate 90 days after submission of the report required under subsection (b)(1).

SEC. 9. PROHIBITION OF FLOOD INSURANCE COVERAGE IN CERTAIN COASTAL BARRIERS.

Section 1321 of the National Flood Insurance Act of 1968 (42 U.S.C. 4028) is

amended(1) by inserting "(a)" after the section designation; and (2) by adding at the end the following new subsection:

"(b) No new flood insurance coverage may be provided under this title after the expiration of the 1-year period beginning on the date of the enactment of the Coastal Barrier Improvement Act of 1990 for any new construction or substantial improvements of structures located in any area identified and depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act as an area that is (1) not within the Coastal Barrier Resources System and (2) is in an otherwise protected area. Notwithstanding the preceding sentence, new flood insurance coverage may be provided for structures in such protected areas that are used in a manner consistent with the purpose for which the area is protected.".

SEC. 10. RTC AND FDIC PROPERTIES.

(a) REPORTS.-

(1) SUBMISSION.-The Resolution Trust Corporation and the Federal Deposit Insurance Corporation shall each submit to the Congress for each year a report identifying and describing any property that is covered property of the corporation concerned as of September 30 of such year. The report shall be submitted on or before March 30 of the following year.

(2) CONSULTATION.-In preparing the reports required under this subsection, each corporation concerned may consult with the Secretary of the Interior for purposes of identifying the properties described in paragraph (1).

(b) LIMITATION ON TRANSFER.-

(1) NOTICE.-The Resolution Trust Corporation and the Federal Deposit Insurance Corporation may not sell or otherwise transfer any covered property unless the corporation concerned causes to be published in the Federal Register a notice of the availability of the property for purchase or other transfer that identifies the property and describes the location, characteristics, and size of the property.

(2) EXPRESSION OF SERIOUS INTEREST.-During the 90-day period beginning on the date that notice under paragraph (1) concerning a covered property is first published, any governmental agency or qualified organization may submit to the corporation concerned a written notice of serious interest for the purchase or other transfer of a particular covered property for which notice has been published. The notice of serious interest shall be in such form and include such information as the corporation concerned may prescribe.

(3) PROHIBITION OF TRANSFER.-During the period under paragraph (2), a corporation concerned may not sell or otherwise transfer any covered property for which notice has been published under paragraph (1). Upon the expiration of such period, the corporation concerned may sell or otherwise transfer any covered property for which notice under paragraph (1) has been published if a notice of serious interest under paragraph (2) concerning the property has not been timely submitted.

(4) OFFERS AND PERMITTED TRANSFER.-If a notice of serious interest in a covered property is timely submitted pursuant to paragraph (2), the corporation concerned may not sell or otherwise transfer such covered property during the 90-day period beginning upon the expiration of the period under paragraph (2) except to a governmental agency or qualified organization for use primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes, unless all notices of serious interest under paragraph (2) have been withdrawn.

(c) DEFINITIONS.-For purposes of this section:

(1) CORPORATION CONCERNED.-The term "corporation concerned" means

(A) the Federal Deposit Insurance Corporation, with respect to matters relating to the Federal Deposit Insurance Corporation; and

(B) the Resolution Trust Corporation, with respect to matters relating to the Resolution Trust Corporation.

(2) COVERED PROPERTY.-The term "covered property" means any property

(A) to which(i) the Resolution Trust Corporation has acquired title in its corporate or receivership capacity; or (ii) the Federal Deposit Insurance Corporation has acquired title in its corporate capacity or which was acquired by the former Federal Savings and Loan Insurance Corporation in its corporate capacity; and

(B) that(i) is located within the Coastal Barrier Resources System; or (ii) is undeveloped, greater than 50 acres in size, and adjacent to or contiguous with any lands managed by a governmental agency

primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.
(3) GOVERNMENTAL AGENCY.-The term "governmental agency" means any agency or entity of the Federal Government or a State or local government.
(4) UNDEVELOPED.-The term "undeveloped" means
(A) containing few manmade structures and having geomorphic and ecological processes that are not significantly impeded by any such structures or human activity; and
(B) having natural, cultural, recreational, or scientific value of special significance.

SEC. 11. ACQUISITION OF PROPERTY BY SECRETARY OF THE INTERIOR.
The Secretary of the Interior may purchase any property within the area added to unit T-12 of the System by this Act, as depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act. The Secretary of the Interior shall provide that any property purchased under this section is used and administered in accordance with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee).

SEC. 12. DEFINITIONS.
For purposes of this Act
(1) the term "undeveloped coastal barrier" means
(A) a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that(i) is subject to wave, tidal, and wind energies, and (ii) protects landward aquatic habitats from direct wave attack; and
(B) all associated aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters; but only if such features and associated habitats contain few man-made structures and these structures, and man's activities on such features and within such habitats, do not significantly impede geomorphic and ecological processes.
(2) the term "otherwise protected area" means an undeveloped coastal barrier within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes;
(3) the term "qualified organization" means such an organization under section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3));
(4) the term "Secretary" means the Secretary of the Interior; and (5) the term "System" means the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.), as amended by this Act.

SEC. 13. AUTHORIZATIONS OF APPROPRIATIONS.
(a) Coastal Barrier Resources Act.-Section 12 of the Coastal Barrier Resources Act (16 U.S.C. 3510) is amended to read as follows:

"SEC. 12. AUTHORIZATIONS OF APPROPRIATIONS.
"There is authorized to be appropriated to the Secretary for carrying out this Act not more than $1,000,000 for each of the fiscal years 1990, 1991, 1992, and 1993.".
(b) THIS ACT.-
(1) IN GENERAL.-There is authorized to be appropriated to the Secretary for carrying out this Act not more than $1,000,000 for each of the fiscal years 1991 and 1992.
(2) PROPERTY ACQUISITION.-In addition to the amounts authorized to be appropriated under paragraph (1), there is authorized to be appropriated to the Secretary of the Interior during fiscal years 1991, 1992, and 1993 an aggregate amount of $15,000,000 to carry out section 11.

SEC. 14. CERTIFICATION OF COMPLIANCE.
Section 7 of the Coastal Barrier Resources Act (16 U.S.C. 3506) is amended to read as follows:
"SEC. 7. CERTIFICATION OF COMPLIANCE.
"(a) REGULATIONS.-Not later than 12 months after the date of enactment of the Coastal Barrier Improvement Act of 1990, the head of each Federal agency affected by this Act shall promulgate regulations to assure compliance with the provisions of this Act.

"(b) CERTIFICATION.-The head of each Federal agency affected by this Act shall report and certify that each such agency is in compliance with the provisions of this Act. Such reports and certifications shall be submitted annually to the Committees and the Secretary.".

SEC. 15. DARE COUNTY, NORTH CAROLINA, TRANSFER.
Notwithstanding another law, the Secretary of Transportation shall transfer without consideration by quitclaim deed to Dare County, North Carolina, all rights, title, and interest of the United States in Coast Guard property and improvements located on the northern end of Pea Island east side of State road 1257, 0.3 miles north of North Carolina Highway 12 in Rodanthe, Dare County, North Carolina. The Secretary shall require the property to be surveyed before it is transferred.

44 CFR 71.1-71.5
TITLE 44--EMERGENCY MANAGEMENT AND ASSISTANCE

CHAPTER I--FEDERAL EMERGENCY MANAGEMENT AGENCY

PART 71--IMPLEMENTATION OF COASTAL BARRIER LEGISLATION--Table of Contents

Sec. 71.1 Purpose of part.
This part implements section 11 of the Coastal Barrier Resources Act (Pub. L. 97-348) and section 9 of the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591), as those Acts amend the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).
[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22661, May 29, 1992]

Sec. 71.2 Definitions.
(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.
(b) For the purpose of this part, a structure located in an area identified as being in the Coastal Barrier Resources System (CBRS) both as of October 18, 1982, and as of November 16, 1990, is 'new construction' unless it meets the following criteria:
(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 18, 1982; and
(ii) The start of construction (see part 59) took place prior to October 18, 1982; or
(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 1, 1983; and
(ii) The structure constituted an insurable building, having walls and a roof permanently in place no later than October 1, 1983.
(c) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is 'new construction' unless it meets the following criteria:
(1) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and
(2) The start of construction (see 44 CFR part 59) took place prior to November 16, 1990.
(d) For the purpose of this part, a structure located in an 'otherwise protected area' is 'new construction' unless it meets the following criteria:
(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1990; and
(ii) The start of construction took place prior to November 16, 1990; or
(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to November 16, 1991; and
(ii) The structure constituted an insurable building, having walls and a roof permanently in place, no later than November 16, 1991.
(e) For the purpose of this part, a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, is a 'substantial improvement' if the substantial improvement (see 44 CFR part 59) of such structure took place on or after October 1, 1983.

(f) For the purpose of this part, a structure located in an area newly identified as being in the CBRS as of November 16, 1990, is a 'substantial improvement' if the substantial improvement of such structure took place on or after November 16, 1990.

(g) For the purpose of this part, a structure located in an 'otherwise protected area' is a 'substantial improvement' if the substantial improvement of such structure took place after November 16, 1991.

(h) For the purpose of this part, a policy of flood insurance means a policy issued pursuant to the National Flood Insurance Act of 1968, as amended. This includes a policy issued directly by the Federal Government as well as by a private sector insurance company under the Write Your Own Program as authorized by 44 CFR part 62.

(i) For the purpose of this part, new policy of flood insurance means a policy of flood insurance other than one issued by an insurer (Write Your Own insurer or the Federal Government as the direct insurer) effective upon the expiration of a prior policy of flood insurance issued by the same insurer without any lapse in coverage between these two policies.

(j) For the purpose of this part, new flood insurance coverage means a new or renewed policy of flood insurance.

(k) For the purpose of this part, otherwise protected area means an undeveloped coastal barrier within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes and identified and depicted on the maps referred to in section 4(a) of the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990, as an area that is:

(1) Not within the CBRS and

(2) In an 'otherwise protected area.'

[48 FR 37039, Aug. 16, 1983, as amended at 49 FR 33879, Aug. 27, 1984; 57 FR 22661, May 29, 1992]

Sec. 71.3 Denial of flood insurance.

(a) No new flood insurance coverage may be provided on or after October 1, 1983, for any new construction or substantial improvement of a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990.

(b) No new flood insurance coverage may be provided on or after November 16, 1990, for any new construction or substantial improvement of a structure located in any area newly identified as being in the CBRS as of November 16, 1990.

(c) No new flood insurance coverage may be provided after November 16, 1991, for any new construction or substantial improvement of a structure which is located in an 'otherwise protected area.'

(d) Notwithstanding paragraph (c) of this section, new flood insurance coverage may be provided for a structure which is newly constructed or substantially improved in an 'otherwise protected area' if the building is used in a manner consistent with the purpose for which the area is protected.

[57 FR 22662, May 29, 1992]

Sec. 71.4 Documentation.

(a) In order to obtain a new policy of flood insurance for a structure which is located in an area identified as being in the CBRS as of November 16, 1990, or in order to obtain a new policy of flood insurance after November 16, 1991, for a structure located in an 'otherwise protected area,' the owner of the structure must submit the documentation described in this section in order to show that such structure is eligible to receive flood insurance. However, if the new policy of flood insurance is being obtained from an insurer (Write Your Own or the Federal Government as direct insurer) that has previously obtained the documentation described in this section, the property owner need only submit a signed written certification that the structure has not been substantially improved since the date of the previous documentation.

(b) The documentation must be submitted along with the application for the flood insurance policy.

(c) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place prior to October 18, 1982, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 18, 1982;

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statment must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

(i) The start of construction took place prior to October 18, 1982; and

(ii) The structure has not been substantially improved since September 30, 1983.

(d) For a structure located in an area identified as being in the CBRS both as of October 18, 1982, and as of November 16, 1990, where the start of construction of the structure took place on or after October 18, 1982, but the structure was completed (walls and roof permanently in place) prior to October 1, 1983, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 1, 1983;

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

(i) The structure constituted an insurable building, having walls and a roof permanently in place no later than October 1, 1983; and

(ii) The structure has not been substantially improved since September 30, 1983; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying the the building was completed (walled and roofed) by October 1, 1983.

(e) For a structure located in an area newly identified as being in the CBRS as of November 16, 1990, where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 15, 1990.

(f) For a structure located in an area identified as an 'otherwise protected area' where the start of construction of the structure took place prior to November 16, 1990, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1990.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also

include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records, that:

(i) The start of construction took place prior to November 16, 1990; and

(ii) The structure has not been substantially improved since November 16, 1991.

(g) For a structure located in an area identified as an 'otherwise protected area' where the start of construction of the structure took place after November 15, 1990, but construction was completed with the walls and a roof permanently in place no later than November 16, 1991, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure, dated prior to November 16, 1991.

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his or her own knowledge or from official community records that:

(i) The structure constituted an insurable building, having walls and a roof permanently in place, no later than November 16, 1991; and

(ii) The structure has not been substantially improved since November 16, 1991; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying that the building was completed (walled and roofed) by November 16, 1991.

(h) For a structure located in an area identified as an 'otherwise protected area' for which the documentation requirements of neither paragraph (f) nor paragraph (g) of this section have been met, the documentation shall consist of a written statement from the governmental body or qualified organization overseeing the 'otherwise protected area' certifying that the building is used in a manner consistent with the purpose for which the area is protected.

(Approved by the Office of Management and Budget under control number 3067-0120)

[48 FR 37039, Aug. 16, 1983, as amended at 57 FR 22662, May 29, 1992]

Sec. 71.5 Violations.

(a) Any flood insurance policy which has been issued where the terms of this section have not been complied with or is otherwise inconsistent with the provisions of this section, is void ab initio and without effect.

(b) Any false statements or false representations of any kind made in connection with the requirements of this part may be punishable by fine or imprisonment under 18 U.S. Code section 1001.

Code of the Federal Register

13 CFR 116.40
33 CFR 220-230
15 CFR 923
15 CFR 930, subpart D
15 CFR 933
33 CFR 220-230
33 CFR 320, 325, 330
33 CFR 241
44 CFR 71

Appendix B: Existing and Proposed Policies – North Carolina

Part 1. Organization and Goals.

§ 113A-100. Short title:

This Article shall be known as the Coastal Area Management Act of 1974. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c.932, s. 2.1.)

§ 113A-101. Cooperative State-local program.

This Article establishes a cooperative program of coastal area management between local and State governments. Local government shall have the initiative for planning. State government shall establish areas of environmental concern. With
regard to planning, State government shall act primarily in a supportive standard-setting and review capacity, except where local governments do not elect to exercise their initiative.
Enforcement shall be a concurrent State-local responsibility. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-102. Legislative findings and goals.

(a) Findings. -- It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost ninety percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.
In recent years the coastal area has been subjected to increasing pressures which are the result of the often-conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.
In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States.
(b) Goals. -- The goals of the coastal area management system to be created pursuant to this Article are as follows:
(1)To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;
(2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;
(3)To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;
(4)To establish policies, guidelines and standards for:
a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;
b. The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;
c. Recreation and tourist facilities and parklands;
d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;

f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;
g. Any other purposes deemed necessary or appropriate to effectuate the policy of this Article. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-103. Definitions.

As used in this Article:
(1)"Advisory Council" means the Coastal Resources Advisory Council created by G.S. 113A-105.
(1a)"Boat" means a vessel or watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.
(2)"Coastal area" means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the "coastal area," as defined by this section, and his designation shall be final and conclusive. On or before May 1, 1974, the Governor shall file copies of a list of said coastal-area counties with the chairmen of the boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. The said coastal-area counties and cities shall thereafter transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S. 113A-104(d).
(3)"Coastal sound" means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. For purposes of this Article, the inland limits of a sound on a tributary river shall be defined as the limits of seawater encroachment on said tributary river under normal conditions. "Normal conditions" shall be understood to include regularly occurring conditions of low stream flow and high tide, but shall not include unusual conditions such as those associated with hurricane and other storm tides. Unless otherwise determined by the Commission, the limits of seawater encroachment shall be considered to be the confluence of a sound's tributary river with the river or creek entering it nearest to the farthest inland movement of oceanic salt water under normal conditions. For purposes of this Article, the aforementioned points of confluence with tributary rivers shall include the following:
a. On the Chowan River, its confluence with the Meherrin River;
b. On the Roanoke River, its confluence with the northeast branch of the Cashie River;
c. On the Tar River, its confluence with Tranters Creek;
d. On the Neuse River, its confluence with Swift Creek;
e. On the Trent River, its confluence with Ready Branch. Provided, however, that no county shall be considered to be within the coastal area which: (i) is adjacent to, adjoining or bounded by any of the above points of confluence and lies entirely west of said point of confluence; or (ii) is not bounded by the Atlantic Ocean and lies entirely west of the westernmost of the above points of confluence.
(4)"Commission" means the Coastal Resources Commission created by G.S. 113A-104.
(4a)"Department" means the Department of Environment and Natural Resources.
(5)a. "Development" means any activity in a duly designated area of environmental concern (except as provided in paragraph b of this subdivision) involving, requiring, or consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings; clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake, or canal; or placement of a floating structure in an area of environmental concern identified in G.S. 113A-113(b)(2) or (b)(5).
b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:
1. Work by a highway or road agency for the maintenance of an existing road, if the work is carried out on land within the boundaries of the existing right-of-way;
2. Work by any railroad company or by any utility and other persons engaged in the distribution and transmission of petroleum products, water, telephone or telegraph messages, or electricity for the purpose of inspecting, repairing, maintaining, or upgrading any existing substations, sewers, mains,

pipes, cables, utility tunnels, lines, towers, poles, tracks, and the like on any of its existing railroad or utility property or rights-of-way, or the extension of any of the above distribution-related facilities to serve development approved pursuant to G.S. 113A-121 or 113A-122;
3. Work by any utility and other persons fort he purpose of construction of facilities for the development, generation, and transmission of energy to the extent that such activities are regulated by other law or by present or future rules of the State Utilities Commission regulating the siting of such facilities (including environmental aspects of such siting), and work on facilities used directly in connection with the above facilities;
4. The use of any land for the purposes of planting, growing, or harvesting plants, crops, trees, or other agricultural or forestry products, including normal private road construction, raising livestock or poultry, or for other agricultural purposes except where excavation or filling affecting estuarine waters (as defined in G.S. 113-229) or navigable waters is involved;
5. Maintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes.
6. The construction of any accessory building customarily incident to an existing structure if the work does not involve filling, excavation, or the alteration of any sand dune or beach;
7. Completion of any development, not otherwise in violation of law, for which a valid building orzoning permit was issued prior to ratification of this Article and which development was initiated prior to the ratification of this Article;
8. Completion of installation of any utilities or roads or related facilities not otherwise in violation of law, within a subdivision that was duly approved and recorded prior to the ratification of this Article and which installation was initiated prior to the ratification of this Article;
9. Construction or installation of any development, not otherwise in violation of law, for which an application for a building or zoning permit was pending prior to the ratification of this Article and for which a loan commitment (evidenced by a notarized document signed by both parties) had been made prior to the ratification of this Article; provided, said building or zoning application is granted by July 1, 1974;
10. It is the intention of the General Assembly that if the provisions of any of the foregoing subparagraphs 1 to 10 of this paragraph are held invalid as a grant of an exclusive or separate emolument or privilege or as a denial of the equal protection of the laws, within the meaning of Article I, Secs. 19 and 32 of the North Carolina Constitution, the remainder of this Article shall be given effect without the invalid provision or provisions.
c. The Commission shall define by rule (and may revise from time to time) certain classes of minor maintenance and improvements which shall be exempted from the permit requirements of this Article, in addition to the exclusions set forth in paragraph b of this subdivision. In developing such rules the Commission shall consider, with regard to the class or classes of units to be exempted:
1. The size of the improved or scope of the maintenance work;
2. The location of the improvement or work in proximity to dunes, waters, marshlands, areas of high seismic activity, areas of unstable soils or geologic formations, and areas enumerated in G.S. 113A-113(b)(3); and
3.Whether or not dredging or filling is involved in the maintenance or improvement.
(5a)"Floating structure" means any structure, not a boat, supported by a means of floatation, designed to be used without a permanent foundation, which is used or intended for human habitation or commerce. A structure shall be considered a floating structure when it is inhabited or used for commercial purposes for more than thirty days in any one location. A boat may be considered a floating structure when its means of propulsion has been removed or rendered inoperative.
(6)"Key facilities" include the site location and the location of major improvement and major access features of key facilities, and mean:
a. Public facilities, as determined by the Commission, on nonfederal lands which tend to induce development and urbanization of more than local impact, including but not limited to:
1. Any major airport designed to serve as a terminal for regularly scheduled air passenger service or one of State concern;
2. Major interchanges between the interstate highway system and frontage-access streets or highways; major interchanges between other limited-access highways and frontage-access streets or highways;
3. Major frontage-access streets and highways, both of State concern; and
4. Major recreational lands and facilities;

b. Major facilities on nonfederal lands for the development, generation, and transmission of energy.
(7) "Lead regional organizations" means the regional planning agencies created by and representative of the local governments of a multi-county region, and designated as lead regional organizations by the Governor.
(8)"Local government" means the governing body of any county or city which contains within its boundaries any lands or waters subject to this Article.
(9)"Person" means any individual, citizen, partnership, corporation, association, organization, business trust, estate, trust, public or municipal corporation, or agency of the State or local government unit, or any other legal entity however designated.
(10)Repealed by Session Laws 1987, c. 827, s. 133.
(11)"Secretary" means the Secretary of Environment and Natural Resources, except where otherwise specified in this Article. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 913, s. 1; c. 932, s. 2.1; 1987, c. 827, s. 133; 1989, c. 727, s. 126; 1991 (Reg. Sess., 1992), c. 839, ss. 1, 4; 1995, c. 509, s. 58; 1997-443, s. 11A.119(a).

§ 113A-104. Coastal Resources Commission.

(a) Established. -- The General Assembly hereby establishes within the Department of Environment and Natural Resources a commission to be designated the Coastal Resources Commission.
(b) Composition. -- The Coastal Resources Commission shall consist of 15 members appointed by the Governor, as follows:
(1) One who shall at the time of appointment be actively connected with or have experience in commercial fishing.
(2) One who shall at the time of appointment be actively connected with or have experience in wildlife or sports fishing.
(3) One who shall at the time of appointment be actively connected with or have experience in marine ecology.
(4) One who shall at the time of appointment be tively connected with or have experience in coastal agriculture.
(5) One who shall at the time of appointment be actively connected with or have experience in coastal forestry.
(6) One who shall at the time of appointment be actively connected with or have experience in coastal land development.
(7) One who shall at the time of appointment be actively connected with or have experience in marine-related business (other than fishing and wildlife).
(8) One who shall at the time of appointment be actively connected with or have experience in engineering in the coastal area.
(9) One who shall at the time of appointment be actively associated with a State or national conservation organization.
(10) One who shall at the time of appointment be actively connected with or have experience in financing of coastal land development.
(11) Two who shall at the time of appointment be actively connected with or have experience in local government within the coastal area.
(12) Three at-large members.
(c) Appointment of Members. -- Appointments to the Commission shall be made to provide knowledge and experience in a diverse range of coastal interests. The members of the Commission shall serve and act on the Commission solely for the best interests of the public and public trust, and shall bring their particular knowledge and experience to the Commission for that end alone. The Governor shall appoint in his sole discretion those members of the Commission whose qualifications are described in subdivisions (6) and (10), and one of the three members described in subdivision (12) of subsection (b) of this section. The remaining members of the Commission shall be appointed by the Governor after completion of the nominating procedures prescribed by subsection (d) of this section. The members of the Commission whose qualifications are described in subdivisions (1) through (5), (9), and (11), shall be persons who do not derive any significant portion of their income from land development, construction, real estate sales, or lobbying and do not otherwise serve as agents for development-related business activities. The Governor shall require adequate disclosure of potential conflicts of interest by members. The Governor, by executive order, shall promulgate criteria regarding conflicts of interest and disclosure thereof for determining the eligibility of persons under this section.

(d) Nominations for Membership. -- On or before May 1 in every even-numbered year the Governor shall designate and transmit to the board of commissioners in each county in the coastal area four nominating categories applicable to that county for that year. Said nominating categories shall be selected by the Governor from among the categories represented, respectively by subdivisions (1), (2), (3), (4), (5), (7), (8), (9), (11) -- two persons, and (12) -- two persons, of subsection (b) of this section (or so many of the above-listed paragraphs as may correspond to vacancies by expiration of term that are subject to being filled in that year). On or before June 1 in every even- numbered year the board of commissioners of each county in the coastal area shall nominate (and transmit to the Governor the names of) one qualified person in each of the four nominating categories that was designated by the Governor for that county for that year. In designating nominating categories from biennium to biennium, the Governor shall equitably rotate said categories among the several counties of the coastal area as in his judgment he deems best; and he shall assign, as near as may be, an even number of nominees to each nominating category and shall assign in his best judgment any excess above such even number of nominees. On or before June 1 in every even-numbered year the governing body of each incorporated city within the coastal area shall nominate and transmit to the Governor the name of one person as a nominee to the Commission. In making nominations, the boards of county commissioners and city governing bodies shall give due consideration to the nomination of women and minorities. The Governor shall appoint 12 persons from among said city and county nominees to the Commission. The several boards of county commissioners and city governing bodies shall transmit the names, addresses, and a brief summary of the qualifications of their nominees to the Governor on or before June 1 in each even- numbered year, beginning in 1974; provided, that the Governor, by registered or certified mail, shall notify the chairman or the mayors of the said local governing boards by May 20 in each such even-numbered year of the duties of local governing boards under this sentence. If any board of commissioners or city governing body fails to transmit its list of nominations to the Governor by June 1, the Governor may add to the nominations a list of qualified nominees in lieu of those that were not transmitted by the board of commissioners or city governing body; Provided however, the Governor may not add to the list a nominee in lieu of one not transmitted by an incorporated city within the coastal area that neither has a population of 2,000 or more nor is contiguous with the Atlantic Ocean. Within the meaning of this section, the "governing body" is the mayor and council of a city as defined in G.S. 160A-66. The population of cities shall be determined according to the most recent annual estimates of population as certified to the Secretary of Revenue by the Secretary of Administration.

(e) Residential Qualifications. -- All nominees of the several boards of county commissioners and city governing bodies must reside within the coastal area, but need not reside in the county from which they were nominated. No more than one of those members appointed by the Governor from among said nominees may reside in a particular county. No more than two members of the entire Commission, at any time, may reside in a particular county. No more than two members of the entire Commission, at any time, may reside outside the coastal area.

(f) Office May Be Held Concurrently with Others. -- Membership on the Coastal Resources Commission is hereby declared to be an office that may be held concurrently with other elective or appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(g) Terms. -- The members shall serve staggered terms of office of four years. At the expiration of each member's term, the Governor shall reappoint or replace the member with a new member of like qualification (as specified in subsection (b) of this section), in the manner provided by subsections (c) and (d) of this section. The initial term shall be determined by the
Governor in accordance with customary practice but eight of the initial members shall be appointed for two years and seven for four years.

(h) Vacancies. -- In the event of a vacancy arising otherwise than by expiration of term, the Governor shall appoint a successor of like qualification (as specified in subsection (b) of this section) who shall then serve the remainder of his predecessor's term. When any such vacancy arises, the Governor shall immediately notify the board of commissioners of each county in the coastal area and the governing body of each incorporated city within the coastal area. Within 30 days after receipt of such notification each such county board and city governing body shall nominate and transmit to the Governor the name and address of one person who is qualified in the category represented by the position to be filled, together with a brief summary of the qualifications of the nominee. The Governor shall make the appointment from among said city and county nominees. If any county board or city governing body fails to make a timely transmittal of its nominee, the Governor may add to the nominations a qualified person in lieu of said

nominee; Provided however, the Governor may not add to the list a nominee in lieu of one not transmitted by an incorporated city within the coastal area that neither has a population of 2,000 or more nor is contiguous with the Atlantic Ocean.
(i) Officers. -- The chairman shall be designated by the Governor from among the members of the Commission to serve as chairman at the pleasure of the Governor. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term.
(j) Compensation. -- The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.
(k) In making appointments to and filling vacancies upon the Commission, the Governor shall give due consideration to securing appropriate representation of women and minorities.
(l) Regular attendance at Commission meetings is a duty of each member. The Commission shall develop procedures for declaring any seat on the Commission to be vacant upon failure by a member to perform this duty. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; c. 486, ss. 1-6; 1981, c. 932, s. 2.1; 1989, c. 505; c. 727, s. 218(64); 1997-443, s. 11A.119(a).)

§ 113A-105. Coastal Resources Advisory Council.

(a) Creation. -- There is hereby created and established a council to be known as the Coastal Resources Advisory Council.
(b) The Coastal Resources Advisory Council shall consist of not more than 45 members appointed or designated as follows:
(1) Two individuals designated by the Secretary from among the employees of the Department;
(1a) The Secretary of Commerce or person designated by the Secretary of Commerce;
(2) The Secretary of Administration or person designated by the Secretary of Administration;
(3) The Secretary of Transportation or person designated by the Secretary of Transportation; and one additional member selected by the Secretary of Transportation from the Department of Transportation;
(4) The State Health Director or the person designated by the State Health Director;
(5) The Commissioner of Agriculture or person designated by the Commissioner of Agriculture;
(6) The Secretary of Cultural Resources or persondesignated by the Secretary of Cultural Resources;
(7) One member from each of the four multi-county planning districts of the coastal area to be appointed by the lead regional agency of each district;
(8) One representative from each of the counties in the coastal area to be designated by the respective boards of county commissioners;
(9) No more than eight additional members representative of cities in the coastal area and to be designated by the Commission;
(10) Three members selected by the Commission who are marine scientists or technologists;
(11) One member who is a local health director selected by the Commission upon the recommendation of the Secretary.
(c) Functions and Duties. -- The Advisory Council shall assist the Secretary and the Secretary of Administration in an advisory capacity:
(1) On matters which may be submitted to it by either of them or by the Commission, including technical questions relating to the development of rules, and
(2) On such other matters arising under this Article as the Council considers appropriate.
(d) Multiple Offices. -- Membership on the Coastal Resources Advisory Council is hereby declared to be an office that may be held concurrently with other elective or appointive offices (except the office of Commission member) in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.
(e) Chairman and Vice-Chairman. -- A chairman and vice- chairman shall be elected annually by the Council.
(f) Compensation. -- The members of the Advisory Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c.771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 249, ss. 1, 2; 1989, c.727, s. 127; c. 751, s. 8(14a); 1991 (Reg. Sess., 1992), c. 959, s. 26; 1995, c. 123, s. 4; c. 504, s. 7.)

Part 2. Planning Processes.

§ 113A-106. Scope of planning processes.

Planning processes covered by this Article include the development and adoption of State guidelines for the coastal area and the development and adoption of a land-use plan for each county within the coastal area, which plans shall serve as criteria for the issuance or denial of development permits under Part 4. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-106.1. Adoption of Coastal Habitat Protection Plans.

The Commission shall approve Coastal Habitat Protection Plans as provided in G.S. 143B-279.8. (1997-400, s. 3.3.)

§ 113A-107. State guidelines for the coastal area.

(a) State guidelines for the coastal area shall consist of statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area. Such guidelines shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102. They shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission under Part 3. Land and water areas addressed in the State guidelines may include underground areas and resources, and airspace above the land and water, as well as the surface of the land and surface waters. Such guidelines shall be used in the review of applications for permits issued pursuant to this Article and for review of and comment on proposed public, private and federal agency activities that are subject to review for consistency with State guidelines for the coastal area. Such comments shall be consistent with federal laws and regulations.

(b) The Commission shall be responsible for the preparation, adoption, and amendment of the State guidelines. In exercising this function it shall be furnished such staff assistance as it requires by the Secretary of Environment and Natural Resources and the Secretary of the Department of Administration, together with such incidental assistance as may be requested of any other State department or agency.

(c) The Commission shall mail proposed as well as adopted rules establishing guidelines for the coastal area to all cities, counties, and lead regional organizations within the area and to all State, private, federal, regional, and local agencies the Commission considers to have special expertise on the coastal area. A person who receives a proposed rule may send written comments on the proposed rule to the Commission within 30 days after receiving the proposed rule. The Commission shall consider any comments received in determining whether to adopt the proposed rule.

(d), (e) Repealed by Session Laws 1987, c. 827, s. 134.

(f) The Commission shall review its rules establishing guidelines for the coastal area at least every five years to determine whether changes in the rules are needed. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1975, 2nd Sess., c. 983, ss. 75, 76; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, s. 134; 1989, c. 313; c. 727, s. 218(65); 1997-443, s. 11A.119(a).)

§ 113A-108. Effect of State guidelines.

All local land-use plans adopted pursuant to this Article within the coastal area shall be consistent with the State guidelines. No permit shall be issued under Part 4 of this Article which is inconsistent with the State guidelines. Any State land policies governing the acquisition, use and disposition of land by State departments and agencies shall take account of and be consistent with the State guidelines adopted under this Article, insofar as lands within the coastal area are concerned. Any State land classification system which shall be promulgated shall take account of and be consistent with the State guidelines adopted under this Article, insofar as it applies to lands within the coastal area. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-109. County letter of intent; timetable for preparation of land-use plan.

Within 120 days after July 1, 1974, each county within the coastal area shall submit to the Commission a written statement of its intent to develop a land-use plan under this Article or its intent not to develop such a plan. If any county states its intent not to develop a land-use plan or fails to submit a statement of intent within the required period, the Commission shall prepare and adopt a land-use plan for that county. If a county states its intent to develop a land-use plan, it shall complete the preparation and adoption of such plan within 480 days after adoption of the State guidelines. In the event of failure by any county to complete its required plan within this time, the Commission shall promptly prepare and adopt such a plan. In any case where the Commission has adopted a land-use plan for a county that county may prepare its own land-use plan in accordance with the procedures of this Article, and upon approval of such plan by the Commission it shall supersede the Commission's plan on a date specified by the Commission. (1973, c. 1284, s. 1; 1975, c. 452, ss. 1, 5; 1981, c. 932, s. 2.1.)

§ 113A-110. Land-use plans.

(a) A land-use plan for a county shall, for the purpose of this Article, consist of statements of objectives, policies, and standards to be followed in public and private use of land within the county, which shall be supplemented by maps showing the appropriate location of particular types of land or water use and their relationships to each other and to public facilities and by specific criteria for particular types of land or water use in particular areas. The plan shall give special attention to the protection and appropriate development of areas of environmental concern designated under Part 3. The plan shall be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102 and with the State guidelines adopted by the Commission under G.S. 113A-107. The plan shall be adopted, and may be amended from time to time, in accordance with the procedures set forth in this section.
(b) The body charged with preparation and adoption of a county's land-use plan (whether the county government or the Commission) may delegate some or all of its responsibilities to the lead regional organization for the region of which the county is a part. Any such delegation shall become effective upon the acceptance thereof by the lead regional organization. Any county proposing a delegation to the lead regional organization shall give written notice thereof to the Commission at least two weeks prior to the date on which such action is to be taken. Any city or county within the coastal area may also seek the assistance or advice of its lead regional organization in carrying out any planning activity under this Article.
(c) The body charged with preparation and adoption of a county's land-use plan (whether the county or the Commission or a unit delegated such responsibility) may either (i) delegate to a city within the county responsibility for preparing those portions of the land-use plan which affect land within the city's zoning jurisdiction or (ii) receive recommendations from the city concerning those portions of the land-use plan which affect land within the city's zoning jurisdiction, prior to finally adopting the plan or any amendments thereto or (iii) delegate responsibility to some cities and receive recommendations from other cities in the county. The body shall give written notice to the Commission of its election among these alternatives. On written application from a city to the Commission, the Commission shall require the body to delegate plan-making authority to that city for land within the city's zoning jurisdiction if the Commission finds that the city is currently enforcing its zoning ordinance, its subdivision regulations, and the State Building Code within such jurisdiction.
(d) The body charged with adoption of a land-use plan may either adopt it as a whole by a single resolution or adopt it in parts by successive resolutions; said parts may either correspond with major geographical sections or divisions of the county or with functional subdivisions of the subject matters of the plan. Amendments and extensions to the plan may be adopted in the same manner.
(e) Prior to adoption or subsequent amendment of any land-use plan, the body charged with its preparation and adoption (whether the county or the Commission or a unit delegated such responsibility) shall hold a public hearing at which public and private parties shall have the opportunity to present comments and recommendations. Notice of the hearing shall be given not less than 30 days before the date of the hearing and shall state the date, time, and place of the hearing; the subject of the hearing; the action which is proposed; and that copies of the proposed plan or amendment are available for public inspection at a designated office in the county courthouse during designated hours. Any such notice shall be published at least once in a newspaper of general circulation in the county.
(f) No land-use plan shall become finally effective until it has been approved by the Commission. The county or other unit adopting the plan shall transmit it, when adopted, to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the plan, and shall review and consider each county land-use plan in light of such objections and comments, the State guidelines, the requirements of this Article, and any generally applicable standards of review adopted by rule of the Commission. Within 45 days after receipt of a county land-use plan the Commission shall either approve the plan or notify the county of the specific changes which must be made in order for it to be approved. Following such changes, the plan may be resubmitted in the same manner as the original plan.
(g) Copies of each county land-use plan which has been approved, and as it may have been amended from time to time, shall be maintained in a form available for public inspection by (i) the county, (ii) the Commission, and (iii) the lead regional organization of the region which includes the county. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-111. Effect of land-use plan.

No permit shall be issued under Part 4 of this Article for development which is inconsistent with the approved land-use plan for the county in which it is proposed. No local ordinance or other local regulation

shall be adopted which, within an area of environmental concern, is inconsistent with the land-use plan of the county or city in which it is effective; any existing local ordinances and regulations within areas of environmental concern shall be reviewed in light of the applicable local land-use plan and modified as may be necessary to make them consistent therewith. All local ordinances and other local regulations affecting a county within the coastal area, but not affecting an area of environmental concern, shall be reviewed by the Commission for consistency with the applicable county and city land-use plans and, if the Commission finds any such ordinance or regulation to be inconsistent with the applicable land-use plan, it shall transmit recommendations for modification to the adopting local government. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-112. Planning grants.

The Secretary of Environment and Natural Resources is authorized to make annual grants to local governmental units for the purpose of assisting in the development of local plans and management programs under this Article. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1989, c. 727, s. 218(66); 1997-443, s. 11A.119(a).)

Part 3. Areas of Environmental Concern.

§ 113A-113. Areas of environmental concern; in general.

(a) The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.

(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

(1) Coastal wetlands as defined in G.S. 113-229(n)(3) and contiguous areas necessary to protect those wetlands;

(2) Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources;

(3) Renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could jeopardize future water, food or fiber requirements of more than local concern, which may include:

a. Watersheds or aquifers that are present sources of public water supply, as identified by the Department or the Environmental Management Commission, or that are classified for water-supply use pursuant to G.S. 143-214.1;

b. Capacity use areas that have been declared by the Environmental Management Commission pursuant to G.S. 143-215.13 (c) and areas wherein said Environmental Management Commission (pursuant to G.S. 143-215.3(d) or 143-215.3(a)(8)) has determined that a generalized condition of water depletion or water or air pollution exists;

c. Prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of marketable timber), as identified by the Department.

(4) Fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:

a. Existing national or State parks or forests, wilderness areas, the State Nature and Historic Preserve, or public recreation areas; existing sites that have been acquired for any of the same, as identified by the Secretary; and proposed sites for any of the same, as identified by the Secretary, provided that the proposed site has been formally designated for acquisition by the governmental agency having jurisdiction;

b. Present sections of the natural and scenic rivers system;

c. Stream segments that have been classified for scientific or research uses by the Environmental Management Commission, or that are proposed to be so classified in a proceeding that is pending before said Environmental Management Commission pursuant to G.S. 143-214.1 at the time of the designation of the area of environmental concern;

d. Existing wildlife refuges, preserves or management areas, and proposed sites for the same, as identified by the Wildlife Resources Commission, provided that the proposed site has been formally

designated for acquisition (as hereinafter defined) or for inclusion in a cooperative agreement by the governmental agency having jurisdiction;
e. Complex natural areas surrounded by modified landscapes that do not drastically alter the landscape, such as virgin forest stands within a commercially managed forest, or bogs in an urban complex;
f. Areas that sustain remnant species or aberrations in the landscape produced by natural forces, such as rare and endangered botanical or animal species;
g. Areas containing unique geological formations, as identified by the State Geologist; and
h. Historic places that are listed, or have been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966; historical, archaeological, and other places and properties owned, managed or assisted by the State of North Carolina pursuant to Chapter 121; and properties or areas that are or may be designated by the Secretary of the Interior as registered natural landmarks or as national historic landmarks;
(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;
(6) Natural-hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include:
a. Sand dunes along the Outer Banks;
b. Ocean and estuarine beaches and the shoreline of estuarine and public trust waters;
c. Floodways and floodplains;
d. Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;
e. Areas with a significant potential for air inversions, as identified by the Environmental Management Commission.
(7)Areas which are or may be impacted by key facilities.
(8) Outstanding Resource Waters as designated by the Environmental Management Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary for the purpose of maintaining the exceptional water quality and outstanding resource values identified in the designation.
(9) Primary Nursery Areas as designated by the Marine Fisheries Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary to protect the resource values identified in the designation including, but not limited to, those values contributing to the continued productivity of estuarine and marine fisheries and thereby promoting the public health, safety and welfare.
(c) In those instances where subsection (b) of this section refers to locations identified by a specified agency, said agency is hereby authorized to make the indicated identification from time to time and is directed to transmit the identification to the Commission; provided, however, that no designation of an area of environmental concern based solely on an agency identification of a proposed location may remain effective for longer than three years unless, in the case of paragraphs (4)a and d of subsection (b) of this section, the proposed site has been at least seventy-five percent (75%) acquired. Within the meaning of this section, "formal designation for acquisition" means designation in a formal resolution adopted by the governing body of the agency having jurisdiction (or by its chief executive, if it has no governing body), together with a direction in said resolution that the initial step in the land acquisition process be taken (as by filing an application with the Department of Administration to acquire property pursuant to G.S. 146-23).
(d) Additional grounds for designation of areas of environmental concern are prohibited unless enacted into law by an act of the General Assembly. (1973, c. 476, s. 128; c. 1262, ss. 23, 86; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 518, s. 1; 1989, c. 217, s. 1; c. 727, s. 128; 1997-443, s. 11A.119(a).)
§113A-114. Repealed by Session Laws 1983, c. 518, s. 2, effective June 13, 1983.
§ 113A-115. Designation of areas of environmental concern.
(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings

required by this section are in addition to the hearing required by Article 2 of Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:
(1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.
(2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.
(3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.
(4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby.
(b) In addition to the notice required by G.S. 113A-115(a)(2) notice shall be given to any interested State agency and to any citizen or group that has filed a request to be notified of a public hearing to be held under this section.
(c) The Commission shall review the designated areas of environmental concern at least biennially. New areas may be designated and designated areas may be deleted, in accordance with the same procedures as apply to the original designations of areas under this section. Areas shall not be deleted unless it is found that the conditions upon which the original designation was based shall have been found to be substantially altered. (1973, c. 1284, s. 1; 1975, 2nd Sess., c. 983, s. 78; 1987, c. 827, s. 135.)

§ 113A-115.1 Limitations on erosion control structures.

(a) As used in this section:
(1) "Erosion control structure" means a breakwater, bulkhead, groin, jetty, revetment, seawall, or any similar structure.
(2) "Ocean shoreline" means the Atlantic Ocean, the oceanfront beaches, and frontal dunes. The term "ocean shoreline" includes an ocean inlet and lands adjacent to an ocean inlet but does not include that portion of any inlet and lands adjacent to the inlet that exhibits characteristics of estuarine shoreline.
(b) No person shall construct a permanent erosion control structure in an ocean shoreline. The Commission shall not permit the construction of a temporary erosion control structure that consists of anything other than sandbags in an ocean shoreline. This section shall not apply to (i) any permanent erosion control structure that is approved pursuant to an exception set out in a rule adopted by the Commission prior to 1 July 2003 or (ii) any permanent erosion control structure that was originally constructed prior to 1 July 1974 and that has since been in continuous use to protect an inlet that is maintained for navigation. This section shall not be construed to limit the authority of the Commission to adopt rules to designate or protect areas of environmental concern, to govern the use of sandbags, or to govern the use of erosion coastal structures in estuarine shorelines.
(c) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that: (i) the structure will not be enlarged beyond the dimensions set out in the original permit; (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

Part 4. Permit Letting and Enforcement.

§ 113A-116. Local government letter of intent.

Within two years after July 1, 1974, each county and city within the coastal area shall submit to the Commission a written statement of its intent to act, or not to act, as a permit-letting agency under G.S.

113A-121. If any city or county states its intent not to act as a permit-letting agency or fails to submit a statement of intent within the required period, the Secretary shall issue permits therein under G.S. 113A-121; provided that a county may submit a letter of intent to issue permits in any city within said county that disclaims its intent to issue permits or fails to submit a letter of intent. Provided, however, should any city or county fail to become a permit-letting agency for any reason, but shall later express its desire to do so, it shall be permitted by the Coastal Resources Commission to qualify as such an agency by following the procedure herein set forth for qualification in the first instance. (1973, c. 1284, s. 1; 1975, c. 452, s. 2; 1977, c. 771, s. 4; 1989, c. 727, s. 129.)

§ 113A-117. Implementation and enforcement programs.

(a) The Secretary shall develop and present to the Commission for consideration and to all cities and counties and lead regional organizations within the coastal area for comment a set of criteria for local implementation and enforcement programs. In the preparation of such criteria, the Secretary shall emphasize the necessity for the expeditious processing of permit applications. Said criteria may contain recommendations and guidelines as to the procedures to be followed in developing local implementation and enforcement programs, the scope and coverage of said programs, minimum standards to be prescribed in said programs, staffing of permit-letting agencies, permit-letting procedures, and priorities of regional or statewide concern. Within 20 months after July 1, 1974, the Commission shall adopt and transmit said criteria (with any revisions) to each coastal-area county and city that has filed an applicable letter of intent, for its guidance.

(b) The governing body of each city in the coastal area that filed an affirmative letter of intent shall adopt an implementation and enforcement plan with respect to its zoning area within 36 months after July 1, 1974. The board of commissioners of each coastal-area county that filed an affirmative letter of intent shall adopt an implementation plan with respect to portions of the county outside city zoning areas within 36 months after July 1, 1974, provided, however, that a county implementation and enforcement plan may also cover city jurisdictions for those cities within the counties that have not filed affirmative letters of intent pursuant to G.S. 113A-116.

Prior to adopting the implementation and enforcement program the local governing body shall hold a public hearing at which public and private parties shall have the opportunity to present comments and views. Notice of the hearing shall be given not less than 15 days before the date of the hearing, and shall state the date, time and place of the hearing, the subject of the hearing, and the action which is to be taken. The notice shall state that copies of the proposed implementation and enforcement program are available for public inspection at the county courthouse. Any such notice shall be published at least once in one newspaper of general circulation in the county at least 15 days before the date on which the public hearing is scheduled to begin.

(c) Each coastal-area county and city shall transmit its implementation and enforcement program when adopted to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the program, and shall review and consider each local implementation and enforcement program submitted in light of such objections and comments, the Commission's criteria and any general standards of review applicable throughout the coastal area as may be adopted by the Commission. Within 45 days after receipt of a local implementation and enforcement program the Commission shall either approve the program or notify the county or city of the specific changes that must be made in order for it to be approved. Following such changes, the program may be resubmitted in the same manner as the original program.

(d) If the Commission determines that any local government is failing to administer or enforce an approved implementation and enforcement program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 90 days of receipt of notification from the Commission, the Commission shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program. (1973, c. 1284, s. 1; 1975, c. 452, s. 3; 1977, c. 771, s. 4; 1989, c. 727, s. 130.)

§ 113A-118. Permit required.

(a) After the date designated by the Secretary pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A- 121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not

developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary.
(c) Permits shall be obtained from the Commission or its duly authorized agent.
(d) Within the meaning of this Part:
(1) A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Environment and Natural Resources, the Department of Administration, the North Carolina Mining Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.
(2) A "minor development" is any development other than a "major development."
(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.
(f) The Secretary may issue special emergency permits under this Article. These permits may only be issued in those extraordinary situations in which life or structural property is in imminent danger as a result of storms, sudden failure of man-made structures, or similar occurrence. These permits may carry any conditions necessary to protect the public interest, consistent with the emergency situation and the impact of the proposed development. If an application for an emergency permit includes work beyond that necessary to reduce imminent dangers to life or property, the emergency permit shall be limited to that development reasonably necessary to reduce the imminent danger; all further development shall be considered under ordinary permit procedures. This emergency permit authority of the Secretary shall extend to all development in areas of environmental concern, whether major or minor development, and the mandatory notice provisions of G.S. 113A-119(b) shall not apply to these emergency permits. To the extent feasible, these emergency permits shall be coordinated with any emergency permits required under G.S. 113-229(e1). (1973, c. 476, s. 128; c. 1282, ss. 23, 33; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1979, c. 253, s. 5; 1981, c. 932, s. 2.1; 1983, c. 173; c. 518, s. 3; 1987, c. 827, s. 136; 1989, c. 727, s. 131; 1997-443, s. 11A.119(a).)

§ 113A-118.1. General permits.

(a) The Commission may, by rule, designate certain classes of major and minor development for which a general or blanket permit may be issued. In developing these rules, the Commission shall consider:
(1) The size of the development;
(2) The impact of the development on areas of environmental concern;
(3) How often the class of development is carried out;
(4) The need for onsite oversight of the development; and
(5) The need for public review and comment on individual development projects.
(b) General permits may be issued by the Commission. Individual developments carried out under the provisions of general permits shall not be subject to the mandatory notice provisions of G.S. 113A-119.
(c) The Commission may impose reasonable notice provisions and other appropriate conditions and safeguards on any general permit it issues.
(d) The variance, appeals, and enforcement provisions of this Article shall apply to any individual development projects undertaken under a general permit. (1983, c. 171; c. 442, s. 1; 1987, c. 827, s. 137.)
(e) The Commission shall allow the use of riprap in the construction of groins in estuarine and public trust waters on the same basis as the Commission allows the use of wood.

§ 113A-118.2. Development in Primary Nursery Areas and Outstanding Resource Waters areas of environmental concern.

Public notice, opportunity for public comment, and agency review shall be required for all development within the Primary Nursery Areas or Outstanding Resource Waters areas of environmental concern. Provided, however, that the Coastal Resources Commission may by rule exempt or issue general permits for minor maintenance and improvement projects as defined in G.S. 113A-103(5)c. and for single-family residential development pursuant to use standards or conditions adopted by the Coastal Resources Commission. (1989, c. 217, s. 2.)

§ 113A-119. Permit applications generally.

(a) Any person required to obtain a permit under this Part shall file with the Secretary and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission. The applicant must submit with the application a check or money order payable to the Department or the city or county, as the case may be, constituting a fee set by the Commission pursuant to G.S. 113A-119.1.
(b) Upon receipt of any application, a significant modification to an application for a major permit, or an application to modify substantially a previously issued major permit, the Secretary shall issue public notice of the proposed development (i) by mailing a copy of the application or modification, or a brief description thereof together with a statement indicating where a detailed copy of the proposed development may be inspected, to any citizen or group which has filed a request to be notified of the proposed development, and to any interested State agency; (ii) by posting or causing to be posted a notice at the location of the proposed development stating that an application, a modification of an application for a major permit, or an application to modify a previously issued major permit for development has been made, where the application or modification may be inspected, and the time period for comments; and (iii) by publishing notice of the application or modification at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least 20 days before final action on a major permit and at least seven days before final action on a permit under G.S. 113A-121 or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after mailing of the mailed notice, whichever is later. Public notice under this subsection is mandatory, except for a proposed modification to an application for a minor permit or proposed modification of a previously issued minor permit that does not substantially alter the original project.
(c) Within the meaning of this Part, the "designated local official" is the official who has been designated by the local governing body to receive and consider permit applications under this Part. (1973, c. 1284, s. 1; 1977, c. 771, s. 4; 1983, c. 307; 1985, c. 372; 1989, c. 53, c. 727, s. 132; 1989 (Reg. Sess., 1990), c. 987, s. 1.)

§ 113A-119.1. Permit Fees.

(a) The Commission shall have the power to establish a graduated fee schedule for the processing of applications for permits, renewals of permits, modifications of permits, or transfers of permits issued pursuant to this Article. In determining the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for processing the applications, related compliance activities, and the complexity of the development sought to be undertaken for which a permit is required under this Article. The fee to be charged for processing an application may not exceed four hundred dollars ($400.00). The total funds collected from fees authorized by the Commission pursuant to this section in any fiscal year shall not exceed thirty-three and one-third percent (33 1/3%) of the total personnel and administrative costs incurred by the Department for permit processing and compliance programs within the Division of Coastal Area Management.
(b) Fees collected under this section shall be applied to the costs of administering this Article.
(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 1039, s. 4, effective July 24, 1992. (1989 (Reg. Sess., 1990), c. 987, s. 2; 1991 (Reg. Sess., 1992), c. 1039, s. 4.)

§ 113A-120. Grant or denial of permits.

(a) The responsible official or body shall deny an application for a permit upon finding:
(1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
(2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
(3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).
(4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).

(5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
(6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.
(7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.
(8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.
(9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.
(10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.
(b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.
(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:
(1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;
(2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;
(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or
(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and state laws, regulations, and rules for the protection of the environment.
(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.
(c) Repealed by Session Laws 1989, c. 676, s. 7. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1; 1983, c. 518, ss. 4, 5; 1987, c. 827, s. 138; 1989, c. 51; c. 676, s. 7; 1997-337, s. 2; 1997-456, s. 55.2B; 1997-496, s. 2.)

§ 113A-120.1. Variances.

(a) Any person may petition the Commission for a variance granting permission to use the person's land in a manner otherwise prohibited by rules or standards prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. To qualify for a variance, the petitioner must show all of the following:
(1) Unnecessary hardships would result from strict application of the rules, standards, or orders.
(2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
(3) The hardships did not result from actions taken by the petitioner.
(4) The requested variance is consistent with the spirit, purpose, and intent of the rules, standards, or orders; will secure public safety and welfare; and will preserve substantial justice.
(b) The Commission may impose reasonable and appropriate conditions and safeguards upon any variance it grants. (Session Law 2002-68.)

§ 113A-120.2. (Expires April 1, 2001) Permits for urban waterfront redevelopment in historically urban areas.

(a) Notwithstanding any other provision of law, any person may apply to the Commission for a permit for major development granting permission to use the person's land for a nonwater dependent use that is otherwise prohibited by rules, standards, or limitations prescribed by the Commission, or orders issued by the Commission, pursuant to this Article. The procedure to apply for the permit shall be as provided by G.S. 113A-119.
(b) Notwithstanding G.S. 113A-120(a), the Commission shall grant a permit for nonwater dependent development in public trust areas designated pursuant to G.S. 113A-113(b)(5) if the following criteria are met:
(1) The land is waterfront property located in a municipality.
(2) The land has a history of urban-level development as evidenced by any of the following:
a. The land is a historic place that is listed, or has been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966.
b. The land is a historical, archaeological, and other site owned, managed, or assisted by the State of North Carolina pursuant to Chapter 121 of the General Statutes.
c. The land has a central business district zoning classification, or any other classification that may be designated as acceptable by the Commission.
(3) The proposed development is sponsored in part or in whole by the local jurisdiction in which the development would be located for the purpose of significantly increasing public access consistent with the Coastal Area Management guidelines.
(4) The municipality in which the activity would occur has determined that the development will not have a significant adverse impact on the environment.
(5) The development as requested is consistent with a local urban waterfront development plan, local development regulations, public access plans, and other applicable local authority.
(c) Except as otherwise provided by this section, all other provisions of this Article apply to a permit applied for under this section, including the provisions of G.S. 113A-120(b1) and (b2).
(d) A structure constructed over coastal wetlands, estuarine waters, or public trust areas prior to 1 July 2000 may be used to
serve to the public food and drink that is prepared at a food services establishment that began operation on or before 1 July 2000. (1997-337, s. 1; 1997-456, s. 55.2B; 2000-140, s. 92.1(a); 2000-172, s. 2.1.) (1997-337, s. 1; 1997-456, s. 55.2B.)

§ 113A-121. Permits for minor developments under expedited procedures.

(a) Applications for permits for minor developments shall be expeditiously processed so as to enable their promptest feasible disposition.
(b) In cities and counties that have developed approved implementation and enforcement programs, applications for permits for minor developments shall be considered and determined by the designated local official of the city or county as the case may be. In cities and counties that have not developed approved implementation and enforcement programs, such applications shall be considered and determined by the Secretary. Minor development projects proposed to be undertaken by a local government within its own permit-letting jurisdiction shall be considered and determined by the Secretary.
(c) Failure of the Secretary or the designated local official (as the case may be) to approve or deny an application for a minor permit within 25 days from receipt of application shall be treated as approval of the application, except that the Secretary or the designated local official (as the case may be) may extend the deadline by not more than an additional 25 days in exceptional cases. No waiver of the foregoing time limitation (or of the time limitation established in G.S. 113A-122(c)) shall be required of any applicant.
(d) Repealed by Session Laws 1981, c. 913, s. 2. (1973, c. 1284, s. 1; 1977, c. 771, s. 4; 1981, c. 913, s. 2; 1983, c. 172, s. 1; c. 399; 1989, c.727, s. 133.)

§ 113A-121.1. Administrative review of permit decisions.

(a) An applicant for a minor or major development permit who is dissatisfied with the decision on his application may file a petition for a contested case hearing under G.S. 150B-23 within 20 days after the decision is made. When a local official makes a decision to grant or deny a minor development permit and the Secretary is dissatisfied with the decision, the Secretary may file a petition for a contested case within 20 days after the decision is made.
(b) A person other than a permit applicant or the Secretary who is dissatisfied with a decision to deny or grant a minor or major development permit may file a petition for a contested case hearing only if the Commission determines that a hearing is appropriate. A request for a determination of the

appropriateness of a contested case hearing shall be made in writing and received by the Commission within 20 days after the disputed permit decision is made. A determination of the appropriateness of a contested case shall be made within 15 days after a request for a determination is received and shall be based on whether the person seeking to commence a contested case:
(1) Has alleged that the decision is contrary to a statute or rule;
(2) Is directly affected by the decision; and
(3) Has alleged facts or made legal arguments that demonstrate that the request for the hearing is not frivolous. If the Commission determines a contested case is appropriate, the petition for a contested case shall be filed within 20 days after the Commission makes its determination. A determination that a person may not commence a contested case is a final agency decision and is subject to judicial review under Article 4 of Chapter 150B of the General Statutes. If, on judicial review, the court determines that the Commission erred in determining that a contested case would not be appropriate, the court shall remand the matter for a contested case hearing under G.S. 150B-23 and final Commission decision on the permit pursuant to G.S. 113A-122. Decisions in such cases shall be rendered pursuant to those rules, regulations, and other applicable laws in effect at the time of the commencement of the contested case.
(c) A permit is suspended from the time a person seeks administrative review of the decision concerning the permit until the Commission determines that the person seeking the review cannot commence a contested case or the Commission makes a final decision in a contested case, as appropriate, and no action may be taken during that time that would be unlawful in the absence of a permit. (1981, c. 913, s. 3; 1983, c. 400, ss. 1, 2; 1987, c. 827, s. 139; 1995, c. 409, s. 1.)

§ 113A-122. Procedures for hearings on permit decisions.

(a) Repealed by Session Laws 1987, c. 827, s. 140.
(b) The following provisions shall be applicable in connection with hearings pursuant to this section:
(1), (2) Repealed by Session Laws 1987, c. 827, s. 140.
(3) A full and complete record of all proceedings at any hearing under this section shall be taken by a reporter appointed by the Commission or by other method approved by the Attorney General. Any party to a proceeding shall be entitled to a copy of such record upon the payment of the reasonable cost thereof as determined by the Commission.
(4)to(6) Repealed by Session Laws 1987, c. 827, s. 140.
(7) The burden of proof at any hearing on a decision granting a permit shall be upon the person who requested the hearing.
(8),(9) Repealed by Session Laws 1987, c. 827, s. 140.
(10) The Commission shall grant or deny the permit in accordance with the provisions of G.S. 113A-120. All such orders and decisions of the Commission shall set forth separately the Commission's findings of fact and conclusions of law and shall, wherever necessary, cite the appropriate provision of law or other source of authority on which any action or decision of the Commission is based.
(11) The Commission shall have the authority to adopt a seal which shall be the seal of said Commission and which shall be judicially noticed by the courts of the State. Any document, proceeding, order, decree, special order, rule, rule of procedure or any other official act or records of the Commission or its minutes may be certified by the Executive Director under his hand and the seal of the Commission and when so certified shall be received in evidence in all actions or proceedings in the courts of the State without further proof of the identity of the same if such records are competent, relevant and material in any such action to proceedings. The Commission shall have the right to take official notice of all studies, reports, statistical data or any other official reports or records of the federal government or of any sister state and all such records, reports and data may be placed in evidence by the Commission or by any other person or interested party where material, relevant and competent.
(c) Failure of the Commission to approve or deny an application for a permit pursuant to this section within 75 days from receipt of application shall be treated as approval of the application, except the Commission may extend the deadline by not more than an additional 75 days in exceptional cases. Failure of the Commission to dispose of an appeal pursuant to this section within 90 days from notice of appeal shall be treated as approval of the action appealed from, except that the Commission may extend the deadline by not more than an additional 90 days if necessary to properly consider the appeal.
(d) All notices which are required to be given by the Secretary or Commission or by any party to a proceeding under this section shall be given by registered or certified mail to all persons entitled thereto. The date of receipt or refusal for such registered or certified mail shall be the date when such notice is deemed to have been given. Notice by the Commission may be given to any person upon whom a

summons may be served in accordance with the provisions of law covering civil actions in the superior courts of this State. The Commission may prescribe the form and content of any particular notice. (1973, c. 1284, s. 1; 1979, c. 253, s. 6; 1981, c. 913, ss. 4- 6; 1983, c. 172, s. 2; 1987, c. 827, s. 140.)

§ 113A-123. Judicial review.

(a) Any person directly affected by any final decision or order of the Commission under this Part may appeal such decision or order to the superior court of the county where the land or any part thereof is located, pursuant to the provisions of Chapter 150B of the General Statutes. Pending final disposition of any appeal, no action shall be taken which would be unlawful in the absence of a permit issued under this Part.

(b) Any person having a recorded interest or interest by operation of law in or registered claim to land within an area of environmental concern affected by any final decision or order of the Commission under this Part may, within 90 days after receiving notice thereof, petition the superior court to determine whether the petitioner is the owner of the land in question, or an interest, therein, and in case he is adjudged the owner of the subject land, or an interest therein, the court shall determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof, being not otherwise authorized by law, and is therefore an unreasonable exercise of the police power because the order constitutes the equivalent of taking without compensation. The burden of proof shall be on petitioner as to ownership and the burden of proof shall be on the Commission to prove that the order is not an unreasonable exercise of the police power, as aforesaid. Either party shall be entitled to a jury trial on all issues of fact, and the court shall enter a judgment in accordance with the issues, as to whether the Commission order shall apply to the land of the petitioner. The Secretary shall cause a copy of such finding to be recorded forthwith in the register of deeds office in the county where the land is located. The method provided in this subsection for the determination of the issue of whether such order constitutes a taking without compensation shall be exclusive and such issue shall not be determined in any other proceeding. Any action authorized by this subsection shall be calendared for trial at the next civil session of superior court after the summons and complaint have been served for 30 days, regardless of whether issues were joined more than 10 days before the session. It is the duty of the presiding judge to expedite the trial of these actions and to give them a preemptory setting over all others, civil or criminal. From any decision of the superior court either party may appeal to the court of appeals as a matter of right.

(c) After a finding has been entered that such order shall not apply to certain land as provided in the preceding subsection, the Department of Administration, upon the request of the Commission and upon finding that sufficient funds are available therefor, and with the consent of the Governor and Council of State may take the fee or any lesser interest in such land in the name of the State by eminent domain under the provisions of Chapter 146 of the General Statutes and hold the same for the purposes set forth in this Article. (1973, c. 1284, s. 1; c. 1331, s. 3; 1977, c. 771, s. 4; 1987, c. 827, s. 1; 1989, c.727, s. 134.)

§ 113A-124. Additional powers and duties.

(a) The Secretary shall have the following additional powers and duties under this Article:

(1) To conduct or cause to be conducted, investigations of proposed developments in areas of environmental concern in order to obtain sufficient evidence to enable a balanced judgment to be rendered concerning the issuance of permits to build such developments.

(2) To cooperate with the Secretary of the Department of Administration in drafting State guidelines for the coastal area.

(3) To keep a list of interested persons who wish to be notified of proposed developments and proposed rules designating areas of environmental concern and to so notify these persons of such proposed developments by regular mail. A reasonable registration fee to defray the cost of handling and mailing notices may be charged to any person who so registers with the Commission.

(4) To propose rules to implement this Article for consideration by the Commission.

(5) To delegate such of his powers as he may deem appropriate to one or more qualified employees of the Department or to any local government, provided that the provisions of any such delegation of power shall be set forth in departmental rules.

(6) To delegate the power to conduct a hearing, on his behalf, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the record of the hearing to the Secretary for decision or action.

(b) In order to carry out the provisions of this Article the secretaries of Administration and of Environment and Natural Resources may employ such clerical, technical and professional personnel, and consultants with such qualifications as the Commission may prescribe, in accordance with the State personnel rules and budgetary laws, and are hereby authorized to pay such personnel from any funds made available to them through grants, appropriations, or any other sources. In addition, the said secretaries may contract with any local governmental unit or lead regional organization to carry out the planning provisions of this Article.
(c) The Commission shall have the following additional powers and duties under this Article:
(1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
(2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
(3) To hold such public hearings as the Commission deems appropriate.
(4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
(5) Repealed by Session Laws 1987, c. 827, s. 141.
(6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
(7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
(8) To adopt rules to implement this Article.
(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997- 443, s. 11A.119(a).)

§ 113A-125. Transitional provisions.

(a) Existing regulatory permits shall continue to be administered within the coastal area by the agencies presently responsible for their administration until a date (not later than 44 months after July 1, 1974), to be designated by the Secretary of Natural and Economic Resources as the permit changeover date. Said designation shall be effective from and after its filing with the Secretary of State.
(b) From and after the "permit changeover date," all existing regulatory permits within the coastal area shall be administered in coordination and consultation with (but not subject to the veto of) the Commission. No such existing permit within the coastal area shall be issued, modified, renewed or terminated except after consultation with the Commission. The provisions of this subsection concerning consultation and coordination shall not be interpreted to authorize or require the extension of any deadline established by this Article or any other law for completion of any permit, licensing, certification or other regulatory proceedings.
(c) Within the meaning of this section, "existing regulatory permits" include dredge and fill permits issued pursuant to G.S. 113-229; sand dune permits issued pursuant to G.S. 104B-4; air pollution control and water pollution control permits, special orders or certificates issued pursuant to G.S. 143-215.1 and 143-215.2, or any other permits, licenses, authorizations, approvals or certificates issued by the Board of Water and Air Resources pursuant to Chapter 143; capacity use area permits issued pursuant to G.S. 143-215.15; final approval of dams pursuant to G.S. 143-215.30; floodway permits issued pursuant to G.S. 143-215.54; water diversion authorizations issued pursuant to G.S. 143-354(c); oil refinery permits issued pursuant to G.S. 143-215.99; mining operating permits issued pursuant to G.S. 74-51; permissions for construction of wells issued pursuant to G.S. 87-88; and rules concerning pesticide application within the coastal area issued pursuant to G.S. 143-458; approvals by the Department of Health and Human Services of plans for water supply, drainage or sewerage, pursuant to G.S. 130-161.1 and 130-161.2; standards and approvals for solid waste disposal sites and facilities, adopted by the Department of Health and Human Services pursuant to Chapter 130, Article 13B; permits relating to sanitation of shellfish, crustacea or scallops issued pursuant to Chapter 130, Articles 14A or 14B; permits, approvals, authorizations and rules issued by the Department of Health and Human Services pursuant to Articles 23 or 24 of Chapter 130 with reference to mosquito control programs or districts; any permits, licenses,

authorizations, rules, approvals or certificates issued by the Department of Health and Human Services relating to septic tanks or water wells; oil or gas well rules and orders issued for the protection of environmental values or resources pursuant to G.S. 113-391; a certificate of public convenience and necessity issued by the State Utilities Commission pursuant to Chapter 62 for any public utility plant or system, other than a carrier of persons or property; permits, licenses, leases, options, authorization or approvals relating to the use of State forestlands, State parks or other state-owned land issued by the State Department of Administration, the State Department of Natural and Economic Resources or any other State department, agency or institution; any approvals of erosion control plans that may be issued by the North Carolina Sedimentation Control Commission pursuant to G.S.113A-60 or 113A-61; and any permits, licenses, authorizations, rules, approvals or certificates issued by any State agency pursuant to any environmental protection legislation not specified in this subsection that may be enacted prior to the permit changeover date.

(d) The Commission shall conduct continuing studies addressed to developing a better coordinated and more unified system of environmental and land-use permits in the coastal area, and shall report its recommendations thereon from time to time to the General Assembly. (1973, c. 1284, s. 1; 1975, c. 452, s. 4; 1979, c. 299; 1987, c. 827, ss. 125, 142; 1997-443, s. 11A.122.)

§ 113A-126. Injunctive relief and penalties.

(a) Upon violation of any of the provisions of this Article or of any rule or order adopted under the authority of this Article the Secretary may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the State upon the relation of the Secretary for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(b) Upon violation of any of the provisions of this Article relating to permits for minor developments issued by a local government, or of any rule or order adopted under the authority of this Article relating to such permits, the designated local official may, either before or after the institution of proceedings for the collection of any penalty imposed by this Article for such violation, institute a civil action in the General Court of Justice in the name of the affected local government upon the relation of the designated local official for injunctive relief to restrain the violation and for a preliminary and permanent mandatory injunction to restore the resources consistent with this Article and rules of the Commission. If the court finds that a violation is threatened or has occurred, the court shall, at a minimum, order the relief necessary to prevent the threatened violation or to abate the violation consistent with this Article and rules of the Commission. Neither the institution of the action nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty prescribed by this Article for any violation of same.

(c) Any person who shall be adjudged to have knowingly or willfully violated any provision of this Article, or any rule or order adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates, any such provision, rule or order after written notice from the Secretary or (in the case of a permit for a minor development issued by a local government) written notice from the designated local official, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

(d)

(1) A civil penalty of not more than two hundred fifty dollars ($250.00) for a minor development violation and two thousand five hundred dollars ($2,500) for a major development violation may be assessed by the Commission against any person who:

a. Is required but fails to apply for or to secure a permit required by G.S. 113A-118, or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit.

b. Fails to file, submit, or make available, as the case may be, any documents, data or reports required by the Commission pursuant to this Article.

c. Refuses access to the Commission or its duly designated representative, who has sufficiently identified himself by displaying official credentials, to any premises, not including any occupied dwelling house or curtilage, for the purpose of conducting any investigations provided for in this Article.

d. Violates a rule of the Commission implementing this Article.

(2) For each willful action or failure to act for which a penalty may be assessed under this subsection, the Commission may consider each day the action or inaction continues after notice is given of the violation as a separate violation; a separate penalty may be assessed for each such separate violation.
(3) The Commission may assess the penalties provided for in this subsection. The Commission shall notify a person who is assessed a penalty by registered or certified mail. The notice shall state the reasons for the penalty. A person may contest a penalty by filing a petition for a contested case under G.S. 150B-23 within 20 days after receiving the notice of assessment. If a person fails to pay a penalty, the Commission shall refer the matter to the Attorney General for collection. An action to collect a penalty must be filed within three years after the date the final agency decision was served on the violator.
(4) In determining the amount of the penalty the Commission shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.
(5) The clear proceeds of penalties assessed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 485, ss. 1-3; c. 518, s. 6; 1987, c. 827, ss. 11, 143; 1991, c. 725, s. 6; 1991 (Reg. Sess., 1992), c. 839, s. 3; c. 890, s. 8; 1993, c. 539, s. 874; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 53(a).)

§ 113A-127. Coordination with the federal government.

All State agencies shall keep informed of federal and interstate agency plans, activities, and procedures within their area of expertise that affect the coastal area. Where federal or interstate agency plans, activities or procedures conflict with State policies, all reasonable steps shall be taken by the State to preserve the integrity of its policies. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-128. Protection of landowners' rights.

Nothing in this Article authorizes any governmental agency to adopt a rule or issue any order that constitutes a taking of property in violation of the Constitution of this State or of the United States. (1973, c. 1284, s. 1; 1987, c. 827, s. 144.)

§ 113A-129: Reserved for future codification purposes.

Part 5. Coastal Reserves.

§ 113A-129.1. Legislative Findings and Purposes.

(a) Findings. -- It is hereby determined and declared as a matter of legislative finding that the coastal area of North Carolina contains a number of important undeveloped natural areas. These areas are vital to continued fishery and wildlife protection, water quality maintenance and improvement, preservation of unique and important coastal natural areas, aesthetic enjoyment, and public trust rights such as hunting, fishing, navigation, and recreation. Such land and water areas are necessary for the preservation of estuarine areas of the State, constitute important research facilities, and provide public access to waters of the State.
(b) Purposes. -- Important public purposes will be served by the preservation of certain of these areas in an undeveloped state. Such areas would thereafter be available for research, education, and other consistent public uses. These areas would also continue to contribute perpetually to the natural productivity and biological, economic, and aesthetic values of North Carolina's coastal area. (1989, c. 344, s. 1.)

§ 113A-129.2. Coastal Reserve Program.

(a) There is hereby created a North Carolina Coastal Reserve System for the purpose of acquiring, improving, and maintaining undeveloped coastal land and water areas in a natural state.
(b) This system shall be established and administered by the Department of Environment and Natural Resources. In so doing the Department shall consult with and seek the ongoing advice of the Coastal Resources Commission. The Department may by rule define the areas to be included in this system and set standards for its use.
(c) This system shall be established within the coastal area as defined by G.S. 113A-103(2).
(d) All acquisitions or dispositions of property for lands within this system shall be in accordance with the provisions of Chapter 146 of the General Statutes.
(e) All lands and waters within the system shall be used primarily for research and education. Other public uses, such as hunting, fishing, navigation, and recreation, shall be allowed to the extent consistent with these primary uses. Improvements and alterations to the lands shall be limited to those consistent with these uses. (1989, c. 344, s. 1; c. 727, s. 218(58); 1997- 443, s. 11A.119(a).)

§ 113A-129.3. Coordination.

(a) To the extent feasible, this system shall be carried out in coordination with the National Estuarine Reserve Research System established by 16 U.S.C. § 1461.
(b) To the extent feasible, lands and waters within this system shall be dedicated as components of the "State Nature and Historic Preserve" as provided in Article XIV, Section 5, of the Constitution and as nature reserves pursuant to G.S. 113A-164.1 to G.S. 113A-164.11. (1989, c. 344, s. 1, c. 770, s. 47.)

Part 6. Public Beach and Coastal Waterfront Access Program.

§ 113A-134.1. Legislative findings.
(a) The General Assembly finds that there are many privately owned lots or tracts of land in close proximity to the Atlantic Ocean and the coastal waters in North Carolina that have been and will be adversely affected by hazards such as erosion, flooding, and storm damage. The sand dunes on many of these lots provide valuable protective functions for public and private property and serve as an integral part of the beach sand supply system. Placement of permanent substantial structures on these lots will lead to increased risks of loss of life and property, increased public costs, and potential eventual encroachment of structures onto the beach.
(b) The public has traditionally fully enjoyed the State's beaches and coastal waters and public access to and use of the beaches and coastal waters. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the economic well-being of the State. The General Assembly finds that the beaches and coastal waters are resources of statewide significance and have been customarily freely used and enjoyed by people throughout the State. Public access to beaches and coastal waters in North Carolina is, however, becoming severely limited in some areas. Also, the lack of public parking is increasingly making the use of existing public access difficult or impractical in some areas. The public interest would best be served by providing increased access to beaches and coastal waters and by making available additional public parking facilities. There is therefore, a pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement, and maintenance of public accessways to the beaches and coastal waters. (1981, c. 925, s. 1; 1983, c. 751, s. 13; 1989, c. 344; s. 2; 1995, c. 183, s. 2.)
§ 113A-134.2. Creation of program; administration; purpose; definitions.
(a) There is created the Public Beach and Coastal Waterfront Access Program, to be administered by the Commission and the Department, for the purpose of acquiring, improving, and maintaining property along the Atlantic Ocean and coastal waterways to which the public has rights-of-access or public trust rights as provided in this Part.
(b) As used in this Part:
(1) "Public trust resources" has the same meaning as in G.S. 113-131(e).
(2) "Public trust rights" has the same meaning as in G.S. 1-45.1. (1981, c. 925, s. 1; 1983, c. 757, s. 13; 1989, c. 344, s. 2; c. 727, s. 136; c. 751, s. 13; 1995, c. 183, s. 3.)
§ 113A-134.3. Standards for public access program.
(a) The Commission, with the support of the Department, shall establish and carry out a program to assure the acquisition, improvement, and maintenance of a system of public access to coastal beaches and public trust waters. This public access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of the property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands that due to adverse effects of natural hazards, such as past and potential erosion, flooding, and storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all coastal beaches and public trust waters where access is compatible with the natural resources involved and where reasonable access is not available.
(b) To the maximum extent possible, this program shall be coordinated with State and local beach and coastal water management and recreational programs and shall be carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary or his designee shall make a written finding of the public purpose to be served by the cquisition. Once property is purchased, the Department may allow property, without charge, to be controlled and operated by the county or

municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose.
(c) Subject to any restrictions imposed by law, any funds appropriated or otherwise made available to the Public Beach and Coastal Waterfront Access Program may be used to meet matching requirements for federal or other funds. The Department shall make every effort to obtain funds from sources other than the General Fund to implement this program. Funds may be used to acquire or develop land for pedestrian access including parking and to make grants to local governments to accomplish the purposes of this Part. All acquisitions or dispositions of property made pursuant to this Part shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Part for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach or coastal waters access. (1981, c. 925, s. 1; 1983, c. 334; c. 757, s. 13; 1987, c. 827, s. 145; 1989, c. 344, s. 2; c. 727, s. 137; c. 751, s. 13; 1995, c. 183, s. 4.)

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.0104 STATE AND LOCAL COASTAL RESERVE ADVISORY COMMITTEES
.0105 RESERVE COMPONENTS
SECTION .0200 - MANAGEMENT: USE AND PROTECTION OF THE NORTH CAROLINA COASTAL RESERVE
.0201 MANAGEMENT PLAN
.0202 RESERVE USE REQUIREMENTS

Chapter 143 State Departments, Institutions and Commissions, Article 21 – Water and Air Resources, Water Resources Development Plan (G.S. 143-215.70-73A)

§ 143-215.70. Secretary of Environment and Natural Resources authorized to accept applications.
The Secretary is authorized to accept applications for grants for nonfederal costs relating to water resources development projects from units of local government sponsoring such projects, except that this shall not include small watershed projects reviewed by the State Soil and Water Conservation Commission pursuant to G.S. 139-55. (1979, c. 1046, s. 1; 1987, c. 827, s. 154; 1989, c. 727, s. 218(109); 1997-443, s. 11A.119(a).)

§ 143-215.71. Purposes for which grants may be requested.
Applications for grants may be made for the nonfederal share of water resources development projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:
(1) General navigation projects that are sponsored by local governments - eighty percent (80%);
(2) Recreational navigation projects - twenty-five percent (25%);
(3) Construction costs for water management (flood control and drainage) purposes, including utility and road relocations not funded by the State Department of Transportation - sixty-six and two-thirds percent (66 2/3%), but only of that portion of
the project specifically allocated for such flood control or drainage purposes;
(4) Stream restoration - sixty-six and two-thirds percent (66 2/3%);

(5) Protection of privately owned beaches where public access is allowed and provided for - seventy-five percent (75%);
(6) Land acquisition and facility development for water-based recreation sites operated by local governments - fifty percent (50%);
(7) Aquatic weed control projects sponsored by local governments - fifty percent (50%). (1979, c. 1046, s. 1; 1983, c. 450; 1987, c. 781, s. 1.)

§ 143-215.73. Recommendation and disbursal of grants.
After review of grant applications, project funds shall be disbursed and monitored by the Department. After review, but before transfer of funds from the Department's reserve fund into accounts for specific projects, the Secretary may forward the applications to the Advisory Budget Commission for its review of the recommendations. (1979, c. 1046, s. 1; 1983, c. 717, s. 70; 1985 (Reg. Sess., 1986), c. 955, s. 93; 1987, c. 827, s. 154.)

Chapter 139 Soil and Water Conservation Districts, Article 4 – Grants for Small Watershed Projects, Purposes for Which Grants May Be Requested (*G.S.* 139-54)

§ 139-54. Purposes for which grants may be requested.
Applications for grants may be made for the nonfederal share of small watershed projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:
(1) Land rights acquisition for impounding or retarding water - fifty percent (50%).
(2) Engineering fees - fifty percent (50%).
(3) Anticipated future and present water supply needs in conjunction with watershed improvement works or projects as described in G.S. 139-37.1 – fifty percent (50%).
(4) Installation of recreational facilities and services (to include land acquisition) as described in G.S. 139-46 - fifty percent (50%).
(5) Construction costs for water management (drainage or irrigation) purposes, including utility and road relocations not funded by the State Department of Transportation - sixty-six and two-thirds percent (66 2/3%).
(6) Conservation and replacement of fish and wildlife habitat as described in G.S. 139-46 - seventy-five percent (75%).
(7) Rehabilitation or improvement of water resources structural measures in accordance with criteria established by the Natural Resources Conservation Service of the United States Department of Agriculture pursuant to the Watershed Protection and Flood Prevention Act of 1954, as amended by the Small Watershed Rehabilitation Amendments of 2000 (Pub. L. No. 106-472, 114 Stat. 2007), codified at 16 U.S.C. § 1001, et. seq.; the Dam Safety Law of 1967, G.S. 143-215.23, et. seq.; and rules adopted pursuant thereto - fifty percent (50%). (1977, 2nd Sess., c. 1206; 1979, c. 1046, s. 2; 2002-176, s.3.)

Oceanfront Construction

New construction or substantial improvements to existing structures (an increase of 50 percent or more in the value of existing square footage) must meet the following standards in addition to the general rules for ocean hazard AECs (15A NCAC 7H.0308(d)):

- All development must be designed and located to avoid unreasonable dangers to humans and property and to minimize damage caused by changes in ground elevation and wave action in a 100-year storm.
- Structures built in the ocean hazard area must comply with the N.C. Building Code, including the Coastal and Flood Plain Construction Standards and local flood damage prevention ordinances required by the National Flood Insurance Program. *If any provision of the building code or flood ordinance is not consistent with CAMA standards, the more restrictive provisions apply.* Your local building inspector can explain the requirements of the State Building Code and local ordinances.
- All structures must be on pilings at least 8 inches in diameter or, if the pilings are square, 8 inches per side.

- All pilings must be driven more than 8 feet below the lowest ground elevation under the structure. Pilings on the primary dune or nearer the ocean must extend at least 5 feet below normal sea level (see Figure 4.15).
- Foundations must be designed to withstand changes in ground elevation and wave forces during a 100-year storm (see Figure 4.16). Cantilevered decks and walkways must meet this standard or be designed to break away.

Figure 4.15

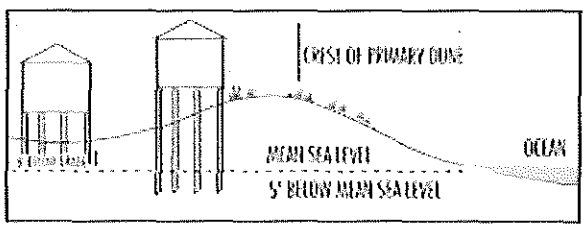
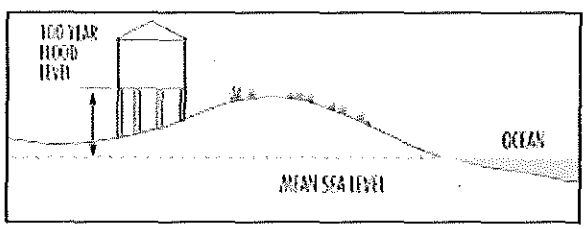


Figure 4.16



Oceanfront Erosion Response

Erosion is a fact of life in North Carolina's oceanfront communities: Nothing can prevent it. To protect your development from erosion, you should place your new buildings or developments as far back from the beach as possible.

But new buildings aren't the only ones at risk. Many existing buildings may become threatened by the forces of wind and water. Recognizing that people cannot prevent erosion – they can only respond to it – the Coastal Resources Commission allows two methods of erosion response: moving buildings out of the way, or replenishing the beach's supply of sand.

The CRC does not allow permanent stabilization of the ocean shoreline, because structures such as bulkheads, seawalls, jetties and groins interrupt natural sand migration patterns and can increase erosion at nearby properties.

Any oceanfront erosion protection measure must meet CAMA's general rules for development in ocean hazard AECs as well as the following specific standards {15A NCAC 7H Section .0308(a)}:

- Permanent erosion-control structures, such as seawalls, groins and revetments, are prohibited.
- Building relocation and beach nourishment are preferred responses to erosion.
- Comprehensive shoreline management is preferred over small-scale projects. Erosion management measures are more successful when coordinated over a large stretch of shoreline rather than at scattered, individual sites.
- Rules governing erosion response apply to all oceanfront property.
- Erosion-control measures that interfere with public beach access are prohibited.
- All erosion-response projects must demonstrate sound engineering practices.
- Unless appropriate mitigation is incorporated into your project plan, erosion-response projects will not

be permitted in areas that provide substantial habitat for important wildlife.

- Your project must be timed to cause the least possible damage to biological processes. Certain times of year and day are important for breeding, spawning, nesting and feeding cycles of shorebirds, sea turtles and other species. Your project must accommodate these cycles in order to protect North Carolina's wildlife.
- You must notify all adjacent property owners of your proposed project. No permit will be issued until the property owners have signed the notice form or until a reasonable effort has been made to contact them by certified mail.
- All exposed remnants and debris from failed erosion-control structures must be removed before beginning any erosion-response project.

Permanent erosion-control structures that normally are prohibited **may** be permitted in certain cases for public projects, for example: to protect a bridge that provides the only existing road access to a substantial barrier island population, is vital to public safety and is threatened by erosion.

Sandbags for Temporary Erosion Control

Sandbags are allowed (with the proper permit) to temporarily protect imminently threatened oceanfront structures. A structure is considered threatened when the erosion escarpment is less than 20 feet from a building's foundation (see Figure 4.17A).

Most sandbag installation can be authorized with a general permit.

Dune crossovers, pools, parking lots, decks, tennis courts and similar structures don't qualify as threatened structures. Roads are considered structures, and septic systems that currently are serving a building also qualify for sandbag protection.

Figure 4.17

Sandbags are allowed o
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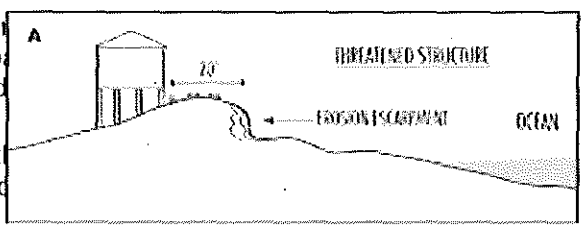
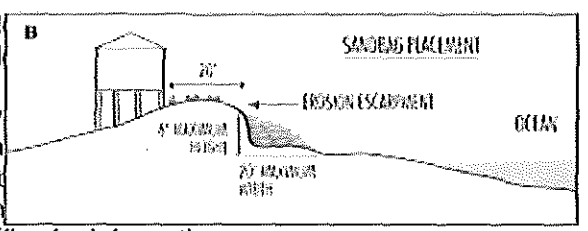


To prevent that damage, t
sets specific limits on sand



- Two years for buil
- Five years for buil
  and
- Five years or May
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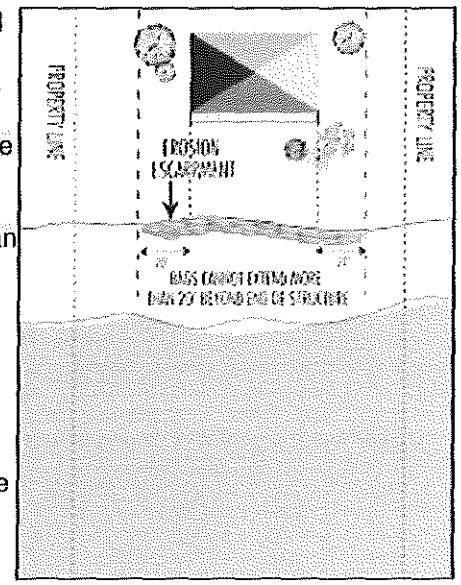
  your local DCM office for information.

Only one sandbag permit may be issued in the life of your property, even if that property changes ownership.

Sandbags and other temporary oceanfront erosion controls must meet CAMA's general rules for the ocean hazard AEC, as well as the following standards {15A NCAC 7H Section .0308(a)}:

Figure 4.18

- Sandbags must be placed above the normal high water mark and parallel to the shore.
- Sandbag structures can't extend more than 20 feet past the sides of the protected structure (see Figure 4.18).
- Sandbag structures cannot be more than 6 feet tall, and their base width (measured from the oceanward side to the landward side) cannot be greater than 20 feet (see Figure 4.17B).
- The landward side of the sandbag structure must not be more than 20 feet seaward of the structure it protects.
- Sandbags used to construct temporary erosion-control structures must be tan. Each bag must be 3 to 5 feet wide and 7 to 15 feet long when measured flat.
- You may maintain your sandbag structure for the life of your permit provided you don't make the structure any larger.
- If your sandbags are determined to be unnecessary because of the relocation or removal of the threatened structure, they must be removed within 30 days.
- If sandbags are buried and covered with vegetation that has spread enough to be considered natural, the sandbags may remain in place.



. Ocean Hazard AECs {15A NCAC 7H .0306}

Definitions

A primary dune is the first mound of sand (measured from the ocean) that is six feet taller than the mean flood level for the area. Frontal dunes are the first mounds of sand that have enough vegetation, height and continuity to offer protection.

The crest of the primary dune and the landward toe of the frontal dune are determined on a case-by-case basis by the Division of Coastal Management.

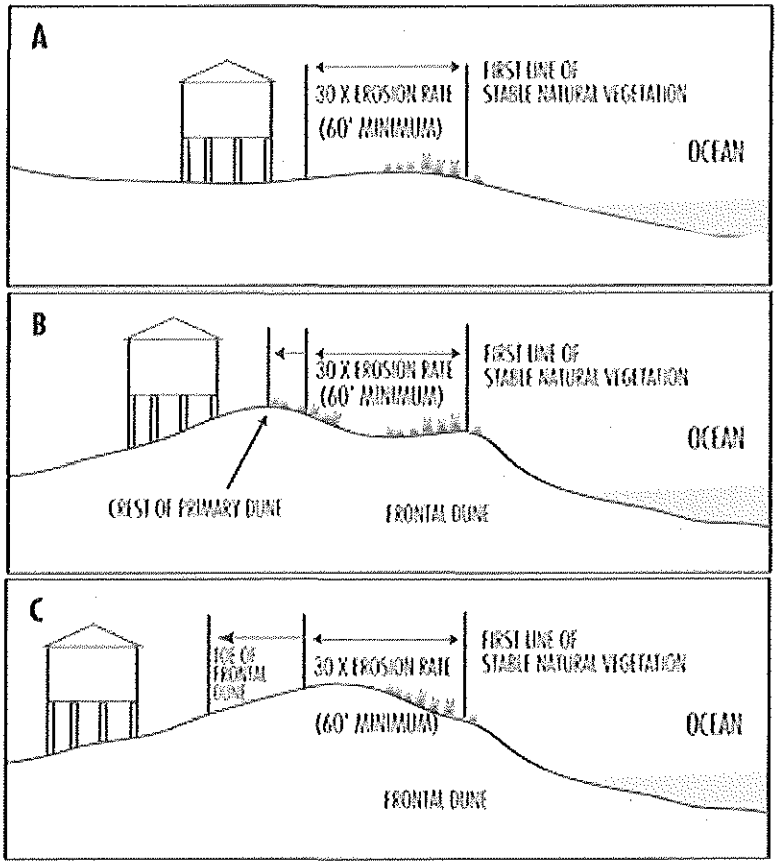
The **first line of stable natural vegetation** is the first area on the oceanfront where natural dune-stabilizing plants are present. Such plants include sea oats and American beachgrass.

The following requirements apply to all development in the Ocean Hazard AEC {15A NCAC 7H .0306}:

- Your development must be located and designed to protect human lives and property from storms and erosion, to prevent permanent structures from encroaching on public beaches and reduce the public costs (such as disaster relief aid) that can result from poorly located development.
- Your development must incorporate all reasonable means and methods to avoid damage to the natural environment or public beach accessways. Reasonable means and methods include: limiting the scale of the project and the damage it causes; restoring a damaged site; or providing substitute resources to compensate for damage.
- No growth-inducing development paid for (in any part) by public funds will be permitted if it is likely to require more public funds for maintenance and continued use – unless the benefits of the project will outweigh the required public expenditures.

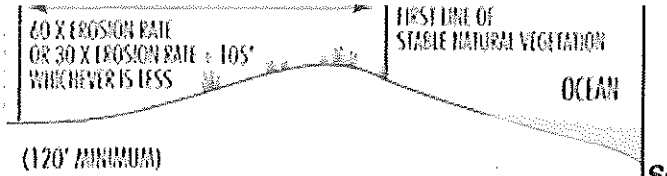
- Your project should be set as far back from the ocean as possible. At minimum, all building must be located behind the crest of the primary dune, the landward toe of the frontal dune or the erosion setback line - whichever is the farthest from the first line of stable natural vegetation (see Figure 3.1).

Figure 3.1



- Your project must not remove or relocate sands or vegetation from primary or frontal dunes. These dunes help protect structures from erosion, flooding and storm waves, and they help maintain North Carolina's barrier islands and beaches.
- If you want to move a building that is in an ocean hazard area, you will need a CAMA permit. Buildings relocated entirely with private funds should be relocated as far landward as possible. Buildings relocated with public funds must meet all AEC standards, including the setback requirement.
- Your project must meet all local minimum lot-size and setback requirements. Counties and towns often require a setback from roads, property lines or dunes. For more information, contact your local building inspector.
- Your project must comply with the local CAMA land use plan. A land use plan contains a community's goals, management policies and a map classifying land according to the types of development allowed.
- You must not place a mobile home within the high hazard flood area unless it is in a mobile home park that existed before June 1, 1979. Not only are mobile homes likely to be damaged by coastal storms, they are also likely to damage other buildings during storms.
- You may not interfere with or block the public's ability to reach, use and enjoy the resources that belong to all the people of the state. These resources include the wet sand beaches and waters. No development is allowed seaward of the vegetation line, because the public has a right to use the sandy beach. Development also may not block established pathways to the beach.
- Your project must not cause major or irreversible damage to valuable archaeological or historic resources. Information on the location of these sites is available from the N.C. Division of Archives and History in the Department of Cultural Resources.
- The construction of publicly funded projects, such as sewers, water lines, roads, bridges and erosion control works, will be permitted only if they:

    - greatly benefit the public, nation or state;
    - don't promote additional development in ocean hazard AECs;
    - won't damage natural buffers to erosion, wave wash and flooding;
    - won't otherwise increase existing hazards.



Setback Requirements for all development in the Ocean Hazard AEC

Note: The erosion setback line extends inland from the first line of stable natural vegetation.

- For small structures or single family homes, the line extends landward a distance of 30 times the average annual erosion rate at the site. In areas where erosion is less than 2 feet per year, the setback is 60 feet (see Figure 3.1A).
- Any structure of more than 5,000 square feet, such as a motel or condominium, must meet an additional setback requirement because of the unique physical, financial and legal problems posed by relocating these structures.
- For large structures, the erosion setback line extends inland from the first line of stable natural vegetation a distance of 60 times the average annual erosion rate at the site. The minimum setback is 120 feet (see Figure 3.2). *Note: In areas where the erosion rate is more than 3.5 feet a year, the setback line shall be set at a distance of 30 times the annual erosion rate plus 105 feet.*

Figure 3.2

- Coastal Management determines erosion rates for different segments of the state's ocean shoreline by analyzing a time-series of aerial photographs dating back to the 1930s. Erosion rates are updated about every five years and are adopted by the CRC.
- The following types of development may be permitted between the oceanfront setback line and the vegetation line if they don't remove or alter primary or frontal dunes or plants, if overwalks are used to protect dunes, and the projects meet all other AEC general rules:

    - campgrounds with no substantial permanent structures;
    - public fishing piers;
    - parking areas made from clay, packed sand or gravel;
    - beach access structures;
    - elevated decks with a footprint of less than 500 square feet;
    - uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
    - unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
    - temporary amusement stands;
    - swimming pools;
    - sand fences.

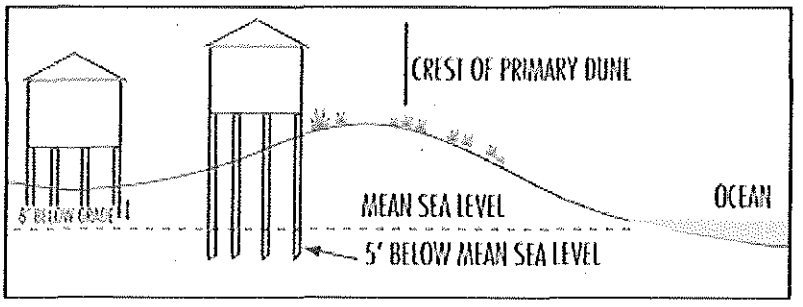
- When the oceanfront setback requirement will not allow the development of permanent structures on lots that had been platted as of June 1, 1979, single-family homes may be permitted seaward of the setback line in ocean erodible areas if they meet the following conditions:

    - the structure is set back as far as possible from the ocean with the least possible encroachment into the setback area;
    - it is at least 60 feet landward of the vegetation line;
    - it is entirely behind the landward toe of the frontal dune;
    - all pilings used to support the structure are driven at least five feet below normal sea level (see Figure 3.3);
    - the footprint of the structure covers no more than 1,000 square feet or 10 percent of the lot area, whichever is greater; and
    - the project meets all other state and local requirements.

Note: The exceptions listed above do NOT apply to inlet hazard areas.

- If the development is to be served by an onsite waste disposal system, a copy of a valid permit for this system from your county health department must be submitted with the CAMA permit application.

Figure 3.3



NOTE: If you are applying to build in an Ocean Hazard AEC, you must sign an AEC Hazard Notice to acknowledge that you are aware of the risks and of the area's limited suitability for permanent structures.

The AEC Hazard Notice also states that you are aware that you may not build any permanent erosion protection, such as wooden bulkheads, seawalls and breakwaters. Preferred responses to oceanfront erosion are building relocation or beach nourishment. Temporary erosion protection devices, such as low sandbag structures, may be permitted if certain conditions are met. Those sandbags must be removed by a date set in the permit.

By granting permits for development, the Division of Coastal Management does not guarantee the safety of the development, and the Division and the Coastal Resources Commission do not assume liability for future damage.

Inlet Hazard Areas

In addition to the general rules for ocean hazard AECs, all development in inlet hazard areas must meet the following standards {15A NCAC 7H .0310}:

- All development must be set back from the first line of stable natural vegetation a distance equal to the setback required in the adjacent ocean hazard area.
- You may receive a permit for only one permanent commercial or residential unit per 15,000 square feet of land area on lots subdivided after July 23, 1981. Mud flats, salt marshes and beach areas seaward of the vegetation line are not included in computing a lot's land area or density for the purposes of this rule.
- Residential buildings of four units or less and non-residential buildings with less than 5,000 square feet of floor area are the only buildings allowed in the inlet hazard area. Access roads to those areas and maintenance or replacement of *existing* bridges may be allowed.
- Development must not encroach on public accessways or restrict their use.
- Small-scale, non-essential development that does not induce further growth, such as single-family piers and bulkheads that do not interfere with natural inlet movement, may be permitted within designated inlet hazard area shorelines that exhibit features characteristic of estuarine shorelines. Features can include the presence of wetland vegetation, low wave energy and lower erosion rates than in the adjoining ocean erodible area. Typically, these areas are on the back side of barrier islands and are not influenced by ocean waves.

Local Regulations
Ordinances
Land Use Plan (LUP)