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OUTER CONTINENTAL SHELF DEVELOPMENT AND RECENT APPLICATIONS OF THE COASTAL ZONE MANAGEMENT ACT OF 1971

Shelby H. Moore, Jr.*

I. INTRODUCTION

For many years, particularly in the Gulf of Mexico, Outer Continental Shelf (OCS) oil and gas exploration and production operations presented legal problems which were essentially federal in nature. The Army Corps of Engineers handled platform location permits,¹ the Coast Guard had authority for navigational aids,² and the United States Geological Survey issued most other operational permits.³ The development into frontier OCS areas, however, whetted the appetites of state and local governments to exercise a degree of control over such operations.⁴ One method for achieving such control is a federally approved state coastal zone management program, established under the provisions of the Coastal Zone Management Act of 1971 (CZMA).⁵

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1. Permits for structures or work in or affecting navigable waters of the United States, 33 C.F.R. § 332 (1979).

2. Aids to navigation on artificial islands and fixed structures, *id.* § 67 (1979).

3. 30 C.F.R. § 250 (1978).

4. One commentator has noted that "[t]he ability of coastal states and communities to delay the Government's offshore leasing program lies in their control over the adjacent coastline. By prohibiting the construction of onshore facilities needed to support exploration activities and process offshore production, the states could effectively delay offshore development." Rubin, *The Role of the Coastal Zone Management Act of 1972 in the Development of Oil and Gas From the Outer Continental Shelf*, 8 NAT. RES. LAW. 399 (1975) [hereinafter cited as Rubin].

5. Pub. L. No. 92-583, 86 Stat. 1280, 16 U.S.C. § 1451-1464 (1972), *as amended by* Pub. L. No. 94-370, 90 Stat. 1013 (1979). The Coastal Zone Management Act, signed into law on October 27, 1972, authorizes the use of federal resources, both technical and financial, to encourage and assist states in the development and operation of comprehensive management programs for their coastal zones. Although cooperation in the coastal zone management program is entirely voluntary on the part of the states, the Act incorporates two incentives to insure participation by all coastal states. First, the Act provides that once a state's plan is approved by the Secretary of

This article will discuss several problems which the CZMA presents for companies conducting OCS operations. The CZMA is particularly troublesome for companies who are concerned not only about the development of management programs by states⁶ but also about meeting the requirement that OCS activities be consistent with any applicable, approved state programs.⁷ Examples from the states of California and Alaska serve to illustrate the current issues raised by the CZMA, and the litigation of its provisions.

There are no easy answers or hard and fast rules upon which an attorney can rely in this area of the law. The application of coastal zone concepts to OCS operations involves a myriad of conflicting interests and policies, which make full compliance with the legislation—federal, state, and local—difficult and often impossible. Hence, determining and applying the law of coastal zone management often proves to be an extremely frustrating task. Federal legislation on use of the Outer Continental Shelf requires consistency among the laws, ordinances, and local land use plans with respect to their priorities.⁸ The proposal by one who intends to use the OCS must be consistent with those priorities.⁹ Although the goal of this interlocking web of regulations and statutes is intended to assure the priorities will be guarded at every governmental level, the procedural aspects of assuring this end are greatly flawed, as are the substantive requirements of the law.¹⁰

A conflict of interests is evident in the development of the CZMA itself. The initial Act was undoubtedly weighted in favor of protection of ecological, cultural, and aesthetic interests.¹¹ The intervening Arab oil embargo and the energy crisis which resulted, however, forced recognition of a greater degree of energy self-sufficiency as a national objective of the highest priority. The 1976 amendments to the CZMA,¹² therefore, encouraged this goal, particularly by encouraging the pro-

Commerce, federal actions that affect that state's coastal zone must be "consistent" with the state's management program. Second, the federal government will fund up to two-thirds of the cost towards developing and administering a coastal zone management program. *See generally* Rubin, *supra* note 4.

6. 16 U.S.C. § 1454 (Supp. 1979).

7. *Id.* § 1456(c).

8. *See* notes 17-39 *infra* and accompanying text.

9. *See, e.g.*, note 72 *infra*.

10. *See* notes 93-94 *infra* and accompanying text.

11. For a general discussion of the 1972 Act by the Acting Administrator of the Office of Coastal Zone Management, *see* Knecht, *Coastal Zone Management—A Federal Perspective*, 1 COASTAL ZONE MANAGEMENT J. 123 (1974).

12. Coastal Zone Management Act Amendments of 1976, Pub. L. No. 94-370, 90 Stat. 1013, 16 U.S.C. §§ 1451-1464 (Supp. 1979).

duction of new oil and gas from the Outer Continental Shelf.¹³ The aim of Congress was to assure such development through smooth cooperation among the federal, state, and local governments.¹⁴ Unfortunately, this is not a task which can be performed easily, as noted by United States District Judge Robert Kelleher in a recent opinion involving California CZMA litigation:

In other words, for the high purpose of improving and maintaining felicitous conditions in the coastal areas of the United States, the Congress has undertaken a legislative solution, the application of which is so complex as to make it almost wholly unmanageable. In the course of the legislative process, there obviously came into conflict many competing interests which, in typical fashion, the Congress sought to accommodate, only to create thereby a morass of problems between the private sector, the public sector, the federal bureaucracy, the state legislature, the state bureaucracy, and all of the administrative agencies appurtenant thereto.¹⁵

II. THE CZMA REQUIREMENT OF CONSISTENCY

The CZMA identifies four types of activities, and related effects,

13. 16 U.S.C. § 1451 (Supp. 1979).

14. For a discussion of the problems encountered when the states and the federal government attempt to work together, and for a view of a scheme for cooperative planning, see generally Comment, *Toward Better Use of Coastal Resources: Coordinated State and Federal Planning Under the Coastal Zone Management Act*, 65 GEO. L.J. 1057 (1977).

15. *American Petroleum Inst. v. Knecht*, 456 F. Supp. 889, 896 (C.D. Cal. 1978), *aff'd* 609 F.2d 1306 (9th Cir. 1979). Upon review of the final environmental impact statement, the plaintiffs requested that NOAA refrain from approving California's Coastal Management Program because of the addition of substantial new material which was not adopted by the state, and the fact that the core of California's Program, the Coastal Act, (1) was not a complete management program, (2) did not satisfy the CZMA requirements for approval, and (3) would not be capable of effective implementation until local coastal programs were developed. (Pursuant to submission by California, NOAA had reviewed several proposals during the evolution of California's Coastal Management Program. The latest version NOAA reviewed was the 1977 final environmental impact statement, which consisted of five elements: the Coastal Act; two other statutes; the Coastal Commission's regulations; and 14 chapters of the EIS. California conceded that the newly added material in the FEIS was never the subject of a hearing.) The private plaintiffs therefore sued the federal officials to overturn the final approval of the California Coastal Management Program.

The issues on appeal before the Ninth Circuit were (1) whether the district court had erred in applying the arbitrary and capricious standard of review of the decision of the Acting Associate Administrator for Coastal Management on behalf of the Secretary of Commerce, and in deferring to the "expertise" of that agency; and (2) whether the California Management Program failed to meet the standards of the Coastal Zone Management Act in that it was allegedly adopted without adequate notice and hearing opportunities, not specific enough, lacking in the required energy elements, lacking in adequate consideration of national interests, and inclusive of no protections against unreasonable prohibitions on uses of regional benefit. 609 F.2d at 1309. The circuit court, after a brief review of each issue, summarily "agreed with" the district court and affirmed, per curiam. *Id. passim*.

which trigger application of the consistency requirements:¹⁶ (1) development projects conducted by or on behalf of the federal government in the coastal zone, for example, a Corps of Engineers dredging project;¹⁷ (2) activities other than development projects conducted by or on behalf of the federal government which directly affect the coastal zone, for example, activities of the Department of the Interior leading to a lease sale;¹⁸ (3) private activities (including OCS exploration, development, and production) which affect land or water uses in the coastal zone and which require a federal license or permit;¹⁹ and (4) federally assisted activities of state and local governments affecting the coastal zone.²⁰

Section 307(c)(3)(B) of the CZMA²¹ provides the OCS consistency requirements, which are basically these: After approval of the management program of a coastal state, any person submitting any OCS exploration, development, or production plan to the Department of the Interior must, with respect to such activities described in detail in the plan affecting any land or water use in the coastal zone of the state, certify that each such activity complies with the state program and will be carried out in a manner consistent with that program. Further, this subsection prohibits federal agencies from issuing any license or permit for any such activity until the state either concurs in the certification or until such concurrence is conclusively presumed by the state's nonaction for six months.²² If the state concurs, no further certifications are required for any such activities when licenses or permits are applied for subsequently. If the state objects, however, or the person fails to comply substantially with an approved plan, then the applicant must submit an amendment or a new plan to the Department of the Interior. An amendment or new plan will again be subject to the state review

16. The doctrine of consistency in land use control refers to the relationship among land use plans and governmental regulations, although the term itself is susceptible of various interpretations. The governments regulating include both state and local bodies; and the land use plans may be private but are most often regional public plans. The goal of the consistency doctrine, which has experienced most of its expansion in the 1970's, is the development of regional land use plans, usually administered by local commissions, and conformity of regulation and legislation to such plans. See generally DiMento, *Improving Development Control Through Planning: The Consistency Doctrine*, 5 COLUM. J. ENV'T'L L. 1 (1978) [hereinafter cited as DiMento].

17. 16 U.S.C. § 1456(c)(2) (1976).

18. *Id.* § 1456(c)(1) (Supp. 1979).

19. *Id.* § 1456(c)(3).

20. *Id.* § 1456(d) (1976).

21. *Id.* § 1456(c)(3)(B) (Supp. 1979).

22. See note 32 *infra*.

process, except that the six month period is reduced to three.²³

It should be noted that the CZMA contains a "grandfather" clause. The consistency requirement is not applicable to activities under OCS plans approved by the Department of the Interior prior to federal approval of the state program.²⁴ Nor does consistency apply to the issuance of any OCS lease.²⁵ Pre-leasing activities, however, have been the subject of a substantial controversy, and will be discussed below.

A. *The Federal Regulations*

The regulations of the National Oceanic and Atmospheric Administration (NOAA) set forth the consistency process in detail.²⁶ This process officially begins when the appropriate state agency is notified by the applicant seeking a consistency certification from a federal agency.²⁷ The regulations, however, encourage persons intending to file an exploration or development plan with the Department of the Interior to obtain the views and assistance of the state prior to official submission of the plan to the Interior Department.²⁸ The OCS applicant must furnish the state all information the state requires under its management program (except certain proprietary information), a brief assessment of the probable effects on the coastal zone, and a set of findings indicating that each activity, such as drilling, platform placement and their associated facilities (for example, onshore support facilities or offshore pipelines), and the primary effects of that activity, such as any adverse effects on air, water, waste discharge, erosion, or wetlands, are all consistent with the state program.²⁹

The state review commences as soon as the applicant's certification

23. The ability of the state to manage its coastal zone seems untenable without the authority to influence decisions which engender profound impacts on the coastal zone. Consequently, the most important impetus to state development of a comprehensive coastal plan is the consistency clause mandating that federal activities be conducted in a manner consistent with an approved state coastal plan, where such activities are in, or significantly affect, the coastal zone.

Comment, *Coastal Zone Impacts of Offshore Oil and Gas Development: An Accommodation Through the California Coastal Act of 1976*, 8 PAC. L.J. 783, 796 (1977).

24. 16 U.S.C. § 1456(c)(3)(B) (Supp. 1979).

25. 15 C.F.R. § 930.51(a) (1979).

26. *Id.* §§ 930.1-930.145 (1979).

27. *Id.* § 930.57(a).

28. *Id.* § 930.75.

29. *Id.* § 930.77(b).

and supporting information are received.³⁰ At the earliest practicable time, the state agency must notify the applicant and federal agency whether it concurs or objects to the consistency certification.³¹ If the state agency has not issued a decision in three months, it must provide a status report and its reasons for any further delay.³² Failure to submit this report for OCS plans will be deemed concurrence. (These requirements were added to the regulations pursuant to the mandate of section 504 of the 1978 OCS Lands Act Amendments.)³³ If the state concurs in the applicant's certification, federal approval of the permit application will follow.³⁴ If the state objects, the applicant may appeal to the Secretary of the Interior,³⁵ who is empowered to overturn the state decision if it is determined either that the proposal is consistent with the objectives of the CZMA or is necessary to national security.³⁶ In the event the Secretary finds that the proposal meets either of these two requirements, the federal agency may approve the activity.³⁷ A procedure for mediation of serious disagreements between federal and state agencies arising out of consistency considerations is also provided, but it is completely voluntary.³⁸

B. *Conflicting Interests*

This scheme of consistency requirements presents many problems. As one author has noted, a consequence of the mandate of consistency is that the decision makers are cast in certain roles, without flexibility.³⁹ The CZMA directs the states to protect the coastal zone in the national interest. The OCS Lands Act requires the Secretary of the Interior to develop oil and gas resources in the Outer Continental Shelf through private enterprise in the national interest. The National Environmental Policy Act (NEPA) demands that the Secretary of the Interior consider the environmental effects in the national interest, and proceed through

30. *Id.* § 930.60(a). A request by a state for further information from the applicant does not alter the official date the review period begins.

31. *Id.* § 930.63(a). The State's concurrence will be conclusively presumed in the absence of an objection by it after six months. *Id.*

32. *Id.* § 930.63(b).

33. 16 U.S.C. § 1456(c)(3)(B)(ii) (Supp. 1979).

34. 15 C.F.R. § 930.63(c) (1979).

35. *Id.* § 930.125.

36. *Id.* § 930.130.

37. *Id.* § 930.131(a).

38. *Id.* § 930.110-.116. See notes 91-94 *infra* and accompanying text.

39. Shaffer, *OCS Development and the Consistency Provisions of the Coastal Zone Management Act—A Legal and Policy Analysis*, 4 OHIO N.U.L. REV. 595, 606 (1977).

balancing the two conflicting values. The Secretary of Commerce, under the CZMA, must approve state management programs, taking into consideration the national interest in energy facilities, mediate, and, in some instances, finally resolve disagreements between a state and an OCS lessee.⁴⁰

The same author points out that the legislative scheme places both the Secretary of Commerce and the Secretary of the Interior in anomalous, even clashing, positions. The Secretary of Commerce is placed in the position of defending the state's determination because of his prior approval of the state's management program. The Secretary of Commerce is also directed, however, to mediate and make final decisions when disputes arise. The Secretary of the Interior, on the other hand, is directed to defend the Department's development program by the statute, national energy priorities, and by the fact that in the leasing process, environmental considerations, which include consideration of state environments, are taken into account. The Secretary of the Interior also becomes an advocate for the oil and gas lessee, although he previously acted as the lessor-regulator, because the Secretary has an interest in seeing that the lessee fulfills its obligations under the lease.⁴¹

Substantively, the overriding concern of the Secretary of Commerce, and the state, under legislative scheme is to protect the environment from adverse impacts caused by OCS development. On the other hand, the Secretary of the Interior's concern is to proceed with development while minimizing environmental impacts. Hence, we have two separate governmental entities making judgments concerning the same subject matter, which judgments are based on conflicting rationale.⁴²

This author agrees with this statutory analysis, and submits that the statutory scheme itself virtually assures that the coastal management process will be fraught with controversy.

40. *Id.*

41. *Id.* at 606-07. See also Brewer, *Federal Consistency and State Expectations*, 2 COASTAL ZONE MANAGEMENT J. 315 (1976); Breeden, *Federalism and the Development of Outer Continental Shelf Mineral Resources*, 28 STAN. L. REV. 1107 (1976).

42. *Id.*

III. THE CALIFORNIA COASTAL ACT

A. *History of the Act*

California was the first state to place great emphasis on coastal zone management. Thus, it is instructive to look briefly at California's experience in developing a plan for coastal management, and at the litigation that has ensued since the California plan was approved by the National Oceanic and Atmospheric Administration.⁴³

California did not enact coastal legislation as a direct result of the federal Coastal Zone Management Act.⁴⁴ In fact, California's policies of coastal conservation had their beginning in Proposition 20,⁴⁵ an initiative measure, passed by the California voters in 1972, to restrict coastal development. Proposition 20 provided for commissions with the authority to withhold permission from those seeking to build within the coastal zone in order to implement its policy.⁴⁶ Proposition 20 also provided for the development of a Coastal Plan to be completed before the Act expired on December 31, 1976. A Coastal Plan was drawn up and submitted to the California Governor and Legislature in December of 1975 for adoption. Although approximately 400 pages in length, it was less a plan than a statement of general objectives. In February, 1976, further legislation was introduced. Eventually, the Coastal Act of 1976 emerged and declared itself to be California's Coastal Management Program for purposes of the CZMA.⁴⁷

As it was finally adopted by the California Legislature in 1976, the Coastal Act, although incorporating some of the Plan's general policy statements, rejected the Plan as a whole as not appropriate for implementation. Instead, the Act adopted the process approach to coastal planning and like the Plan, set forth only very general guidelines with-

43. NOAA must approve state plans for consistency with the provisions of the CZMA pursuant to 16 U.S.C. § 1455(c) (Supp. 1979) in order to receive the federal grants of up to 80% of the cost of administering the state's program. 16 U.S.C. § 1455(a) (Supp. 1979). California was one of the first states to seek and receive federal funds under the CZMA. See text accompanying note 36 *infra* for the provisions of section 307 of the CZMA setting forth the federal standards.

44. *But see id.*

45. California Coastal Zone Conservation Act of 1972, CAL. PUB. RES. CODE §§ 27000-27650 (repealed, 1977) (replaced by California Coastal Act, CAL. PUB. RES. CODE §§ 30000-30900 (West 1977 and Supp. 1980)).

46. For a discussion of Proposition 20, the California Coastal Management Plan, see Douglas, *Coastal Zone Management: a New Approach in California*, 1 COASTAL ZONE MANAGEMENT J. 1 (1974).

47. California Coastal Act, CAL. PUB. RES. CODE §§ 30000-30900 (West 1977 and Supp. 1980).

out attempting to establish clear, precise operational standards for coastal development. In this respect, the Act does not differ from the Plan.⁴⁸ The process established by the Coastal Act places the responsibility for developing California's coastal management program with local governments.⁴⁹ A State Coastal Commission was created⁵⁰ to oversee this process and assure that the programs developed by local governments were consistent with the general statements of policy set forth in the Act.⁵¹ Implementation of these policies, however, is the responsibility of cities and counties along the coast within the broad parameters established by the Legislature. Recognizing that develop-

48. *But see* DiMento, *supra* note 16 at 13.

49. CAL. PUB. RES. CODE § 30330 (West 1977). *See also id.* at § 30500 (West Supp. 1980) which states:

(a) Each local government lying, in whole or in part, within the coastal zone shall prepare a local coastal program for that portion of the coastal zone within its jurisdiction.

(b) The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the commission and an appropriate regional commission, and with full public participation.

See id. § 30004(a) (West Supp. 1980) which states: "To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local governments and local land use planning procedures and enforcement." *Id.*

50. *Cal. Pub. Res. Code* § 30300 (West 1977).

51. The general policies of the California Act are codified at CAL. PUB. RES. CODE §§ 30001-30001.5 (West Supp. 1980).

The Legislature hereby finds and declares:

(a) That the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all people and exists as a delicately balanced ecosystem.

(b) That the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.

(c) That to promote the public safety, health, and welfare, and to protect public and private property, wildlife, marine fisheries, and other ocean resources, and the natural environment, it is necessary to protect the ecological balance of the coastal zone and prevent its deterioration and destruction.

(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

Id. § 30001.

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

(d) Assure priority for coastal-dependent and coastal-related development over other development of the coast.

Id. § 30001.5.

ment of a comprehensive management program would demand time, the California Legislature did not require local governments to make their first submission for approval until January 1, 1980.⁵²

B. *Challenges to the California Coastal Act*

Subsequent to the passage of the Coastal Act, it became apparent that NOAA intended to approve a hastily prepared, modified version of the previously drafted Coastal Plan. The American Petroleum Institute (API), Western Oil and Gas Association and several energy companies therefore promptly brought suit in federal court to enjoin NOAA's approval of the California Program.⁵³ One month later, the district court issued an order allowing the federal defendants to approve the California program, but enjoining enforcement of consistency provisions until the case could be resolved on its merits. The Acting Associate Administrator for Coastal Management, on behalf of the Secretary of Commerce, then approved the California Coastal Management Program under the CZMA. In August of 1978, the district court granted summary judgment in favor of the federal defendants, holding that approval of the California Program complied with the requirements of the CZMA; and that the state could enforce the federal consistency provisions of the CZMA.

The plaintiffs in that case raised both procedural and substantive defects in the CZMA. Those requirements of the federal Act that relate to the manner by which the state program is to be developed, adopted, and implemented were challenged on procedural grounds. Those specific provisions relating to issues which Congress directed each plan contain prior to federal approval, such as consideration of the national interest, were challenged on their substance.⁵⁴

Among the procedural issues was the plaintiffs' contention that the California Coastal Plan, as envisioned by the California Legislature, was not completed at the time the National Oceanic and Atmospheric Administration approved it because the necessary local coastal programs mandated by state law had not yet been developed. The CZMA

52. CAL. PUB. RES. CODE § 30501 (West Supp. 1980).

53. 456 F. Supp. 889 (C.D. Cal. 1978).

54. See Privett, *The Coastal Zone Management Act and its Potential Impacts on Coastal Dependent Energy Development*, 11 NAT. RES. LAW. 455 (1979), for a detailed analysis and discussion of the significant aspects of the National Oceanic and Atmospheric Administration's regulations concerning the development and approval of state coastal management programs.

requires in section 306(c)(2)(A)⁵⁵ that prior to approval, the state must have coordinated its program with local plans in existence by January 1 of the year in which federal approval is given. Since in California's case the local plans were not in existence and, in fact, were not contemplated by the State Coastal Act for several years, the plaintiffs contended the proposed state program was procedurally deficient and not subject to approval. The National Oceanic and Atmospheric Administration responded that since the Coastal Act required the local plans be developed in conformance with that Act's policies, coordination between the state and local plans was ensured. The court concluded that the determination of NOAA was correct and that the requirement of section 306 of the CZMA had been met; but the court did not reveal its reasoning.

On a substantive basis, the plaintiffs challenged the lack of specific treatment of, and commitment to, the so-called energy requirements of the CZMA. Section 306(c)(8) requires that the management program contain a commitment by the state to provide for a consideration of the national interest involved in the planning for and in the siting of facilities (including energy-related) that are necessary to meet requirements which are other than local in nature.⁵⁶ Section 305(6) requires the state to develop an energy facility planning process.⁵⁷ Section 306(e)(2) requires the state program to provide a method of assuring that local regulations do not unnecessarily restrict or exclude uses of regional benefit.⁵⁸ The plaintiffs contended that California's program failed to meet any of these requirements and, further, that NOAA's own regulations for approving state programs were deficient.

On the substantive issues, the court also ruled in favor of NOAA, reasoning that in 1972 Congress delegated broad authority to the Secretary of Commerce and that the 1976 amendments indicated congressional approval of the manner in which NOAA carried out its mandate. The following excerpt from its opinion reveals that court's attitude toward coastal zone management:

The message is as clear as it is repugnant: under our so-called federal system, the Congress is constitutionally empowered to launch programs the scope, impact, consequences and workability of which are largely unknown, at least to the Congress,

55. 16 U.S.C. § 1455(c)(2)(A) (1976).

56. *Id.* § 1455(c)(8) (Supp. 1979).

57. *Id.* § 1454(b)(8).

58. *Id.* § 1455(c)(2).

at the time of enactment; the federal bureaucracy is legally permitted to execute the congressional mandate with a high degree of befuddlement as long as it acts no more befuddled than the Congress must reasonably have anticipated; if ultimate execution of the congressional mandate requires interaction between federal and state bureaucracy, the resultant maze is one of the prices required under the system.⁵⁹

The United States Court of Appeals for the Ninth Circuit affirmed the decision of the district court.⁶⁰ The circuit court deferred to the findings and conclusions of the district court, stating simply that the district court had reached the right conclusions "in a complex case presenting a number of difficult and close questions."⁶¹ On the issue of coordination with local programs, the Ninth Circuit concluded that there was a rational basis for the decision by the NOAA Acting Administrator that the California Plan complied with the CZMA. The court specifically found that California had a process coordinating the coastal program with local plans and assuring potential users of the coast that they would not be subject to local plans that fail to comply with the requirements of the California Coastal Act.⁶²

On the issues of the energy requirements, section 306(c)(8) of the CZMA, and the national interest, the court of appeals affirmed the district court findings and conclusions that NOAA had properly considered the congressional mandate in its program approval regulations both before and after the 1976 amendment; and that the Administrator's approval of the California program was supportable as a correct interpretation of the CZMA. The court reiterated the district court finding that "while the primary focus of subsection 306(c)(8) is on the planning for and siting of facilities, adequate consideration of the national interest in these facilities must be based on a balancing of these interests relative to the wise use, protection and other development of the coastal zone."⁶³

This decision means, at the very least, that future OCS exploration and development activities in California will be subject to the state's determination that such activities are consistent with the California program, as required under the CZMA section 307 consistency provi-

59. 456 F. Supp. at 931.

60. 609 F.2d 1306 (9th Cir. 1979). *See* note 15 *supra*.

61. *Id.* at 1315.

62. *Id.*

63. *Id.* at 1314.

sion,⁶⁴ and the NOAA implementing regulations.⁶⁵

IV. THE CZMA IN ALASKA

Another situs of current controversy in coastal zone management is Alaska. In view of the great potential reserves in the continental shelf off the coast of Alaska, there is much concern over the development of a workable program. The Alaska Coastal Management Program Act was enacted in June of 1977.⁶⁶ It provides for the development of an Alaskan Coastal Management Program by a state agency, the Alaska Coastal Policy Council.⁶⁷ Regulations in the form of guidelines and standards to implement the program were drafted, eventually approved by the Council, and submitted to and approved by the Alaska Legislature in June of 1978.⁶⁸ At first, the standards governing the siting of energy facilities were not approved. The federal Office of Coastal Zone Management objected to them on the grounds that they were too broad. The Alaska Oil and Gas Association helped sponsor workshops and meetings at which the energy facility siting criteria were redrafted. They were then submitted to the Alaska Legislature and approved.⁶⁹ NOAA in July of 1979, approved the Alaska program.

As in the California Plan, the basic effect of the Alaska Coastal Management Plan is to place land use planning and control under the jurisdiction of local governments through the implementation of local coastal programs.⁷⁰ During the development of the Alaska program, there was strong political insistence, by native legislators in particular,

64. 16 U.S.C. § 1456(c) (Supp. 1979).

65. One commentator has noted:

These recent actions by oil interests make clear that state programs which restrict energy development, or even ones which do not assure it, will be put to the test of law. But *API v. Knecht* (California) suggests that reasonable restrictions of specific facilities, especially controversial and hazardous ones such as liquid natural gas terminals and nuclear power plants, combined with high performance standards grounded in strong state and national interests against pollution and safety hazards will withstand legal challenge if contained in state programs whose policies are articulated clearly as the result of the balancing of interests mandated by the CZMA.

Gendler, *Offshore Oil Power Plays: Maximizing State Input into Federal Resource Decision Making*, 12 NAT. RES. LAW. 347, 375 (1979) [hereinafter cited as Gendler].

66. ALASKA STAT. §§ 44.40.010-46.40.210 (1979).

67. *Id.* 46.40.010 (1979), which provides, "(a) The Alaska Coastal Policy Council established in AS 44.19.891 shall approve, in accordance with ss 10-210 of this chapter, the Alaska coastal management program."

68. 6 ALASKA ADMIN. CODE § 85 (1979).

69. ALASKA S. CON. RES. 12, 11th Legis., 1st Sess. (approved by Governor, May 5, 1979).

70. 6 ALASKA ADMIN. CODE § 85 (1979).

that the program not be dictated by the state and that control be maintained by the local boroughs and municipalities. At the present time, several local governments, including the North Slope Borough, are preparing and developing their local coastal programs, which according to statute, must be submitted to the Policy Council for approval and then to the Alaska Legislature.⁷¹ Once these programs have been approved at the state level, the state program will be amended to incorporate the local coastal programs and then be resubmitted to the Secretary of Commerce for approval.

There is considerable concern among members of the Alaska oil and gas industry that the philosophy of local control in the Alaska program may be a major obstacle to future oil and gas development in the Beaufort Sea coastal zone, which is adjacent to the North Slope Borough. Since the late fall of 1978, the Borough has endeavored to obtain approval of a local coastal program, and, at the same time, enact zoning ordinances which would presumably implement that program. The Borough, however, realized that it could probably not obtain an approved coastal program prior to the Beaufort Sea lease sale in December 1979, and therefore concentrated its efforts on drafting the interim zoning ordinances which would then be in effect prior to the adoption of its coastal plan and prior to the lease sale. The purpose of the interim ordinances was to regulate and control oil and gas development in the Beaufort Sea coastal zone. The proposed ordinances, however, made it doubtful whether industry could operate at all.⁷²

The current status of the North Slope Borough program is unclear. The interim ordinances have been adopted as zoning ordinances, but are greatly altered from their interim form.⁷³ They are to remain in effect for eighteen months, or until a coastal plan is approved. The legality of these ordinances is still in question in Alaska.⁷⁴ The entire

71. *Id.* § 85.150.

72. One version of the ordinances required that, in case of a blowout, a relief well be commenced within three days. This is impossible unless a backup rig is maintained nearby. Another version was even more stringent and would have required that a backup well be drilled at the same time as each primary well. Still other ordinances required that exploration and development zoning permits have a limit of two and five years. These proposed ordinances would have precluded any certainty of long-term production. (Proposed ordinances on file with author.) The interim ordinances were adopted Dec. 4, 1979, as *North Slope Borough Ord. Ser. No. 75-6-6*.

73. *Id.*

74. The Alaska Coastal Policy Council, on Mar. 4, 1980, requested the Alaska Attorney General to offer a formal legal opinion on the extent of regulatory authority of municipalities in Alaska (Res. No. 14). This request resulted from concern in the Council over the extent of the North Slope Borough's zoning powers to regulate oil and gas exploration and development by

coastal zone program, consisting of a statement of policies and objectives, the ordinances in a revised form, comprehensive plan and map, were submitted to the Alaska Coastal Policy Council. When the Council indicated it probably would not approve the plan, however, it was withdrawn by the North Slope Borough.⁷⁵ Pursuant to the Borough's request for direction from the Council, it passed a resolution stating what it would like to see in a plan.⁷⁶ The Borough is currently considering reorganization and resubmittal of a coastal zone plan.

The emphasis in the Alaska Coastal Plan on the protection of the subsistence resources and lifestyle that is found in many areas of the state has also posed problems. The Alaska Coastal Plan allows subsistence to be declared as the dominant use of a coastal area.⁷⁷ The North Slope Borough proposal, as submitted to the Council, declared subsistence to be the dominant use of the entire North Slope Coastal Zone. This use designation was apparently one of the features of the Borough plan that the Alaska Coastal Policy Council found objectionable.⁷⁸

Recent litigation has raised the issue of the subsistence lifestyle as a basis sufficient for preventing the federal government from leasing off the coast of Alaska. In *North Slope Borough v. Andrus*,⁷⁹ the North Slope Borough, the National Wildlife Federation, and the Village of Kaktovik filed suit against the Secretary of the Interior and the Administrator of NOAA seeking to enjoin the sale of any leases by the federal government. They alleged that the lease sale would result in immediate and irreparable harm to the environment of the Beaufort Sea, threaten the survival of the bowhead whale and the existence of the Inupiat native Alaskans, and violate several statutes, principally NEPA,⁸⁰ the Endangered Species Act,⁸¹ the Alaska Native Claims Settlement Act,⁸² and the Outer Continental Shelf Lands Act and its 1978 amendments.⁸³ In addition, they asserted that the lease sale and resulting activities

imposing requirements in addition to those promulgated by the Alaska Oil and Gas Conservation Commission. To date, the opinion of the Attorney General has not been issued.

75. North Slope Borough Resolution No. 4-80 (1980).

76. Alaska Coastal Policy Council Resolution No. 14 (Mar. 5, 1980).

77. See 6 ALASKA ADMIN. CODE § 80.120 (1979) for the requirement that priority be given to the designated dominant use.

78. Office of Coastal Management Summary of Revised Findings and Conclusions (Jan. 4, 1980).

79. *North Slope Borough v. Andrus*, 79-3193 (D.D.C. 1980).

80. National Environmental Policy Act of 1969 42 U.S.C. § 421-61 (Supp. 1979).

81. Endangered Species Act of 1973, 16 U.S.C. § 1531-43 (Supp. 1979).

82. Alaska Native Claims Settlement Act, 43 U.S.C. § 1601-28 (Supp. 1979).

83. Outer Continental Shelf Lands Act, 43 U.S.C. § 133-56 (Supp. 1979).

would violate the trust obligation of the United States Government to protect the subsistence resources of Alaskan natives. The basis of the plaintiffs' arguments was that the subsistence lifestyle of the Inupiat people is essential to the preservation of their society, including their nutrition, health, culture, economy, and very existence. Unlike previous environmental suits to stop lease sales, this suit emphasizes the protection of the Inupiat subsistence lifestyle.

The plaintiffs were denied a preliminary injunction, and the lease sale was held as scheduled in December of 1979. In early January of 1980, the district court enjoined the Secretary of the Interior from accepting the high bids and issuing leases until the requirements of NEPA and the Endangered Species Act were fulfilled.⁸⁴

V. CONSISTENCY REVIEWS AND PRE-LEASE SALE ACTIVITIES

Another area of controversy has been the applicability of the CZMA consistency review to Department of the Interior pre-lease sale activities, such as tract selection and preparation of lease stipulations.⁸⁵ In April of 1979, the Justice Department issued an opinion letter which concluded that neither the 1976 amendments to the CZMA nor the 1978 OCSLA amendments repealed the application of the section 307 consistency requirements to these pre-leasing activities.⁸⁶ This opinion had been jointly requested by the Interior and Commerce Departments. The Department of the Interior had contended that the consistency review provided for under these statutory amendments at the time of submittal of OCS exploration and development plans was the only review required, and that this was sufficient for the states to raise any problems relating to OCS activities. The Department of Justice, however, was not convinced that Congress had intended in these amendments to preempt the consistency review otherwise provided by

84. *North Slope Borough v. Andrus*, No. 79-3192 (D.D.C. 1980). The Secretary has appealed the decision.

85. Congress could not have intended to delegate coastal management responsibility to the state only to have the Department of the Interior, by excluding the state from nomination decision, deny the means to implement the programs so authorized.

The management of the coastal zone, given the significance of the impacts from offshore development, appears to justify the involvement of the state throughout the lease-production development process.

Comment, *Coastal Zone Impacts of Offshore Oil and Gas Development: An Accommodation Through the California Coastal Act of 1976*, note 37 *supra*, at 792.

86. Letter from Leon Ulman, Deputy Assistant Attorney General, Dep't of Justice, to Leo M. Krulitz, Dep't of Interior, and to C.L. Haslam, Dep't of Commerce, Apr. 20, 1979 (on file with the author).

the CZMA itself.⁸⁷

This Justice Department opinion may be viewed as a slap on the wrist for the Department of Commerce for its failure to follow the clear statutory language in its consistency regulations. The Justice Department ruled that the Department of Commerce had erred in substituting a "significant effect" test for the "direct impact" test of the statute to determine whether the requirement of consistency is applicable.⁸⁸ This conclusion of the Justice Department is a delayed victory for the energy industry which had previously, and unsuccessfully, argued this point when the Commerce Department originally proposed its consistency regulations.⁸⁹

Shortly after the Justice Department opinion was issued, the Department of the Interior issued a negative determination of need for consistency for Lease Sale 48 activities off the coast of California on the basis that none of decisions made by the Interior Department directly affected the state's coastal zone.⁹⁰ Interior's rationale, in essence, was that these pre-leasing decisions could have no effect unless an "intervening event," such as exploration or development, took place; and that, in such a case, the state itself would have a consistency review of the OCS operating plan.⁹¹ This reasoning, though it travels a longer route, scarcely differs from that for which the Justice Department so sharply criticized the Department of Commerce. It should also be noted that the Department of Commerce has amended its consistency regulations to incorporate the requirements of the Justice Department opinion.⁹²

The State of California disagreed so sharply with the negative de-

87. *Id.* Commerce requested the opinion on Mar. 23, 1979; Interior on Apr. 20, 1979.

88. *Id.* at 14.

89. Statement of American Petroleum Institute and Western Oil & Gas Ass'n concerning Lease Sale 48 (Sept. 7, 1979) (on file with author).

90. Letter from Heather Ross, Dep't of the Interior, to Michael L. Fischer, Cal. Coastal Comm'n, May 25, 1979 (on file with the author).

91. Further evidence that DOI is reluctant to share its authority in OCS decisions is the DOI's narrow view of the effect of the CZMA consistency provision on decision [sic] to hold OCS lease sales. Despite the clear intent of the CZMA to both incorporate coastal resource concerns in federal decision making and increase the state role in those decisions, DOI argues that one of the most important decisions, whether to hold an OCS lease sale, is neither a decision to issue a license or a permit or an action with direct effect on a state's coastal zone. DOI's predisposition toward this view is best seen when it concludes that, although the legislative history is at best confusing, Congress did not intend to include these decisions in consistency review. Nor does the argument attempt to support the bare contention that OCS leases themselves have no direct effect on coastal zones.

Gendler, *supra* note 65, at 359.

92. 44 Fed. Reg. 37142 (1979).

termination of the Department of the Interior that the state requested voluntary mediation. Accordingly, a mediation conference among the State of California, Department of the Interior, and the Commerce Department was held on October 19, 1979, the first mediation proceeding held under the CZMA. During the mediation conference, all the parties restated their respective positions. The California Coastal Commission and the Interior Department, however, were unable to reach any compromise as to the correct meaning of the term "directly affect" with respect to any pre-lease activities. The Secretary of Commerce reported that the mediation process had been "unsuccessful." He did, however, request NOAA to "issue the requisite regulations, defining the term 'directly affect' in a manner consistent with the statutory history and Congressional intent."⁹³ Thus, the first application of voluntary mediation under the CZMA has raised serious questions about the efficacy of this process in situations where the parties are polarized.⁹⁴

VI. CONSISTENCY REVIEW AND ONSHORE AIR EMISSION CONTROL

The applicability of CZMA consistency review to the onshore air emission effects of OCS operations has proven to be another controversy. The issue has been raised in connection with the public hearings held by the Department of the Interior on its proposed air regulations. In fact, the Department had suggested that consistency would, in essence, give states such as California a veto power over OCS activities if such activities did not comport with state or local air rules.⁹⁵ In the writer's view, this is an erroneous interpretation of the consistency review process for the following reasons. In the context of the Department of the Interior's proposal⁹⁶ to incorporate new air emission control into the regulations, the question of consistency review by a state arises whenever a new OCS plan is filed or an existing plan is modified to incorporate air control features. Whether a consistency review is required, and if so, the proper scope thereof, should be determined primarily by reference to the CZMA and the regulations

93. Letter from Philip M. Klutznick, Sec. of Commerce, to Michael L. Fischer, Cal. Coastal Comm'r, (Feb. 27, 1980) (on file with author).

94. In Michael Fischer's response to the Secretary of Commerce's report, he concluded that "[a]s written your report provides no basis for faith in the basic integrity and meaningfulness of the mediation process and leaves us with no hope in the future for resolving federal-state disagreements other than resort to the judicial system." (Mar. 6, 1980) *id.* at 4 (on file with author).

95. Dep't of the Interior Secretarial Issue Doc., Southern Cal. OCS Sale No. 48 (Feb. 28, 1979) (on file with the author).

96. 44 Fed. Reg. 27449 (1979) (proposed to amend 30 C.F.R. § 50.57).

promulgated under that Act. As discussed earlier, the 1976 amendments to the CZMA provide that a consistency review is required only if the activity described in the OCS plan significantly affects "any *land* or *water use* in the coastal zone."⁹⁷

The language of section 307⁹⁸ makes clear that OCS consistency requirements are deliberately limited to activities affecting "land use" or "water use" by virtue of several other subsections prescribing a broader scope of review. For instance, section 307(c)(1), applicable to federal agencies, requires consistency review with respect to all "activities directly affecting *the coastal zone*."⁹⁹ Similarly, the requirements of Section 307(d) are applicable to "programs affecting *the coastal zone*."¹⁰⁰ The entirety of section 307 reveals, therefore, that Congress intended a limited scope of review with respect to OCS activities by restricting consistency to effects on land use or water use. Air uses were thus exempted from the purview of a state's consistency review powers. This construction of CZMA section 307 is also supported by the 1978 amendments to the Outer Continental Shelf Lands Act (OCSLAA)¹⁰¹ and the accompanying legislative history. Both the amendment to section eleven and the addition of a new section twenty-five include provisions limiting consistency to activities affecting "any *land use* or *water use* in the coastal zone of a state."¹⁰²

The effects on the air quality of a state resulting from activities conducted under OCS plans were treated separately and specifically by Congress in the OCSLAA. Section five was amended to direct the Secretary of the Interior to adopt regulations necessary "for compliance with the national ambient air quality standards pursuant to the Clean Air Act . . . to the extent the activities authorized under this Act significantly affect the air quality of any state."¹⁰³ The legislative history is unambiguous in assigning the responsibility for determining whether OCS operations may have a significant effect on the air quality of on-shore areas, and for deciding who shall assure that OCS operations do not prevent the attainment or maintenance of national ambient air

97. 16 U.S.C. § 1456(c)(c)(B) (Supp. 1979) (emphasis added).

98. *Id.*

99. *Id.* § 1456(c)(1) (Supp. 1979) (emphasis added).

100. *Id.* § 1456(d) (1974) (emphasis added).

101. Act of Sept. 18, 1978, (Pub. L. 95-372, 92 Stat. 629 codified in scattered sections of 16, 30, and 43 U.S.C. (Supp. 1979)).

102. 43 U.S.C. § 1331 (Supp. 1979) (emphasis added).

103. *Id.* § 1334(a)(8).

quality standards, to the Secretary of the Interior.¹⁰⁴

This is not to say that a state has no voice in matters of air emission control. Section nineteen of the OCSLAA allows a state to be heard prior to major decisions by the Secretary, including development plans.¹⁰⁵ The Secretary, however, is not bound to accept the state's recommendation. The legislative history also indicates that a state should not have veto power over OCS oil and gas activities.¹⁰⁶ This declaration by Congress against state veto power provides additional support for the argument that effects on a state's air quality from offshore activity are not intended for consistency review.

Even assuming that a state consistency review could properly include consideration of the effects on air quality resulting from coastal zone activities, such a review would be very limited in scope. Geographically, only the effects on the coastal zone itself can be considered in a consistency review. This generally includes an area seaward to the three mile line, and inland only a short distance. In California, for instance, the coastal strip is generally only 1,000 yards wide.¹⁰⁷ Thus, only effects on the air quality of this very narrowly drawn area could be considered by the state in its review. The substantive standard for a state consistency review regarding air emissions would be limited by the CZMA section 307(f)¹⁰⁸ to consideration of the effect of the proposed activities on achievement of ambient air quality standards established pursuant to the Clean Air Act.¹⁰⁹ The CZMA requires that a state incorporate such standards in its management program.¹¹⁰ This would not, however, include every state or local air regulation or standard, as has been suggested by the Department of the Interior. Rather, it would include only those ambient air quality standards established pursuant to Clean Air Act procedures, i.e., those either developed as nationwide standards by the Environmental Protection Agency (EPA) or those incorporated into a state implementation plan approved by the EPA.¹¹¹

104. The Secretary of the Interior can promulgate regulations for compliance with national ambient air quality standards pursuant to the Clean Air Act only to the extent that activities significantly affect the air quality of a state. See H. REP. NO. 95-1474, 95th Cong., 2d Sess. (1978).

105. 43 U.S.C. § 1345 (Supp. 1979).

106. See S. REP. NO. 95-284, 95th Cong., 2d Sess. at 78 (1978); H. REP. 95-590, at 153.

107. CAL. PUB. RES. CODE § 30103 (West Supp. 1979).

108. 16 U.S.C. § 1456(f) (1974).

109. 42 U.S.C. §§ 7401-7626 (Supp. 1979).

110. 16 U.S.C. § 1456(f) (1974).

111. Privett, *The Coastal Zone Management Act and Its Potential Impacts on Coastal Dependent Energy*, 11 NAT. RES. LAW 455, 505 (1979).

Thus limited, state consistency review becomes quite narrow. These restrictions allow a state to review only to determine whether the effect of OCS emissions would significantly hinder the achievement of Clean Air Act ambient air quality standards in the coastal zone strip. As stated above, Congress has mandated that the Secretary of the Interior make precisely the same determination of effect on the appropriate onshore area.¹¹² State review would be redundant, and, it is submitted, could lead to frustration of the congressional intent that the Department of the Interior make the final decision regarding necessary controls for OCS air emissions. A recent Ninth Circuit case considered this issue in deciding whether the EPA or the Interior Department should control the OCS air quality off the coast of California.¹¹³ Based on the language of the OCSLA and also on the history of OCS legislation, the court concluded that the Department of the Interior must have final authority over state review plans to avoid the serious potential for conflict and confusion. The same court also held that dual jurisdiction over the OCS by both the state and the Interior Department would not accomplish the congressional intent.¹¹⁴

The other aspect of consistency review arising in connection with the proposed air emission regulations is the application of such review to OCS activities conducted pursuant to plans approved prior to state coastal management program approval. It has already been noted that all federal license and permit activities which were required to be described in detail in OCS exploration and development plans approved by the Secretary of the Interior prior to approval of an applicable state coastal program are exempted from consistency requirements.¹¹⁵ Once a particular activity in an OCS plan has been saved from initial consis-

112. See note 104 *supra* and accompanying text.

113. *State of California v. Kleppe*, 604 F.2d 1187 (Cir. 1979). The controversy arose over disputes as to whether the EPA had authority to apply the Clean Air Act to certain activities on the OCS, 3.2 miles off Santa Barbara County, California. A number of oil companies contended that the Secretary of the Interior, not the EPA, had authority over air quality control in this area. The court reviewed the 1978 Amendments to the OCSLA and noted that "The plain meaning" of this statute provides no suggestion that DOI is supposed to share its authority to promulgate air quality regulations for the OCS with the EPA or the affected states. *Id.* at 1192. The court observed that such simultaneous jurisdiction would "impair or frustrate" the Secretary of the Interior's authority. *Id.* The opinion then analyzed the legislative history of the OCSLA and concluded that "Congress simply did not make its intent clear with respect to EPA administrative authority over OCS air quality except in its explicit statutory direction to the Secretary [of the DOI] to assume this responsibility." *Id.* at 1198. It held that "Congress did not intend that the jurisdictional grants of the OCSLA and the CAA could stand together, and no jurisdictional conflict can arise." *Id.* at 1199.

114. *Id.* at 1199.

115. 15 C.F.R. §§ 930.71, 930.72(b) (1979).

tency review by this provision, it can thereafter become subject to such review under the consistency regulations of the Department of Commerce *only* if there is a major amendment of the plan concerning that activity,¹¹⁶ which is one whereby "the activity will be modified substantially causing new or significant coastal zone effects."¹¹⁷ Thus, it is only a substantial change in operational activities requiring a plan modification that triggers consistency review. If the activities described in the already approved plan remain substantially unchanged, it follows that the effects of those activities would be substantially the same. It is submitted that no valid basis would exist for subjecting the previously approved activities to consistency review simply because the Department of the Interior requires a revision of the OCS plan to incorporate new air control features.

VII. CONCLUSION

This article has briefly reviewed the Coastal Zone Management process from the standpoints of developing viable state management programs and the consistency review process. To date, both aspects have been fraught with difficulties and surrounded by controversy. Looking to the future, the question arises: What do the coastal zone management and consistency review concepts mean for future OCS development? Certainly, they foretell much greater state and local involvement in OCS development. Along with this involvement will be built-in delays, even if the Interior and Commerce Departments and the affected states are able to develop a viable working relationship. States will undoubtedly use these new powers to attempt to extract concessions from OCS operators in matters over which states would have no control, as in the developing example of air emissions control. Shell Oil Company's recent agreement with the California Air Resources Board over air emission offsets on its OCS platforms off Long Beach serves to illustrate the point.¹¹⁸ Also, states will likely seek to become more and more involved in OCS operational decisions such as the

116. *Id.* §§ 930.51(b)(11), 930.70, 930.71.

117. *Id.* § 930.51(b)(3).

118. Public Hearing to Consider Petition of Women Voters for Review of the South Coast Air Quality Management District's Permit Decision Regarding the Shell Beta Project (Apr. 25, 1979) (on file with author). See CAL. HEALTH & SAFETY CODE §§ 39000-39706 (repealed 1975) (recodified in scattered sections of CAL. HEALTH & SAFETY CODE, Div. 26) (West 1979). "Offset" describes the trade-off process whereby a company agrees to take specific steps to reduce emissions in one sector of an air basin in exchange for an air emissions permit allowing increased emissions in another area of the basin.

physical drilling of wells and design and operation of platforms and facilities.

Finally, in areas such as the East Coast, where there are a large number of designated affected states, there is the potential for a great deal of confusion and opposing viewpoints among those states. One recent exploration plan proposal had to be submitted to New Jersey, Rhode Island, Massachusetts, Maryland, and North Carolina for CZMA consistency.¹¹⁹ It is certain that states with approved management programs will affect OCS development in the future. Congress did not intend, however, that such power be exercised in an unfettered manner. Thus, it is essential that the consistency process be administered in a fashion that assures a careful balancing of state versus national interests. This is the key to the future success of the coastal zone management concept.

119. Among the increasing number of states which require consistency are California, *see note 47 supra*; Alaska, *see note 66 supra*; Florida, FLA. STAT. ANN. §§ 163.3161-.3211 (Harrison 1978); Hawaii, HAW. REV. STAT. § 205.16 (1976); Kentucky, KY. REV. STAT. § 100.201 (Baldwin 1969); Maryland, MD. NAT. RES. CODE §§ 8-101 to 8-407 (1975 and Cum. Supp. 1979); Massachusetts, MASS. GEN. LAWS. ANN. ch. 40A, §§ 20-23 (1973); Nebraska, NEB. REV. STAT. § 23-114.03 (1977); New Jersey, N.J. STAT. ANN. § 40:55 D-62(a) (West Supp. 1978); North Carolina, N.C. GEN. STAT. §§ 113A-100 to 113A-126 (Supp. 1978); Oregon, OR. REV. STAT. §§ 197.005-795 (1977); Rhode Island, R.I. GEN. LAWS §§ 46-23-1 to 43-23-17 (Cum. Supp. 1979); Vermont, VT. STAT. ANN. tit. 24, § 4401(a) (1978); Wyoming, WYO. STAT. § 9-19-301(a) (1977). *See also* Minnesota's statute, MINN. STAT. ANN. § 366.12 (West 1966).