

APPENDIX B  
CONSISTENCY WITH FEDERAL AND STATE COASTAL ZONE MANAGEMENT PROGRAMS

Coastal Zone Management Act

The CZMA of 1972 specifies at Section 307(c)(1) that

Each federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

The MFCMA specifies at Section 303(b) that

Any FMP which is prepared by any council or by the Secretary, with respect to any fishery, may . . .  
(5) incorporate (consistent with the national standards, the other provisions of MFCMA, and any other applicable law) the relevant fishery conservation and management measures of the coastal states nearest to the fishery.

Both the CZMA and the MFCMA establish policies that affect the conservation and management of fishery resources.

NOAA administers both the MFCMA and the CZMA. Moreover, it is NOAA's policy that the two statutes are fundamentally compatible and should be administered in a manner to give maximum effect to both laws. It is also NOAA's policy that most FMPs (and amendments of FMPs) constitute a federal activity that "directly affects" the coastal zone of a state with an approved coastal zone management program. NOAA recognizes that fisheries constitute one of the key resources of the coastal zone and that the preparation and implementation of FMPs to regulate fisheries in the EEZ could have a direct effect on the state's coastal zone because of the division in the fishery resources between the EEZ and state territorial and internal waters.

The CZMA and the MFCMA establish time frames for consistency review and approval of FMPs and amendments that are approximately equal. However, these time frames may, on occasion, cause procedural problems in coordinating consistency review and approval of FMPs or amendments.

NOAA regulations require that consistency determinations be provided to states with approved programs "at least 90 days before final approval of the federal activity unless both the federal agency and the state agency agree to an alternative notification schedule" (15 CFR 930.54[b]). Similarly, NOAA regulations encourage federal agencies to provide consistency determinations "at the earliest practical time" in the planning of an activity, "before the federal agency reaches a significant point of decision making in its review process" (930.54[b]). A state must indicate its agreement or disagreement with the consistency determination within 45 days. If the state fails to respond within 45 days, the state's agreement may be presumed. However, the state may request one 15-day extension before the expiration of the 45-day period, and the federal agency must comply. Longer extensions may be granted by the federal agency (15 CFR 930.41).

The MFCMA requires the Secretary of Commerce review an FMP or amendment prepared by a council and notify such council of his approval, disapproval, or partial approval within 95 days after he receives the FMP or amendment (P.L. 97-453).

The sections that follow summarize those portions of the Washington, Oregon, and California coastal zone management programs that may be relevant to the FMP and subsequent amendments, and the last section determines consistency between the third amendment to the FMP and these state programs.

### Washington State Coastal Zone Management Program

The DOE is lead state agency for implementation of the WCZMP. The coastal zone boundary embodies a two-tier concept. The first or primary tier, bounded by the "resource boundary," encompasses all of the state's marine waters and their associated wetlands, including, at a minimum, all upland area 200 feet landward from the ordinary high water mark. The second tier, bounded by the "planning and administrative boundary," is composed of the area within the 15 coastal counties which front on saltwater. The second tier is intended to be the maximum extent of the coastal zone and, as such, is the context within which coastal policy planning is accomplished through the WCZMP.

Management of the coastal zone is subject to the Shoreline Management Act and implementing regulations, the federal and state clean air act requirements, and the energy facility siting law. Together, these authorities establish priorities for permissibility of uses and provide guidance as to the conduct of uses of Washington's coastal zone. The emphasis of the program includes not only Washington's coastal waters, but the shoreline jurisdiction throughout the 15 coastal counties.

The WCZMP provides a consistency review mechanism for federal activities affecting the coastal zone based on specific policies and standards. For federal activities requiring no permits, but having coastwide implications (such as FMPs), the policies and standards addressed in the Shoreline Management Act of 1971 (RCW 90.58) and the Final Guidelines (WAC 173-16) provide the basis for determining consistency.

### Shoreline Management Act

The management goals in the Shoreline Management Act emphasize a balance between conservation and use of the shorelines. More specific priorities were given to "shorelines of statewide significance" encompassing an area including Washington ocean waters and shoreline from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets.

Amendment 3 to the FMP is consistent with the following directives contained in the WCZMP concerning shoreline management.

#### (a) Recognize and Protect the Statewide Interest Over local Interest

The current FMP and both issues in this amendment have statewide and regionwide implications for a productive groundfish resource and fisherman success and safety.

(b) Preserve the Natural Character of the Shoreline

This proposed FMP amendment should have no direct impact on the natural character of the Washington shoreline. Issue 2 (adjustments for weather-related vessel safety) is not relevant to this directive. Any impacts of Issue 1 (habitat relationships and preservation of productive capacity) should be supportive of this directive where degradation of the natural character of the shoreline also degrades the productive capacity of the environment.

(c) Result in Long-term Over Short-term Benefit

The FMP requires the annual consideration of long-term resource needs and short-term social and economic benefits. The determination of OY balances these competing demands. Under the FMP, management measures may be imposed to alleviate biological stress on any stock of fish to assure that future productivity is not threatened. Ocean commercial fisheries off Washington have been curtailed in recent years in order to alleviate biological stress on certain stocks of groundfish. Neither amendment issue would change this aspect of the FMP. Thus, no option presented in this amendment would jeopardize the productivity of any stock of fish or would result in significant short-term economic gains at the expense of long-term benefits.

(d) Protect the Resources and Ecology of the Shoreline

The purpose of the FMP and subsequent amendments is to conserve and protect the groundfish resource for current and future use. The FMP amendment directly addresses this goal by inclusion of a section which stresses the need to protect groundfish habitat.

(e) Increase Public Access to Publicly-owned Areas of the Shoreline

The amendment to the FMP will not have any direct or indirect affect on public access to publicly-owned areas along the coastal zone.

(f) Increase Recreational Opportunities for the Public in the Shoreline

The FMP amendment will not affect recreational fishing opportunities for the public in the shoreline.

DOE Final Guidelines

The concept of preferred shoreline uses has been incorporated in DOE's final guidelines, with water-dependent uses clearly a priority over water-oriented or nonwater-oriented uses. The guidelines address uses compatible with (1) the natural environment, (2) the conservancy environment, (3) the rural environment, and (4) the urban environment. Of the 21 individual development policies in the final guidelines, three have relevance or potential relevance to the federal activity proposed in this amendment to the FMP.

(a) Commercial Development

Shoreline-dependent commercial development and developments which will provide shoreline enjoyment for a large number of people shall be preferred. New commercial activities shall locate in urbanized areas.

(b) Ports and Water-related Industry

Industry which requires frontage on navigable waters should be given priority over other industrial uses. Prior to allocating shorelines for port uses, regional and statewide needs for such uses should be considered.

Although this amendment does not specifically address development of water-related coastal industry, the protection and enhancement of ocean resources may provide a incentive for shoreside commercial development. Numerous shoreside fish plants process groundfish that are caught in the EEZ. Some of the processors are dependent on the groundfish fishery and will be affected by regulatory decisions made under the FMP and subsequent amendments. Consideration of the economic viability of shoreside commercial developments that are dependent on groundfish fisheries is an important economic factor in the annual determinations of OY by the Council.

(c) Recreation

Priority will be given to developments which provide recreational uses and other improvements facilitating public access to shorelines. Water-oriented recreation is a preferred use along the shorelines, but it should be located and conducted in a way which is compatible with the environment.

The amendment does not specifically address shoreside recreational development, but again the conservation, protection, and enhancement of ocean resources could provide an incentive for such developments.

Oregon State Coastal Zone Management Program

The Oregon program calls for consistency review to activities directly affecting the coastal zone, including air, water, scenic, living, economic, cultural, and/or mineral resources of the coastal zone.

The basis for the Oregon program is the 1973 Oregon Land Use Act, ORS 197. Oregon's program relies on the combined authority of state and local governments to regulate uses and activities in the coastal zone. The principal components of Oregon's program are: (1) 19 statewide planning goals and supporting guidelines adopted by LCDC, the state's coastal zone agency; (2) coordinated comprehensive local plans prepared by local governments and approved by the LCDC; and (3) selected state statutes implemented by various state agencies. Local and state planning decisions must comply with the statewide planning goals, which serve as the program's overriding standards until local comprehensive plans are developed and acknowledged by LCDC. Once acknowledged, the comprehensive plans supersede the goals as standards for

state and federal planning and activities in the coastal zone. Coastal zone boundaries are generally defined to extend to the state's seaward limit (three nautical miles offshore) and inland to the crest of the coastal mountain range.

Table B-1 lists the statewide planning goals and state regulations that have been examined for this analysis and categorized them according to their particular relevance to the recommendations in the amendment to the FMP.

(a) Goal 19 - Ocean Resources

The amendment is consistent with Goal 19 the most pertinent aspect of the Oregon State Coastal Zone Management Program relating to groundfish management. The overall statement of Goal 19 is:

to conserve the long-term value, benefits and natural resources of the nearshore ocean and continental shelf. All local, state, and federal plans, projects, and activities which affect the territorial sea shall be developed, managed, and conducted to maintain, and where appropriate, enhance and restore, long-term benefits derived from the nearshore oceanic resources of Oregon. Since renewable ocean resources and uses, such as food production, water purity, navigation, recreation, and aesthetic enjoyment will provide greater long-term benefits than will nonrenewable resources, such plans and activities shall give clear priority to the proper management and protection of renewable resources.

Guidelines for Goal 19 reflect concerns for awareness of impacts upon fishing resources, biological habitat, navigation and ports, aesthetic uses, recreation, and other issues. The management objectives that are expressed in the FMP and this amendment are consistent with the objective of Goal 19, the protection and conservation of ocean resources. Goal 19 emphasizes the long-term benefits that would be derived from the conservation and restoration of the renewable nearshore oceanic resources. Issue 1 of the FMP amendment emphasizes the need to provide for the conservation and protection of groundfish stocks and their habitat. As such the amendment should enhance the protection and conservation of oceanic resources.

(b) Goal 5 - Preservation of Open Space . . . and Natural Resources

Goal 5 also addresses the issue of conservation of natural resources. The guidelines call for fish and wildlife areas and habitats to be protected and managed in accordance with the Oregon Fish and Wildlife Commission's management plans. The FMP was found consistent with the management objectives for groundfish stocks off Oregon that were developed by ODFW and adopted by the Oregon Fish and Wildlife Commission. The habitat conservation provisions in Amendment 3 strengthen this consistency.

Table B-1. Oregon coastal zone management planning goals and state regulations.

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Category 1. Applicable Issues and Statutes

Goal No. 1	Citizen Involvement in Planning
Goal No. 5	Preservation of Open Space . . . and Natural Resources
Goal No. 8	Recreational Needs
Goal No. 16	Estuarine Resources
Goal No. 19	Ocean Resources
ORS 496.012	Wildlife Policy
ORS 506.109	Foodfish Management
ORS 506.201- 506.211	Oregon Fish and Wildlife Management Planning

Category 2. Potentially Applicable Goals and Statutes

Goal No. 2	Land-use Planning
Goal No. 9	Economy of the State
Goal No. 17	Coastal Shorelands
ORS 184.033	Economic Development
ORS 777.835	Ports Planning

Category 3. Goals Relatively Inapplicable to the Proposed Action

Goal No. 3	Agricultural Lands
Goal No. 4	Forest Lands
Goal No. 6	Air, Water, and Land Resources Quality
Goal No. 7	Areas Subject to Natural Disasters
Goal No. 10	Housing
Goal No. 11	Public Facilities and Services
Goal No. 12	Transportation
Goal No. 13	Energy Conservation
Goal No. 14	Urbanization
Goal No. 18	Beaches and Dunes

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(c) Goal 16 - Estuarine Resources

Goal 16 addresses the protection of estuarine resources. This goal emphasizes the need for protection, maintenance, development, and appropriate restoration of long-term environmental, economic, and social values; diversity, and benefits of Oregon's estuaries. Comprehensive plans and activities affecting estuaries must protect the estuarine ecosystem including its biological productivity, habitat, diversity, unique features, and water quality. However, Goal 16 underscores the need to classify Oregon estuaries and to specify "the most intensive level of development or alteration which may be allowed to occur within each estuary." Neither the FMP nor its amendment has a direct affect on development or alteration of the estuarine environment. However, the amendment stresses the need to protect the estuarine environment and establishes the Council's habitat protection policy.

(d) Goal 8 - Recreational Needs

Goal 8 refers to existing and future demand by citizens and visitors for recreational facilities and opportunities. Planning guidelines recommend that inventories of recreational opportunities be based on adequate research and analysis of the resource, and where multiple uses of the resource exist, provision be made for recreational users. The FMP amendment in no way impedes the opportunity for Oregon recreational fishermen to harvest groundfish.

(e) Goal 1 - Citizen Involvement

Goal 1 calls for the coordination of state, regional, and federal planning with the affected governing bodies and citizenry. Guidelines address communication methods, provision of technical information, and feedback mechanisms to assure the opportunity for citizen involvement in planning processes. The FMP process provides for close collaboration and coordination between state and federal management entities and assures citizen involvement in decision making through the forum of the Council and through a series of public hearings that are convened before the Council adopts any fishery management measures.

Lastly, insofar as FMPs and FMP amendments have the potential to indirectly affect the coastal zone by stimulating private development of new markets or development of fish handling and processing facilities, or otherwise influence land-use planning, Goals 2, 9, and 17 may also apply.

California State Coastal Zone Management Plan and San Francisco Bay Plan

Coastal Plan

The California State Coastal Zone Management Plan is based upon the California Coastal Act of 1976, Division 20, California Public Resources Code, Sections 30000, et seq.; the California Urban and Coastal Park Bond Act of 1976, Division 5, CPRC 5096.777 et seq.; and the California Coastal Commission Regulations, California Administrative Code, Title 14.

The California Coastal Act establishes a structure for state approval of local coastal programs (Section 30050). The California Coastal Commission is the state's coastal zone agency (Section 30300). The coastal zone boundaries are generally the seaward limit of state jurisdiction, and inland to 1,000 yards from the mean high tide line.

The general provisions of the California plan that address issues significant to this analysis concern the protection of the ocean's resources, including marine fish and the natural environment. The plan also calls for the balanced utilization of coastal zone resources, taking into account the social and economic needs of the people of the state. Specific coastal zone policies developed to achieve these general goals and which are applicable or potentially applicable to the regulatory measures proposed in the amendment to the FMP have been identified as follows.

- (a) Section 30210 - ". . . recreational opportunities shall be provided for all the people consistent with the need to protect natural resource areas from overuse."

This goal is consistent with the FMP which seeks to provide recreational fishing opportunities consistent with the needs of other user groups and the need to protect the resource. Recreational fishing opportunities of California citizens are not expected to be inhibited in any way by this FMP amendment.

- (b) Section 30231 - "The biological productivity and quality of coastal waters, streams, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained, and, where feasible, restored . . ."

Any action considered in the amendment does not affect the quality of coastal waters. However, the amendment establishes a habitat conservation policy and provides discussion of the need to protect marine fish habitat. It also provides for the conservation and optimum use of groundfish stocks, which are an integral part for the ecology of the coastal waters.

- (c) Section 30230 - "Uses of the marine environment shall be carried out in a manner . . . that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes."

The amendment to the FMP does not jeopardize the reproductive capability of any resource, has no significant environmental impacts, and promotes equitable utilization among user groups with the intent of maintaining the groundfish harvest at levels which provide the long-term MSY.

- (d) Section 30234 - "Facilities serving the commercial fishing and recreational boating industries shall be protected, and where feasible, upgraded."

This amendment does not specifically address the development of shoreside facilities that serve the commercial and recreational fishing industries.



- (e) Section 30260 - "Coastal-dependent industrial facilities (such as fishing support) shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with the California Coastal Act."
- (f) Section 30708 - "All port-related developments shall be located . . . so as to . . . give highest priority to the use of existing and space within harbors for port purposes including . . . necessary (commercial fishing) support and access facilities."

The amendment does not address the location of coastal-dependent industry or ports.

- (g) Section 30411 - "The CDFG and the Fish and Game Commission are the state agencies responsible for the establishment and control of wildlife and fishery management programs."

The director of CDFG is a voting member of the Council. A representative from CDFG participates on the Council's GMT and helped develop the FMP and this amendment. The MFCMA mandated that all interested individuals, including state fishery management personnel, would have the opportunity to participate in the preparation of FMPs and amendments. This action is consistent with the provisions of Section 30411 because the CDFG has been involved in the planning process for those parts of the amendment that pertain to the management of California and coastwide fisheries.

#### San Francisco Bay Plan

The San Francisco Bay Conservation and Development Commission has jurisdiction over the San Francisco Bay itself, as well as any river, stream, tributary, creek, flood control, or drainage channel that flows into San Francisco Bay.

The San Francisco Bay Plan was approved by the California legislature in 1969. Part II of the plan describes the Commission's objectives as follows.

1. Protect the bay as a great natural resource for the benefit of present and future generations.
2. Develop the bay and its shoreline to their highest potential with a minimum of bay filling.

Part III of the San Francisco Bay Plan describes the findings and policies of the Commission including fish and wildlife policies for the San Francisco Bay. The adopted policies state:

1. the benefits of fish and wildlife in the bay should be insured for present and future generations of Californians. Therefore, to the greatest extent feasible, the remaining marshes and mudflats around the bay, the remaining water volume and surface area of the bay, and adequate fresh water inflow into the bay should be maintained.

the bay, the remaining water volume and surface area of the bay, and adequate fresh water inflow into the bay should be maintained.

2. specific habitats that are needed to prevent the extinction of any species, or to maintain or increase any species that would provide substantial public benefits, should be protected, whether in the bay or on the shoreline behind dikes . . . .

Part IV of the bay plan presents the findings and policies concerning the development of the bay and the adjacent shoreline. Emphasis is given to the consideration of construction projects on filled lands and the controls over-filling and dredging in San Francisco Bay.

The amendment to the FMP does not address water flows or shoreline development. It does expand the Council's habitat protection policy and provide information on the need to conserve marine fish habitat.

#### Consistency Determination

This amendment, including its appendices, describes issues considered in Amendment 3 to the FMP, evaluate the likely impacts of various options that could be taken, compare the expected impacts of the amendment from environmental, social, and economic perspectives, and assess the impacts on small businesses. Any option analyzed in this amendment has been determined to have no significant impact under NEPA, Executive Order 12991, or the Regulatory Flexibility Act.

Based on the above discussions and supported by these determinations, the Council finds that any action likely to result from the third amendment to the FMP is consistent, to the maximum extent practicable, with the approved Washington, Oregon, California, and San Francisco Bay coastal zone management plans.