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Coastal Zone Management Reauthorization: An Overview

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Summary

Congress is considering legislation that would reauthorize the Coastal Zone Management Act of 1972. This overview summarizes the programs created by this act and its amendments, and outlines issues associated with reauthorization. These issues include reauthorizing funding, altering grant programs, changing the National Estuarine Research Reserve system, funding to implement nonpoint water pollution requirements, protecting private property rights, expanding program evaluation efforts, and examining effects of personal water craft on the coastal environment. A reauthorization bill has been reported by the House Resources Committee (H.R. 2669, H. Rept. 106-485), and floor action is anticipated soon. In the Senate, no action has been taken. This report will be updated as events warrant.

Introduction

This country's coastal zone is only 11% of the Nation's area, but it is home to about half the country's population and jobs, according to the National Oceanic and Atmospheric Administration (NOAA). It is also home to many valuable and productive natural resources, including coastal wetlands, beaches, and estuaries. The federal Coastal Zone Management Program (CZM), created under the Coastal Zone Management Act of 1972 (CZMA) (P.L. 92-583; 16 USC 1451 *et. seq.*), provides grants to coastal states and territories to develop and implement plans that coordinate overall development and resource protection activities in their coastal zones. These grants are one incentive to participate. A second incentive is the law's consistency provision that requires all federal actions in or affecting the coastal zone to be consistent with the federally-approved state plans. These incentives seem to be working because 33 of the 35 eligible states and territories are implementing federally-approved plans. One of the remaining states, Indiana, is developing a program, while the other state, Illinois, is inactive. NOAA in the Department of Commerce administers this program.

Congress has reauthorized the CZMA five times since 1972. The most recent reauthorization, enacted in 1996 (P.L. 104-150), expired at the end of FY1999. This uncontroversial legislation was limited to the three year reauthorization; it passed both

chambers without a dissenting vote. Most of the earlier reauthorizations have amended the law to address changing coastal concerns. Among the most notable amendments have been the creation of a coastal energy impact assistance program in 1976, the addition of new grants programs for states that sought to move beyond their basic coastal management efforts in 1980 (§306A) and 1990 (§309), and a coastal nonpoint water pollution program in 1990.

Reauthorization Issues in 2000

Reauthorization legislation, as reported by the House Resources Committee (H.R. 2669, H. Rept. 106-486) addresses several topics, some of which are controversial. The subjects discussed below are limited to those that are already being addressed in reauthorization legislation. Others may be added during the reauthorization process.

Grant Programs. Grants are available for program implementation under §306 of current law, for resource management improvements under §306A, and for coastal zone enhancement under §309 (see background discussion below for more on how these grants can be used). The proposed legislation, like many past reauthorizations, would alter some of the purposes for which participants can spend grants.

Section 102 of H.R. 2669 would replace the resource management improvement grants program under §306A with a new coastal community conservation grants program. This new program would require local sponsors for funded projects. Funds would be allocated among participants using the same formula of relative population size and shoreline length that has been used for the §306 allocations. Projects funded by these grants would have to meet either one of the objectives under the current §306A program or any of several new objectives that would be added: these include redevelopment of historic waterfronts, protection, creation or restoration of coastal habitats, preparation of community revitalization plans, beach access for disabled people, and preparing inventories of public shoreline access points.

These new provisions also would alter the purposes for which the grant money can be used. One of those uses, permit coordination for aquaculture, would be moved from §306A to §309. Two new uses for the §306 grants would be added to the uses previously allowed for resource management improvement grants: (1) addressing significant emerging coastal issues and (2) acquisition and distribution of cultch materials for oyster beds. The committee report states that §102 is to encourage participants to revise their plans to address the concerns and expand the involvement of coastal communities.

Section 104 of the bill would amend the coastal zone enhancement grants provisions in §309. Participants would have to provide matching funds for these grants, and funds would be allocated by the formula that is used to allocation §306 funds, i.e., relative population size and length of shoreline. New uses for these funds would include emerging coastal issues of local and national concern and aquaculture, noted earlier.

Funding. The modest level of funding for the CZM program has long been a concern of advocates, especially the participants, but their attempts to increase authorization and appropriations levels have been largely unsuccessful. Funding levels have received more attention during the past year since CZM was included in the Clinton

Administration's Land Legacy Initiative in the FY2000 budget, and again in the FY2001 request. (See below for background on prior funding and the Lands Legacy Initiative.)

Section 107 of H.R. 2669 would authorize appropriations through FY2005. It would authorize \$55 million in FY2000 for grants under §306 and §309, and they would increase \$1 million each year. It also would authorize \$30 million for grants under §306A in FY2000, growing each year until it reaches \$45 million in FY2005. In addition, it would authorize \$6.5 million a year for program administration and for awards under §314 (the Walter B. Jones awards program). Several specific provisions related to appropriations and grants are also included, such as restricting NOAA from using any of the funds appropriated for §306, §306A, or §309 to administer the federal program.

National Estuarine Research Reserve System. The reserve is made up of sites set aside for research and education programs that support coastal management. Title II of H.R. 2669 includes 5 sections that would amend this program. Section 201 contains language that emphasizes that individual reserves are part of a system, and encourages greater coordination both among the units in this system and between each unit and the coastal management program in that state. Section 202 states that reserves may be made up of areas that constitute a natural ecosystem unit, such as a watershed. Section 203 would allow states to accept donations of both qualified lands and support for research and education projects. Sanctuaries could also enter into agreements with non profit organizations. Section 204 would require that evaluations of reserves be coordinated with evaluations of state programs rather than being conducted as part of the reserve system. Section 205 would increase authorized funding levels for grants to states by \$1 million each year, from \$7 million in FY2000 to \$11 million in FY2005, and also authorize \$12 million each year for construction at reserves.

Water Quality. States are required to develop and implement coastal nonpoint water pollution programs, or risk losing federal funding. H.R. 2669, as approved by the Subcommittee on Fisheries Conservation, Wildlife and Oceans, included a provision to allow up to \$10 million of coastal zone management grants to states to provide technical assistance in support of projects that implement the coastal nonpoint pollution plans. The full committee deleted this provision, expressing concern over possible jurisdictional conflicts with other committees. Members then discussed the possibility of offering an amendment to earmark funding for nonpoint pollution programs during floor debate.

Property Rights. The potential for the CZM to reduce property value or use options without compensation has been a fear long raised by property rights advocates. Some of these advocates believe that this program approaches federal land use planning, even though the planning and implementation occur at the state or local levels. Indeed, when this legislation was initially debated in the late 1960s and early 1970s, sponsors in Congress and leaders in the Nixon Administration stated that they viewed it as a precursor to a more general federal planning effort.

Section 111, addressing property rights protection, was added during full committee markup. It specifies that no action under this program affecting private property for a public purpose can be taken without compensation. This provision has been controversial, with supporters saying that these protections are long overdue, and opponents countering that the fear of compensation would inhibit state programs because of the potential for large liabilities.

Program Evaluation. Measuring program accomplishments has been a challenge for the CZM because of the great variation in priorities among participants. Section 109 would require the Department of Commerce to develop a common set of outcome indicators within 2 years that can be used to evaluate all the state programs, and to submit draft legislation to implement a national evaluation system based on monitoring performance outcomes within 4 years. H.R. 2669 would provide \$1 million in FY2000 and FY2001 to carry out these provisions.

Consistency. H.R. 2669, as reported, does not amend the consistency provisions, but another proposal, H.R. 720 sponsored by Representative Porter Goss, would increase opportunities for states to provide more complete reviews of proposed oil and gas activities on the Outer Continental Shelf. The Resources Committee has not acted on H.R. 720, and it might be offered as an amendment on the floor.

Personal Water Craft. Noise and pollution associated with the use of personal water craft, such as jet skis, have become a major concern in many areas where their use interacts with other activities. These craft are banned from a few water bodies. Wherever use limits are proposed, the debate is fierce. Under §110 of H.R. 2669, the Department of Commerce would be required to complete a study that examines the adverse impacts of these craft on aquatic biota, shoreline stability, and suspended sediments within 4 years. The Department study is to be built from regional studies that reflect coastal geographic and habitat diversity. This legislation would authorize \$2 million a year for FY2000 through FY2002 to complete this work. In addition, §107, which authorizes appropriations, would provide another \$500,000 each year through FY2005 to fund a personal water craft task force for Barnegat Bay, New Jersey.

Background on the Current Coastal Zone Management Program

Grants. Participants can receive grants for many purposes under several CZMA provisions. Participants can receive program implementation grants under §306, coastal resource management improvement grants under §306A, and program enhancement grants under §309. To be approved and become eligible for §306 grants, state plans must:

- define the boundaries of the coastal zone;
- designate areas of particular concern in the coastal zone;
- define permitted land and water uses having a direct impact on coastal waters;
- identify how those uses will be controlled;
- outline guidelines for determining priority uses in the coastal zone;
- describe how the approved program will be administered;
- lay out a process for dealing with access to public coastal areas;
- lay out a planning process for energy facilities in or affecting the coastal zone; and
- lay out a planning process to study the effects and control of coastal erosion.

Participants are eligible for §306A grants if they are making “satisfactory progress” in implementing their plans. These grants can be used to help preserve or restore coastal areas, redevelop urban waterfronts and ports and improve access to the shore. Participants must match their federal grants under both §306 and §306A.

The program enhancement grants under §309 do not require a funding match. They may be used for several specified purposes, including the following;

- protect and restore wetlands;
- protect life and property from coastal hazards, including the potential effects of sea level rise;
- increase opportunities for public access to coastal areas;
- manage coastal activities to reduce marine debris;
- develop and adopt procedures to control coastal development;
- prepare and implement special area management plans;
- plan for aquaculture facilities;
- plan and manage ocean resources; and
- adopt procedures to help site energy and government facilities of greater than local significance.

Funding. The funding level for coastal zone management activities has grown slowly. The most recent reauthorization provided \$50.5 million for coastal program grants in FY1999, the final year of the authorization. In FY2000, participants will be receiving a total of \$58.7 million; \$46.2 million for §306 and §306A grants, \$10 million for §309 grants, and \$2.5 million for coastal nonpoint pollution grants. With up to 35 participating states and territories, the money to any individual participant is limited. According to NOAA data, in FY2000, grants ranged from \$758,000 to \$2.765 million. But the potential of being able to apply consistency and the benefits of coastal planning and resource protection have attracted participation.

In its FY2000 Budget proposal, the Clinton Administration included CZM as one of almost two dozen programs in its “Lands Legacy Initiative.” It proposed \$90 million for CZM. Congress did support a smaller increase, as noted above, to \$59 million. The Clinton Administration has proposed the Lands Legacy Initiative in the FY2001 budget, and is requesting \$152 million for coastal management. (For more information on the programs and funding levels associated with this initiative, see CRS Report RS20471, *The Administration’s Lands Legacy Initiative in the FY2001 Budget Proposal – A Fact Sheet* and IB10015, *Conserving Land Resources: Legislative Proposals in the 106th Congress.*)

National Estuarine Research Reserves. Section 315 of the CZMA established a national system of research areas, called estuarine reserves, that states set aside to investigate long-term trends in coastal resources, to test coastal and estuarine management strategies, to compare scientific information among the sites, and to educate the public. One program goal is to establish at least one site in each of the 29 biogeographic regions in the U.S. coastal zone. Currently, 25 sites in 19 states and Puerto Rico encompassing over 450,000 acres have been designated. Participants can receive grants that cover up to 50% of the costs of acquiring, developing, and operating sites. This program is also included in the Lands Legacy Initiative. It received \$12 million in FY2000, an increase from preceding years, and the Administration is requesting \$20 million in FY2001.

Water Quality. Legislation enacted in §6217 of the Omnibus Budget and Reconciliation Act of 1990 (P.L. 101-508) created a coastal nonpoint water pollution program, known as the Coastal Zone Act Reauthorization Amendments (CZARA). Its purpose is to strengthen links between coastal zone management and water quality programs by requiring states to develop a nonpoint water pollution control program to

restore and protect coastal waters. It is the only mandatory program in the suite of coastal zone management activities that states undertake; participants who do not meet its requirements risk losing increasing portions of their funding under both the Coastal Zone Management Act and §319 of the Clean Water Act, which funds nonpoint pollution grants. All states have met initial implementation requirements, and the program of one state, Maryland, has been fully approved. (For more information on this program, see CRS Report RS20232, *The Coastal Nonpoint Pollution Program: Status and Legislative Issues*, 6 p.)

Consistency. The consistency provision in §307 of the CZMA allows states with approved programs to review federal activities, including activities that require federal permits, in or affecting the coastal zone to determine whether the action is consistent with the state coastal program to “the maximum extent practicable.” Any action that is found to be inconsistent can be halted unless there is an overriding national security concern. If the state and federal agency disagree, an appeals process is available, and the final determination is made by the Secretary of Commerce. Consistency has been most controversial as states have responded to proposals for leasing federal lands on the Outer Continental Shelf for oil and gas exploration and development.

Evaluation. The accomplishments of coastal zone management are difficult to evaluate because state coastal zone programs vary widely in their priorities and because the law allows participants to spend funds on a very wide range of planning, resource protection, and development activities. This variation is amplified by differences in the institutional capacity and implementing laws among the participants. Every state program is periodically evaluated by the federal program (NOAA) to determine both whether it is fulfilling the goals it has set and how to direct future efforts. The difficulty in evaluating the overall program has been frequently identified as a concern. This concern has become more prominent as units of the federal government have started to implement the Government Performance and Results Act (GPRA), which is supposed to use outcome-based performance measures to evaluate accomplishments.

Researchers, primarily from the academic community, have completed several studies in recent years of the effectiveness or the accomplishments of the coastal program. The most recent study, coordinated by researchers at the University of Washington and presented to a House Resources Subcommittee in testimony at a February 25, 1999 hearing, looked at how each participant is meeting each of 5 basic resource protection and coastal development objectives. It concluded that data were lacking to prepare a systematic outcome-based evaluation of state programs because no set of common indicators has been identified that link activities of states to national program objectives.

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