

# CRS Report for Congress

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## **The Coastal Nonpoint Pollution Program: Status and Legislative Issues**

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### **Summary**

In 1990, Congress enacted legislation requiring coastal states and territories to develop programs to help address the problem of nonpoint source pollution in coastal waters, which are especially threatened by pressures of population growth, development, and pollution. The coastal nonpoint pollution program is unique because it expressly links federal and state coastal zone management and water quality programs. Coastal states are now implementing these requirements. Congress has not changed the program since its enactment, but one issue receiving attention is whether to integrate the coastal nonpoint pollution program with activities under the Coastal Zone Management Act (CZMA). In the 106<sup>th</sup> Congress, CZMA legislation passed the Senate (S. 1534), and a separate bill was reported by a House committee (H.R. 2669), but no further action occurred. Whether the coastal nonpoint program will receive attention in the 107<sup>th</sup> Congress is unknown at this time. This report will be updated as developments warrant.

### **Introduction**

Coastal environments face substantial challenges because of multiple pressures of population growth, economic development, and pollution. Population densities of coastal counties are five times the national average, and it is estimated that, from 1996 to 2015, the coastal population will increase from 141 to 161 million persons. Besides supporting people, coastal ecosystems support fisheries, prevent runoff, purify water supply, and mitigate floods, while providing recreation and resources such as lumber, fuel, and food.

In coastal areas, water quality impairments have led to beach closures, prohibitions on harvesting shellfish, and loss of biological productivity in coastal habitats. In addition, the loss of wetlands and riparian areas, water withdrawals, and saltwater intrusion have adversely impacted coastal water quality. Coastal waters are affected by both point and nonpoint sources of pollution, with the latter in many cases the dominant form of pollution. Point source pollution is discharged from factories and municipal sewage treatment plants, usually from a pipe or defined outlet. Nonpoint source pollution is

rainfall runoff and snowmelt from diverse areas including construction sites, city streets, farms and ranches, and forests that is not released through pipes or other outlets.

Historically, the nation's water pollution control programs have emphasized managing point source pollution. Yet, as those efforts have progressed, nonpoint source pollution now represents a larger and more pervasive proportion of total water quality problems. In the most recent data reported by states, nonpoint sources of water pollution are estimated to contribute more than 50% of remaining water quality impairments in rivers, lakes, and coastal waters. The leading nonpoint sources in coastal waters are diverse: runoff from construction sites and development activities in urban areas, municipal point source discharges, atmospheric deposition, and contaminated sediments.

## **The Coastal Zone Management Program**

The 1972 Coastal Zone Management Act (CZMA, P.L. 92-583) created federal incentives for coastal states and territories to plan and manage their coastal and ocean resources. Its purpose is to encourage and assist states to exercise their responsibilities in the coastal zone to achieve effective use of land and water resources. Eligible states may develop coastal management programs pursuant to federal requirements. Under this Act, the federal government's role is to provide grants for states to develop and implement coastal zone management plans. The National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce administers the programs authorized by the CZMA. (For information on the CZMA, see CRS Report 98-1002, *Oceans and Coastal Resources Issues*.) Once approved, coastal states then have a mechanism for managing coastal development and become eligible for additional financial benefits through coastal zone grant programs. The first state CZM program (Washington) was approved in 1974. As of October 2000, 33 eligible coastal and Great Lakes states and territories have federally approved CZM plans. Indiana's plan is being prepared. Among eligible states, only Illinois is not currently participating. NOAA estimates that 99.7% of the nation's shoreline is under management of federally-approved coastal programs.

Under the CZMA, states and territories are eligible to receive several types of grant assistance, including program development and administrative grants (Section 306), resource management improvement grants (Section 306A), and coastal zone enhancement grants (Section 309). One especially significant provision of the Act is Section 307, which gives states with federally-approved CZM programs the right to review federal activities in or affecting the coastal zone (including activities that require federal permits) to determine whether they are consistent with the policies of the state's program.

## **CZARA: Enactment of the Coastal Nonpoint Pollution Program**

Congress has reauthorized the CZMA several times, amending it in ways that reflect changing views about issues that state programs might address. In 1990, Congress enacted Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) to help address the problem of nonpoint source pollution in coastal waters.<sup>1</sup> In it,

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<sup>1</sup> Section 6217 did not amend the Clean Water Act or the Coastal Zone Management Act. It contains independent provisions and was enacted as Section 6217 of the Omnibus Budget (continued...)

Congress acknowledged that there is a clear link between coastal water quality and land use activities along the shore and directed that state programs under the CZMA should play a larger role in improving coastal zone water quality. The central purpose of Section 6217 is to strengthen the links between state coastal zone management and water quality programs by requiring coastal states to develop a nonpoint pollution control program to restore and protect coastal waters. It is intended to update and expand the coastal portion of state nonpoint source management programs under Section 319 of the Clean Water Act (CWA).<sup>2</sup> State coastal zone management agencies and state water quality agencies have dual and co-equal roles and responsibilities in developing the program. It applies in states and territories that receive federal funds to implement their approved coastal zone programs. Because Section 6217 is mandatory, it represents a significant departure from other provisions of the CZMA, which is a voluntary program to assist states in addressing stated national objectives in coastal resource management, and also from Section 319.

CZARA employed an innovative approach. First, NOAA and the Environmental Protection Agency (EPA) shared responsibility for developing the program's framework. Second, states for the first time brought together the land-use management expertise of their coastal zone agencies and the water quality expertise of their Section 319 agencies.

EPA and NOAA published two sets of guidance documents in January 1993. The first specifies management measures for specific categories of nonpoint source pollution. Management measures are defined in CZARA to be economically achievable measures that reflect the best available technology for reducing nonpoint pollutants. In this technical guidance, EPA identified five categories of nonpoint sources affecting coastal waters (agriculture, forestry, urban, marinas and recreational boating, and hydromodification) and for each category, management measures and practices to control nonpoint source pollution. The decision of which measure or practice to apply to achieve the goal of restoring and protecting coastal waters will be up to states.

Second, NOAA and EPA jointly issued guidance describing how states would administratively develop their nonpoint pollution control programs, using management measures in the related technical guidance document. States may select from a wide range of practices to achieve the level of control specified in the management measure.

Coastal states were required to submit a coastal nonpoint plan for EPA and NOAA approval, based on the two types of guidance, within 30 months of issuance of the guidance (by July 1995). The plan is to ensure implementation of management measures in conformity with the technical guidance, at a minimum to protect coastal waters generally, and in coastal areas with degraded or threatened water quality, to ensure implementation of additional measures to attain and maintain applicable water quality standards under the Clean Water Act.

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<sup>1</sup> (...continued)

Reconciliation Act of 1990 (P.L. 101-508).

<sup>2</sup> The Clean Water Act's Section 319 program, enacted in 1987, addresses nonpoint source pollution through voluntary state management programs utilizing federal technical and financial assistance. It provides states, territories, and Indian tribes with grants to implement nonpoint source pollution controls described in EPA-approved nonpoint source pollution management programs.

Section 6217 authorized grants to assist states in developing coastal nonpoint pollution plans: \$6 million for FY1992 and \$12 million annually for FY1993 through FY1995. These grants are administered by NOAA. CZARA provided that, if a state failed to submit an approvable program by 1996, NOAA and EPA would reduce federal grants to the state under the coastal zone management and CWA Section 319 programs. The penalty would initially be a 10% reduction under both programs in FY1996, gradually reaching a 30% reduction in FY1999 and each fiscal year thereafter.

**Program Status.** In 1995, EPA and NOAA made certain administrative changes to the program, based on initial reviews of the progress that coastal states were making towards completing the required CZARA programs. The agencies agreed with states that changes could make the program more flexible, while still achieving pollution reduction goals. EPA and NOAA agreed to utilize conditional approval of state plans, where states need additional time (up to 5 years) to complete development of plans, thus avoiding the penalty of withholding federal grant funds. Also, time frames for implementing management practices for existing sources were extended from 3 to 5 years. In addition, states were given more deference in determining the geographic area to be covered by the program, and NOAA and EPA expanded the range of what constitutes acceptable management measures.

Further administrative changes were made in 1998, again to provide flexibility for states. (For information, see: [<http://www.nos.noaa.gov/ocrm/czm/6217/>]). They were given more flexibility in targeting nonpoint pollution sources, allowing exclusion of sources which are not significant contributors to pollution. While allowing states greater opportunity to determine priorities, EPA and NOAA required states to submit a program strategy. It is to describe the state's overall approach and schedule to ensure implementation of management measures and improve water quality within 15 years of the date of conditional approval, along with more specific 5-year implementation plans nested within the 15-year program strategy against which EPA and NOAA will measure progress. Section 6217 does not specify timeframes for implementation.

The CZMA requires that state 6217 programs contain "enforceable policies and mechanisms" to implement applicable requirements of their coastal nonpoint pollution plans. Balancing among available restrictive or less restrictive tools to achieve policies for controlling nonpoint pollution, particularly with respect to measures affecting individuals' right to manage land uses, has been controversial and challenging. The statute defines enforceable policies as state policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances or similar means by which a state "exerts control over private and public land and water uses and natural resources in the coastal zone." The agencies' 1993 program guidance identified a variety of effective regulatory (e.g., permits or local zoning) and/or non-regulatory approaches (e.g., economic incentives and disincentives) that states can use to meet this requirement. Further, in 1998, the agencies clarified that under certain circumstances they will approve program elements for which states propose voluntary or incentive-based mechanisms, backed by existing state enforcement authorities such as a legal opinion stating that such authority can be used to prevent nonpoint pollution and require management measure implementation.

EPA and NOAA granted the first conditional approval of state program submissions in August 1997, and the last were conditionally approved in June 1998.<sup>3</sup> Each conditional approval contained findings which detail elements that the state is expected to expand or modify in order to conform with the requirements of CZARA within 5 years. Program implementation begins even while such changes are underway. Final program approval has been given to Maryland, Rhode Island, California, and Puerto Rico.

Completing the conditional approval process and issuing the final guidance supported a key action in President Clinton's 1998 Clean Water Action Plan. The Plan was an Administration initiative seeking to build on water quality improvements of the past and address remaining water pollution problems nationwide. The three goals of the Plan were to achieve more effective control of nonpoint source pollution, enhance protection from public health threats posed by water pollution, and promote water quality protection on a watershed basis. (For information, see CRS Report 98-150, *The Clean Water Action Plan: Background and Early Implementation*.)

**Funding and Resources.** A long-standing concern of states is adequacy of resources to carry out the coastal nonpoint pollution program. For FY2001, Congress appropriated \$10 million for grants to develop and implement 6217 programs, in P.L. 106-533 (compared with \$2.5 million for FY2000). These are separate from CZMA grants (\$52 million in FY2001), only a small portion of which (less than \$4 million in FY2001) may be used for the 6217 program. Needs for program implementation are greater than for development. The CWA Section 319 grant program is one that has greater potential to assist with implementation (but is not limited geographically to coastal states). FY2001 appropriations for Section 319 grants are \$238 million (P.L. 106-377).

## Congressional Interest

Congress has not modified the Section 6217 program or reauthorized its grants since 1990. During the 103<sup>rd</sup> Congress, committees heard testimony about the program and general coastal pollution issues. Some issues discussed at that time, such as recognizing the role of voluntary measures for managing nonpoint pollution and extending timeframes for implementation, were subsequently addressed in revised EPA-NOAA program guidance. One long-standing issue, however, is integration of the Section 6217 program with other federal programs with potential for overlap or duplication, such as clean water programs. In the 104<sup>th</sup> Congress, the House passed legislation to amend the Clean Water Act (H.R. 961). One of its provisions would have modified the 6217 program to give EPA the lead role in administering it and allow states the option of participating in either the CZARA or CWA Section 319 nonpoint program. The Senate did not act on H.R. 961. Congress reauthorized the CZMA in 1996 (P.L. 104-150) but made no changes to CZARA. Current CZMA authorizations expired at the end of FY1999.

The 106<sup>th</sup> Congress took steps to address CZARA and coastal nonpoint pollution issues in connection with CZMA reauthorization, but did not complete action on a bill.

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<sup>3</sup> These actions covered the 29 states and territories with federally-approved CZM programs as of 1993. Four states with newer CZM programs (Georgia, Ohio, Texas, and Minnesota) have submitted their 6217 programs for approval, under the 30-month deadline specified in CZARA.

During hearings held by subcommittees of the House Resources Committee and the Senate Commerce, Science and Transportation Committee, witnesses expressed substantial support for the coastal nonpoint pollution program.<sup>4</sup> States like it because state plans are self-designed and self-implemented, but a key concern has been secure funding and improved coordination between the 6217 program and the CZM program. The Clinton Administration supported amending the CZMA to include development and implementation of coastal nonpoint pollution plans as activities eligible for CZMA grant funding. The Administration said that coastal states need increased financial support to implement their plans and proposed that funds for these activities be authorized in addition to base funding for the existing CZMA grants.

Environmental groups also support incorporating the coastal nonpoint pollution program into the CZMA and providing funding for its implementation. They strongly support the enforceable nature of the Section 6217 program which requires backup enforceable means to insure implementation where voluntary measures in state plans fail. In contrast, they have criticized the CWA Section 319 nonpoint program, because it is voluntary (states are not penalized for failure to implement nonpoint management measures) and does not require similar enforceable elements.

In August 1999, the House Resources Committee Fisheries Conservation, Wildlife and Oceans Subcommittee approved a bill to reauthorize the CZMA for five years (H.R. 2669). It included a provision to allow states with approved coastal nonpoint plans to use up to \$10 million per year in CZMA grants to implement projects for technical assistance, public education, and implementation of management measures for nonpoint sources. However, in October, before approving H.R. 2669 (H.Rept. 106-485), the full committee deleted that provision because of concerns over possible jurisdictional conflicts with other House committees. The full committee also approved a property rights amendment opposed by the Clinton Administration and state and county organizations. The House did not take up H.R. 2669 because of controversies over the property rights provision.

In September 2000, the Senate approved a 5-year CZMA reauthorization bill (S. 1534, S.Rept. 106-412). It included a new coastal community grant program to help communities address impacts of development, sprawl, and nonpoint source pollution. Up to \$10 million per year of these grants would be directed to implementing nonpoint pollution control projects. There was no further congressional action on this bill.

Supporters of CZMA legislation and of the 6217 nonpoint pollution program anticipate that the 107<sup>th</sup> Congress will address these issues, but it is unclear whether that will occur. The views of the Bush Administration are not yet known, and the legislative priorities of the key congressional committees that have interest in these topics also are not known.

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<sup>4</sup> Testimony from the Feb. 25, 1999, House subcommittee hearing is available at: [<http://www.house.gov/resources/106cong/fisheries/99feb25/990225witnesslist.htm>]. Testimony from the May 6, 1999, Senate subcommittee hearing is available at: [<http://www.senate.gov/~commerce/issues/ocfish.htm#Hearings>]. Other CZMA reauthorization issues were discussed at these hearings; for information, see CRS Report RS20498, *Coastal Zone Management Reauthorization: An Overview*.

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