

# 1969 - Santa Barbara Oil Spill

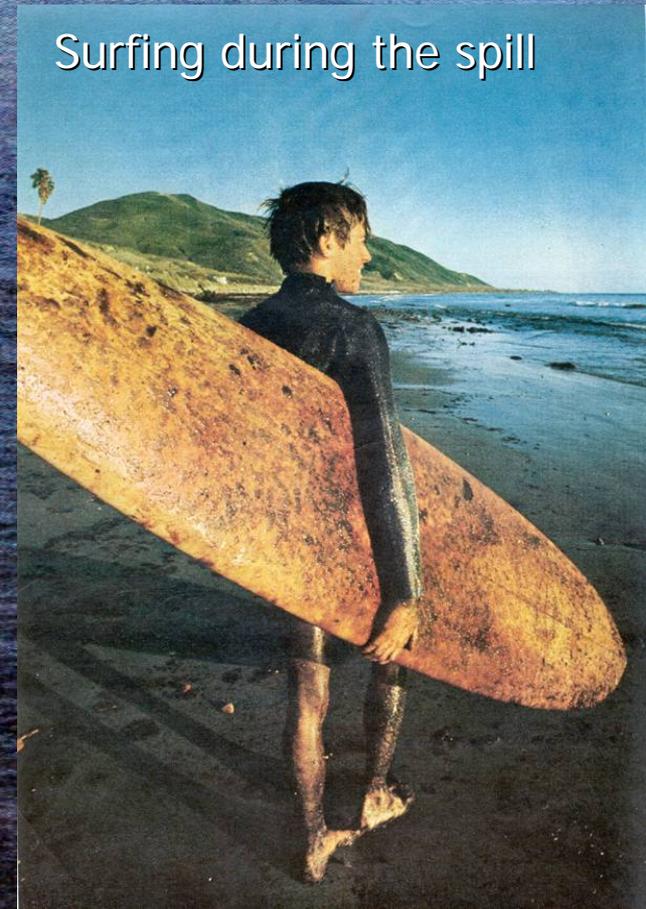
1972 – Coastal Act & CZMA passed

1978 – CCMP Approved



**Federal Consistency Program Briefing  
by Mark Delaplaine  
to the California Coastal Commission  
on February 9, 2012**

Surfing during the spill



## Major State Concerns

Have a say in where and how oil leasing and drilling will occur

Maximize transportation by pipeline rather than tanker



# OS&T

## Underscores need for CZMA/Illustrates expansion of CCC authority

Pre-CCMP approval (1976)

Exxon doesn't accept CCC conditions for Pipeline

Transportation commitments – moves OS&T just outside 3-mile limit

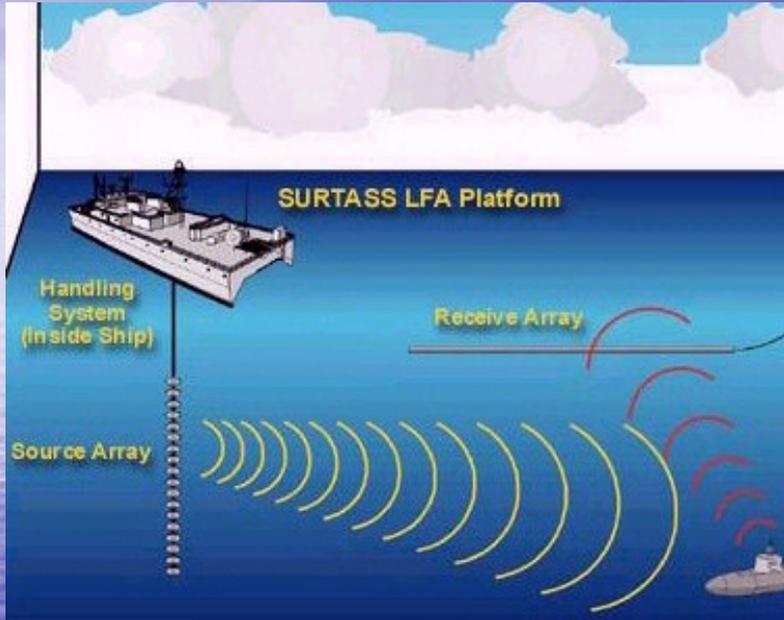


# Tenets

- Federal agency is equal partner, is not *asking* for state permission. This equality tends to foster conflict resolution
- Heavy emphasis on communication/cooperation
- Process brings together federal, state, and local interests

One measure of success for how well this works is lack of litigation

# Effect, not location, determines CCC's authority – example, Navy sonar in federal waters



The "Fish Swim" Test



Federal lands/waters, and lands held in trust for Tribes, are not considered "within" the coastal zone. Consistency review is based on spillover effects on the coastal zone.

# Spillover effects examples

Federal land examples: Effects on listed coastal species (snowy plover, pacific pocket mouse), wetland fill



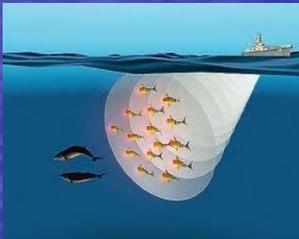
Inland examples:

Dams, sand mining



Seaward examples:

Navy – low/mid frequency sonar



DOI/Energy – OCS activities



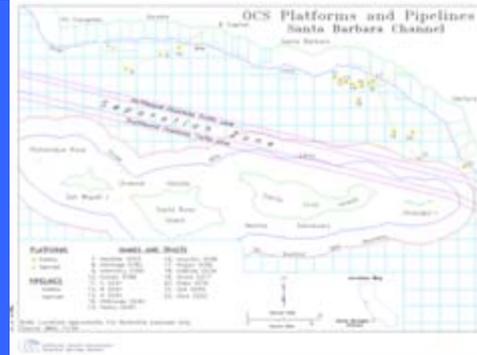
# Two Types of Reviews

## Federal Agency Projects

Consistency Determinations

DOI Lease Sales, Military Activities

(called "c1", from CZMA § 307(c)(1))



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## Federally Permitted Projects

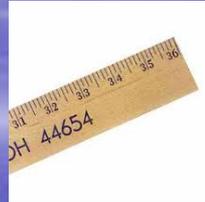
Consistency Certifications

OCS Drilling, Orange Co. Toll Road

(called "c3", from CZMA § 307(c)(3))



# Differences Between Federal Agency Activities “c1’s” and Federally Permitted Activities “c3’s”



## Different standard of review:

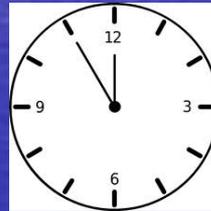
c 1's: Consistent “to the *maximum extent practicable*”

c 3's: Consistent

## Different review period:

c 1's: 60-76 days

c 3's: 6 months



## Different conflict resolution in event of dispute:

c 1's: Objection NOT a veto. Fed. agency can proceed.  
Further resolution thru mediation or litigation.

c 3's: Objection *is* a veto (federally agency may not issue permit), UNLESS objection overruled by Secretary of Commerce.



# CCC Federal Consistency Reviews - 35 Years

3000 cases - 1,300 public hearings

70% Fed. agency activities (c1's) / 30% Fed. permitted (c3's)

95% Concurrence rate for all Federal Consistency Reviews

For remaining 5% (@ 150 objections), only:

14 Appeals to Secretary of Commerce

10 Times, Fed. agency proceeded in the face of an objection

## Handful of cases litigated

CCMP Program approval

Navy Homeporting

Exxon Thresher Shark

Santa Barbara airport runway improvements

OCS Lease Suspensions

Lease Sale 53

CCMP Decertification

So. Pacific Railroad Abandonment, Monterey

WSPA Oil and gas, NPDES Ocean Plan standards

Navy SOCAL Training, Sonar

# Fed. Agency Proceed Despite Objection (major cases)

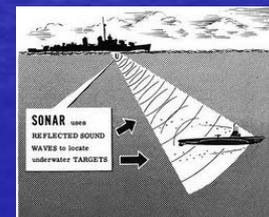
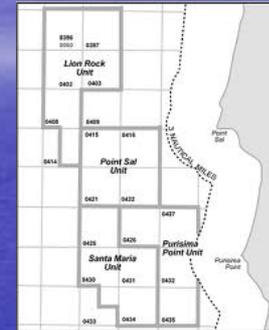
Is rare – when has occurred, most resolved to CCC's satisfaction – only 3 times ending in CCC filing litigation (a fourth – Congress exempted)

1983 DOI Lease Sales – litigation, US Supreme Ct. said not subject to CZMA review; Congress later modified CZMA

1998 Navy Homeporting – litigation, but later resolved  
(issue: munitions in sand to be used on beaches)

2006 Navy Sonar Training – litigation and Presidential override – (issue: protection of whales from active sonar)

2003 Homeland Security, Border Fence – Congress exempted from CZMA – (issue: habitat loss, sedimentation)





# Successful Mediation Cases

## Air Force, Pillar Point & Navy, Port Hueneme



Issue: Effects of Air Force/County fence on access/parking, wetlands



Issue: effects of Navy radar on recreation/neighbors

SWEF

# Maximum Extent Practicable Examples

## Veterans Affairs (VA), San Francisco

Issue: Could CCC require free parking?

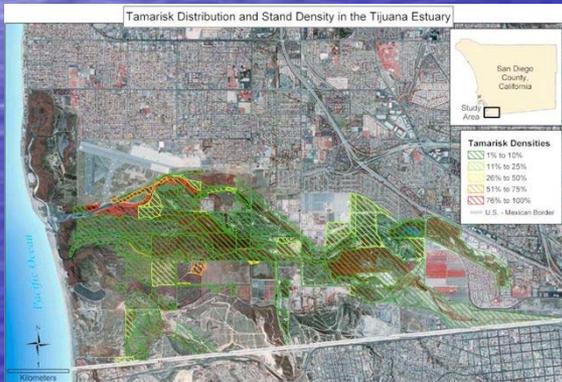
Max Prac. Finding: Federal law authorizing the project required the VA to charge lot users to pay for parking



## International Boundary and Water Commission (IBWC), Tijuana River Riparian Habitat removal for flood control

Issue: Conflicted with habitat and ag. policies

Max Prac. Finding - U.S./Mexico Treaty required IBWC to provide specified level of flood flow conveyance



# CA CZMA-Related Litigation Cases

1. American Petroleum Institute v. Knecht, 609 F.2d 1306 (1979) (**CCMP Program approval**)
2. Secretary of the Interior v. State of California, 464 U.S. 312 (1984) (**Lease Sale 53**)
3. CCC v. United States, 5 F. Supp. 2d 1106 (1998) (**Navy Homeporting**)
4. Environmental Health Coalition v. CCC, (**Navy Homeporting**)
5. CCC v. Mack, 693 F. Supp. 821 (1988) (**Decertification**)
6. Exxon v. Fischer, 807 F.2d 842 (1987) (**Thresher Shark Case**)
7. CCC v. Granite Rock Co., 480 U.S. 572 (1987) (**Mining, Big Sur**)
8. So. Pacific Transportation v. CCC, 520 F. Supp. 800 (1981) (**Railroad Abandonment, Monterey**)
9. Santa Barbara Channelkeeper v. CCC, 2005 WL 2660048, 2005 Cal. App. Unpub. Lexis 9484 (Oct. 19, 2005) (**Santa Barbara airport runway safety improvements**)
10. Western States Petroleum Association v. CCC, (**Oil and gas discharges, NPDES permit, Ocean Plan standards in federal waters**)
11. California v. Norton, 311 F.3d 1162 (2002) (**OCS Lease Suspensions**)
12. Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365 (2008) (**Navy SOCAL Training/Sonar**)



## Simplified List of "c3" Federal Permits

- Corps of Engineers (USACE): Activities affecting navigation and filling wetlands and ocean waters
- Nuclear Regulatory Commission (NRC): Siting and operating of nuclear power plants
- Bureau of Ocean Energy Management (BOEM)/Bureau of Safety and Environmental Enforcement (BSEE): OCS drilling, pipelines, seismic surveys (when part of OCS Plan)
- Environmental Protection Agency (EPA): Point-source ocean discharges, secondary treatment waivers
- Coast Guard (USCG): Bridge construction
- Maritime Administration (MARAD): Deepwater ports for transporting oil or gas (e.g., LNG)
- Federal Aviation Administration (FAA): operation of new airports
- Federal Energy Regulatory Commission (FERC): Hydroelectric/hydrokinetic generating projects, interstate gas pipelines, facilities for import, export, or transship natural gas or electrical energy

If permit is not "listed," CCC must request OCRM permission to review

# Federal Consistency Reopener "Changed Circumstances" Procedures

DOI, OCS Lease Suspensions  
Caltrans, Hatton Canyon Freeway  
Army, Stilwell Hall  
Navy, Homeporting  
Navy, Broadway Complex

Hatton Canyon  
Bypass



Stilwell Hall



Regulations for  
changed circumstances:

- c 1's - 15 CFR §930.45 & 930.46
- c 3's - §930.65 & 930.66 (§930.85 for OCS activities)
- Fed. \$\$\$ - §930.100 & 930.101 for federal funding to state and local governments (CZMA §307 (d))

Regs. provide for re-review if project is having coastal zone effects that are substantially different than originally proposed and, as a result, the project is no longer consistent (or consistent to the maximum extent practicable)

# SECRETARIAL APPEAL CASES

- **CC-12-82 Union**, Exploratory Drilling, SB Channel. CCC Objection Overridden.
- **CC-7-83 Exxon**, Production Drilling, Santa Ynez Unit, SB Channel, Objection to "Option A" Settled/appeal Withdrawn upon resubmittal, Objection to "Option A" Secretary Deferred a final decision, 2/18/84, pending CCC review of "Option B" (which the CCC ultimately approved).
- **CC-5-83 Exxon**, Exploratory Drilling, Santa Barbara Channel ("Thresher Shark" Case). CCC Objection Sustained.
- **CC-25-84 Southern Pacific Transportation Co.**, Reconstruct Railroad Bridge, Santa Ynez River, Vandenberg AFB, Objection Overridden.
- **CC-31-84 Gulf**, Exploratory Drilling, Santa Maria Basin (off Vandenberg Air Force Base). Objection Overridden.
- **CC-52-86 Korea Drilling Co.**, NPDES Permit, SB Channel, CCC Objection Overridden.
- **CC-47-87 Texaco**, Exploratory Drilling, Pt. Conception, Objection Overridden.
- **CC-2-88 Chevron**, Exploratory Drilling, SB Channel, CCC Objection Sustained.
- **CC-18-07 Foothill/Eastern Transportation Corridor Agencies (TCA)**, Foothill Transportation Corridor-South, Appeal Outcome: CCC Objection Sustained, 12/18/08.

# SECRETARIAL APPEAL - TESTS

(a) The activity furthers the national interest as articulated in § 302 or 303 of the act, in a significant or substantial manner

(b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program.

Federal Lands  
North Coast









## **Coastal Commission's Website Links**

<http://www.coastal.ca.gov/fedcd/fedcndx.html>

1. Section 307 of the CZMA (16 USC § 1456)
2. California's Enforceable Policies (Ch. 3 of CA Coastal Act)
3. 15 CFR Part 930 – Federal Consistency Regulations
4. Summary of California's Coastal Mgmt. Program (CCMP)
5. Sample Consistency Determinations & Certifications
6. Secretarial Decisions On Appeals - California

## **Federal govt. (OCRM) Federal Consistency Website**

<http://coastalmanagement.noaa.gov/consistency/welcome.html>

1. Fed. Regs. & CZMA
2. State Coastal Zone Contacts and Boundaries
3. Appeals Decisions Nationwide
4. Policy Guidance Documents