1969 - Santa Barbara Oil Spill
1972 - Coastal Act & CZMA passed
1978 - CCMP Approved

Surfing during the spill

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

**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)

It's 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)
Outcomes in 14 Appeals Filed
(mostly OCS oil & gas cases)

Secretary Overrode CCC Objection – 5 Times

1. CC-12-82 Union, Exploratory Drilling, Santa Barbara Channel. CCC Objection Overridden, 11/9/84.
4. CC-52-86 Korea Drilling Co., NPDES Permit, Santa Barbara Channel, CCC Objection Overridden, 1/19/89.
5. CC-47-87 Texaco, Exploratory Drilling, Pt. Conception Objection Overridden, 5/19/89

CCC Objection Upheld – 3 Times

1. CC-5-83 Exxon Exploratory Drilling, Santa Barbara Channel (“Thresher Shark” Case). CCC Objection Sustained, 11/14/84.
2. CC-2-88 Chevron, Exploratory Drilling, Santa Barbara Channel, CCC Objection Sustained, 10/29/90.
3. CC-18-07 Foothill/Eastern Transportation Corridor Agencies (TCA), Foothill Transportation Corridor-South, CCC Objection Sustained, 12/18/08.

Appeal Withdrawn, Deferred, or Dismissed – 6 Times
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

4. Environmental Health Coalition v. CCC, (Navy Homeporting)
10. Western States Petroleum Association v. CCC, (Oil and gas discharges, NPDES permit, Ocean Plan standards in federal waters)
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

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-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.
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