UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

NOV 28 2001

Tom Fitzsimmons
Director
State of Washington
Department of Ecology
P. O. Box 47600
Olympia, Washington 98504-7600

Dear Mr. Fitzsimmons:

Enclosed are final evaluation findings for the Washington Coastal Zone Management program for the period from December 1996 through August 2000.

We appreciate the cooperation and assistance of your staff during the evaluation.

Sincerely

Charles N. Ehler
Acting Director

Enclosure

cc: G.White

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EVALUATION FINDINGS

FOR THE

WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM

DECEMBER 1996 THROUGH AUGUST 2000

Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration
United States Department of Commerce

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EXECUTIVE SUMMARY

A. OVERVIEW

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires NOAA's Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of the performance of states and territories with federally-approved coastal management programs. This review examined the operation and management of the Washington Coastal Zone Management Program (WACZMP) by the Washington Department of Ecology (Ecology), the designated lead agency, for the period from December 1996 through August 2000.

It is the conclusion of this evaluation that Ecology is successfully implementing and enforcing its federally-approved coastal management program, adhering to the terms of Federal financial assistance awards, and addressing the coastal management needs identified in section 303(2)(A) through (K) of the CZMA. This document contains five recommendations that take the form of program suggestions that denote actions OCRM believes the State should take to improve the program, but which are not mandatory at this time. Ecology has met the three Necessary Actions from the previous evaluation dated April 14, 1997.

B. SUMMARY OF ACCOMPLISHMENTS

Significant accomplishments have been made in the following areas listed below. These are reviewed in detail in Section IV.

1. Shoreline Management Act Guideline Revision. While balancing many other responsibilities, the Shorelands and Environmental Assistance (SEA) Program has completed the first major revision of the Shoreline Management Act (SMA) Guidelines since the rules were first adopted in 1972. Legislation passed in 1995 directed the program to rewrite the SMA rules over a five-year timeframe to make them function more efficiently and effectively. The SEA Program employed a consensus-building process that involved a wide range of stakeholder groups. The draft guidelines were substantially altered during 1999/2000 based on thousands of written comments from the public. In addition, the SEA Program developed portions of the Guidelines to address the several species of salmon and steelhead added to the list of threatened and endangered species pursuant to the Endangered Species Act (ESA). The changes to the proposed rule were considered substantial enough to trigger additional public hearings held in the summer of 2000. The SMA Guidelines were adopted at the end of 2000.[1]

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[1] On August 27, 2001, the Shorelines Hearing Board entered a split decision invalidating the SMA Guidelines. The Board held that the Department of Ecology did not have authority to implement the ESA and that the implementation plan for formal consultation under the ESA was adopted without adequate public notice and opportunity to comment under the state's Administrative Procedures Act. Officials

2. Improved Capacity for Compliance Monitoring and Enforcement. Although local administrators monitor and enforce the SMA, there is a strong role for the State in this area to work jointly with all levels of government. The need for the program to make improvements to SMA monitoring and enforcement capabilities was cited by OCRM as a required action throughout the 1990s. Since 1997, Ecology has implemented a number of actions in response to this concern. These include: increasing the number of the enforcement staff; establishing a SMA compliance Workgroup; improving internal communication and consistency in decisionmaking; updating the enforcement manual, *Enforcing the Shoreline Management Act; Guidebook for Local Government Administrators* and making it available on-line; assisting Ecology in the development of an investigator training program; completing the first retrospective analysis of permit compliance; and, heightening efforts to coordinate enforcement jointly with other agencies.

3. Information Management and Delivery. The broad access to and delivery of data and information in useful forms to support resource management continues to be a major strength of the WACZMP. The program has been aggressive in harnessing Geographic Information System (GIS) and Web-based technologies for managing and sharing spatially-based data and information within and beyond Ecology. Several major activities undertaken in the review period will have a lasting impact on the program's effectiveness. These have included: the development of a pilot, digital Coastal Atlas that will be a key tool for State and local resource managers; the development of an excellent Web site; and the organization and public availability over the Internet of a series of oblique aerial photographs of the state's marine shoreline. Facing typical budgetary constraints for such activities, the program has been deft in seeking new opportunities to collect, update, and disseminate information characterizing the coastline. The hallmark of the program's approach has been to seek innovative collaborative ventures, apply new technologies across the program where appropriate, and to compete successfully for NOAA Coastal Management Fellows.

4. Effective Provision of Technical Assistance for Wetlands Protection and Restoration at the Watershed Level. The WACZMP continues a strong tradition of supplying expert technical assistance to local governments in assessing, delineating, and protecting wetlands under the SMA and the Growth Management Act (GMA). Two additional mechanisms have become available in this review period to expand the state's repertoire for addressing habitat and salmon recovery. The first was the Watershed Planning Act (WPA) of 1998, which has helped to galvanize local interest in characterizing watersheds to identify near-shore habitats suitable for state-funded restoration using a watershed team planning process. The second mechanism has been the Puget Sound Restoration Plan, which has helped to focus the state's efforts to facilitate habitat restoration projects, many of which involve wetlands. With this assessment and decision-making framework in place, the WACZMP has played an

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representing the State, environmental, and business interests announced on September 25, 2001 that they will attempt to negotiate an agreement on new shoreline guidelines for the State.

invaluable role in helping to guide the appropriate expenditure of Federal and state funding made available for habitat restoration and salmon recovery activities.

5. Effective Use of §401 Water Quality Certification Authority. The SEA Program has taken a number of internal steps to strengthen the effectiveness of the state's application of the §401 water quality certification process, a powerful regulatory tool delegated under the Federal Clean Water Act. These step include: the establishment of a well organized Federal Permit Team; the development of a process that is coupled with Federal consistency review, with associated policies and guidance to govern joint 401/CZM review; and an emphasis placed on compliance monitoring, permit tracking, staff training, and enhanced communication. As a result of these refinements and the potential to review many proposed projects that affect salmon habitat, the Federal Permits Team has a strong role in implementing the state's salmon and watershed strategies. Members of this team represent the SEA Program in the array of programs, projects, and policy development bodies that have proliferated in response to the ESA and the state's watershed initiatives. The evolving effort by Ecology to make fuller and more effective use of its authority under §401 has been noted positively by representatives of the environmental community.

6. Hazards Management Advances. The SEA Program has continued to make significant progress in strengthening the basis for the management of hazards in the face of dynamic and unstable conditions on the southwest Pacific and Puget Sound coasts. The state's focus on shoreline protection coincides with the equally pressing need to preserve and restore those near-shore habitats serving as critical habitat for salmonids. The program has been pursuing a number of complementary strategies in order to maximize the state's capacity to address these dual concerns. These approaches have included: developing an improved information base for use in supporting local hazards and flood plain management decisions; fostering intergovernmental partnerships through such collaborative efforts as the Southwest Washington Coastal Erosion Study, a five-year regional research and monitoring program nearing completion; pursuing a program enhancement strategy under §309 of the CZMA that has laid the foundation for amending the shoreline master program guidelines to discourage shoreline armoring and encourage the protection of shoreline functioning; and making effective use of staff expertise to strike a balance between meeting local needs for technical advice and producing useful products that can be disseminated to a wider audience.

7. Beach Watchers: An Example of a Strategic Nonprofit Partnership. Since 1992, the WACZMP has provided funds to Beach Watchers, a volunteer organization affiliated with Washington State University Cooperative Extension that sponsors monitoring, education and outreach activities in Island County. In supporting this highly effective program, the WACZMP has found a means to capitalize on surrogate, on-the-ground support for meeting its own mission. Created in 1989, Beach Watchers trains volunteers to monitor water quality, measure beach profiles and biodiversity, and document shoreline armoring around Island County. Each volunteer receives more than 100 hours of training in the classroom and field. Since 1990, Beach Watchers has trained 180

volunteers who have given more than 40,000 hours of support along the 200-mile shoreline of Island County.

8. Successful Integration of Functional Responsibilities of Coastal Management Staff. In January 1995, the WACZMP was merged with the Water Resource Program through a departmental reorganization. The program had also established a regional office structure to get staff in closer proximity to local government administrators and citizens in the coastal zone. Only two years later in 1997, the program was involved in another reorganization of Ecology even more complex in scope leading to the creation of the SEA Program, where the WACZMP now resides. The purpose of this action was to forge a closer connection between programs in the State whose missions entail a linkage between land and water. While the integration of these program functions under a single organizational structure made functional sense from the State's perspective--SEA Program is viewed as a critical mechanism for program coordination across Ecology--the changes posed a significant challenge to the WACZMP. As the program adapted, the opportunity for confusion, loss of visibility or an internal identity, and a reduction in efficiency or effectiveness in management of the coastal zone elements would have been understandable. The program managers and staff have risen to meet this challenge and these institutional changes will make the program stronger over the long term.

C. SUMMARY OF FINDINGS AND RECOMMENDATIONS

In addition to the accomplishments discussed above, OCRM has identified five areas where the program could be strengthened.

Finding: The need by local governments for technical and regulatory assistance will increase sharply as local governments begin modifying their Shoreline Master Programs (SMPs) to adapt to the revised SMA guidelines. The guidelines also call for Ecology staff to provide data and information in the preparation of the shoreline inventory and various analyses that are required for the update process. The ESA salmon listings have instigated close collaboration between Ecology regulatory and technical staff and fish and wildlife biologists from the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on how to tailor shoreline management activities to meet functional habitat requirements, as well as to adopt an effective monitoring program. The WACZMP has submitted a request to the State Legislature to obtain six additional positions to work with local governments on SMPs in the coastal zone, including reviewers, technical, and compliance monitoring staff. OCRM has significant concerns that even with this increase, the capacity of the WACZMP to address technical assistance needs will be exceeded.

1. PROGRAM SUGGESTION: OCRM encourages Ecology to submit a proposal to the State Legislature explaining the need for additional funds to hire technical staff to augment the existing capacity in the WACZMP. With the revised guidelines and ESA, additional consultative services to local governments and watershed bodies in the areas of habitat restoration ecology, coastal geology, and hydrology are needed. The SEA

Program is encouraged to request assistance from the NMFS and USFWS to obtain staff expertise in one or more of these areas.

Finding: The WACZMP technical staff are maximizing their effectiveness by gathering and synthesizing information that can serve as the scientific basis for refining standards for managing shoreline development and designing restoration activities. This information will be compiled in a revised Guidebook. The need for information substantiating setbacks fronting on marine waters is acute. It was noted that while scientific research has been conducted on shoreline functions, information that can aid in translating this knowledge into prescriptive standards is lacking. State agency staff efforts to develop synopses of what is known from the literature on broader geographic scales to guide regulatory and planning decisions are more economical than having such exercises replicated by scientific staff where they exist at the local level or county level. In pulling together this resource base, staff in WACZMP also acknowledge the need to tap all sources of information and expertise in the area including federally-sponsored research capabilities pertaining to habitat and salmon recovery.

2. PROGRAM SUGGESTION: The SEA Program should make a systematic effort to develop a strategy for assessing the full range of scientific information and expertise in the region to be applied to the update of the shoreline management Guidebook.

Finding: With the push at all governmental levels to encourage habitat restoration and with many projects now being proposed or underway, various regulatory obstacles were identified which present a disincentive for municipalities and property owners to pursue habitat restoration activities. Regulatory obstacles were identified in a voluntary habitat restoration project in a built-out, urban environment; and, in a long-term, meso-scale restoration project being conducted for the sake of habitat enhancement and not part of a compensatory mitigation agreement. There may be flexibility for alternate interpretations of existing state regulations, whose chief purpose is to minimize impacts from development. Otherwise, the current regulatory framework may need modifying to address management approaches encouraging habitat restoration.

3. PROGRAM SUGGESTION: The WACZMP should conduct an analysis of cases where existing regulatory policies or management practices provide a disincentive for municipalities or private landowners to undertake voluntary habitat restoration projects. Over the longer term, Ecology should pursue a coordinated strategy for removing regulatory disincentives and creating incentives to encourage successful habitat restoration. As part of this effort, Ecology may want to explore a regional §404 permit program with the U.S. Army Corps of Engineers (Corps) with procedures to streamline approval of restoration projects. The WACZMP should also review state policies for land acquisition to ensure that habitat restoration needs can be met.

Finding: Throughout its history, the WACZMP has found it difficult to convey a cohesive picture of the scope of the program's organization and mission. This holds true both within Ecology and in Ecology's external communications. The program operates within a broader set of statutory mandates that are statewide in scope. Add to that repeated agency reorganizations and consolidated budget structures and it is not surprising that a firm identity has not been established. Increased program visibility leads to improved awareness of issues of importance to the public and various constituency groups. Increased visibility also helps to promote greater levels of interaction with the public and ultimately more support for the program's mission and requirements. The WACZMP has taken several steps that should help to forge a more cohesive and visible program. These include increased use of the Internet as an outreach tool, the development of an annual WACZMP work plan, the development of a revised program document, and delegation of budget responsibilities to the Coastal/Shorelands Section, the core of the coastal management operation.

4. PROGRAM SUGGESTION: The SEA Program should post a copy of the annual work plan on its Web site and encourage a dialogue with the public to gain feedback on its year-to-year priorities.

Finding: The past three WACMZP evaluations noted the need to complete revisions to the WACZMP program document. Progress was deterred when events triggered at the Federal and state level took preceden, such as the Federal listing of seven salmonids pursuant to the ESA and the release of draft proposed SMA Guidelines by the State. In order to allow the program to focus needed attention on these activities, OCRM requested that Ecology withhold the submittal of the revised document until the end of 1999. The revised WACZMP document was submitted to OCRM for review as a routine program change on November 20, 2000, and received Federal approval on January 12, 2001. The program published the document Managing Washington's Coasts in February 2001.

Finding: During this review period, the program has instituted a number of improvements in the manner in which Federal consistency is administered. These include: the development of policies and a process governing joint §401/Federal consistency review of project proposals (see section IV.E.); implementation of a new process through §306(d)(14) of the CZMA for encouraging public participation in Federal consistency decision-making for direct Federal activities; improved coordination with the Corps of Engineers to refine the handling of the §404 permitting program and particularly nationwide permits, in order to address additional ESA requirements. These findings contain a recommendation encouraging the program to conduct a review and update of the official list of Federal activities subject to Federal consistency review.

5. PROGRAM SUGGESTION: The WACZMP is encouraged to conduct a review and update the list of Federal activities subject to Federal consistency review using the established OCRM approval process and submit these changes for incorporation as part of the new Federally-approved program document.

Finding: Earlier evaluations have cited the challenge to Ecology of developing a means to assess and document the effectiveness of local SMPs in meeting SMA goals. Federal and state government agencies alike are grappling with the development of a system of appropriate and cost-effective measures of performance. Ideally, these indicators should measure quantifiable, on-the-ground outcomes of management strategies, rather than charting the output of process-oriented mechanisms, such as the number of permits issued or violations enforced. During this review period, the SEA Program has made progress in its capacity to convey a more tangible, meaningful picture of program performance, including instituting the annual SEA Program Workplan and continued advances in the program's use of GIS and Web-based technologies.

6. PROGRAM SUGGESTION: The WACZMP should work with NOAA to improve the format and content of its current federal performance reports to provide greater coverage of the on-the-ground progress being made. The program should determine how to incorporate cost-effective and quantifiable resource-based measures of performance, where they are being acquired for reporting purposes within Ecology. The program should make relevant portions of these reports available to the public on its Web site and in other periodic public documents reporting on the WACZMP.

I. INTRODUCTION

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires NOAA's Office of Ocean and Coastal Resource Management (OCRM) to conduct a continuing review of the performance of states and territories with federally-approved coastal management programs. This document sets forth the evaluation findings of the Director of OCRM with respect to how the State of Washington has implemented and enforced the Coastal Zone Management Program (CZMP), addressed the coastal management needs identified in §303(2)(A) through (K) of the CZMA, and adhered to the terms and conditions of the NOAA financial assistance awards for the period from December 1996 through August 2000. It contains an executive summary of the review findings, a description of the review procedures, a description of the Washington Coastal Zone Management Program (WACZMP), major accomplishments during the review period, evaluation findings and recommendations, a conclusion, and appendices.

The recommendations made by this evaluation appear in bold type and follow the section of the findings in which the facts relevant to the recommendation are discussed. The recommendations may be of two types:

Necessary Actions address programmatic requirements of the CZMA's implementing regulations and of the WACZMP approved by NOAA, and must be carried out by the date(s) specified;

Program Suggestions denote actions that OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA §312 evaluation.

Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312(c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. NOAA will consider the findings in this evaluation document in making future financial award decisions relative to the WACZMP.

II. PROGRAM REVIEW PROCEDURES

A. OVERVIEW

The OCRM evaluation staff began its review of the WACZMP in July 2000. The team leader worked with OCRM's Coastal Programs Division (CPD) in the preparation for and conduct of this review. The §312 evaluation process involves four distinct phases:

- an initial document review and identification of specific issues of concern;
- a site visit to Washington, including scheduled interviews and a public meeting;
- subsequent development of the draft evaluation findings; and
- preparation of the final evaluation findings based, in part, on comments from the State regarding the content and timetables of necessary actions specified in the draft document.

B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT

This process included an analysis of the following documents of relevance to the WACZMP: the federally-approved program document; approval findings; subsequent changes to the program; various financial award documents; performance reports and work products; programmatic correspondence between the program and OCRM; the previous CZMA §312 evaluation findings dated April 14, 1997; and other relevant information. Based on this review and in conjunction with discussions with CPD staff, the evaluation team leader identified the following as priority issues:

- Effectiveness of the State's implementation of the Shorelands program and WACZMP core authorities;
- Implementation of the enforcement and compliance strategy developed by the compliance and monitoring work group;
- Status of implementation of legislative changes to the Shoreline Management Act;
- Implementation of Federal consistency authority;
- Effectiveness of the implementation of the public notice requirements at §306(d)(14) of the CZMA;
- Effectiveness of technical assistance, training, and outreach to local governments programs in order to forward the goals of the WACZMP;

- Effectiveness of collaboration in the State and region in WACZMP implementation, including involvement with the Padilla Bay National Estuarine Research Reserve's Northwest Straits Initiative, the Northwest Indian Fisheries Initiative, and the Olympic Coast National Marine Sanctuary;

- Opportunities for public participation in the coastal management planning and decision making process; and

- Program accomplishments, including changes to the core statutory and regulatory provisions of the WACZMP.

C. SITE VISIT TO WASHINGTON

Notification of the scheduled evaluation was sent to the Director of the Department of Ecology (Ecology) as the lead agency, to the headquarters and regional offices of relevant Federal agencies, and to congressional offices. Ecology used a number of mechanisms to announce the evaluation and scheduled public meeting: a public notice appeared in the *Aberdeen Daily World, Bellingham Herald, Everest Herald, Longview Daily News, The Olympian, Peninsula Daily News, Seattle Times, Seattle Post Intelligencer, Tacoma News Tribune, and the Columbian* on July 27, 2000; a notice was posted on the agency's web site on September 1, 2000; and the agency issued a press release on September 8, 2000. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on July 28, 2000.

A site visit to Washington was conducted from September 11 - 15, 2000. The OCRM evaluation team consisted of Marjorie Ernst, Evaluation Team Leader and Elaine Vaudreuil, both from the OCRM Director's Office; Masi Okasaki, Assistant Pacific Regional Manager, CPD; and Catherine Cunningham, Manager of the Michigan Coastal Management Program in the Department of Environmental Quality.

During the site visit, the evaluation team met with: the SEA Program Manager and staff; representatives from Federal, other state, county, and local governmental agencies; and interest group members involved with or affected by the WACZMP. Appendix A contains a listing of individuals contacted during this review.

The CZMA provides three modes of public participation in the §312 evaluation of coastal programs: public meetings, interviews, and submission of written comments. A public meeting was held on Thursday, September 14, 2000, at 7:00 p.m., in the Department of Ecology Auditorium, 300 Desmond Drive, Lacey, Washington, where members of the general public were given the opportunity to provide input on the operation and management of the WACZMP. The list of public meeting attendees can be found in Appendix B. The written comments received in response to the evaluation can be found in Appendix C.

III. COASTAL PROGRAM DESCRIPTION

In June 1976, Washington received NOAA approval of its coastal management program. Washington was the first state to receive such approval. The Washington Coastal Zone Management Program (WACZMP) is based primarily on the State's Shoreline Management Act (SMA), enacted in 1971, and the State Environmental Policy Act (SEPA), also enacted in 1971. Other authorities related to water and air pollution control are also incorporated.

The Department of Ecology (Ecology) has been designated as the lead coastal management agency in the State. Responsibilities for administering the WACZMP within Ecology have been consolidated in the Shorelands and Environmental Assistance (SEA) Program. Staff who assist in WACZMP implementation operate from the Headquarters office and the Northwest and Southwest Regional Offices. Other agencies participating in program implementation include the Departments of Natural Resources, Fish and Wildlife, Transportation, and Parks and Recreation.

Washington's coastal zone boundary is composed of the 15 coastal counties that front saltwater including Wahkiakum. The Shoreline Management Act applies to the shorelines of the State which includes all marine waters, all lakes twenty acres and larger, all streams and rivers with a mean annual flow of twenty cubic feet per second or more, land areas within 200 feet of the waters, and associated wetlands. The SMA requires that land and water uses meet certain criteria as follows:

- Recognition and protection of Statewide interest over local interest;
- Preservation of the natural character of the shoreline;
- Promotion of long term benefit over short-term gain;
- Protection of the resources and ecology of the shoreline;
- Increasing public access to publicly owned areas of the shoreline; and
- Increasing recreational opportunities of the public on the shoreline.

The Washington program is based on local implementation. Local governments develop Shoreline Master Plans (SMPs) based on the SMA with guidance and assistance from Ecology. Once a local SMP is approved, Ecology provides continuing policy direction and oversight for local shoreline administrators, who are responsible for integrating SMA policies into local land use management and permitting decisions, and for compliance monitoring and enforcement.

Fifteen counties and 100 local jurisdictions within the coastal zone have developed, adopted, and received approval of their SMP from Ecology and NOAA. These 115 jurisdictions have the authority under the SMA to issue or deny substantial development permits for activities. Local government recommendations for conditional uses and for variances from their SMP, however, must be submitted to Ecology for approval. The SMA also provides an appeals process. Any person aggrieved by the granting, denying, or rescinding of any local government shoreline permit may appeal that decision to the Shorelines Hearings Board (SHB), a quasi-judicial body. Local permitting decisions and Ecology decisions on conditional use permits and variances, for example, are subject to SHB appeal.

In addition to these formal regulatory and oversight responsibilities, the WACZMP calls for Ecology to assist local governments with technical, financial, and shoreline and growth management planning assistance, as well as to engage in public education and outreach activities to forward the goals of the program.

IV. PROGRAM ACCOMPLISHMENTS

A. SHORELINE MANAGEMENT ACT GUIDELINE REVISION

While balancing many other responsibilities, the Shorelands and Environmental Assistance (SEA) Program has completed the first major revision of the Shoreline Management Act (SMA) Guidelines since the rules were first adopted in 1972.[1] Legislation passed in 1995 directed the program to rewrite the SMA rules over a five-year timeframe to make them function more efficiently and effectively. The SEA Program employed a consensus-building process that involved a wide range of stakeholder groups. The draft guidelines were substantially altered during 1999/2000 based on thousands of written comments from the public. In addition, the SEA Program developed portions of the Guidelines to address the several species of salmon and steelhead added to the list of threatened and endangered species pursuant to the Endangered Species Act (ESA). The changes to the proposed rule were considered substantial enough to trigger additional public hearings held in the summer of 2000. The SMA Guidelines were adopted at the end of 2000 and the program has now turned to address the information needs of local governments. Based on the SMA Guidelines, the local governments have two years to revise their Shoreline Master Programs (SMP). Throughout, the SEA Program has pursued this daunting and complex challenge with diligence and patience.

The SMA rule revision was undertaken in the context of a series of regulatory reforms passed by the Legislature during 1995 with the aim of creating a more efficient, streamlined land use regulatory process. Amendments to the SMA, the Growth Management Act (GMA), and State Environmental Policy Act (SEPA) directed the integration of shoreline planning with growth management planning; SMPs were to be considered elements of local comprehensive plans required under the GMA and individual SMP policies would be incorporated into local land use regulations. Initially, Ecology focused on consolidating the procedural rules for shoreline permit processing and rules governing the process at the local and state level for adoption or amendment of local SMPs. This was followed by a rule change to clarify jurisdictional issues and make definitions being used in the SMA, the GMA, and the Clean Water Act (CWA) consistent.

The challenge still remained to develop revised SMA Guidelines, translating almost thirty years of scientific, legal, and policy advancements and experience gained in implementing the Act into concrete steps with which local governments must comply in adopting SMPs. Draft rules released for comment by Ecology in 1999 elicited enough public comments that the rules were formally withdrawn. At the same time, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) (referred together hereafter as the Services) worked to produce a 4(d) rule that set limits on the take of listed salmonid species under the Endangered Species Act (ESA) in the northwest region of the U.S. Ecology worked in consultation with representatives from the Services, tribes, and interested parties to integrate the requirements for shoreline management needed to protect salmonids and their habitats under the ESA within the framework of the SMA.

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[1] The revised SMA Guidelines went into effect on December 28, 2000.

A new draft rule was released by Ecology in December 1999 containing a dual set of approaches or "paths" in an attempt to provide an optional (Path B) approach to ESA compliance. Path A sets forth mandatory minimum procedures and performance standards, but allows local governments the flexibility to decide how to achieve those standards. Path B provides specific means for satisfying ESA requirements, anticipating actions from the Services that will allow local governments to be insulated from liability under the ESA if this path is selected. The choice between Path A and Path B by local governments is voluntary. Ecology recived over 2000 written comments in response to the final draft guidelines leading to further refinements. At the time of the evaluation site visit, staff were preparing individual written responses to this input as required by the rulemaking process. Accompanying the final rules were a Final Environmental Impact Statement and a cost/benefit analysis. The SMA Guidelines were adopted by the Director of Ecology on November 29, 2000, and went into effect a month later.

In September 2000, SEA staff began to anticipate the steps necessary to implement the revised SMA Guidelines. The shoreline inventory and the data-driven analyses that form the foundation of the SMP revision process are areas where the addition of technical assistance and state resources will be required the most. The SEA Program plans to hold a series of local workshops, working directly with local administrators to scope out technical and other needs that are precipitated by the rule revision. The program is planning to revamp the *Shoreline Guidebook*, last revised in 1994. The Guidebook will be a guide to: prepare Shoreline Master Program amendments; provide assistance in addressing common shoreline management issues; and respond to new directions in shoreline management practices. The goal is to have the Guidebook completed by the end of 2001. In the interim, the program will take advantage of other forums such as the coastal planners group meetings and conduits such as the *Confluence* newsletter and its web site to communicate items of common interest, in addition to one-on-one interactions.

Under the existing statute, all 244 SMPs in the State are to be revised and approved within two years of the adoption of the new guidelines with no additional funding. To accommodate workloads, Ecology has submitted a proposal to the Legislature to amend this schedule by developing a tiered timeframe for program submittals. In implementing this tiered approach, the agency envisions using criteria for local government participation based on such factors as population growth, the incidence of a salmon listing, and the interest of a jurisdiction in being included. The third and last tier of SMPs would be due by the end of 2005.

B. IMPROVED CAPACITY FOR COMPLIANCE MONITORING AND ENFORCEMENT CAPABILITIES

Although local administrators monitor and enforce the SMA, there is a strong role for the State in this area to work jointly with all levels of government. The need for the program to make improvements to SMA monitoring and enforcement capabilities was cited by OCRM as a required action throughout the 1990s. Since 1997, Ecology has implemented a number of actions in response to this concern. These include: increasing the number of the enforcement staff; establishing a SMA compliance Workgroup; improving internal communication and consistency in decisionmaking; updating the enforcement manual, *Enforcing the Shoreline*

Management Act; Guidebook for Local Government Administrators and making it available on-line; assisting Ecology in the development of an investigator training program; completing the first retrospective analysis of permit compliance; and, heightening efforts to coordinate enforcement jointly with other agencies.

The necessary action from the previous evaluation stated that "Ecology must develop a compliance and enforcement strategy to assure that the WACZMP is being implemented in such a way that the policies of the CZMA are being met. The strategy will be completed by December 31, 1998. In the interim, Ecology will include summaries of compliance and enforcement activities in their routine semi-annual reports."[2]

In response to this requirement, the SEA Program established the SMA Compliance Workgroup, made up of representatives from each of the regional offices, the Coastal/Shorelands section manager, and a representative from the Attorney General's (AG) Office. The workgroup, under the leadership of the headquarters-based compliance coordinator, developed the basis for a compliance and enforcement strategy and further outlined a series of specific goals and tasks to ensure that the policies of the WACZMP are being implemented. Products of those deliberations are highlighted below.

The Compliance Workgroup continues to meet monthly to discuss enforcement and appeals cases. The purpose of these meetings is to encourage consistency and accountability in decisionmaking and to assist staff and management in developing and implementing SMA policy initiatives. The AG Office assists the SEA Program staff in strengthening the enforcement cases early in the process to avert costly mistakes. A Compliance Checklist was created and is now being used to assist staff in recommending which permits to appeal and which enforcement actions to pursue. Although time consuming to complete, the checklist gives staff a systematic way of conducting permit reviews.

An Ecology-wide training program was developed for investigators. Of the 450 who participated in the three-day training on how to do environmental investigations, approximately 25 were SEA Program staff. In addition to attending the training, SEA Program enforcement staff was instrumental in the development of this training program. Additional follow-up for program specific training is anticipated in the near future. The program also intends to include a compliance component in its upcoming training programs for local administrators on the SMA rule revisions.

In the first systematic survey of compliance conducted in the history of the program, 46 sites (25 percent of the total sites) were inspected for compliance, based on variance and conditional use permits written in 1996. Eleven SEA program permit writers took on this additional work task of monitoring significant permit conditions for compliance. A two-page narrative report, graphs, and a spread sheet summarizing permit condition compliance was produced. An analysis of results showed a fifty-seven percent compliance rate. A similar assessment is underway to determine a project's level of compliance with permit requirements for compensatory wetland mitigation.

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[2] The program issues 800-1000 SMA permits per year; about half of these are in the coastal zone.

This task has been a learning experience for the SEA permit writers. They found that in some cases where the permit conditions were not well written, non-compliance could occur through misinterpretation. These results provide a valuable baseline for the future. The SEA Program has pledged to revisit 25 percent of the permitted sites each year to verify compliance with permit conditions.[3]

Also in response to this necessary action, Ecology included enforcement action summaries in the compliance and enforcement section of the performance report. Although sometimes lacking sufficient quantitative information, the documentation now gives a better picture of enforcement actions that the SEA Program is undertaking. OCRM will continue to work on improving OCRM's performance report guidance provided to the states with their cooperative agreement award materials.

Ecology previously established an agency-wide enforcement database. However, due to internal problems, staff did not always provide the necessary enforcement data. The database has now been decentralized to make it more accessible and user-friendly to the regions. With these improvements, use of the database has increased. The data provided can now assist in shoreland monitoring and will eventually begin to show other enforcement trends.

The Ecology enforcement staff continues to meet quarterly with the U.S. Environmental Protection Agency (EPA) and U.S. Army Corp of Engineers (Corps) to discuss such enforcement actions as Clean Water Act wetland fill violations. The Corps has opened field offices in Pacific and Clark Counties, and Ecology has a staff person co-located there. Better communication could be established among these agencies. Ecology should consider including managers and staff from EPA and the Corps in the monthly compliance and monitoring workgroup meeting to help enhance communication.

Ecology is pursuing a change in philosophical approach away from a dependence on enforcement to encourage broader forms of compliance by using various forms of facilitation, technical, legal, and policy assistance to applicants and local governments. The increased use of tools such as the notice of correction is intended to encourage compliance. Through its actions, Ecology aims to bring a sense of consistency and clarity of goals both to its staff and the regulated community.

C. INFORMATION MANAGEMENT AND DELIVERY

The broad access to and delivery of data and information in useful forms to support resource management continues to be a major strength of the WACZMP. The program has been aggressive in harnessing Geographic Information System (GIS) and Web-based technologies for managing and sharing spatially-based data and information within and beyond Ecology. Several major activities begun in the review period will have a lasting impact on the program's effectiveness. These have included: the development of a pilot, digital Coastal Atlas that will be a key tool for State and local resource managers; the development of an excellent Web site;

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[3] The program issues 800-1000 SMA permits per year; about half are in the coastal zone.

and the organization and public availability over the Internet of a series of oblique aerial photographs of the state's marine shoreline. Facing typical budgetary constraints for such activities, the program has been deft in seeking new opportunities to collect, update, and disseminate information characterizing the coastline. The hallmark of the program's approach has been to seek innovative collaborative ventures, apply new technologies across the program where appropriate, and to compete successfully for NOAA Coastal Management Fellows.

Washington Coastal Zone Atlas

For a number of years, the program has pursued a goal of redesigning and developing a digital atlas of the state's marine shoreline. Once a primary decision-making tool for local and state management officials, the Washington Coastal Zone Atlas, with detailed maps and information on shoreline attributes at a scale of 1:24,000, was out of print and twenty years out of date. The SEA Program successfully recruited a NOAA Coastal Management Fellow to spearhead a two-year project which outlined a series of task elements leading to the implementation of a pilot system and draft strategy for ensuring long-term maintenance of a digital Coastal Atlas. Early steps included an inventory and evaluation of data sources and information systems and a coastal data needs assessment. The conceptual design combined GIS technology with the opportunities for broad access offered by the Internet.

During the evaluation site visit, the Fellow presented an update of progress being made to obtain data layers for the Coastal Atlas from a variety of sources. The GIS system is designed to link with a system to record and track permits. Ultimately, the program plans to enter information for the 25,000 permits issued since 1971 along the state's 2500-mile marine shoreline to be depicted at a square-mile resolution. The Atlas will be a powerful tool for both current planning and regulatory decision-making, as well as for determining the cumulative impact of past decisions.

Oblique Air Photo Collection

For years, in the course of meeting its mission responsibilities, the WACZMP and other parts of Ecology have obtained aerial photographs of the state's shoreline. Each year, the SEA Program establishes a schedule for contracting overflights to add additional coverage to its archive. Digital photography and satellite sensors have replaced more conventional techniques for recording ground conditions, but older photographs in the collection are invaluable for conducting trend analyses and in many cases may be the most recent coverage available of the state's 2500-miles of shoreline. Although it takes time and money, old photos can be digitized and geographically rectified and made available for wide use.

During this review period, staff in the Coastal/Shorelands section of SEA Program committed to a plan to first organize and then digitize and rectify over 10,000 aerial archived photographs. The first goal was to make these photos available within Ecology over the intranet communication network and a map server was established on this network to facilitate the internal exchange of mapped products. A Shoreline Aerial Photography web site was established to make as many photos as possible available to the public. The evaluation team heard positive feedback from a number of citizens about the accessibility and usefulness of these

oblique photos. This project typifies the program's forward thinking and resourceful approach for capturing and delivering information characterizing the marine shoreline for the benefit of a wide audience.

Web Site Development

The program's use of the World Wide Web to convey information and deliver products has burgeoned in recent years. The web site, which can be reached at: http:\\www.ecy.wa.gov is well organized, easy to navigate, and actively maintained. Information is made available to expedite outreach for all facets of WACZMP implementation: from the Federal/state permitting to the local grants programs; and from guidance for local SMA administrators to property owners. A number of web offerings are popular with users, including the shoreline aerial photos and an element added recently on Puget Sound landslides. The web site afforded convenient access to the draft Shoreline Management Guidelines during the public comment period and the site was used to disseminate the draft and now final coastal management program document. While the SEA Program will continue to explore additional uses of its Web site, the agency provides hard copies of its regulatory documents, publications, and newsletters to those who lack access to the Internet.

D. EFFECTIVE PROVISION OF TECHNICAL ASSISTANCE FOR WETLANDS PROTECTION AND RESTORATION AT THE WATERSHED LEVEL

Wetlands in Washington receive protection at the state level through two statutory mechanisms, the SMA for wetlands falling under that statute's jurisdiction and through the requirement for local governments to enact critical area ordinances as part of local comprehensive plans required under the Growth Management Act (GMA) of 1990. The WACZMP continues a strong tradition of supplying expert technical assistance to local governments in assessing, delineating, and protecting wetlands under the SMA and GMA. Two additional mechanisms have become available in this review period to expand the state's repertoire for addressing habitat and salmon recovery. The first was the Watershed Planning Act (WPA) of 1998, which has helped to galvanize local interest in characterizing watersheds to identify near-shore habitats suitable for state-funded restoration using a watershed team planning process. The second mechanism is the Puget Sound Restoration Plan, which has helped to focus the state's efforts to facilitate habitat restoration projects, many of which involve wetlands. With this assessment and decision-making framework in place, the WACZMP has played an invaluable role in helping to guide the appropriate expenditure of Federal and state funding made available for habitat restoration and salmon recovery activities.

The purpose of the WPA is to support the development of voluntary, locally-driven, long-term strategies for providing adequate water supplies for population growth, fish, and wildlife on a watershed basis throughout the State. While the focus is on water rights and water availability, optional strategies can be pursued for improving water quality, protecting and restoring fish habitat, and working with the State to establish instream flow rates. The State is divided into 62 Water Resource Inventory Areas (WRIA) and watershed planning teams were organized for individual or for multiple WRIAs with the help of organizing grants. State

funding of up to $200,000 was available to planning units to assess current water supply and use levels and with that detail in hand, an additional $250,000 was made available to produce a watershed management plan. Watershed planning units located in any of 16 critical fish basins identified in the Governor's Salmon Recovery Plan were given priority consideration for funding.

Since Ecology was given the lead by the Legislature to administer the WPA, staff from various components of the agency serve as team leads. As a member of the watershed planning team, these individuals are able to deliver the knowledge and resources of the State that could be put to use in meeting the groups' charge. The WACZMP has worked with coastal government officials through this watershed management planning process to tie in several additional elements to be considered in flooding and estuarine flow. A concerted effort was also made to integrate the watershed management planning activity with the comprehensive planning function occurring under the GMA.

The Puget Sound Restoration Plan was an outgrowth of the Puget Sound Water Quality Management Plan, developed through the state's participation in the EPA's National Estuary Program. During this review period, the Restoration Plan provided an impetus for the WACZMP to facilitate habitat restoration projects, many of which involve wetlands. The Puget Sound WRIA served as the training ground for applying and improving upon the concept of the river basin characterization process, a methodology developed by the SEA Program as a foundation for its wetland restoration program. The characterization process involves an effort to bring together the appropriate data and information needed to understand the functional processes at play in a watershed, where and how humans have had an impact on these processes, and the extent of those impacts. Only after such a systematic assessment and analysis, can one make a determination of where wetland preservation and restoration will have the greatest potential to address watershed problems. A corollary wetland function assessment method, developed through a coordinated effort of Ecology with funding from the EPA, is also being employed to assess the functions of individual wetlands in the State for both regulatory and nonregulatory applications.

While relying on its state and federally-based regulatory authorities, the WACZMP has also placed a strong focus on promoting the role of stewardship for the protection and restoration of wetland habitats. This approach not only increases the options for potential restoration available at the state and local level, it also cultivates a sense of personal responsibility on the part of landowners that in time should become culturally ingrained. Stewardship embodies voluntary acquisition of land and the use of conservation and restoration management practices and principles in making land use decisions. The WACZMP staff has produced a number of highly effective publications to provide individual landowners and local government administrators the tools to adopt a stewardship approach. *Exploring Wetlands Stewardship: A Reference Guide*, is a compendium of guidance on practical steps that can be taken to acquire, protect, restore, and maintain wetlands, as well as the means for obtaining various technical and funding resources. Another document, *Public Benefit Rating System* was prepared in 1999 for local governments as an incentive-based tool to encourage wetland protection through the classification of lands as open space under the Current Use Taxation Program.

There are numerous habitat restoration projects underway or at the planning stages as a result of the state and Federal regulatory process, the Watershed Planning Act, Federal appropriations intended to support salmon recovery activities, and through voluntary means. The WACZMP has been able to leverage small amounts of funding from its Federal grant to cover portions of small-scale habitat restoration projects. These projects involve a variety of partnerships and capitalize on various opportunities for funding. The program does not have the staff levels to provide direct management for these projects, rather a lead outside of the agency is identified to take responsibility for project implementation. With the Washington Conservation Corps located within the SEA Program, the program is able to deploy Corps members working out in the field to assist with restoration activities and progress monitoring. The program has also made full use of its GIS and data management capabilities in support of these watershed-based activities that have proven to be indispensable for planning, analytical, and presentation purposes.

One category of wetland restoration is coming under particular scrutiny by the program, compensatory wetland mitigation projects authorized by the Corps and the State under §404 and §401 of the Clean Water Act, respectively. In the face of mounting evidence being gathered by county, state, and Federal agencies, the SEA Program joined with the EPA to initiate a two-phased study to determine the effectiveness of compensatory wetland mitigation statewide. The first phase of the Washington State Wetland Mitigation Evaluation Study to look at compliance with permit requirements was completed with the issuance of a study report in June 2000.[4] The results, most projects (29 percent of 45 randomly selected sites judged to be in full compliance) were failing to meet basic permit requirements, concerned the program and pointed to the need for improved design, construction, and monitoring of these projects. Of note, the attention is placed on the problems associated with assessing performance standards. In Phase 2 of the study, project partners will go further to determine the level of ecological functioning in these projects. The knowledge gained by the program in conducting Phase 1 and 2 will be directly applicable to wetland mitigation projects being proposed under different auspices around the State.

Finally, it is important to note that the program has taken a broad view of its responsibilities and its unique vantage point to look at the bigger picture. As more effort and public and private funds are spent on habitat restoration, the logical question to follow is whether the State can begin to account for significant, on-the-ground improvements in landscape-level and ecosystem function. Although hundreds of completed restoration projects will be required to discern such progress, it is critical to understand what types of measures provide a meaningful picture of a healthy watershed system, not just indicators of individual symptoms being addressed. Through a growing base of experience being gained from technical and regulatory activities occurring in the State and the northwest region, the SEA Program is establishing a science-based foundation on which to chronicle the cumulative progress being made in this area.[5]

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[4] Washington State Wetland Mitigation Evaluation Study Phase 1: Compliance. Publication No. 99-06-016.

[5] The State is working jointly with NMFS and USFWS in defining this picture from the standpoint of salmon recovery.

E. EFFECTIVE USE OF §401 WATER QUALITY CERTIFICATION AUTHORITY

The SEA Program has taken a number of internal steps to strengthen the effectiveness of the state's application of the §401 water quality certification process, a powerful regulatory tool delegated under the Federal Clean Water Act.[6] These steps include: the establishment of a well organized Federal Permit Team; the development of a process that is coupled with Federal consistency review, with associated policies and guidance to govern joint 401/CZM review; and an emphasis placed on compliance monitoring, permit tracking, staff training, and enhanced communication. As a result of these refinements and the potential to review many proposed projects that affect salmon habitat, the Federal Permits Team has a strong role in implementing the state's salmon and watershed strategies. Members of this team represent the SEA Program in the array of programs, projects, and policy development bodies that have proliferated in response to the ESA and the state's watershed initiatives. The evolving effort by Ecology to make fuller and more effective use of its authority under §401 has been noted positively by representatives of the environmental community.

The Federal Permit Team consists of eight members (all FTE positions). Three are based at the regional level (one from each of Ecology's coastal region offices, where they review §401 projects and provide technical assistance). Two team members operate from the Ecology headquarters office where functions related to policy guidance, training, and major project review have been centralized. One of these positions is devoted to navigational dredging. The remaining three members of the team focus on Ecology's coordination with the state Department of Transportation. This complex but highly functional arrangement has been honed over time and allows the program to take effective advantage of its regional structure.

The SEA Program has established a concurrent and coordinated 401/Federal consistency review process, which can only serve to strengthen the program's role in the handling of each of these functions. The policy lead for the Federal permit team in the headquarters office has spearheaded the development of a set of policies and guidance for project review that outlines how various projects are to be handled, with criteria for when certification decisions are to be deferred. This enables the program to operate from a consistent position when conducting negotiations with Federal and other state agencies.

The review process cuts across a broad range of managed activities falling under the purview of the WACZMP, such as wetland permitting and mitigation, dredged material management, flood and flood plain hazard reduction, and stormwater discharges associated with such projects. Compliance under §401 is measured by whether a project to be certified or approved meets state water quality standards and other requirements based on relevant state and Federal law. Projects can be approved or denied. More typically, a permit applicant receives a certification, with conditions to be addressed in the course of project construction and over the life of its operation. The certification process is conducted concurrently with and coupled with Federal consistency review. Permit conditions are applied for both §401 and for Federal consistency; the conditions of the 401 certification become conditions of Federal approval.

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[6] Projects or activities taking place in water or wetlands requiring a Federal permit fall under the scope of §401.

With these refinements to the joint review process, the program is able to focus attention on compliance monitoring, and to determine how water quality certification and Federal consistency conditions have been addressed by applicants over time. Staff have been directed to conduct wetland compliance assessments. Through this process, the program has gained important feedback that was translated into improvements to the permit conditions being applied to wetland and water projects.

The team has developed a statewide and centralized database of permits requiring water quality certification to be used for permit tracking and documentation. Finally, a staff training program was instituted and internal communications has been enhanced by having the certifiers meet for half a day on a monthly basis.

These program refinements have enabled the SEA program staff to contribute in an effective and expanded way in considering the potential effect of projects under review on salmon and their essential habitats. The ESA has injected even more complexity into the permit review process, particularly projects covered under the Nationwide Permit Program. As a result, a Corps regulatory representative remarked that there is still some confusion on their part about who to coordinate with at SEA Program at various steps in the 401/Federal consistency review process. For the benefit of the Corps and the Federal resource agencies, the SEA program has pledged to produce a document by the end of 2000 that lays out the review process and the names of pertinent staff contacts.

F. HAZARDS MANAGEMENT ADVANCES

The SEA Program has continued to make significant progress in strengthening the basis for the management of hazards in the face of dynamic and unstable conditions on the southwest Pacific and Puget Sound coasts. The state's focus on shoreline protection coincides with the equally pressing need to preserve and restore those near-shore habitats serving as critical habitat for salmonids. The program has been pursuing a number of complementary strategies in order to maximize the state's capacity to address these dual concerns. These approaches have included: developing an improved information base for use in supporting local hazards and flood plain management decisions; fostering intergovernmental partnerships through such collaborative efforts as the Southwest Washington Coastal Erosion Study, a five-year regional research and monitoring program nearing completion; pursuing a program enhancement strategy under §309 of the CZMA that has laid the foundation for amending the shoreline master program guidelines to discourage shoreline armoring and encourage the protection of shoreline functioning; and making effective use of staff expertise to strike a balance between meeting local needs for technical advice and producing useful products that can be disseminated to a wider audience.

Unusual climatic conditions during the last four years provided an urgent backdrop for the SEA program's hazards management activities. More frequent and in some cases fatal incidences of landslides and flooding in Puget Sound since 1996 have helped to focus public attention on hazards and flood plain management considerations. Landslides that marked the winter of 1996/97 were followed during the winter of 1998/99 by more unusual deep-seated landslides as saturating soil conditions caused water tables to rise. A comprehensive survey of

Puget Sound has revealed a third of the shoreline to be unstable. On the southwest Pacific coast, a reversal of conditions has communities in several coastal counties coping with severe, chronic erosion.

Development of a Data and Information Base

For a number of years, the program has pursued a goal of producing an information base for hazards management to be readily available to local shoreline administrators. The activity described in section IV.C. to update and digitize the Washington State Coastal Atlas will form the core of this shoreline characterization. Historically, the Atlas had not included coverage of the counties in the southwest Washington coast, areas that are now experiencing erosion problems. As a result, the baseline data being gathered through the Southwest Washington Coastal Erosion Study will be a critical piece of the updated digital Atlas being created for local planners and administrators managing the state's shoreline.

Southwest Washington Coastal Erosion Study

The evaluation team received an update of the Southwest Washington Coastal Erosion Study, a five-year research program initiated in 1996 involving the State, the U.S. Geological Survey (USGS), and local governments. The goals of the study are to gather baseline data on coastal processes along the bi-state littoral zone influenced by the Columbia River, develop a predictive modeling capability, and format data in ways that would be useful for making local management decisions. The project filled a critical void of information available to explain the erosion phenomenon occurring on the southwest coast of Washington. Now in the final year of this study, the program is doing an excellent job of translating and promoting the application of the study results at the local level.

Once again the SEA Program demonstrated its resourcefulness in competing successfully for a NOAA Coastal Management Fellow to serve in the role of integrating and assisting in the transfer of scientific data and information being gathered and the technical capabilities such as modeling, monitoring, and data base management being established. The fellow, who since joined the permanent staff, is serving as the link between project scientists and local government administrators. The project has generated two years of data on coastal processes, enabling local governments and citizens to begin to assess and weigh management alternatives for dealing with erosion. Counties and local government officials are working with SEA Program staff to assess issues and local capacities for managing coastal erosion hazards. They are also providing guidance to the study team on how to format data to make it useful for planning and regulatory purposes.

The study is a resounding success. It has helped to forge closer working relationships between agencies, scientists, and local officials. The study has enabled academic and state agency experts from Washington and Oregon to share their expertise. In Washington, study results should lead to a renewed focus on the need for dune management strategies. The project has attracted new sources of technology that should lead to other applications. It has also underscored the importance of having an institutionalized capability to monitor beach morphology to improve analyses and predictive modeling capabilities. Funding for monitoring

will end with the completion of the project at the end of 2001. The SEA program would like to establish a permanent monitoring program on the southwest coast with the USGS and pursue opportunities to extend their capabilities into Puget Sound.

Task Force Activities

After another severe winter of coastal erosion and repeated requests for state and federal financial assistance, Governor Locke directed the State to establish a Coastal Erosion Task Force in 1998. The goal of the Task Force was to develop short and long term policy recommendations for the State to address erosion issues. In 1999, the Task Force produced 22 recommendations which can be used by coastal decision makers involved with erosion issues. In addition, during the period from November 1995 through June 1997 Washington State had five Presidential Disaster Declarations for flooding with damage exceeding $1 billion, including 385 million to transportation infrastructure alone. The 1998 Legislature, through SHB 3110 directed Ecology and Washington State Department of Transportation to produce a report assessing the State's increasing vulnerability to damaging flood events. In 1999, in response to the 3110 Report, the Legislature appropriated funding and staff positions for the creation of a Floodplain Management Task Force. As a byproduct of this action, the SEA Program has strengthened its partnerships with both WA State Emergency Management Division and with the Federal Emergency Management Agency. The effect of this increased cooperation has been to better integrate environmental concerns and needs into governmental approaches for addressing flood hazard reduction.

Program Enhancement Activities

Over the last decade, the program has used the CZMA §309 enhancement program to build a coastal erosion management strategy. Chief elements of the strategy included the need to assess the cumulative impact of shoreline armoring and to improve the basis for locally-adopted erosion management standards under the SMA that would address both structural (bulkheads, revetments) and non-structural (building setbacks, beach nourishment, dune management) methods. These efforts have culminated during this review period with the adoption of the revised SMA rules, described in section IV.A of these findings. The rules reflect the benefit of almost 30 years of knowledge that has been gained in the State on the importance of protecting, and, where necessary, restoring shoreline functions. Local governments also have access to a suite of techniques that show the most promise and public benefit to support these goals. The revised SMA Guidelines contain stricter measures to slow the spread of bulkheads and other hard structures. They also address the restoration of shoreline functions as redevelopment occurs.

Staff Resources to Meet Demand For Technical Assistance

SEA Program staff responsible for providing hazards technical assistance are renown for their expertise and in high demand throughout the State. Salmon habitat recovery has focused increased attention on the need to protect and restore nearshore habitats. The program has had to find a strategic way to maximize the effectiveness of this small cadre of specialists. Time devoted to regional assessments, case study reports, or research projects must be balanced with

efforts to meet the needs of individual requests for technical assistance coming from local governments, permit applicants, and landowners. Staff resources are being strained in their efforts to respond to such incoming requests. The program has tried to augment staff through participation in the NOAA Coastal Management Fellows Program and coordinated their assessment activities with groups such as the Beach Watchers to achieve its objectives. While resourceful, this is no substitute for a comprehensive review of staffing needs for addressing complexities such as erosion along Washington's marine shoreline.

G. BEACH WATCHERS: AN EXAMPLE OF A STRATEGIC NONPROFIT PARTNERSHIP.

Since 1992, the WACZMP has provided funds to Beach Watchers, a volunteer organization affiliated with Washington State University Cooperative Extension that sponsors monitoring, education and outreach activities in Island County. In supporting this highly effective program, the WACZMP has found a means to capitalize on surrogate, on-the-ground support for meeting its own mission.

Created in 1989, Beach Watchers trains volunteers to monitor water quality, measure beach profiles and biodiversity, and document shoreline armoring around Island County. Each volunteer receives more than 100 hours of training in the classroom and field. Since 1990, Beach Watchers has trained 180 volunteers who have given more than 40,000 hours of support along the 200-mile shoreline of Island County.

Beach Watchers has designed standard protocols, in consultation with staff from the WACZMP, that can be used by a number of organizations operating within Island County and be applied to other counties along Puget Sound. Using these protocols, Beach Watchers monitors shoreline elevation profiles and documents the abundance of plants and animals in the intertidal zone at twenty-five beach sites around Island County. This information is collected, stored in a central location, and made available to resource managers and the public. To make the information more accessible, Beach Watchers, using a grant from the coastal program, has begun to enter previous years of data in the computer, and is now exploring the possibility of integrating this information into a GIS.

In 1999, a team from Beach Watchers coordinated the development, testing, and implementation of protocols to measure shoreline hardening along Puget Sound. Working with a network of volunteer organizations brought together by the Puget Sound Water Quality Action Team, Beach Watchers helped survey approximately 95% of the shoreline of Whidbey Island in Island County. Of the shoreline surveyed, approximately 22% has been hardened by the construction of seawalls, bulkheads, piers, docks, launch ramps, jetties, groins and other structures. This data provides resource managers with important baseline information on the state of nearshore habitat around the island.

In addition to its volunteer-based monitoring efforts, Beach Watchers also sponsors and conducts a broad range of education and outreach activities, and produces resources for other environmental educators. The group hosts Sound Waters, an annual day-long workshop for

community education; established Junior Beach Watchers, a popular summer program for children; conducted field trips and presentations for thousands of school children in Island County; and revived an annual water festival that has drawn more than 20,000 people since 1992. As resources for community educators, Beach Watchers published a teacher's handbook for conducting successful beach field trips, published a Beach Access Guide to public beaches in Island County, and developed a manual to teach others how to set up volunteer environmental education programs.

The WACZMP's modest annual investment in Beach Watchers has leveraged the equivalent of approximately four full-time employees per year in volunteer support. The WACZMP has gained a record of changes in beach profile and water quality around Island County for the past five years and standard monitoring protocols that can be applied throughout the Puget Sound coast.

H. SUCCESSFUL INTEGRATION OF FUNCTIONAL RESPONSIBILITIES OF COASTAL MANAGEMENT STAFF.

In January 1995, the WACZMP was merged with the Water Resource Program through a departmental reorganization. The program had also established a regional office structure to get staff in closer proximity to local government administrators and citizens in the coastal zone. Only two years later in 1997, the program was involved in another reorganization of Ecology even more complex in scope leading to the creation of the SEA Program, where the WACZMP now resides. The purpose of this action was to forge a closer connection between programs in the State whose missions entail a linkage between land and water. While the integration of these program functions under a single organizational structure made functional sense from the State's perspective--SEA Program is viewed as a critical mechanism for program coordination across Ecology--the changes posed a significant challenge to the WACZMP. As the program adapted, the opportunity for confusion, loss of visibility or an internal identity, and a reduction in efficiency or effectiveness in management of the coastal zone elements would be understandable. The program managers and staff have risen to meet this challenge and these institutional changes will make the program stronger over the long term.

The SEA program assumed statewide responsibility for the State Environmental Policy Act (SEPA) and §401 Water Quality Certification authorities, the Washington Conservation Corps, and the Permit Assistance Center to complement its existing statewide responsibility for implementing the SMA. In the course of integrating its handling of newly assumed functions, the SEA Program had to take a hard look at how it was functioning under its current structure operating between the headquarters and two regional offices serving the state's coastal zone. Opportunities were sought to coordinate related staff and functions. For example, a joint review process was established for Federal consistency and §401 water quality certification. Overlap in the conduct of these reviews would lead to greater efficiency and a stronger basis for decision-making. As lines of communication and accountability were defined internally and put into practice, the program had to clarify these connections for other state and Federal agencies and for administrators in the 115 local jurisdictions charged with implementing the SMA in

the coastal zone. A document for external use, outlining staff roles and procedures for dealing with facets of the regulatory program, was in preparation in the fall and scheduled for completion by the end of the year.

The SEA Program contains three headquarters sections (Coastal/Shorelands, Flood/ Wetlands/Watersheds, and Environmental Coordination, which houses the Permit Assistance Centers), four regional offices, two of which cover the coastal zone, the Padilla Bay National Estuarine Research Reserve, and the Washington Conservation Corps. In some cases, section functions are also being addressed by regional office counterparts. The evaluation team met with many headquarters and regional office staff during the site visit. We were uniformly impressed with the level of effort and concern expressed for developing a workable and effective mode of operating in the wake of the reorganization.

The program has instituted several mechanisms to clarify how the organization functions and how progress will be measured. The first is the SEA Workplan, a document first produced in September 2000 for FY2000/2001. The plan contains a description of how various programmatic functions are organized, funded, and staffed and what each work plan element is expected to accomplish. These strategies and objectives are accompanied by selected performance measures the program intends to report on within Ecology. While this document was intended to serve as a management tracking tool, the program recognizes its added value as a product for outreach and education. Secondly, the budget process is now directly tied to the program components. For example, the Coastal/Shorelands Section of SEA is responsible for requesting and managing the entire CZM grant. And thirdly, the WACZMP is developing a source of renewed visibility and a sense of cohesion among staff since the reorganization. The functions and associated budget for the WACZMP are defined in the SEA Workplan allowing staff and the overall agency administrators an understanding of how the coastal program fits into a broader program shouldering varied, statewide responsibilities.

V. FINDINGS AND RECOMMENDATIONS

INTRODUCTION

The WACZMP has been challenged on many fronts over the last four years in responding to State legislative directives for streamlining the administration of the SMA and revising its guidelines and to Federal requirements triggered by the ESA. As described in section IV.A, the SMA guideline revision was a consuming process that dominated the attention of the program during this review period. The ESA listing drove the program to broaden the context for the guideline changes, but it was also viewed as the source of new activities and initiatives.

The ESA has ushered a new era of interagency interaction, particularly with the Services. Opportunities to work jointly have been pursued on many facets of salmon recovery. NMFS has established technical recovery teams, made up of NMFS scientists and managers, and representatives from tribes and state and local governments to identify the demographic features that will be of value to the recovery of salmon; Puget Sound is one of the areas selected for this activity. The USFWS has interacted closely with Ecology on all facets of coastal wetland restoration. The SEA Program has been cooperating with these agencies, as well as the Corps to arrange for the joint handling of compliance monitoring and enforcement. Ecology has been viewed uniformly as a solid partner at both the technical and policy level by their Federal counterparts.

The SEA Program has brought many complementary authorities and capabilities to the table. As described in section IV.D., the program has been a major source of technical assistance and funding for projects to restore wetlands and other approaches to enhance fish habitat and passage. Over time, the activities being funded at the local level under the Watershed Planning Act have been tied more closely to the goals of the ESA. This has allowed the state to establish a broader context for local watershed restoration activities and the post project monitoring that should occur.

Efforts by the program to integrate protection measures necessary to avoid take of listed salmon using the SMA and the GMA will be critical to the ultimate success of salmon recovery. Appropriate local action and commitment will be essential to achieve this goal. In some cases, such as the tri-county initiative encompassing the urbanized region that includes Seattle, planning and regulatory approaches are being explored in collaboration with state and Federal agencies to achieve ESA compliance. Having revised SMA guidelines incorporating policies reflecting almost three decades of improved understanding of the importance of near-shore habitat and improved methods for maintaining or restoring natural functioning conditions is an important benchmark. The SEA Program is committed to work closely with local governments to produce approvable SMPs, to the extent that its staff resources will allow.

A. NEED FOR ADDITIONAL SPECIALIZED STAFF TO MEET INCREASING DEMAND FOR ENVIRONMENTAL EXPERTISE

The need by local governments for technical and regulatory assistance will increase sharply as local governments begin modifying their Shoreline Master Programs (SMPs) to adapt to the revised SMA guidelines. The guidelines also call for Ecology staff to provide data and information in the preparation of the shoreline inventory and various analyses that are required for the update process. The ESA salmon listings have instigated close collaboration between Ecology regulatory and technical staff and fish and wildlife biologists from the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on how to tailor shoreline management activities to meet functional habitat requirements, as well as to adopt an effective monitoring program. The WACZMP has submitted a request to the State Legislature to obtain six additional positions to work with local governments on SMPs in the coastal zone, including reviewers, technical, and compliance monitoring staff. OCRM has significant concerns that even with this increase, the capacity of the WACZMP to address technical assistance needs will be exceeded.

Subject areas where expertise will be in particular demand include: restoration ecologists with an understanding of the ecological functional habitat requirements for salmon and on-the-ground aquatic restoration experience; coastal geologists who can work with biologists and managers to balance shoreline protection with habitat preservation and restoration strategies; and hydrologists whose expertise provides a critical underpinning for flood plain management and watershed-level planning underway in the State. The existing staff who shoulder this suite of activities are relatively small in number although their years of experience help compensate for the fact that, without a question, additional expertise is needed. Technical staff would like to provide more one-on-one technical assistance to local government managers and property owners for aquatic restoration and shoreline protection. However, at present, requests for specialized assistance are exceeding the capacity of the program. These shortcomings existed prior to revision of the SMA Guidelines and will be exacerbated by their adoption and implementation.

1. PROGRAM SUGGESTION: OCRM encourages Ecology to submit a proposal to the State Legislature explaining the need for additional funds to hire technical staff to augment the existing capacity in the WACZMP. With the revised guidelines and ESA, additional consultative services to local governments and watershed bodies in the areas of habitat restoration ecology, coastal geology, and hydrology are needed. The SEA Program is encouraged to request assistance from the Services to obtain staff expertise in one or more of these areas.

B. STRATEGY FOR CAPITALIZING ON EXISTING SCIENTIFIC RESOURCES

The WACZMP technical staff are maximizing their effectiveness by gathering and synthesizing information that can serve as the scientific basis for refining standards for managing shoreline development and designing restoration activities. This information will be compiled in a revised Guidebook. The need for information substantiating setbacks fronting on marine

waters is acute. It was noted that while scientific research has been conducted on shoreline functions, information that can aid in translating this knowledge into prescriptive standards is lacking. State agency staff efforts to develop synopses of what is known from the literature on broader geographic scales to guide regulatory and planning decisions are more economical than having such exercises replicated by scientific staff where they exist at the local level or county level. In pulling together this resource base, staff in WACZMP also acknowledge the need to tap all sources of information and expertise in the area including federally-sponsored research capabilities pertaining to habitat and salmon recovery.

2. PROGRAM SUGGESTION: The SEA Program should make a systematic effort to develop a strategy for assessing the full range of scientific information and expertise in the region to be applied to the update of the shoreline management Guidebook.

C. NEED FOR REGULATORY ACCOMMODATIONS AND INCENTIVES TO FACILITATE VOLUNTARY HABITAT RESTORATION ACTIVITIES

With the push at all governmental levels to encourage habitat restoration and with many projects now being proposed or underway, various regulatory obstacles were identified which present a disincentive for municipalities and property owners to pursue habitat restoration activities. Regulatory obstacles were identified in a voluntary habitat restoration project in a built-out, urban environment; and, in a long-term, meso-scale restoration project being conducted for the sake of habitat enhancement and not part of a compensatory mitigation agreement. There may be flexibility for alternate interpretations of existing state regulations, whose chief purpose is to minimize impacts from development. Otherwise, the current regulatory framework may need modifying to address management approaches encouraging habitat restoration.

Restoration opportunities in urbanized areas are being lost. This is due chiefly to the concern by property owners contemplating restoration (and owners of adjacent properties) that any shift in the SMA boundary triggered by movement of the 200-foot buffer would move previously unregulated areas into SMA jurisdiction. Also voiced by urban resource managers and planners that the difficulty of getting conservation easements established was an obstacle to habitat restoration. Both the State and the Federal government have a strong interest in addressing this issue.

Also the current regulatory framework may not be suited to mesoscale size restoration projects initiated voluntarily for habitat enhancement. These projects are not big enough to warrant a Habitat Conservation Plan (HCP) or size or type of a typical compensatory mitigation project. Even the questions being posed at the Federal level for HCP development are designed for mitigation activities. Permits for mid-sized restoration projects need better integration in the ESA recovery planning process. The state's funding programs for land acquisition (Conservation Futures) and enhancement (Aquatic Lands Enhancement Area Program), designed to be phased in over time and space, are also key to the success of voluntary habitat restoration projects. Private parcels purchased for speculation and a lynchpin to a restoration plan are often priced out of reach. The State should weigh these land purchase requests in the context of the goals being

undertaken by project agents of voluntary restoration and have policies in place to support acquisition.

3. PROGRAM SUGGESTION: The WACZMP should conduct an analysis of cases where existing regulatory policies or management practices provide a disincentive for municipalities or private landowners to undertake voluntary habitat restoration projects. Over the longer term, Ecology should pursue a coordinated strategy for removing regulatory disincentives and creating incentives to encourage successful habitat restoration. As part of this effort, Ecology may want to explore a regional §404 permit program with the U.S. Army Corps of Engineers (Corps) with procedures to streamline approval of restoration projects. The WACZMP should also review state policies for land acquisition to ensure that habitat restoration needs are being met.

D. NEED FOR STEPS TO IMPROVE PUBLIC AWARENESS AND VISIBILITY OF THE WACZMP

Throughout its history, the WACZMP has found it difficult to convey a cohesive picture of the scope of the program's organization and mission. This holds true both within Ecology and in Ecology's external communications. The program operates within a broader set of statutory mandates that are statewide in scope. Add to that repeated agency reorganizations and consolidated budget structures and it is not surprising that a firm identity has not been established. Increased program visibility leads to improved awareness of issues of importance to the public and various constituency groups. Increased visibility also helps to promote greater levels of interaction with the public and ultimately more support for the program's mission and requirements. The WACZMP has taken several steps that should help to forge a more cohesive and visible program. These include increased use of the Internet as an outreach tool, the development of an annual WACZMP work plan, the development of a revised program document, and delegation of budget responsibilities to the Coastal/Shorelands Section, the core of the coastal management operation.

The Internet holds great potential for engaging the public and constituent groups in the regulatory process and in facilitating feedback needed to help steer program direction and priorities. The program can also use this medium to present information on the status and trends of resources and threats and educate the public on their significance. Web site offerings that allow a citizen a window into their immediate home setting, such as the oblique aerial photos, or information that portrays the characteristics of a region are particularly powerful products. Adding the annual SEA Workplan to the website would provide the public with a comprehensive overview of the goals and objectives of the coastal management program. Posting the plan would also provide groups outside of Ecology with benchmarks for measuring performance and should be a catalyst for encouraging input on the program's priorities for action.

4. PROGRAM SUGGESTION: The SEA Program should post a copy of the annual workplan on its Web site and encourage a dialogue with the public to gain feedback on its year-to-year priorities.

E. COMPLETION OF REVISED WACZMP PROGRAM DOCUMENT

The past three WACMZP evaluations noted the need to complete revisions to the WACZMP program document. Progress was deterred when events triggered at the Federal and state level took precedent, such as the Federal listing of seven salmonids pursuant to the ESA and the release of draft proposed SMA Guidelines by the State. In order to allow the program to focus needed attention on these activities, OCRM requested that Ecology withhold the submittal of the revised document until the end of 1999. The revised WACZMP document was submitted to OCRM for review as a routine program change on November 20, 2000, and received Federal approval on January 12, 2001. The program published the document *Managing Washington's Coasts* in February 2001.[7]

F. IMPLEMENTATION OF FEDERAL CONSISTENCY

Pursuant to §307 of the CZMA, as lead agency, Ecology must review consistency determinations/certifications of proposed Federal actions to determine if they are consistent with the state's laws, rules, and regulations that are the legal basis for the WACZMP's enforceable policies.[8] One purpose of the evaluation is to determine how the program is administering its Federal consistency authority under §307. During this review period, the program has instituted a number of improvements in the manner in which Federal consistency is administered. These include: the development of policies and a process governing joint §401/Federal consistency review of project proposals (see section IV.E.); implementation of a new process through §306(d)(14) of the CZMA for encouraging public participation in Federal consistency decision-making for direct Federal activities; improved coordination with the Corps of Engineers to refine the handling of the §404 permitting program and particularly nationwide permits in order to address additional ESA requirements. These findings contain a recommendation encouraging the program to conduct a review and update of the official list of Federal activities subject to Federal consistency review.

Implementation of CZMA §306(d)(14)

As required, the program established and received Federal approval for a process encouraging public participation in Federal consistency decision-making for direct Federal activities. During the evaluation, the review team asked for feedback on how implementation of the new process through §306(d)(14) of the CZMA appeared to be working. The WACZMP received a large number of responses to the Columbia River dredging project, demonstrating the benefit to the program of this enhanced avenue for public comment. The program ultimately objected to this project, finding it inconsistent with the WACZMP. Staff have set up a database

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[7] With the completion of the revised program document, this necessary action has been met.

[8] Federal consistency applies to federal actions (direct, permitted or licensed, or assisted through funding) that could be reasonably expected to affect any land or water use or natural resource of the state's coastal zone.

of names of individuals interested in receiving information on Federal activities and will consider posting the same information on the SEA program's web site.[9]

Improved Regulatory Coordination Under §404 With the Corps of Engineers

The program has a well-established joint Federal/state regulatory process using the Joint Aquatic Resource Permit Application (JARPA) and has tried to work closely with the two Corps Districts operating in the State. However, the Nationwide Permits (NWP), in particular, have become more complicated since ESA requirements were enacted. The Corps is placing an emphasis on programmatic consultations and plans to conduct programmatic biological evaluations for groups of minor activities. Ecology for its part has issued new state conditions to ensure that projects covered under the NWP will meet state water quality standards. Ecology review will still be required for projects with the potential for significant harm to higher quality wetlands to help prevent further listings of salmon under the ESA. The added complexity has been heightened from the Corps' perspective by the organizational changes that have occurred within Ecology that have led to various procedural changes needed to integrate the Federal consistency and §401 water quality certification review process. The Corps Seattle District regulatory and planning branch representatives welcomed efforts by the WACZMP to produce a document to clarify points of contact and procedural steps necessary to coordinate the handling of Federal consistency in the context of the Federal/state JARPA process.

Changes to Federal Activities List Subject to Federal Consistency Review

For the purpose of implementing Federal consistency, the WACZMP contains a list of those activities that are reasonably expected to affect coastal uses or resources. Over time, the WACZMP has identified several Federal activities not included on the list that should be included. The program has intended to conduct a systematic review in order to revise the Federal consistency activities list.

5. PROGRAM SUGGESTION: The WACZMP is encouraged to conduct a review and update the list of Federal activities subject to Federal consistency review using the established OCRM approval process and submit these changes for incorporation as part of the new Federally-approved program document.

G. CONTINUED NEED TO DEVELOP MEANINGFUL PROGRAM PERFORMANCE MEASURES

Earlier evaluations have cited the challenge to Ecology of developing a means to assess and document the effectiveness of local SMPs in meeting SMA goals. Federal and state government agencies alike are grappling with the development of a system of appropriate and

[9] On July 1, 1999, OCRM approval letter stated that the SEA Program's public participation procedures met the criteria set forth in OCRM's guidance for implementing CZMA § 306(d)(14). This necessary action has been met.

cost-effective measures of performance.[10] Ideally, these indicators should contain cost-effective and quantifiable measures of on-the-ground outcomes of management strategies, rather than charting the output of process-oriented mechanisms, such as the number of permits issued or violations enforced. During this review period, the SEA Program has made progress in its capacity to convey a more tangible, meaningful picture of program performance, including instituting the annual SEA Program Workplan and continued advances in the program's use of GIS and Web-based technologies.

SEA staff has a solid working knowledge of the status of SMA implementation at the local level. The WACZMP performance reports contain anecdotal, descriptive information on progress and/or problems being encountered for SMA permits, SMP amendments, or Federal consistency certifications. This information is meant to convey a general picture of what is being handled. Other tabular information included for SMA permitting (by county), Shoreline Hearing Board appeals, and Federal consistency documents the process, rather than the impact to resources from these decisions. Progress reports also contain short descriptions for an array of tasks related to program elements such as technical assistance, training, education and outreach, information management, research, and planning or implementation of ongoing initiatives intended to forward various coastal zone policies. A tracking sheet is included describing grants to local governments and the status of their completion.

Systematic and geographically-based information on the impact of permitted and voluntary activities on the environment has been difficult to document for a number of reasons. Factors have included the size and geographic complexity of the coastal SMA boundary, technical limitations, and most critically, the need for cost-effective indicators of effective implementation that are concrete and meaningful. In the absence of any evolving guidance on reporting from NOAA or increased funding, the SEA Program has taken a number of enterprising steps that will lead to improvements in its capacity to document and convey a tangible picture of program performance. These include:

The SEA Workplan. The first edition of the SEA Workplan was released in September 2000 for FY2000/2001. The document depicts how the SEA program and its various functions are organized, funded, and staffed and the strategies being pursued under each to meet its overall mission. Functional objectives and strategies are accompanied by performance measures and in some cases, target levels have been established (e.g., miles of salmon habitat enhanced or restored with a target of 25 miles). The document, to be produced annually, is an excellent vehicle for conveying the program's near-term strategies for achieving its mission both to its parent agency and to external audiences. The workplan should also help to coalesce an organizational identity for the WACZMP, whose activities are in some cases dispersed across a number of workplan elements.

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[10] In the fall of 2001, OCRM initiated the Coastal Zone Performance Measures Pilot Project, a feasibility study being conducted in collaboration with the states of Delaware, New Jersey, Wisconsin, Mississippi, and California to characterize the types of measures and data collection necessary for the development of a national coastal zone performance measurement system. A final report with recommendations is expected by the spring of 2002.

Geographic Information System Development. As reported elsewhere in these findings, the SEA Program continues a strong tradition of technical tool development. The program continues to develop data and information management systems to support environmental decision making. As more comprehensive, spatially-based systems are developed with the best available data and information, the program has been able to produce some broad-scaled characterizations on, for example, the status of the shoreline or watershed-based restoration activities. The program is laying the framework for being able to quantify more consistently the status of the resource base and trends that should be factored back into management approaches.

Web-based Expansion. The SEA Program website is reaching a wider audience with an increasing number of digital and map-based products. Some products, such as the archived oblique aerial photographs, give homeowners and permit applicants site-specific detail. Other products depict the results of broader surveys, such as the degree of shoreline hardening, which give managers and citizens alike a big picture of the cumulative result of years of decision-making. The program continues to broadcast the availability of hard copy products through its quarterly newsletter, *Confluence*, for those who lack Internet access.

The Coastal and Marine Management Program (CAMMP) Information System, under development by OCRM, is intended to facilitate grants management and improve access to information for a range of uses. The CAMMP Grant Application and Reporting System is the electronic grant application, reporting, and management system and the chief source of data. The WACZMP has developed its current grant award on this system and by next year, performance reporting standards should be in place. Within two years, performance reports will be available through CAMMP likely via the Internet. The system is expected to facilitate the program evaluation process and allow national and state-by-state trend analyses.

The combination of these advances should translate into more effective and accessible reporting and accountability for the suite of objectives being met under the broad mantle of coastal management. Information gathered during the developmental phase of the WACZMP should be resurrected where possible as an historic baseline of pre-program conditions. The program should also consider how to make better use of performance measures as it embarks on another cycle of gathering data and information and public feedback for the CZMA §309 assessment and strategy.

5. PROGRAM SUGGESTION: The WACZMP should work with NOAA to improve the format and content of its current federal performance reports to provide greater coverage of the on-the-ground progress being made. The program should determine how to incorporate cost-effective and quantifiable resource-based measures of performance, where they are being acquired for reporting purposes within Ecology. The program should make relevant portions of these reports available to the public on its Web site and in other periodic public documents reporting on the WACZMP.

H. PROGRAM CHANGES

One function of the evaluation is to determine whether changes have occurred in the WACZMP during the review period and whether those changes have been submitted to OCRM for processing as program amendments or as routine program changes (RPCs). NOAA regulations define amendments as substantial changes in one or more of the following coastal management program areas: (1) uses subject to management; (2) special management areas; (3) boundaries; (4) authorities and organization; and (5) coordination, public involvement, and national interest.[11] An RPC is a further detailing of a state's coastal management program as a result of implementing the approved program that does not result in substantial changes to the program.

States have the option of notifying OCRM of RPCs on a case-by-case basis, periodically throughout the year, or annually, pursuant to the regulations at 15 CFR §923.84(b)(1)(i). Requests for substantial changes (amendments) to the approved program should be submitted in time frame that precedes the final State action to implement the amendment (15 CFR §923.81(a)). In July 1996, OCRM issued final program change guidance to coastal states clarifying requirements and submission procedures for changes to federally-approved coastal programs.

The following program changes were submitted by the WCZMP and approved by OCRM during the review period. All of these changes were classified as RPCs under NOAA's regulations.

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[11] In the revised program change regulations, effective July 29, 1996, OCRM replaced the four criteria by which program change requests are evaluated with a reference to these five program approvability areas addressed in the program development regulations. In addition, the term routine program implementation (RPI) was changed to the more descriptive term of routine program change (RPC). See 61 Fed.Reg. 33801-33819 (1996).

Date of State Public Notice	Date of Federal Approval	Description of Routine Program Change Submittals
02/14/97	03/13/97	Update San Juan County SMP to reflect government organization.
02/14/97	03/13/97	Update San Juan County SMP in expand jurisdiction of the Eastsound Subarea Plan on Orcas Island; assign new shoreline environment designation; and adopt Eastsound Urban Shoreline waterfront access plan.
02/14/97	03/13/97	Update San Juan County SMP to include language relating to reverse osmosis/distillation units as source of potable water.
02/14/97	03/13/97	Update San Juan County SMP to allow, through conditional use permit, subdivision of property owned in common by more than one person.
02/14/97	03/13/97	Update Pacific County SMP to move setback line for Cranberry Road.
03/24/97	04/14/97	Update King County SMP to develop permit processing consistent with House Bill 1724.
03/24/97	04/14/97	Update City of Bellevue SMP to make changes related to House Bill 1724.
03/24/97	04/14/97	Update City of Carnation SMP to bring into conformance the SMP and Municipal code related to residential development.
03/24/97	04/14/97	Improve the readability of City of Mercer Island SMP.
06/02/97	06/19/97	Update City of Puyallup SMP to implement administrative changes pursuant to House Bill 1724.
06/02/97	06/19/97	Update City of Tacoma SMP to rezone the Thea Foss Waterway from port related land use to mixed commercial use.
06/02/97	06/19/97	Update City of Tacoma SMP to reflect changes made pursuant to House Bill 1724.
06/02/97	06/19/97	Update City of Seattle SMP to reflect changes made pursuant to House Bill 1724.

Date of State Public Notice	Date of Federal Approval	Description of Routine Program Change Submittals
06/02/97	06/19/97	Update City of Seattle SMP to change environment designation of parcel of land located on Lake Union.
05/01/98	05/20/98	Update Skagit County Shoreline Management Plan (SMP) to remove blanket prohibition of hydropower development within shoreline areas.
05/01/98	05/20/98	Update Jefferson County SMP to revise policies and regulations concerning docks, piers, and floats.
05/01/98	05/20/98	Update City of North Bend SMP to redesignate Schweingruber Triangle.
05/01/98	05/20/98	Update City of Olympia SMP to revise policies and regulations to facilitate construction of Heritage Park.
08/27/98	09/24/98	Update City of Seattle SMP to modify language related to single family residential shoreline setback requirements and correct typographical errors.
08/27/98	09/24/98	Update San Juan County SMP to allow through conditional use permit, the subdivision of property owned in common by more than one person.
08/27/98	09/24/98	Update City of Long Beach SMP and environment designation map.
08/27/98	09/24/98	Update City of Woodinville SMP to reflect goals and aspirations of citizens and institute changes in shoreline legislation.
08/27/98	09/24/98	Update King County SMP to allow excavation of wetlands within existing water transmission pipeline corridors in specific situations.
08/27/98	09/24/98	Update City of Seattle SMP to include legislative requirements, remove redundant language and reorganize goals, policies and regulations.

Date of State Public Notice	Date of Federal Approval	Description of Routine Program Change Submittal
08/27/98	09/24/98	Update City of Bothell SMP to achieve consistency with recently adopted Comprehensive Plan and interim Critical Areas Ordinance and to include annexed areas from Snohomish and King Counties.
08/27/98	09/24/98	Update Pacific County SMP to include ocean resource management policies and regulation for coastal waters.
08/27/98	09/24/98	Update City of Seattle SMP to update, clarify, and remove redundancies.
08/27/98	09/24/98	Update City of Seattle SMP to redesignate portion of shoreland urban general from urban industrial.
08/27/98	09/24/98	Update Jefferson County SMP to revise permit administration policies.
08/27/98	09/24/98	Update City of Seattle SMP to include references and language of Department of Ecology Rule, WAC 173-27.
08/27/98	09/24/98	Update City of Tacoma SMP for implementation of ASARCO Master Development Plan.
08/27/98	09/24/98	Update Pierce County SMP to revise shorelines definition, permit administration, exemptions and change codification for regulations form Title 65PCC to Title 20 PCC.
08/27/98	09/24/98	Update City of Renton SMP to include legislative and Department of Ecology changes to SMA and associated rules.
10/23/98	11/23/98	Complete rewrite of City of Bothell SMP.
10/23/98	11/23/98	New SMP for the City of Bain Bridge Island.

Date of State Public Notice	Date of Federal Approval	Description of Routine Program Change Submittals
09/07/99	11/23/98	Complete rewrite of City of Stanwood SMP.
09/07/99	*	Update City of Kent SMP to reflect legislative and Department of Ecology changes to SMA and associated rules.
09/07/99	*	Complete rewrite of City of Sumas SMP.
09/07/99	*	Update City of Seattle SMP to incorporate Ordinance 119240.
09/07/99	*	Update City of Seattle SMP to incorporate Ordinance 119207 which supports water-dependent business.
09/07/99	*	Update City of Seattle SMP to incorporate the goals of Lower Duwamish Watershed Habitat Restoration Plan.

* Due to ESA issues, this submittal was not approved until November 20, 2000.

VI. CONCLUSION

Based upon the recent evaluation of the WACZMP, I find the State of Washington is adhering to its approved program and is making satisfactory progress in implementing the provisions of its approved coastal management program. The Department of Ecology has made notable progress in the following areas: (1) completion of the Shoreline Management Act Guideline Revision, (2) improved capacity for compliance monitoring and enforcement, (3) coastal resource information management and delivery, (4) effective provision of technical assistance for wetlands protection and restoration at the watershed level, (5) effective use of §401 Water Quality Certification Authority, (6) hazards management advances, (7) a strategic partnership with Beach Watchers, and (8) successful integration of coastal management responsibilities in response to the 1997 reorganization of Ecology.

The evaluation team identified the following six areas where the WACZMP could be strengthened: (1) critical staffing needs; (2) strategy for capitalizing on existing scientific resources; (3) need for regulatory accommodations and incentives to facilitate voluntary habitat restoration; (4) need for steps to improve public awareness and visibility of the WACZMP; (4) update the list of Federal activities subject to Federal consistency; and (5) development of meaningful performance measures.

These evaluation findings contain six recommendations in the form of Program Suggestions that should be considered by Ecology prior to the next §312 evaluation of the program.

This is a programmatic evaluation of the WACZMP that may have implications regarding the State's financial assistance award(s). However, it does not make any judgment on, or replace any financial audit(s) related to the allowability or allocability of any costs incurred.

11/28/01
Date

Charles N. Ehler, Acting Director
Office of Ocean and Coastal Resource Management

LIST OF PERSONS CONTACTED

U.S. Senators
Honorable Patty Murray
Honorable Slade Gorton

U.S. Representatives
Honorable Jay Inslee
Honorable Jack Metcalf
Honorable Brian Baird
Honorable Norman Dicks
Honorable Jim McDermott
Honorable Jennifer Dunn
Honorable Adam Smith

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Hugh Shipman	Coastal Erosion
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Federal Agency Representatives

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- Tom Hooper

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  - Lynn Childers
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David Ortman	Wise Use Movement
Ann Ragaurd	League of Women Voters
Karla Raettig	Earthjustice Legal Defense Fund
Eric Espenhorst	Friends of the Earth
Joan Thomas	Washington Environmental Council

Other Participants

Annette Hansen	Rainshadow National Science Foundation

PUBLIC MEETING ATTENDEES

September 14, 2000
7:00 p.m. - 9:00 p.m. at the Department of Ecology Auditorium
Lacey, Washington

Hilary Culvernell	King County Department of Natural Resources
Arthur Grunbaum	Friends of Grays Harbor and the Washington Environment Council
Linda Orgel	Friends of Grays Harbor
Joe Witczak	Shorelands and Environmental Assistance (SEA) Program, Department of Ecology (Ecology)
Therese Swanson	SEA Program, Ecology

RESPONSE TO WRITTEN COMMENTS

NOAA received six letters in response to our formal request for comment regarding the implementation of the Washington Coastal Zone Management Program (WACZMP). These letters are summarized below, followed by the NOAA response.

Commenter: David Swindale
Planning Manager
City of University Place, WA

COMMENT: Mr. Swindale appreciates the financial support and professional staff assistance he obtained from Ecology, allowing the city to develop a shoreline inventory of biological resources and related products needed for the preparation of a shoreline master program.

NOAA RESPONSE: Thank you for the positive feedback on your experience working with and receiving a shoreline management assistance grant from Department of Ecology (Ecology), Shorelands and Environmental Assistance (SEA) Program.

Commenter: Alexandra Dinius
Grayland, WA

COMMENT: Ms. Dinius, a life-long resident of Washington who has lived for the last 57 years along the coast and Puget Sound wants to register her disapproval regarding car traffic on the sand beach near her home and the harvesting of firewood from trees that have fallen onto the beach. She notes that rules don't work when no one is looking and that property owners are the best stewards of what is in their "front yard."

NOAA RESPONSE: Thank you for voicing these issues as a concerned property owner. We would encourage you to communicate your concerns directly to a representative from the SEA Program so they can determine whether existing guidelines governing these activities are adequate ad being enforced.

Commenter: Joseph and Karen Davis
Brier, WA

COMMENT: The Davis' first voice their objection to the lateness of the notice published by the State announcing the public meeting held by NOAA in association with this review.

NOAA RESPONSE: As described in section II.C. of these findings, Ecology used a number of mechanisms to publish timely advanced notices of this review and public meeting. We regret that you were not able to access and take advantage any of these notices.

COMMENT: The Davis' purchased a piece of developed property (they do not say where the property is located or when it was purchased) to learn after-the-fact that "new regulations" prevented them from being granted a septic permit. They question why there is no state law obligating the seller or the title company to inform them that this land was not buildable. They also think it fair to be reimbursed by the state government for property they cannot use due to government regulations.

NOAA RESPONSE: As septic systems are permitted by local governments, Snohomish County should be contacted regarding the issue of septic system permits. Sellers of property are required to prepare a disclosure statement regarding the property. Attempts to improve the amount and kinds of information to be disclosed have mot been successful. Local legislators should be contacted about making changes to real estate disclosure forms.

Commenter: Dean Schwickerath
Conservation Chair of the Grays Harbor Audubon Society
Westport, WA

COMMENT: Based on his direct involvement in efforts to update the Grays Harbor Estuary Management Plan, the negative reaction he witnessed to the updated Shoreline Management rules, and the lack of protection for wetlands, he believes that environmental protection is not something the public in coastal counties is willing to support if it means saying no to a development. He points out that the vocal property rights movement along the coast has been successful in stopping improved land use regulations. He suggests that only when people have been shown the true cost of not protecting the environment will they agree to the need for environmental protection. While he has found Ecology staff to have the best of intentions, he cannot say the same for Ecology's management or for state, city, and county officials in the Grays Harbor and Pacific County areas.

NOAA RESPONSE: NOAA and the State of Washington appreciate your commitment and efforts to support resource protection. The SEA Program has been making a concerted drive to strengthen the implementation of the SMA and to expand on nonregulatory approaches for conserving and protecting natural resources. In recommendation 5 stemming from this evaluation, NOAA encourages the SEA Program to provide enhanced coverage of the on-the-ground changes to the resource base that have come about under the auspices of the WACZMP.

Commenter: Gordan and Gillian Boucher
Hoquiam, WA

COMMENT: The Bouchers did not become aware of the public meeting in time to attend. They also presented a question about a piece of waterfront beach property in Westport they had purchased about ten years ago. The property was zoned Tourist Residential and three of the six platted lots had already been developed. After receiving an offer from a State Senator to purchase their property, they had the property tested for septic approval and the approval was denied. The Bouchers requested that the State address why their septic permit was not approved.

NOAA RESPONSE: Septic systems are permitted by local governments, not by Ecology. Grays Harbor County should be contacted regarding the issue of septic system permits.

Commenters: Rebecca Cochran, Conservation Director and David Ortman
Sierra Club/Cascade Chapter
Seattle, WA

The Cascade Chapter of the Sierra Club submitted approximately 200 comments in response to NOAA's request for public comment on the implementation by the Department of Ecology of the WACZMP. The scope of their comments was wide-ranging and is summarized (category of concern) below, followed by their overall conclusion and NOAA's response to each facet of the program.

1. **CATEGORY OF CONCERN:** Effectiveness of the State's implementation of the Shorelands program and WACZMP core authorities.

OVERALL CONCLUSION: The Cascade Chapter does not find that the State is using its full authorities under the SMA or SEPA to protect the state's coastal zone.

NOAA RESPONSE: Given the fiscal constraints under which the WACZMP must operate, we believe that the WACZMP is adequately using its authorities under the SMA and SEPA.

2. **CATEGORY OF CONCERN:** Implementation of the enforcement and compliance strategy developed by the compliance and monitoring work group.

OVERALL CONCLUSION: The Cascade Chapter found little evidence that Ecology has implemented any real enforcement or compliance strategy to date.

NOAA RESPONSE: These findings document the progress by the program in developing and implementing an enforcement and compliance strategy in response to a required action stemming from the previous evaluation conducted in 1996. (Section IV.B.)

3. **CATEGORY OF CONCERN:** Status of implementation of legislative changes to the Shoreline Management Act.

OVERALL CONCLUSION: The Cascade Chapter has substantial concerns that Ecology is prepared to adopt amendments to its Shoreline Master Program regulations that will adopt "Path A", which will not protect the state's coastal zone.

NOAA RESPONSE: NOAA is working with the Department of Ecology to ensure that the Shoreline Master Program guidelines will meet all relevant federal laws including the requirements of the CZMA and the Endangered Species Act.

4. **CATEGORY OF CONCERN:** Implementation of Federal Consistency authority; the performance reports provide little evidence that Ecology is using it Federal Consistency authority, particularly its CZM coastal consistency certification process.

NOAA RESPONSE: Based on knowledge obtained through OCRM's ongoing monitoring of correspondence and this evaluation, we conclude that the program is making consistent and effective use of its federal consistency authority.

5. **CATEGORY OF CONCERN:** Effectiveness of the implementation of the public notice requirements at §306(d)(14) of the CZMA.

OVERALL CONCLUSION: Ecology could improve all facets of its public notice requirements.

NOAA RESPONSE: As we have noted in these findings, the WACZMP is fine-tuning the application of public notice requirements at §306(d)(14) of the CZMA. (Section V.E.)

6. **CATEGORY OF CONCERN:** Effectiveness of technical assistance, training, and outreach to local government programs in order to forward the goals of the WACZMP.

OVERALL CONCLUSION: Ecology continues to document its technical assistance to local governments but without any measurements against the goals of the WACZMP.

NOAA RESPONSE: Given the limited availability of funding and resources to implement this program, we believe the program is making consistent and innovative use of technical assistance,

training, and outreach to local governments to forward program goals. As documented in these findings, the program is making efforts to better quantify outcomes of performance.

7. **CATEGORY OF CONCERN:** Effectiveness of collaboration in the State and region in WACZMP implementation, including involvement with the Padilla Bay National Estuarine Research Reserve's, the Northwest Straits Initiative, the Northwest Indian Fisheries Initiative, and the Olympic Coast National Marine Sanctuary.

OVERALL CONCLUSION: The performance reports provide little real information on any of these initiatives.

NOAA RESPONSE: While these initiatives are not under the direct purview of the WACZMP, the program has been encouraged to coordinate activities and seek opportunities to leverage resources with these other programs. Also, information on the initiatives can be obtained by contacting those programs directly.

8. **CATEGORY OF CONCERN:** Opportunities for public participation in the coastal management planning and decision making process.

OVERALL CONCLUSION: Ecology continues to participate in CZM policy meetings and decisionmaking processes that exclude the public. In addition, it has done little to provide adequate public notice for this evaluation process.

NOAA RESPONSE: We have observed no pattern or practice by the SEA Program to support the first conclusion. The WACZMP complied with federal notice requirements and met additional guidance for notifying the public of the time and location for the public meeting and identifying avenues for providing written comment for §312 evaluation.

9. **CATEGORY OF CONCERN:** Program accomplishments, including changes to the core statutory and regulatory provisions of the WACZMP; in its performance reports, Ecology consistency fails to establish how they are meeting the goals of the CZMA, the SMA or the WACZMP. There are no benchmarks or analysis showing how Federal CZM funding is protecting, preserving, restoring or enhancing the coastal zone.

NOAA RESPONSE: Previous 312 evaluations have cited the challenge to Ecology of developing a means to assess and document the effectiveness of local SMPs in meeting SMA goals. Federal and state government agencies alike are grappling with the development of a system of appropriate and cost-effective measures of performance. Ideally, these indicators should measure quantifiable, on-the-ground outcomes of management strategies, rather than charting the output of process-oriented mechanisms, such as permits issued or violations enforced. During this review period, the SEA Program has made progress in its capacity to convey a more tangible, meaningful picture of program performance, including instituting the

annual SEA Program Workplan and continued advances in the program's use of GIS and Web-based technologies.

The WACZMP should improve the format and content of its performance reports to NOAA and other interested parties with coverage of on-the-ground progress being made. The program should determine how to incorporate quantifiable, cost-effective resource-based measures of performance, where they are being acquired for reporting purposes within Ecology, into its Federal performance reports submitted to NOAA. The WACZMP should consider using the electronic grant application and reporting system being developed by OCRM as a means of making relevant portions of these reports available to the public on its Web site in the future.

The following very specific CZM issue areas of concern raised by the Cascade Chapter are believed to be best addressed through a regular and sustained dialogue to be established between managers and staff of the WACZMP, the environmental organization, and OCRM, where appropriate. OCRM agrees with this approach as a constructive mechanism for instigating two-way communication and instituting improvements to the State's CZMP. These issues are:

- State Environmental Policy Act (SEPA) review outcomes and appeals;
- Wetlands protection, including the state's role in the Clean Water Act §404 program, use of CWA §401 water quality certification authority, Nationwide Permit review, frequency of after-the-fact permits granted for illegal wetland fills, wetland mitigation banking;
- SMA amendment process;
- Shoreline Management Board, including appeals made to the SMB and enforcement of these appeal decisions made by the SMB, whether it serves as an adequate venue for citizens appealing damaging shoreline permit decisions by local governments;
- "Spot" environmental redesignation and how environmental designations are approved and tracked;
- SMA compliance and enforcement, including an analysis of the time taken to carry out an enforcement action;
- Ecology's federal consistency process, including public participation requirements outlined under §306(d)(14) of the CZMA and particularly the number of comments received on federal consistency certification public notices and how Ecology responds to such public comments;
- Public participation in the regulatory process, such as how citizen complaints are handled and resolved and how information on all facets of the regulatory program, including its impact on natural resources, can be made more readily available to interested members of the public;
- Use of the public trust doctrine and the water-dependency policy;
- Islands policy, including a review of SMA amendments dealing with island areas;
- Sand and gravel mining policy;
- Erosion policy, including an evaluation of the extent to which Ecology is funding or supporting structural projects such as bulkheading rather than non-structural solutions, and beach nourishment;
- Aquaculture policy, and particularly marine fish net pens;

• Stormwater runoff policy, including retention alternatives, after-the-fact permitting of stormwater facilities, and the impact of these facilities on shoreline areas;
• Cranberry promotion;
• Timber harvest policy;
• Glyphosate, carbaryl and other pesticide usage, including the Willapa Bay response to the discharge of glyphosate, the issuance of short-term water quality modifications for the discharge of carbaryl to support oyster aquaculture, public participation in the development of a Memorandum of Agreement with the oyster growers to govern the Integrated Pest Management Plan for the control of burrowing shrimp in Willapa Bay and Grays Harbor, and the requirement for NPDES permits for the discharge of pesticide pollutants;
• Spartina monitoring and the role of non-chemical control alternatives; and
• Grays Harbor Estuary Management Plan.

10. **OVERALL CONCLUSION:** In summary, we must, therefore, conclude, that Ecology is not implementing or enforcing the CZM program approved by the Secretary. We request that OCRM take its responsibilities seriously and require necessary changes addressed above before further funding is provided.

NOAA RESPONSE: We support the manner in which the program has allocated its limited funds and encourage continuing efforts by the program and OCRM to improve the program through the recommendations contained in this evaluation, including efforts to better quantify outcomes of performance.

The remaining areas of concern raised by the Cascade Chapter are organized into general themes and include comments and background information, followed by a NOAA response.

EVALUATION PROCEDURES BEING FOLLOWED BY OCRM AND WACZMP

GENERAL COMMENTS: The public participation process for §312 evaluations remains deficient and inadequate. One Federal Register notice is not sufficient. OCRM must stop relying on states to carry out public notice of such evaluations. Ecology made little effort to alert environmental and conservation organizations concerning the September 14, 2000 public meeting in Lacey, WA. While Ecology may have put a legal notice of the meeting in the Seattle Times, many of our members do not subscribe to the Seattle Times and the only evaluation notification on Ecology's website is dated 1 September. Ecology's website archive of press releases back to 1 July contains no announcement of the WACZMP Evaluation Meeting. This confirms that Ecology has little interest in soliciting the views of the public on your behalf for your evaluation process. Ecology's news release of 7 September (00-177) on the public meeting comes with just seven days notice. It certainly does not allow the public adequate time to review three years of documents and performance reports on the WACZMP. OCRM should to provide real public notice for its evaluations in the future.

NOAA RESPONSE: On July 27, 2000, Ecology provided public notice of the public meeting for this evaluation, as required by OCRM's regulations. As described in Section II.C. of these findings, both OCRM and Ecology used a variety of mechanisms well in advance of the site visit to announce the upcoming §312 review of the WACZMP. In addition, staff in OCRM and Ecology contacted representatives from a number of environmental interest groups in advance of the evaluation in an effort to set up meetings during the evaluation site visit and to request help in getting the word out. OCRM has instituted several changes that should lead to an increased awareness of the evaluation schedule. For over a year, the office has posted the annual evaluation schedule on its web site. In the future, the programs due to receive an evaluation two years out will also be listed.

GENERAL COMMENTS: In addition, none of Ecology's material mentions the availability of the state's past performance reports. This material was cited, as required, in OCRM's Federal Register notice. It is suppose to be available from OCRM and one of our members specifically wrote to request this material in mid-August but received no response. After a followup letter in early September OCRM indicated that this material should be obtained from Ecology, which did not provide all the performance reports requested. This is OCRM's responsibility, not Ecology's. State CZM performance reports should be available in electronic format and OCRM should be able to e-mail them when requested by the public. OCRM should make CZM program performance reports available to the public, as required, in future evaluations.

NOAA RESPONSE: As described in section V. F, both NOAA and Ecology continue to make progress in developing computer and Internet-based tools to improve access to data and information on performance outcomes being reported by the program. OCRM is developing the Coastal and Marine Management Program (CAMMP) Information System. CAMMP is the electronic grant application, reporting and management system. Due to funding constraints only the electronic grant application section has been completed. Until the performance report section and the public access section of CAMMP is completed, requests for performance reports will need to be made to the federal or state agency.

GENERAL COMMENT: The CZMA calls for a continuing evaluation of a state's CZM program. This site visit covers the period from December 1996 through August 2000, nearly a four-year period. This is unacceptable and does not constitute a "continuing evaluation" or allow the public real input into the monitoring of CZM funding to the states. OCRM should establish a yearly evaluation process with public notice, the availability of state's performance reports, and a response to substantive public comments.

NOAA RESPONSE: NOAA does not have the staff to conduct annual evaluations of the 58 federally-approved programs (Coastal Zone Management and National Estuarine Research Reserve) receiving funding under the CZMA, nor do we believe that an annual frequency for a full review is typically warranted. OCRM's program staff is responsible for ongoing monitoring of programs throughout the review cycle. Based on knowledge gained through this day-to-day contact, OCRM may conduct issue or problem-specific evaluations between scheduled evaluations of approved programs which occur on a 3-4 year cycle. In regards to the other two points made, see above NOAA Response to performance reports.

GENERAL COMMENTS: Scheduling only one meeting to receive public comment in the entire state of Washington every three years is not acceptable. When a week long site visit is made, at least five evening meetings should be held to take comments from the public in various regions of the state (Bellingham, Seattle, Olympia, Vancouver and Spokane). OCRM should hold a real series of public comment opportunities during its next evaluation.

NOAA RESPONSE: Given existing financial constraints and the review team concept that has been employed, there are limitations in amount of geography the team can cover during the course of the week. In addition, the team meets with a broad cross-section of individuals and organizations, both involved in and affected by the program under review. One public meeting is held at a minimum, and more if necessary. Various times and settings for these public meetings have been explored over time, with each arrangement having associated pros and cons. NOAA and its state partners explore all available avenues to receive public feedback on program performance and cannot depend solely on the public meeting format.

PLACEMENT OF OCRM STAFF PERSON IN NORTHWEST REGIONAL OFFICE

GENERAL COMMENTS: OCRM appears to be the only part of NOAA/NOS that does not have a real presence in the Northwest Regional NOAA/NOS office in Seattle, WA. Without a presence outside of WA D.C., OCRM staff can not possibly maintain oversight over state programs, certainly not those on the West Coast. OCRM should place at least one staff person in the Northwest where NOAA/NOS already has a regional office to help carry out the continuing evaluation required under the CZMA.

NOAA RESPONSE: Sections of NOS are located at the Sand Point facility in Seattle. However, there is no dedicated staff person from OCRM currently located at this facility. NOS continues to explore the concept of deploying an OCRM staff person to operate within each coastal region to facilitate coordination and assist with issues and opportunities. To maintain oversight NOS uses Internet and email to monitor activities.

SHORELINE MANAGEMENT PROGRAM RULES

GENERAL COMMENTS: Ecology has spent the last five years attempting to upgrade its Shoreline Management Program rules. The latest proposal would allow local governments to either adopt a Path A, which would have little in the way of enforceable provisions, or Path B, which would contain standards that would contribute to the goals and policies of both the SMA and the CZMA. The Sierra Club is extremely concerned that Ecology intends to adopt both options and allow local governments to in essence opt out of the SMA as a statewide program. This is contrary to the CZMA findings of Congress that, "The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone. . ."(Sec. 302(i)). Also, OCRM has previously been alerted as to the problems created when Ecology entered into closed door meetings with local governments during the development of the proposed SMP regulations

process. The Sierra Club has submitted extensive comments on Ecology's proposed Shoreline Management Program rules. OCRM should reject Ecology's adoption of Path A, as contrary to the goals and policies of the SMA and the CZMA.

NOAA RESPONSE: Thank you for your comments on the SMA rules. NOAA will be reviewing these changes to the SMA rules as an amendment to the WACZMP with respect to their approvability under the terms outlined in the CZMA. This review will include completing an NEPA and ESA analysis.

PERFORMANCE REPORTS

A large number of Sierra Club, Cascade Chapter's comments related to performance reporting. These included: the anecdotal and self-selected content of the semi-annual reports provided to NOAA; the lack of detailed descriptions for individual regulatory cases; the lack of continuity of reporting on individual projects, permits, or violations over successive time periods; the lack of quantification of impacts of regulatory and nonregulatory actions and activities over time; as well as specific requests for information contained in selected performance reports since 1997 subject to review by the Cascade Chapter.

GENERAL COMMENTS: The semi-annual Performance Reports submitted by Ecology are extremely unhelpful at determining quantitative gains or losses to shoreline areas of the State of Washington. Since Ecology is only responding to requests for information from OCRM, it is OCRM's responsibility to format information requests that provide a real overview of whether the WACZMP is meeting the goals and objectives of the Federal CZMA to "preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations" (§303(1)). Will OCRM establish a request for performance reports that actually measures preservation, protection, restoration and enhancement goals in a quantitative way? By this, we mean reporting on how many feet (miles) of bulkheads have been permitted? How many acres of wetlands have been filled? How many trees have been harvested in shorelines areas under RCW 90.58.150 regarding selective removal of timber harvest on shorelines of statewide significance? How many species have been taken off the endangered species list in the state of Washington? The amount of habitat loss caused by the issuance of SMA permits, conditional uses and variances? Quantitative information on wetland protection and restoration projects carried out under shoreline management technical assistance? OCRM should revise its performance report criteria.

NOAA RESPONSE: The WACZMP should improve the format and content of its current performance reports to NOAA and other interested parties with coverage of on-the-ground progress being made. The program should determine how to incorporate quantifiable, cost-effective resource-based measures of performance, where they are being acquired for reporting purposes within Ecology, into its Federal performance reports submitted to NOAA. The WACZMP should consider using the electronic grant application and reporting system being developed by OCRM as a means of making relevant portions of these reports available to the public on its Web site in the future.

COMMENT: Neither the table on Shoreline Hearings Board cases nor the performance reports contain any real information on these appeals. In addition, this table documents that Ecology is doing virtually nothing to appeal Substantial Development Permits, conditional uses or variances. OCRM should require Ecology to provide specific information on each of these cases, including the parties involved and the amount of habitat affected.

NOAA RESPONSE: The table reflects the information requested in OCRM's performance report guidelines.

COMMENT: Neither the table of Shoreline Enforcement Actions nor the performance reports contain any real information on these enforcement actions. In addition, this table documents that Ecology is doing virtually nothing to enforce shoreline violations. We request that OCRM require Ecology to provide specific information on each of these enforcement actions, including the parties involved and the amount of habitat affected. In addition, Ecology must disclose not just the number of penalties issued, but the amount actually collected. There appears to be a disturbing trend of Ecology reporting penalties issued but not reporting that, too often, the penalties are dropped or negotiated away.

NOAA RESPONSE: We disagree with the assertion that Ecology is not enforcing the SMA regulations. NOAA agrees that in order to gain a complete picture of the State's enforcement of the SMA, it would be useful to be supplied with a periodic tabulation of the amount of funds collected through the issuance of penalties.

COMMENT: For each of the proposed Shoreline Master Program amendments approved during this time period, the performance reports and the tables need to document the proposed changes to environmental designations. Ecology needs to provide a better way to track master program amendments. A review of all Shoreline Master Program Amendments between 1976 and 1985 documented that nearly 75% of the master program changes involved environmental designation changes that allowed more growth, sprawl and development. OCRM should require Ecology to document its SMP changes in a way that quantifies changes to environmental designations.

NOAA RESPONSE: According to Ecology, their database does document which SMP amendment changes the environmental designation.

COMMENT: The performance reports do not provide any details on the role of Ecology in determining coastal zone consistency and/or §401 water quality certification, particularly to Corps §404 wetland filling applications. We request that OCRM require Ecology to document the number of times coastal zone consistency determinations and §401 water quality certifications have been denied. In addition, Ecology needs to document the amount of habitat destroyed by the issuance of §404 permits that have received approval from Ecology. Ecology needs to document what non-compliance with state program means for §401 purposes. Five such cases are noted in this table, but there is no explanation given as to what non-compliance means or where the proposed projects were to take place.

NOAA RESPONSE: NOAA agrees that in order to gain a complete picture of the effects of Ecology's consistency certifications, it would be useful to be provided with a list of certifications. As required by regulation, OCRM is notified of a consistency objection.

COMMENT: The performance report contains no information on the nature or purpose of Federal Assistance to State and Local Governments under §307(d) of the CZMA. OCRM should require Ecology to explain what type of federal assistance was made, for what type of community assistance and how this assistance contributed to the protection, preservation, restoration, and enhancement of the coastal zone.

NOAA RESPONSE: We agree that this information should be included in future performance reports.

COMMENT: Because these projects highlighted in the performance reports are self-selected by Ecology, neither OCRM nor the public has a clear picture of the scope of projects worked on by Coastal Zone staff. Ecology should provide a better summary by indicating how many pre-application meetings were held during this time period and whether the pre-application meetings took away from staff time devoted to enforcement and compliance.

NOAA RESPONSE: We do not agree that the number of pre-application meetings is a valid parameter to expect the program to quantify, nor that staff time devoted to pre-application meetings has a negative impact as implied by the comment on enforcement and compliance. Rather coastal management programs depend on the pre-application meeting as a critical step helping permit applicants develop well-designed projects.

REPORT EXCERPT[1]: The design changes Ecology proposed at the pre-application meeting for the Admiralty Inlet/ City of Port Townsend /Tides Inn have been carried forward, which include beach restoration, public access enhancement, and replacement of ornamental landscaping with native species better suited for habitat enhancement. WDFW has approved their HPA, including 40 individual conditions consistent or complimentary to our own recommendations.

COMMENT: This part of the performance report is another example of where it is impossible for the public to evaluate what is going on. There is no project description, no list of resources impacted, or any other real information as to what was being proposed in Port Townsend. Ecology should provide sufficient information so that OCRM and the public can have a clearer understanding of what project proposals are being discussed.

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[1] "Report Excerpt" refers to sections of text from WACZMP performance reports quoted in the commnts

NOAA RESPONSE: This type of information is meant to provide a general description of the types of issues being addressed by the program and are not a substitute for the full permit record that would form the basis for a public hearing.

REPORT EXCERPT: Necessary Action-Compliance and Enforcement Strategy-At the request of the Program Management Team, the SEA Program staff has met several times to begin to develop a program enforcement and compliance strategy for the Shoreline Management Act. Jim Anest, the Enforcement Coordinator for the program has been asked to lead this group. The workgroup has generated spirited dialog among staff and steady participation among all program members with enforcement responsibilities. The workgroup is now meeting regularly to establish how to set priorities and to more effectively use existing resources. The workgroup is working closely with the Program Management Team and now has a representative from that team participating with the workgroup. They are also developing procedures, and articulating measures of success for an enforcement/compliance strategy.

COMMENT: In general, this is an unsatisfactory report. It is clear that a compliance enforcement strategy is desperately needed and the establishment of a workgroup is a good first step. However, we find no public participation in this workgroup, although citizen complaints seem to trigger the majority of compliance and enforcement action. We also note that although this workgroup was formed in the second half of 1998, none of the subsequent performance reports have any follow-up. Taking two years to develop a compliance/enforcement strategy is unacceptable. OCRM should require Ecology to produce enforcement and compliance data in a useful form that can be tracked over the lifetime of the CZM grants and to report on the outcome of its compliance/enforcement workgroup.

NOAA RESPONSE: Although the program chose not to allocate scarce staff time to document the compliance/enforcement strategy in the performance report, it did prepare a report and provide a briefing for the evaluation team during the site visit. The report can be obtained from Jim Anest at 360/407-6529. See section IV.B. of the findings for selected details on what has been accomplished in this program area.

REPORT EXCERPT: Shellfish Technical Assistance
Continue to coordinate shellfish protection and restoration efforts with the Department of Health and the Puget Sound Water Quality Action Team. Over 5,000 acres of shellfish growing beds were upgraded in classification status in 1998 due to improved water quality.

COMMENT: While it is encouraging that over 5,000 acres of shellfish growing beds were upgraded in classification status in 1998, the Performance Report fails to indicate whether any shellfish growing beds were closed during 1998. Ecology should provide a more comprehensive report on shellfish closures and openings during the time period covered by the Performance Report.

NOAA RESPONSE: This information on the status of shellfish beds can be obtained from Phil Kauzloric at 360/407-6413 or Dave Peeler at 360/407-6461of the Department of Ecology, Water Quality Program.

COMMENT: We strongly support efforts to restore wetlands. Ecology should provide a more detailed accounting of the amount of acreage actually restored during each of these grant periods.

NOAA RESPONSE: OCRM will request that the SEA Program provide in future performance reports quantifiable information on wetland restoration projects.

COMMENT: Ecology has failed to clarify what is involved in its public education *Spartina* monitoring in Pacific County. Ecology should provide a better description of what kind of *Spartina* monitoring is going on and what role non-chemical alternatives are playing.

NOAA RESPONSE: Based on the final report "Feasibility Study for Biological Control of Spartina alterniflora", dated December 1998, the recipients completed testing of the host range of *Prokelisia marginata* in relation to "potential non-target hosts" in the Willapa ecosystem. Also, the Columbia Pacific Resources Center's project coordinator organized 4 public education meetings to provide residents and interested stakeholders with accurate and up-to-date information on the progress of the research project, to seek comments and identify concerns and to answer questions about the research and published three issues of *Spartina Bio-control News* newsletter. Call Bryan Harrison at 360/875-0356 or Miranda Wecker at 484-7128 for more information.

COMMENT: OCRM should require Ecology to provide a real analysis of issues facing the Olympic Coast National Marine Sanctuary, including the need for tug escorts and a rescue tug in the Strait of Juan de Fuca to protect the Olympic Coast NMS from oil spills. In addition, fish and wildlife trends should be reported.

NOAA RESPONSE: Management issues should be directed to the National Marine Sanctuary (NMS), NOAA, at 301/563-1162 or the Olympic Coast National Marine Sanctuary, at 360/457-6622, not to the SEA Program or OCRM.

REPORT EXCERPT: Rock armoring was installed in a "Natural" designated shorelines of Case Inlet in Pierce County and an after the fact Conditional Use permit granted, which Ecology denied. The applicant appealed; before reaching the pre-hearing stage with the Board, case was settled by agreement. This case is an example of our efforts to help Pierce County make appropriate determinations about when armoring is in fact necessary, and avoid approvals for such installations when protection for structures is not needed.

COMMENT: This narrative is interesting but fails to disclose the nature of the settlement agreement. Was the rock armoring removed? Was it left in place? OCRM should direct Ecology to provide sufficient facts to allow OCRM and the public to determine the outcome of these cases.

NOAA RESPONSE: These permit details are meant to provide a general description of the types of issues being addressed by the program. These descriptions are not meant to be a

substitute for the full permit record that would form the basis for a public hearing or be used to track the final outcome of a contested permit decision.
In response to the Case Inlet permit application, referred to above, in the applicant's contractor built a rock retaining wall, entirely covering a formerly well vegetated slope. A ten foot high rock bulkhead was located at the base. However, the retaining wall was poorly engineered and in danger of collapsing. In addition, an after-the-fact permit was required which involved a variance for a structure in the setback zone. In the settlement, the applicant was able to rebuild the retaining wall and rebuild the bulkhead farther landward, with the requirements that the applicant plant native species vegetation to provide shading at waters edge and buffering at top of the top of the bluff. Ecology staff reported that this project occurred in a Conservancy designation.

REPORT EXCERPT: Clean Water Act (CWA) §404 Review
The Department reviewed 180 projects for compliance with the Federal CWA through §404 Corps of Engineer permits. The scope of these projects has become more complex and controversial through the years, thus taking more time to negotiate and mitigate. As in past years Ecology has been involved with a number of Corps of Engineer dredging projects. A number of Ecology staff are currently involved in review of the Columbia River Channel Improvement project. This project has become increasingly controversial. Ecology will be reviewing it for both §404 and federal consistency compliance.

COMMENT: Each of these 180 projects involved the loss of habitat at a time in which sprawl, growth and development are exceeding the carrying capacity of our shoreline areas. Ecology should provide an explanation of how these 180 projects have preserved, protected, restored or enhanced Washington's coastal zone.

NOAA RESPONSE: As noted in the response to the General Comment on the need to improve performance reporting, OCRM is continuing to work with the states to improve the use of performance indicators and to modify reporting criteria.

PROGRAM ACTIONS OR POLICIES

REPORT EXCERPT: Frailey Mountain Shooting Range
The Department of Ecology has issued a Shoreline Permit for a 270-acre shooting range in eastern Skagit County (project proposed by County Parks Dept.). A portion of the project abuts Pilchuck Creek, which is a shoreline of the state. The major concern was the potential for the migration of lead from shot into wetlands on-site and into Pilchuck Creek. Conditions imposed required the development of a lead management plan by the County that would include a comprehensive lead-monitoring program. If monitoring demonstrated migration of lead outside of shooting range then several remedial steps would be required, including closing of the range recovery methods including mining of lead from the ranges and construction of wetpond systems to physically trap the majority of sediment from the range. Permit may be appealed by local citizen group.

COMMENT: This is an example of the failure of Ecology to impose conditions that would prevent problems from happening in the first place. First, a shooting range is not a water dependent use. Within Skagit County alternatives should have been considered which would not have impacted Pilchuck Creek. Assuming that adequate buffers and a general low impact project was consistent with the environmental designation of this shoreline (which is not specified by Ecology in the above example) the more appropriate condition would have been to ban lead shot and require only steel shot to be used. Many hunting areas have bans on lead shot and steel shot is a viable alternative. OCRM should review how often Ecology approves environmental damaging projects that rely on monitoring and mitigation, rather than avoidance of the impact in the first place.

NOAA RESPONSE: According to Ecology, the Frailey Mountain shooting range shoreline permit was appealed to the Shoreline Hearings Board (SHB) by local citizens. The SHB upheld the conditions imposed on the shooting range by Ecology to protect aquatic resources from heavy metal (lead) contamination. The outcome of the appeal was that the SHB remanded the permit back to the County to provide more information and better site plans regarding grading and recontouring of the site, and a supplemental EIS on range safety and effects on nearby land uses. Skagit County Parks Department did not gather or develop the information required by the Shoreline Hearings Board (SHB) pursuant to the appeal, and the County has not re-issued a revised shoreline permit.

COMMENT: The Grays Harbor Estuary Management Plan (GHEMP) is an unfortunate example of a years of wasted staff time and controversy. The Coastal Zone Management Act was intended to focus on the entire coastal zone, which in this case would have been all of Grays Harbor County. Instead, OCRM funded an effort that looked only at the very narrow shoreline area. Within months of its adoption by OCRM, the GHEMP was already beset by non-conforming amendments. In addition, the relationship between GHEMP and the underlying Shoreline Management Programs was never clarified and remains muddled to this day. OCRM should instruct Ecology to provide an analysis of GHEMP since its adoption by OCRM that includes a quantitative review of the acreage of wetland filling allowed, the footage of shoreline changes, and any changes to environmental designations.

NOAA RESPONSE: The Coastal Zone Management Act (CZMA) not only focuses on the entire coastal zone, but encourages the preparation of special area management plans, §303(3) of the CZMA. Also §309 of the CZMA establishes a voluntary coastal zone enhancement grants program which encourages states to develop changes in one of the nine coastal zone enhancement areas, of which special area management planning is one. The GHEMP is being implemented at the local level as required for Federal approval of the GHEMP which occurred in 1992. At this time, OCRM does not consider the analysis of the GHEMP to be a high priority for WACZMP.

REPORT EXCERPT: Wetlands Technical Assistance Ecology Northwest Regional staff provided direction and input to the City of Anacortes on the development of the Fidalgo Bay Management Plan. Plan proposes to mitigate for eelgrass impacts for future marina development at a level exceeding existing demonstrated success for creation of eelgrass habitat. Worked on

technical committee that eventually agreed on acceptable approach devised demonstration project for eelgrass creation which will serve as basis for either approving or denying future eelgrass mitigation (creation) projects.

COMMENT: This is another example of where Ecology is undermining the policies and intent of the CZMA. Eelgrass mitigation/creation is one of the most difficult undertakings in the coastal zone. Therefore, the emphasis should be on protecting existing eelgrass habitat. OCRM should require Ecology to produce documentation concerning the amount of eelgrass acreage that has been destroyed since 1997.

NOAA RESPONSE: Although individual shoreline permits and the Washington State Department of Natural Resources have eelgrass information for select locations, the State does not have a comprehensive tracking system for monitoring the total amount of eelgrass present, nor the amount of eelgrass destroyed since 1997. We agree that such tracking would be desirable if additional funding were made available.

REPORT EXCERPT: Spartina Research and Control in Padilla Bay
The Spartina control effort for 1997 was completed in this period. Herbicide application took place in July/August. Glyphosate was sprayed on clones mowed a month prior. A Wash. Dept. of Fish & Wildlife crew helped us mow 6.5 acres of S. alterniflora on Dike Island in July and returned a month later to help us spray six of those acres. We did a final survey of the shoreline in September pulling new seedlings, digging new clumps and mowing the treated clones one last time. We patrolled approximately 1,500-acres of shoreline and mudflat to control about 8.5 of the 17 acres that exist in Padilla Bay.

COMMENT: While this is not a review of the Padilla Bay National Estuarine Research Reserve, we continue to be opposed to the use of toxic pesticide pollutants on Washington's aquatic areas. As previously mentioned, dead clams in Willapa Bay have been detected with nearly 1 ppm of glyphosate residues. OCRM should require Ecology to identify the total amount of glyphosate that has been applied in Padilla Bay since it was designated a National Estuarine Sanctuary. In addition, please identify all tests that have carried out in Padilla Bay to monitor the impacts of glyphosate on clams and oysters.

NOAA RESPONSE: Pesticide application records are filed with the Washington State Department of Agriculture (WSDA). To obtain the best available multi-agency composite information, please contact the WSDA, Pesticide Management Office in Olympia, WA and ask for information specific to Puget Sound data on aquatic application of glyphosate on Spartina.

REPORT EXCERPT: Spartina Research and Control in Padilla Bay
Spartina control continued throughout the summer using a herbicide to spray areas mowed a month earlier. For the first time ever, we were able to mow and spray our largest site with the help of a Washington Dept. of Fish & Wildlife crew. Follow-up mowing (two weeks to a month post-spray) occurred in August and September. Volunteers proved to be invaluable again this year. Because of the effectiveness of the 1997 treatments, we saw a substantial reduction in the amount of live S. alterniflora this year at the beginning of the season (1997: 17.2 acres, 1998: 9

acres). With the exception of the scattered but significant infestation at the Oswald property (34 acres), Spartina anglica was reduced with the 1997 treatments from 0.22 acres to 0.03 acres at the beginning of the 1998 season. We are hoping our 1998 treatments reduce the amount of live Spartina so there is substantially less at the beginning of the 1999 season. As counties and tribes to the south are also controlling seed set (our main seed source outside the bay), we should see less new infestation next year on the Swinomish Spit.

COMMENT: This narrative fails to disclose what is going on in Padilla Bay. It fails to state what herbicide is being used or how much was applied in 1997 and 1998. Ecology should provide this information.

NOAA RESPONSE: See NOAA Response (above) to the use of herbicide in Padilla Bay.

COMMENT: OCRM should review the entire WACZMP for compliance with RCW 90.58.150.

NOAA RESPONSE: RCW 90.58.150 allows only selective commercial timber cutting in shorelines of statewide significance. With limited staff and funding resources, OCRM does not believe that this task is the best use of limited resources.

REPORT EXCERPT: Kitsap County/Silverdale
Pre-application meeting on-site with Kitsap County Shoreline Administrator, Surface Water Management staff, wetland staff and permit reviewer. Application (CUP) being developed for an office park on Clear Creek, which is a salmon-spawning stream which passes through Silverdale and has flooded badly in its upper reaches. A comprehensive approach to management for flow and water quality is being sought. Wetland staff helped them determine where tidal influence began for some wetland preservation and permit staff will add conditions to the permit which will require stormwater detention and a setback of 100 feet from the creek for any development activity, including paving. A native vegetation buffer and public access trail will also be required because the office park does not have significant water related activity.

COMMENT: This is another example of where Ecology and the SMA have failed to carry out the basic principles of the Shoreline Management Act. The SMA consistently refers to giving preference to uses "which. . .are UNIQUE TO OR DEPENDENT UPON use of the state's shoreline." It also warns that alterations to the natural conditions of the shorelines of the states, IN THOSE LIMITED INSTANCES WHERE AUTHORIZED, shall be given priority for "industrial and commercial developments WHICH ARE PARTICULARLY DEPENDENT on their location on or the use of the shorelines of the state." RCW 90.58.020. Instead of carrying out the provisions of the SMA, Ecology continues to negotiate away the state's shorelines by allowing shoreline uses for such activities as an office park which "does not have significant water related activity." OCRM should review Substantial Development Permits (SDP) project approvals and determine how many have been given for projects that are particularly dependent on or the use of the shorelines of the state as called for in RCW 90.58.020.

NOAA RESPONSE: According to Ecology, this project was withdrawn after the delineation of the wetlands and the tidal influence was designated. Kitsap County and Ecology discussed the need for more protection of the wetlands and Clear Creek and the applicant determined that there would not be sufficient land to make a viable development. This piece of property is in a retail-commercial zoned area. Ecology played an important role in this project by providing scientific expertise in delineating the wetlands. Clear Creek is subject to shoreline jurisdiction because the ordinary high water mark of adjacent Dyes Inlet extends up the creek, however, Clear Creek is not a shoreline of statewide significance. Also the wetlands on the property were determined to be "associated" wetlands. Ecology provided support to Kitsap County in their desire to afford more protection to a salmon stream and wetland habitat, and helped the applicant understand that special care was needed if this special piece of property was going to be developed. A public trust or the County should consider buying this property for a nature preserve or park, thus giving this shoreline property to the Kitsap residents.

REPORT EXCERPT: Pierce County CMC Heartland Proposed Development and Oxbow Wetland Restoration Potential
Last December, Ecology provided significant comments in response to the EIS for this development proposal. The proposed development called for 924 dwelling units on 163 acres, in the historic floodplain of the Puyallup River. An old oxbow of the Puyallup River (Prior to the river's channelization), now a category 1 wetland, lies immediately adjacent to the site. This wetland is considered associated and therefore activities within this wetland would require shoreline permitting. We have told the applicant and the City of Fife that if any part of the project would require a shoreline permit, then the entire project would be subject to shoreline review. We and several other resource agencies, including the Puyallup Tribe of Indians, expressed deep concern with the proposal's disturbance of opportunities for restoration of this oxbow and its reconnection to the Puyallup River. Since then the applicant has been working on a response to comments and on the preparation of a final EIS. A SEPA coordination/interagency "pre-application" meeting was held in June. We were pleased to learn at this meeting that some elements of the project had been scaled back in response to comments received on the DEIS. However, we pointed out several items of continued concern, including insufficient wetland buffers. We may be providing assistance in verifying the wetland delineation that had been done for the site.

COMMENT: The most significant fact in this narrative is the proposed placement of nearly 1,000 dwelling units in the historic floodplain of the Puyallup River. Given the fact that western Washington is extremely prone to flooding, how did this project get any serious consideration in the first place? OCRM should review projects approved by Ecology over this grant period and determine how many are located within flood plain hazard areas.

NOAA RESPONSE: Ecology has not approved this project. The project is going through the SEPA review process. According to Ecology, the CMC property is not subject to flooding. The property is in the historic floodplain but located along a section of the Puyallup River that is diked and where the dikes are fully maintained. The City of Fife is currently deliberating over

whether to require a Supplemental EIS. Once the SEPA process is completed, Ecology expects the applicant to file for applicable land use permits. Ecology staff has been actively involved in reviewing the environmental documents for this project.

Ecology staff indicated that they may not have the opportunity to review this project even when this project reaches the State because the project is outside the shoreline jurisdiction. The Shoreline Guidelines give local jurisdictions the option of designating the entire floodplain or just that part of the floodplain that lies within 200 feet of the floodway as Shorelands or Shoreland Areas. Pierce County (and the City of Fife, by default for the subject property) selected the latter of the two options. Specifically the entire floodplain is not considered within the shoreline jurisdiction, only that portion of the floodplain that is within 200 feet of the floodway. With limited staff and funding resources, OCRM does not believe that the task to determine the number of projects approved by Ecology that are located in the flood plain hazard area would be the best use of limited resources.

REPORT EXCERPT: Bainbridge Island pre-application involvement with an application for a variance to build a large SFR within the native vegetation buffer and only 25' from the ordinary high water mark (OHWM). The site is at Blakely Point and the applicant wanted to set the house far enough forward to get a 180' view of Puget Sound and Seattle. An appeal had been filed by a local resident at the SEPA stage, and after meeting with WDFW's Jim Brennan and myself, the applicant altered the plan to remove the house from shoreline jurisdiction entirely. He moved it up to a bluff that was set back several hundred feet, was stable, and allowed for several decks and a driveway. The City of Bainbridge Island did want to work something out with him rather than deny the permit, because he had offered several million dollars for the parcel and had promised the City an upland site for an environmental education center. If he had not been able to build, the offer of the center may have been withdrawn.

COMMENT: This appears to be another example of where citizen pressure in the form of a SEPA appeal was needed in order to remove the house from shoreline jurisdiction. OCRM should review this case and determine why Ecology did not file an appeal at the SEPA stage.

NOAA RESPONSE: According to Ecology, the applicant was seeking to employ "buffering averaging" on the required 50 feet from the OHWM native vegetation buffer so that the prow of the house could intrude into the buffer. A shoreline variance was needed and a State Environmental Policy Act (SEPA) document was prepared for the project. A citizen challenged the SEPA document. Although Ecology did not comment on this SEPA document, at the pre-application stage, Ecology and the City of Bainbridge Island advocated that the project be moved back to the required setback from the OHWM. During the SEPA appeal, Ecology received the shoreline variance permit, but withheld a decision on the permit until the appeal was determined. The permit was withdrawn, and the house was built outside the shoreline jurisdiction.

REPORT EXCERPT: City of Port Townsend Cannery Building
Continuing efforts in technical assistance focused on a proposal to redevelop an old, over-water building as a restaurant. Citizens are gearing up to once again protest what they consider improper procedures by the City and developer. Being seaward of OHWM, and long out of use,

the structure clearly is non-conforming. To restore it calls for a conditional use approval. By means of that process, I conveyed that our view is a restaurant and waterfront deck, which includes dedicated public access, should be allowable for this structure.

COMMENT: Why is Ecology allowing private over-the water usage over citizen objections when it is clearly a non-conforming use? OCRM should require Ecology to disclose all over-water uses approved by Ecology since 1997.

NOAA RESPONSE: According to Ecology, the building in question is a historic structure, and is located in a special-management district, adopted within the City Master Program, which allows such development with conditional use approval. The master program was written to encourage all these buildings to be maintained or restored.

When the public hearing was held on the permit, the only testimony from a citizen was favorable. If the development proceeds, the public will benefit by an entirely new waterfront walkway and/or associated public access improvements. There will be no additional adverse impacts beyond the existing structure except by the deck.

With limited staff and funding resources, OCRM does not believe that the task to disclose all over-water uses approved by Ecology since 1997 would be the best use of Ecology's limited resources.

REPORT EXCERPT: Shoreland and Environmental Assistance Program staff worked on the following policy issues: Coastal issue coordinator attended several meetings in Portland, Oregon to meet with the Portland Corps to discuss the dredge materials disposal sites for maintenance dredging of the Columbia River. The technical group for the project consisted of members from both states, NMFS, EPA, the Corps, congressional offices, the crabbing industry, and others.

COMMENT: Ecology has failed to mention that the Corps also has plans for widening and deepening the Columbia River. This project would have a significant adverse impact. OCRM should review Ecology's role in this project. In addition, OCRM should instruct NOAA to strongly oppose the project.

NOAA RESPONSE: Based on information pertaining to the action proposed in the draft and final NEPA documents for the Integrated Feasibility Report for Channel Improvements and the Corp's request for water quality certification pursuant to §401 of the Clean Water Act, the Department of Ecology denied the Corp request for §401 certification for the Columbia River Channel Improvement project. Also, Ecology did not concur with the Corp's federal consistency determination.

COMMENT: §303(4) of the CZMA set a Congressional policy to "encourage the participation of the public, state and local governments in carrying out the purposes of this chapter." Once again, we see Ecology participating in advisory committees that include no members of the public. Over the years, this has been a persistent pattern of Ecology which refuses to take

seriously the goal of involving the public. OCRM should identify all advisory committees upon which Ecology serves and how many of these do not have public representation.

NOAA RESPONSE: Lacking any more specific information, OCRM does not see a pattern of Ecology participating in advisory committees that do not involve public participation.

REPORT EXCERPT: Cross Cascade Oil Pipeline (Olympic Pipeline)
A partnership of oil companies is proposing to build an oil pipeline from Bothell (just north of Seattle) to Paso in eastern Washington. Ecology staff have reviewed the draft EIS and have raised some significant concerns with the project. Primary State review authority rests with the Energy Facility Siting Evaluation Council (EFSEC). The pipeline project is not salmon friendly. Many of the impacts identified with the current alignment can be avoided. Ecology staff will be commenting to EPA and the Corps of Engineers on this project.

COMMENT: We wish to commend Ecology for raising concerns about this unwise, unneeded and environmental unsound project. Ecology has also raised issues concerning the relationship of EFSEC to proper shoreline management. We are particularly troubled, because EFSEC's EIS consultant Jones & Stokes misrepresented the consistency of the pipeline project with local planning guidelines, including the shoreline master programs. OCRM should direct Ecology to review all SMPs to determine whether such projects can be kept out of sensitive environmental shoreline areas.

NOAA RESPONSE: The responsibility for establishing criteria regarding the locations of pipelines rests primarily with the local governments through their adoption of SMPs. It should also be noted that the Olympic Pipeline Project has been withdrawn.

REPORT EXCERPT: Mason County Goldsborough Creek dam removal
This proposal by Simpson Timber Company has been slowly moving forward for a couple of years and now has the participation of the Corps of Engineers among others. Washington Department of Fish and Wildlife and the Squaxin Island Tribe are active supporters of the proposal. The Corps of Engineers released a draft Ecosystem Restoration Report and Environmental Assessment. Removal of the dam and restoration of the creek would result in access to 14 miles of high value habitat. Ecology reviewed and commented on the draft Ecosystem Restoration Report/Environmental Assessment (EA) put out by the Corps of Engineers. On the whole the proposal looks good. It lacks details on the ancillary aspects of the project—access roads, creek diversion structures during construction, staging areas and wetland impacts. We expect that these details will be largely addressed in the Final EA though some will likely have to be postponed until later in the design process.

COMMENT: The removal of the Goldsborough Creek dam would have a beneficial impact. However, there are numerous old dams in Washington coastal zone that block anadromous fish habitat for which removal and restoration are needed. In fact, given the increased listing of anadromous fish as endangered species, dam removal represents one of Ecology's major environmental restoration opportunities. In the mid-1980's citizen groups and the Lower Elwha Tribe filed petitions with FERC requesting the removal of the Elwha and Glines Canyon dams

on the Elwha River in Clallam County near Port Angeles. For the last fifteen years, efforts have been made to remove these dams and restore one of the most significant coastal salmon runs on the Olympic Peninsula. During this time period, Ecology, through its coastal zone responsibilities, has done little to promote or to further this effort despite the fact that this is clearly a coastal zone issue. OCRM should review Ecology's implementation of its CZM program in regards to dam removal for habitat restoration purposes.

NOAA RESPONSE: Ecology reviews dam removal through it federal consistency authority to ensure that the removal is consistent with their enforceable policies. OCRM agrees that this is an important issue that should be reported on in performance reports.

COMMENT: An additional area of general concern is the complete failure of the State of Washington to provide special protection for island ecosystems. Not every state has islands as part of their coastal zone, but the State of Washington is particularly blessed with some of the biggest and smallest in the United States. Congress recognized protection for islands when it passed the Coastal Barriers Resources Act (CBRA). However, this Act was directed at preventing Federal funding on unstable barrier islands or other similar shoreline features such as spits. To date, no West Coast areas have been included in the CBRA system. Please provide a response noting any other states that provide special protection for islands as part of their coastal zone program. OCRM should recommend that Ecology take steps to recognize and increase protections for islands in Washington's Coastal Zone. Such protections should include prohibitions on sand and gravel mining export, increased shoreline buffers, and an emphasis on reducing non-point source coastal pollution.

NOAA RESPONSE: NOAA is not aware of any coastal states having adopted an enforceable policy governing the management of islands in the coastal zone. A number of states, including Michigan and Wisconsin have conducted biological inventories of major island groups. Jekyll Island in Georgia has also developed the *Jekyll Island Comprehensive Land Use Plan* which includes stringent guidelines for protection and enhancement of dynamic beaches and adjacent high hazard upland zones.

COMMENT: One of the most significant wetland losses in the Pacific Northwest in the last twenty years occurred due to Corps emergency dredging of the Cowlitz, Toutle and Columbia Rivers in the aftermath of the eruption of Mt. St. Helens. The USF&WS estimates that anywhere between 750 to 1,000 acres of wetlands were destroyed by the Corps without mitigation. Restoration of wetlands would be a significant improvement to the riparian zone of the Cowlitz, Toutle and Columbia River. OCRM should require Ecology to undertake a wetland restoration project that would mitigate for the wetland losses resulting from the Mt. St. Helens eruption.

NOAA RESPONSE: This request to require Ecology to undertake a wetland restoration project that would compensate for the loss of wetland habitat stemming from an emergency response to a natural disaster goes beyond the scope of CZMA authority.

REPORT EXCERPT: During the reporting period, coastal staff continued to work on integration of the Shoreline Management Act and Growth Management Act through a collaborative process under joint sponsorship of the Department of Ecology and the State's Land Use Study Commission. A work group was formed consisting of representative of local and state government, business, and agriculture, environmental and community organizations with an interest in the subject. This group met frequently for several months and developed a variety of recommendations on changes to the SMA however the group did not reach consensus on critical elements of an integration proposal. Differences centered on the role of the state in oversight of local shoreline planning and the role of the Shoreline Hearing Board. The recommendations of the work group were forwarded to the Land Use Study Commission and a subcommittee of the Commission was continuing to work on the issues at the end of the reporting period.

COMMENTS: We remain concerned at efforts of the development community to continually undermine the Shoreline Management Act by attempting to elevate the more general Growth Management Act. OCRM should continue to make clear that weakening of the Shoreline Management Act is not consistent with the CZMA.

NOAA RESPONSE: OCRM believes that Ecology has greatly strengthened the SMA with the adoption of the revised rules.

COMMENT: In the past, reviews of SMP amendment denials would be heard by the Shorelines Hearings Board. Now, however, the Growth Management Hearing Board (GMHB) has taken over some of these functions. It is extremely troubling to learn that the GMHB upheld an appeal to allow spot projects on our shorelines. OCRM should review the GMHB function as a reviewer of SMP amendment appeals and whether this is consistent with the adopted WACZMP.

NOAA RESPONSE: According to Ecology, the GMHB was given the authority to review SMP amendments by legislation adopted in 1995 (ESHB 1724). This was only one aspect of a general integration of the Shoreline Management Act (SMA) into the overall framework of the State's general land use planning system created by the Growth Management Act (GMA) which the legislation provided. The GMA was originally adopted in 1990 and while it was compatible in overall policy with the SMA, the administrative provisions were not integrated at the time and over time issues of coordination and proper process developed. The 1995 legislation addressed those issues. It is important to note that prior to this time only a local government could challenge the decision of Ecology before the Shoreline Hearings Board (SHB). Citizen's were limited to a court challenge. Under the 1995 legislation any aggrieved party can appeal a decision on the SMP proposal. This substantially broadens citizen rights to have a voice in the SMP process. The appeal of an SMP for a city or county that is planning under the GMA goes to one of the three GMHB, for non-GMA counties and the cities, the appeal goes to the SHB. In the coastal zone, all counties are GMA except Grays Harbor and Wahkiakum.

Ecology is not aware of a case fitting the issue described in the comment section. The GMHB have only reviewed a few SHB cases and have acted in a manner consistent with SMA policy on those cases. The actions taken to date have not in any way compromised the policy or

fundamental procedural safeguards of the SMA but rather have focused on assuring that both the policy and procedures are protected while working within the overall framework of the GMA. Ecology also pointed out that the same legislation (ESHB 1724) that provided for these procedural integration measures also authorized development of the recently adopted SMA Guidelines which will result in significant long term improvement to the management of the State's shorelines.

OCRM will request that Ecology report on appeals that are heard by the GMHB for permit applications that occur within the coastal zone.

REPORT EXCERPT: Skagit County
Cascade Trail: The Trail is a 22+ mile-long trail within the corridor of an abandoned (or "railbanked") Burlington Northern railroad track between Sedro Woolley and Concrete. Skagit County has recently carried out several recent construction activities on the trail that they believe are exempt from shoreline permit requirements as "normal maintenance and repair" and exempt from local and state regulations in general by virtue of federal preemption under the Surface Transportation Board (STB) rules. Ecology disagrees, believing that the activities (placing wood planking over 20+ trestles, adding 6-foot-high railings to the trestles, grading the entire trail corridor and surfacing the trail with a layer of sandy unconsolidated material) exceed exemption criteria under WAC 173-27-040(2)(b) and should have required SEPA, a SDP and a NPDES construction permit. Ecology is currently working with the County to try to resolve environmental and permitting issues in lieu of having to issue a Notice of Correction and are attempting to obtain a AAG opinion as to the federal preemption issues. This is a high-visibility case, with lots of press coverage and citizen interest. A major theme we are hearing is why citizens should have to obtain permits when the County doesn't bother to for its own projects.

COMMENT: This narrative raises (but does not answer) the basic issue we have noted previously, naming why do local government agencies fail to comply with the SMA. OCRM should make it clear to Ecology that it needs to exert its full authority to ensure compliance, particularly by local governments, to protect the state's coastal zone.

NOAA RESPONSE: OCRM agrees that government institutions should set a positive example to individuals and businesses that must comply with the SMA. For this project, the SEA Program requested and obtained an Attorney General's opinion that indicated that the local government was not exempt from the SMA. Several staff at the SEA Program, Northwest Regional Office and Water Quality were involved in this project.

REPORT EXCERPT: Crown Pacific Timber Harvest, Near Lake Ozette
DNR called an Interdisciplinary Team meeting to review four proposed logging units near Lake Ozette. Trout Creek, which runs into Lake Ozette, winds through these harvest units. The soils are exceedingly wet. Much of this area is forested wetland, dominated by mature red alder. Much of this area is in the historic floodplain of the Big River. The hydrology of this system was altered when a County road was put in (many years ago) through the floodplain. Lake Ozette Sockeye Salmon were added to the Endangered Species Act list of federally threatened species this March.

Crown Pacific has been under significant pressure to recover costs of numerous changes of ownership so they have been exceedingly expedient in their efforts to log. They have harvested most of their dry timberlands and are now targeting timber in riparian zones and wetlands. DNR specifically requested the presence of an Ecology wetland specialist at this March ID team meeting. The harvest issues were still unresolved after the ID team meeting. While the suggestion was made to leave a 100' no-cut buffer from Trout Creek and another 100' of hardwood-harvest only (i.e. leaving all conifers), there is some question as to whether any logging should be allowed at all.

A follow-up site visit confirmed that many of the harvest units are, in fact, type II waters by virtue of being within the ordinary high water mark of Trout Creek or by being associated wetlands supporting significant rearing populations of salmonids. If a land is actually typed as a "water", rather than just "associated wetland", it cannot be logged at all, according to the Timber Fish and Wildlife (TFW) rules. The Makah tribe strongly objects to any harvest in this area.

COMMENT: This is an example of where forestry practices impact the coastal zone and wetlands. RCW 90.58.150 regarding selective removal of timber harvest on shorelines of state-wide significance. There is no information provided as to whether Trout Creek is a shoreline of state-wide significance. OCRM should require Ecology to protect wetlands and shoreline areas from logging to the maximum extent of their authority.

NOAA RESPONSE: According to Ecology, Trout Creek is not a shoreline of statewide significance. As stated in the Excerpt section, upon completion of a second site visit, it was concluded that many of the harvest units were type II waters and therefore could not be logged, according to the TFW rules. OCRM believes that Ecology is doing a good job of protecting wetlands and shoreline areas from logging to the maximum extent of their authority.

COMMENT: This [shoreline permits] table again shows a pattern of 264 SDP granted, 55 CUP granted with zero CUP's denied. 17 Variances were granted and zero Variances denied. Again this presents a pattern contrary to the Shoreline Management Act which set out a policy of allowing shoreline alterations only in limited circumstances. OCRM should review this pattern of permit issuance.

NOAA RESPONSE: OCRM will complete a review of the program's issuance of variances.

REPORT EXCERPT: City of Seattle Hotel
The City of Seattle Hotel received a Substantial Development Permit (SDP) for the building of an 85' high hotel in the Urban Harbor front designation on Seattle's waterfront. The height is the maximum for that designation under a 1986 SMP Amendment and Port of Seattle Development Plan. The Project was appealed by several parties because the height blocked the view of Puget Sound, the waterfront, and the Olympic Mountains from the uplands, including public parks and a scenic highway. The Shoreline Hearings Board agreed and the City's permit decision was overturned. The SHB brought in many factors that were interesting and conflicting with the trends in Seattle shoreline development. Because Seattle split the normal 200 foot shoreline jurisdiction into waterfront and upland if the lot is divided by a road, there are many "upland"

lots that are often allowed to use underlying zoning, which is generally much less restrictive in terms of height and bulk. The decision indicated that the entire project, including the part of the lot that really was out of shoreline jurisdiction, should be treated as if it were in shoreline jurisdiction.

An important factor in this case was that there were several existing Plans for the same area, which allowed different things, either by goals, policies, or development regulations. They tried to reconcile them for the sake of the public in the City of Seattle, and it is a very good and interesting decision.

COMMENT: This summary does not begin to describe this issue. Because of Ecology's unwillingness to stand up to the Port of Seattle, it took a citizen activist, Irene Wall, to bring an appeal which overturned the City of Seattle's hotel permit that would have destroyed views of Puget Sound. This narrative points out something else that is interesting about Ecology's performance reports. Washington Ports continue to have a major adverse impact to Washington's coastal zone. But Ecology's performance reports contain virtually no information about what the Ports are up to, how much habitat they have impacted or restored, or how the ever expanding state promotion of international trade can lead to the protection, preservation, restoration or enhancement of the coastal zone. OCRM should review the role of Washington Ports in coastal zone management (as well as the impacts that international trade has had on Washington's coastal zone.)

NOAA RESPONSE: *Managing Washington's Coast*, Washington State's Coastal Zone Management Program document provides a general overview of the importance of Washington ports in coastal zone management. Urban harbor sediment cleanup, dredging, dredged material management, and vessel traffic are important coastal zone management concerns facing the ports and coastal managers.

REPORT EXCERPT: Wetlands Technical Assistance
Clark County 72nd Street Widening, NE 199th Street to NE 219th Street, (not in coastal zone) Regional staff reviewed the proposed mitigation plan for this phase of road widening and wrote Section 401 Certification conditions. The project will result in the loss of .83 acres of wetlands, for which 1.95 acres of existing wetlands would be enhanced as compensation. This mitigation did not meet our enhancement ratios. To make up the deficit, staff accepted the County's suggestion that they make a contribution to the Nature Conservancy and the Columbia Land Trust to support habitat conservation efforts within the County. We wrote a letter stating that a condition of our approval is that the County must contribute $23,250 to these non-profit conservation agencies and that Ecology must receive a receipt of this transaction, as well as copies of the management plans for these conservation sites.

This approach is not ordinarily taken with respect to wetland mitigation. Staff opted for this approach because the County had been working with the Ecology Wetland Specialist previously assigned to this area for many years and felt that they had Ecology's approval of the project already (staff did not want the County to have to bare the brunt of our recent staff turnovers). Also, the impacted wetlands were significantly disturbed. It is also probable that the total

wetland loss was less than the .83 acres stated in the application: the county conservatively estimated the acreage of wetlands, to get through the process more quickly.

This approach did elicit criticism from the wetlands group and initiated a discussion of when "fees in lieu", or other creative approaches to wetland mitigation, may be considered. This also led to a discussion of how we should emphasize that wetland mitigation occurs within wetland mitigation banks when available and appropriate.

COMMENT: This approach should elicit criticism concerning "fees in lieu." What is of equal concern is that the County felt that they had "Ecology's approval of the project already." This is not the first time that applicants have assumed that they had Ecology's approval for environmentally damaging projects. OCRM should review whether Ecology's pre-application meetings (which are not announced to the public) convey a commitment of Ecology approval for projects prior to the public notice and comment process.

NOAA RESPONSE: Ecology staff indicated that information conveyed during a pre-application meetings certainly does not constitute any kind of formal approval. However, staff attending the pre-application meetings frequently let applicants know if their project is potentially permittable and whether or not the proposed mitigation is conceptually sound and generally appropriate. Ecology staff are very sensitive not to communicate that the comments from the meetings constitute any type of formal approval.

REPORT EXCERPT: TASK 1.4 Information Management and Research
Shoreland Aerial Photograph Project -there will be no photos taken this year. Instead, the focus of this year's air photo effort will be improving access to the photos that already exist. We have embarked on an effort to provide internet access our set of color oblique photographs that covers the entire marine shoreline of Washington. The first phase of the project is to provide internal access to the photos over Ecology's intranet. There, permit reviewers, shoreline planners, and others will be able to view a map of Washington's shoreline, click on any stretch of shoreline, and view an oblique photo of the site. The next step will be to provide public access to the photos over the Internet (fall of 1999).

COMMENT: Aerial photography remains one of the tools to locate shoreline violations. Ecology should explain how its aerial photography project is used for compliance and enforcement work.

NOAA RESPONSE: Aerial photos are important in two respects: 1) to develop evidence, if part of the case raises issues of when something was built or how development or natural features of the property at issues of when something was built or how development or natural features of the property at issue has changed over time (perhaps as a consequence of the development at issue); and, 2) for illustrative or educational purposes to a judge, party or interested stakeholder, in order to explain the "bigger picture" of shoreline processes, i.e., how the placement of a particular bulkhead or groin will likely impact sediment transport within this littoral cell. According to Ecology, staff regularly uses aerial photos in enforcement and permit work.

COMMENT: As previously mentioned, cranberry bogs have an extremely adverse environmental impact on the coastal environment. OCRM should review why the proposed grant to Pacific County was not accepted and what Ecology has done to carry out an assessment of cranberry bog impacts since this time.

NOAA RESPONSE: Pacific County was awarded a federal CZM grant for the 1998-99 grant year for an Agricultural Cranberry Bog assessment. The funds were returned by Pacific County. Their letter dated 3/29/99 was not specific as to why the funds were being returned, other than "staffing and time constraints." Ecology did receive an EPA planning grant in 1998 for $10,000 to fund a share of a Cranberry/Wetlands management study. The study was proposed to look at impacts related to expansion and the conversion of interdunal forested wetlands to cranberry bogs. However, the rest of the money from other parties fell through and Ecology returned the funding to EPA. Part of the reason the money from other sources (Cranberry Alliance, Washington State University) dried up is that at the same time the bottom fell out of the cranberry market and bog expansion stopped. Call Bev Huether at 306/407-7254 for additional information.

REPORT EXCERPT: Wetland Stewardship Project
The document on landowner property tax incentives: *Applying the Public Benefit Rating System as a Watershed Action Tool (Publication #99-108)* was printed and distributed to local governments. Presentations on the subject were made at several workgroups and conferences attended by local government representatives dealing with watershed recovery issues.

COMMENT: Ecology has mentioned the Public Benefit Rating System in several of its Performance Reports but has failed to present any data showing how this program works, or showing any results or improvements in wetland protection over time. Ecology should provide this information.

NOAA RESPONSE: The Public Benefit Rating System (PBRS) report has only been in existence for 2 years. No data currently exist, since it takes about that long for any local government to go through the process of setting up a PBRS under their Open Space Program. The document, *Applying the Public Benefit Rating System as a Watershed Action Tool*, (Publication #99-108) explains the program and has been distributed to all county government planning directors and lead staff who work on the Open Space Program. Ecology has received calls from local governments to inquire further about the use of the PBRS as a watershed tool. The document can be requested by calling Tim Gates at 360/407-7256.

REPORT EXCERPT: Table 6. Federal Licenses And Permits - §307(C)

COMMENT: Is this a typo? After years of finding that every single wetland fill allowed by the Corps under §404 Nationwide Permits is no big deal, suddenly 185 permits are in non-compliance with the state program. OCRM should confirm this table.

NOAA RESPONSE: Yes, this was a typo - the results of the 185 permits were placed in the non-compliance box instead of the compliance box.

REPORT EXCERPT: Compliance Tracking
The Wetland group began an effort to improve our compliance tracking of §401 requirements. As a group, we visited several projects for which we had previously provided wetland input for §401 water quality certifications. The purpose was to determine if the required mitigation sites had been constructed and if they had yet or were on their way to achieving success.

COMMENT: This is another example of the vagueness of these Performance Reports. It is useful for Ecology to undertake §401 compliance monitoring. It is not useful to refuse to disclose the results. OCRM should require Ecology to disclose the results its §401 compliance monitoring.

NOAA RESPONSE: According to staff in the Wetlands section, no report was written for this particular 2-day field exercise. This specific exercise was intended to provide the staff with a general perspective on how Ecology might develop a more detailed, on-going program for assessing mitigation project compliance. Subsequently, Ecology received funding from EPA to conduct a 2-year detailed evaluation of mitigation. The report on phase one was published last June 2000 and the report on phase 2 will be completed by July 2001. Ecology is also starting phase 3, which includes the development of an on-going mitigation compliance tracking system. For additional information, contact Andy McMillan at 360/407-7272.

COMMENT: In order to improve public education and information, OCRM should require Ecology to place its performance report on its website for public review.

NOAA RESPONSE: As described in section V. F of the findings, both NOAA and Ecology continue to make progress in developing computer and Internet-based tools to improve access to data and information on performance outcomes being reported by the program. OCRM is developing the Coastal and Marine Management Program (CAMMP) Information System. CAMMP is the electronic grant application, reporting and management system. Due to funding constraints only the electronic grant application section has been completed. Until the performance report section and the public access section of CAMMP is completed, requests for performance reports will need to be made to the federal or state agency.

REPORT EXCERPT: Lower Snohomish Estuary
The State Department of Transportation rebuilt the eastbound bridge on State Route 2 over Ebey Slough east of Everett, WA, sometime in 1993-1994. The bridge was not built according to permits. In an effort to save money, the highway department placed additional support structures below the bridge. This spread the weight of the bridge over more pilings, decreasing construction costs. The "value engineering" study that justified the re-design did not account for site conditions, however. Ebey Slough has a large volume of woody debris. The additional pilings act as a "trash rack" and prevent the wood from passing below the bridge.
In a November 1995 flood, the bridge accumulated a 600-foot long debris jam that threatened the bridge and the adjacent dikes. The jam caused a 2-foot water rise in the channel, and nearly overtopped the dikes. WSDOT spent $100,000 removing the 600-foot long debris jam. WSDOT is now proposing to build a 100-foot long debris deflector at the upstream end of Ebey Slough, where Ebey Slough splits from the Snohomish River. Approximately 40 percent of the

river's flow splits at this point and flows down the slough. The Slough is approximately 12 miles long and provides important habitat to Chinook and other salmonids. The woods debris in the channel is a critical element of salmon habitat in the estuary. The problem is that the debris deflector would essentially starve the slough of the wood debris, thereby reducing the pileup at the bridge. Ecology and other agencies met with WSDOT to discuss the project. Each agency, for their own reasons, told WSDOT that it will be difficult to permit the deflector. Ecology told WSDOT that the debris deflector would significantly degrade the quality of chinook habitat in Ebey Slough, violating state water quality standards. WSDOT admitted they created the problem with the unpermitted bridge re-design, and is reviewing other options. Replacement of the bridge may be the only viable option.

COMMENT: This is another example of incomplete reporting by Ecology. According to the above narrative, WDOT constructed a bridge not built according to permits. However, there is no indication of any enforcement action taken against WDOT. When state agencies violate permits and receive no penalty, it sends a message to the development community that Ecology and other agencies are not serious about permit violations. Ecology should provide additional information concerning what enforcement steps have been taken against WDOT.

NOAA RESPONSE: According to Ecology, a meeting was held on March 6, 1998 at the WSDOT NW region in Seattle. Also in attendance was WDFW and others. Ecology staff told WSDOT that another alternative to the debris deflector being proposed at Ebey Slough needed to be considered. WSDOT has not formally responded. Ecology chose to take no enforcement action in this case.

REPORT EXCERPT: Whatcom County
Finalized 2+ years of shoreline settlement negotiations with Gateway Pacific Terminal (multi-use cargo deep-water pier) proponents, Whatcom County, WDFW, and five environmental groups regarding the Cherry Point proposal. The settlement requires extensive additional studies and analysis, specifically on herring, prior to the project being built. Puget Sound including Cherry Point Pacific Herring stock is under "review status" by NMFS for ESA potential listing. DNR lease and Corps permit is still pending. Project conditions include the toughest ballast water controls in North America, exhaustive baseline monitoring and extensive stormwater controls and monitoring.

Participated in the State Herring Recovery Planning Workgroup for the past year - have also coordinated this effort with and participated in DNR's funded Cherry Point Preliminary Level Ecological Risk Assessment to evaluate the role of industries and natural factors in the dramatic decline of herring in the region.

COMMENT: The Gateway Pacific Terminal represents one of the most controversial projects proposed for North Puget Sound. Particularly at a time in which Cherry Point herring stock are likely to go on the endangered species list, Ecology's approval of this project again represents a significant step away from the goals of the Coastal Zone Management Act. In particular, bulk containers represent some of the worst ships from the standpoint of safety and maintenance. Increased traffic will further congest the narrow waterways around Cherry Point where oil

tankers already present a real threat to the shoreline environment. OCRM should review how the Gateway project increases risk of ship collisions and further adversely impacts both eelgrass and herring stocks.

NOAA RESPONSE: The Gateway Pacific Terminal (GPT) project impacts are addressed in the July 1999 Substantial Development Permit appeal settlement specifically requiring additional studies and regulatory approval on potential increases of ship collisions and impacts to eelgrass and herring stocks prior to construction being initiated. GPT is currently working with the Washington State Department of Natural Resources for a lease and is also meeting the ACOE regarding their permit.

COMMENT: On 10 July 1999, the Olympic petroleum pipeline ruptured and exploded in Bellingham, WA killing three young people and having a devastating impact on Whatcom Creek which drains into Bellingham Bay. Nothing in this Performance Report mentions anything about this. OCRM should review this pipeline accident and make pipeline safety from both natural gas and petroleum pipelines a high priority by both NOAA and the Dept. of Commerce.

NOAA RESPONSE: The issue of pipeline safety is beyond the jurisdiction of the SEA Program and OCRM, and the scope of this evaluation.

COMMENT: On 3 March 1997, the Grays Harbor County Planning Commission approved a conditional use development permit #97-39 for a casino, resort and parking lots by the Quinault Indian Nation along the Pacific coastline in Grays Harbor County. This non-water dependent use not only resulted in wetland filling, it required an exemption from FEMA for construction in a flood plain. Ecology did not provide us with copies of its Performance Report for the first half of 1997. OCRM should review this project and determine why Ecology did not oppose the development of this project in such an inappropriate site on the coast.

NOAA RESPONSE: According to Ecology, the casino and parking lots were built on Trust land owned by individual Quinault tribal members, who sold this land back to the tribe for development. This land is off reservation land held in trust by the Federal Government for the tribe. Ecology reviewed the conditional use development permit for the hotel and the access road and found these uses consistent with the Grays Harbor Master Plan. The wetland mitigation was also handled by Ecology. However, the casino was not within the state's jurisdiction. Under the Federal Indian Gaming Laws a casino is allowable on this land.

REPORT EXCERPT: Table 5. Direct Federal Agency Activities - §307 (C) (1) And (2)

COMMENT: We are curious as to how a Corps project wound up with a denial. Ecology should provide additional information concerning this project.

NOAA RESPONSE: On May 20, 1999, Department of Ecology denied ACOE (Reference #98-4-00587) 401 certification to fill in 1.89 acres of wetlands located in Section 16, T34N, R4E for the North 30th Street extension in Mount Vernon, WA. This was a joint ACOE/City of Mount Vernon Project. Ecology requested copies of the mitigation plan from the applicants.

Ecology denial was based on: No SEPA compliance was documented, no mitigation plan was provided, ability to mitigate was uncertain, and no mitigation site had been established. Applicants wanted Ecology to approve a conceptual mitigation plan and condition the 401 certification on this project that had not secured a mitigation site.

REPORT EXCERPT: Pierce County Water Quality Order and Wetland Mitigation Monitoring Working with the State's Office of the Attorney General, staff revised the 90.48 order for the LRI Landfill. LRI had appealed Ecology's issuance of the original 90.48 order and our settlement ordained that we would work with LRI on an "agreed" order. We used the opportunity to clarify some of the conditions of the original order relating to timing of wetland mitigation construction, water quality monitoring (particularly as it relates to wetlands), and reporting.

The revised order requires monitoring of stormwater flowing into the wetland mitigation area and monitoring of water quality within the wetland itself. The order states, however, that the primary means for protecting wetlands is through the antidegradation policy of the water quality standards and that the monitoring information will only be used to help determine whether antidegradation has or is occurring to the wetlands (i.e. we were in agreement that the numeric standards alone are insufficient to ensure protection of wetlands from stormwater discharge). Ecology wetland staff visited the site several times this winter and spring to evaluate progress of the mitigation site. This is one of the largest mitigation sites in the state, with a total of 71 acres of wetland creation, enhancement, restoration, and preservation. This landfill project has and will continue to be in the limelight, as it is being constructed over a sole-source, yet positive-pressure, drinking water aquifer. It is also resulting in the loss of about 22 acres of wetlands (predominantly forested wetlands). We will continue to monitor the wetland mitigation area in order to ensure its success.

COMMENT: This has certainly been one of the most controversial non-water dependent wetland impacting projects in the state of Washington. Unfortunately, Ecology failed to protect either the wetlands or the sole-source aquifer. Alternative landfill options were available. OCRM should review this project and determine why Ecology failed to protect sensitive shoreline areas from non-water dependent uses where alternatives were available.

NOAA RESPONSE: This project did not fall under Shoreline jurisdiction and was reviewed under the Clean Water Act. Shorelands staff deferred to the Solid Waste program staff on the issue of viable alternatives and the solid waste staff concluded that there were no better sites in Western Washington and that shipping the waste to Eastern Washington was inconsistent with state policy. Technical staff in the Solid Waste program determined from an aquifer protection standpoint, a better site to locate a landfill in Western Washington could not be found because of the positive-pressure groundwater situation. This ensured that, if any leakage occurred, it would not infiltrate into an aquifer which would be difficult to treat. The leakage would be kept at the surface where cleanup would be relatively straightforward. However, there were significant wetland impacts, and Shorelands spent considerable time on the mitigation plan to ensure that it

would adequately compensate for the unavoidable impacts. In the end, Wetlands section of the SEA Program concluded the mitigation plan was adequate and will be tracking this project to ensure that the mitigation is successful.

REPORT EXCERPT: Third Runway at SeaTac International Airport
SeaTac is proposing to build a third runway to the west of the second runway. In the process, it will condemn over 400 homes, move a salmon stream, and fill 30+ acres of headwater wetlands in two Puget Sound watersheds. The project will require approximately 28 million cubic yards of fill to bring the area up to grade (approx. 8 "King Dome's worth" of fill).

COMMENT: This is an ill-conceived project by the Port of Seattle which is attempting to shoehorn an additional runway with high environmental costs when the clear alternative is to consolidate a new major regional airport at the existing Ft. Lewis/McChord Air Force Base complex near Tacoma. Ecology is under tremendous political pressure to approve water quality permits. OCRM should provide Ecology with adequate support to conduct its environmental reviews without interference.

NOAA RESPONSE: Ecology has effectively reviewed this project. The Port of Seattle has recently resubmitted the Port's certification of consistency statement for the SeaTac International Airport project and Ecology had until June 27, 2001 to respond. On June 21, 2001, Ecology and the Port of Seattle mutually agreed to extend the six-month review time, until December 27, 2001 for Ecology to complete its consistency review. On August 10, 2001, Ecology issued a §401 water quality certification and consistency determination. The Airport Communities Coalition (ACC) appealed this decision to the State Pollution Control Hearings Board. On September 21, 2001, the Board ordered Ecology to reissue the water quality certification for this project. The Board also allowed the ACC August 10 appeal to include the September 21 decision. Thus ACC was not required to file a second appeal. A hearing is scheduled for March 2002. The Department of Ecology will continue to provide environmental analysis as required through the appeal process.

REPORT EXCERPT: Table 5. Direct Federal Agency Activities - §307 (C)(1)

COMMENT: We concur that the Corps Nationwide Permit Program does not comply with the State program. OCRM should support Ecology in this determination.

NOAA RESPONSE: OCRM supports state program review of any Nationwide Permits for consistency with their approved coastal zone management programs.

REPORT EXCERPT: Shellfish Technical Assistance
Lead watershed efforts to address shellfish water quality issues -Will propose the development of TMDL's in Dungeness Bay, Grays Harbor and Willapa Bay to address shellfish water quality issues.

COMMENT: TMDL's are a critical part of protecting the coastal zone from water pollution. OCRM should require Ecology to provide data on existing TMDL's for all water bodies within Washington's coastal zone.

NOAA RESPONSE: This information can be requested from Dave Peeler at 360/407-6461 of the Department of Ecology, Water Quality Program. Data on TMDLs fall under the purview of the EPA and not NOAA.

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PLEASE REPLY TO THE
SEATTLE OFFICE

Via Federal Express Overnight Delivery

September 28, 2000

Margo E. Jackson, Deputy Director
Office of Ocean and Coastal Resource Management
NOS/NOAA
1305 East-West Highway, 10th Floor
Silver Spring, Maryland 20910

Re: Evaluation of the Performance of Washington State in Implementing Coastal Zone Management Programs

Dear Ms. Jackson:

This firm represents the Skokomish Indian Tribe. This letter is in response to the notice of the Office of Ocean and Coastal Resource Management published July 28, 2000, concerning the intent of OCRM to evaluate the performance of the Washington Coastal Zone Management Programs. 65 Fed. Reg. 46435 (July 28, 2000). This letter notes the failure of the State of Washington and, specifically, the Department of Ecology, to adequately implement the Washington Coastal Zone Management Program with reference to the licensing of the Cushman Hydroelectric Project in Washington State. This failure seriously jeopardized the interests of the Skokomish Indian Tribe, the protection of the environment, and the public interest. The State's failure to properly implement its Coastal Zone Management Program pursuant to the Coastal Zone Management Act has caused extraordinary expense and consumed inordinate amounts of time with reference to the licensing of the hydroelectric project at Lake Cushman. The State has still not properly conducted a consistency review.

There are currently licensing proceedings underway before the Federal Energy Regulatory Commission concerning that project (FERC No. P-460). The applicant for a license is the City of Tacoma. Part of the requirement of the applicant is that there be a certification that the applicant has complied with the Coastal Zone Management Act and, specifically, the State plan approved under that Act. In the Lake Cushman case, the State of Washington's failure to properly review the application, conduct a proper consistency review and failure to issue a nonconsistency directive in a timely and proper manner has been held to be "arbitrary and capricious." *Skokomish Indian Tribe v. Fitzsimmons, et al.*, 97 Wash. App. 84, 982 P.2d 1179 (1999). This has jeopardized the interests of the Skokomish Indian Tribe, the environment and the general public.

1 The CZMA Statutory Backdrop.

Congress, in passing the CZMA, created a significant federal-state partnership, stating that:

> The key to more effective protection and use of land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

16 U.S.C. § 1451(i).

One method provided by the CZMA for ensuring federal-state cooperation in protecting the coastal zone is the consistency review process, contained in section 307 of the Act. 33 U.S.C. § 1456(c)(3)(A). Consistency certification under the CZMA is an absolutely integral part of federal licencing proceedings. *Id.* The CZMA requires that federally-licensed activities comply and be conducted in a manner consistent with federally-approved state coastal protection programs. *See generally* 16 U.S.C. §§ 1451-1464. The CZMA consistency review provision states in relevant part:

> After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state **shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program**. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data . . . . **At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification**. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. **No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed**, . . .

16 U.S.C. § 1456(c)(3)(A) (emphasis added).

As evidenced by the statute's repeated use of the word "shall," the CZMA's consistency review provision imposes obligations on the federal agency, the state and the applicant. *Board of Pardons v. Allen*, 483 U.S. 369 (1987) (discussing the mandatory meaning of the word "shall"). Accordingly, Section 307(c)(3)(A) of the CZMA prohibits FERC from licensing a hydroelectric project within or affecting a state's coastal zone, unless the state CZMA agency concurs with the applicant's certification of consistency with the state's federal-approved coastal protection program, or unless the agency's concurrence is conclusively presumed by its failure to act within 180 days of its receipt of the applicant's certification. *See*16 U.S.C. § 1456(c)(3)(A).

If the designated state agency objects to the applicant's proposal, the federal agency is generally prohibited from licensing a project. *Id.* CZMA consistency certification then, along with the federal Clean Water Act's § 401 certification process,[1] provide the two key instances in federal licensing or permitting proceedings whereby a state can prevent issuance of a federal license or permit that fails to comply with applicable state law, and require that the license of permit contain certain conditions. *See* 33 U.S.C. § 1341(a) (Clean Water Act § 401 provision).

The Washington State Coastal Zone Management Program ("Program") is federally approved, and the Washington Department of Ecology is the state agency designated to administer the Program. *Fitzsimmons,* 97 Wash. App. at 86. Washington's Program is composed of a network of state laws, regulations and policies, and local ordinances. *See generally*, Washington State Coastal Management Program (April 1995). The Program's central authority is the Shoreline Management Act, which establishes state policies for the protection and appropriate use of Washington's shorelines. RCW Ch. 90.58. The Program also encompasses state programs, laws and regulations relating to water rights, water supply, water quality, air quality, solid waste/resource recovery, flood plain management, noise abatement, environmental coordination, forest practices, marine lands and tidelands protection, recreation, fisheries and game protection, energy facilities, community planning and development, public health, economic development and agriculture. *See generally*, Program.

2 The Cushman License Application Was Never Subjected to a CZMA Consistency Review.

Ecology and Tacoma initially disagreed about whether Tacoma's Cushman project even had to comply with the CZMA and Washington's Program. *See*, letter from D. Mull, Assistant

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[1] Section 401 of the Clean Water Act requires applicants for federal licenses or permits to provide the federal agency with a state certificate establishing that the discharge will comply with the state's water quality program, and prohibits the issuance of a license or permit until state certification is obtained or the state waives certification. 33 U.S.C. § 1341(a).

Attorney General, to M. Swiger, Counsel for Tacoma (March 11, 1997). Ecology eventually prevailed, however, and, after some haggling, Tacoma submitted a complete consistency certification in 1996. *Id.* Tacoma's consistency certification then became part of its licensing application. *See* 16 U.S.C. § 1456(c)(1)(A). Tacoma also submitted a copy of its certification to Ecology to initiate the consistency process. *Id.*

Ecology had six months, or until May 30, 1997, to object to or concur with Tacoma's consistency certification. *Fitzsimmons*, 97 Wash. App. at 86. The Tribe was aware of the approaching deadline and of rumors that Ecology intended to waive its concurrence or objection to the Project's license. *Id.* The Tribe petitioned state superior court for a writ of mandamus, seeking to compel Ecology to respond formally to Tacoma's consistency certification, which was denied. *Id.* at 86-87, 88-89. The next day, the Tribe received a copy of Ecology's letter to FERC and Tacoma, which found the Cushman project to be inconsistent but then purported to waive a consistency review:

> We have concluded that the project as proposed does not comply with Washington's Coastal Zone Program, and will not be conducted in a manner consistent with the program requirements. However, we find ourselves in an untenable position in exercising our responsibility to object to Tacoma's certification of consistency because our objection to certification would likely cause the project to be caught in a procedural gridlock, rather than address the substantive issues related to the project. For a project such as Cushman that has already taken an exorbitant amount of time to license, we have determined that the purposes of the Coastal Zone Program will be better met by declining to object.

Id. at 87.

The Tribe promptly filed a petition for review of Ecology's waiver letter in state superior court.[2] *Id.* at 89. On May 1, 1998, the court dismissed the Tribe's petition for review on mootness grounds. *Id.* The Tribe timely appealed to the Washington Court of Appeals. *Id.*

On July 30, 1998, while the Tribe's CZMA appeal was underway, FERC issued the Cushman project license. 84 FERC ¶ 61,107 (1998). The licensing order briefly noted that Ecology had granted a waiver of CZMA requirements. *Id.* at 24. The Tribe sought reconsideration from FERC on that issue, among others. Skokomish Indian Tribe's: (1) Objections to and Request for Rehearing . . . at 40-43. FERC's rehearing order, issued on March 31, 1999, noted that the Tribe's case was still pending in state court, which is no longer the case. Order on Rehearing, 86 FERC ¶ 61,311 at 8 (1999). FERC also "took into account

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[2] The Tribe also complained to the National Oceanic and Atmospheric Administration, which administers the CZMA program, but to no avail.

Ecology's decision on Tacoma's consistency certification," but Ecology's decision at the time was wholly incorrect and was later completely changed to account for the appeals court's ruling. *See id.*

On August 20, 1999, the Washington Court of Appeals issued a precedential decision that was devastating to Ecology's position. *Skokomish Indian Tribe v. Tom Fitzsimmons, et al.*, 97 Wash. App. 84, 982 P.2d 1179 (1999). The Court held that Ecology's waiver was "arbitrary and capricious" because Ecology had explicitly acknowledged that its position was inconsistent with state law. *Id.* at 95. Moreover, the court held that:

> Both the federal and state regulatory schemes in this case would be rendered meaningless if [Ecology] could choose not to follow procedures prescribed by law to ensure that the Cushman Project complies with state law.

Id.

On January 5, 2000, the Washington State Supreme Court denied Ecology's petition for review on the merits. *Skokomish Indian Tribe v. Fitzsimmons*, No. 68577-1 (Jan. 5, 2000). Ecology then sent a one-page letter to Tacoma, dated February 9, 2000, which it served on all Cushman parties, stating that the Cushman Project, as proposed, "would not be consistent with the state's [Program]." Letter from T. Fitzsimmons, Ecology to S. Klein, Tacoma Power (Feb. 9, 2000) (enclosed).

Ecology's February 9 letter, however, clearly does not constitute a CZMA consistency review. One, it does not appear that it is the product of Tacoma's proposal having been circulated for comments to the state agencies responsible for implementing portions of the Program. Two, it is only one page long; a consistency review for a hydroelectric project consisting of two dams, two powerhouses, transmission lines and other appurtenances certainly requires more content. Three, the letter contains only recommendations, rather than mandatory conditions attached to the license that would bring the project into compliance with state law.

On review of Washington State's performance, OCRM should investigate all reasonable alternatives to this failure to require compliance with the program, including insisting that DOE conduct a proper consistency certification which is in full compliance with the law.

A finding that Tacoma's application is not in compliance with the CZMA is still relevant to ongoing proceedings. FERC has authority to reopen license proceedings. *See* 16 U.S.C. § 797; 18 C.F.R. § 385.716. FERC will, upon motion or *sua sponte*, reopen proceedings for "good cause" and if it has "reason to believe that reopening of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest." *Id.* at §§ 385.716(a), (c).

Reopening can occur after the "initial decision or, if appropriate, the revised initial decision is served." *Id.* at § 385.716(c).

Accordingly, the FPA justifies introducing new evidence that (1) is material and (2) could not have been introduced during the administrative proceedings. 16 U.S.C. § 825l(b). And, proceedings should be reopened if "warranted by any changes in conditions of fact or of law or by the public interest." 18 C.F.R. § 385.716(c). For reasons described below, both the *Fitzsimmons* decision/order denying review and Ecology's subsequent letter substantially meet these tests.

3 Evidence of a License's Violation of the CZMA and a Federally-Approved State Coastal Protection Program is Clearly "Material."

The Washington Court of Appeals' decision in the *Fitzsimmons* case is undeniably "material." *See* 16 U.S.C. § 825l(b). The court held that the Cushman project, as proposed, never went through a proper consistency review under the CZMA and Washington's federally-approved Program. *See* 97 Wash. App. at 84. Tacoma's license application was therefore substantially incomplete. *See* 33 U.S.C. § 1456(c)(1)(A). Accordingly, FERC should now have to consider the serious implications of the *Fitzsimmons* decision and its effect on the legality of the Cushman project license.

Evidence that a federal hydropower license was issued in violation of the CZMA and the federally-approved state program is absolutely material, and therefore fully justifies FERC's reopening of the record. Circuit courts have not hesitated to set aside FERC licenses where the agency did not or was unable to inquire into all relevant facts. *See, e.g., Scenic Hudson Preservation Conf. v. Federal Power Comm'n,* 354 F.2d 608 (2d Cir. 1965), *cert. denied,* 384 U.S. 941 (1966), *appeal after remand,* 453 F.2d 463 (1971), *cert. denied,* 407 U.S. 926 (1972) (FERC failed to inquire into and consider public interest factors under § 10(a) of the Federal Power Act, 16 U.S.C. § 803(a)).

Courts look with extreme disfavor on instances when federal permitting or licensing proceedings ignore federally-approved state coastal programs. For example, in *Russo Dev. Corp. v. Thomas,* 725 F. Supp. 631 (D.N.J. 1989), the court on summary judgment held that the Environmental Protection Agency "certainly has a duty to consider the New Jersey Coastal Management Program" in its deliberations over whether to veto a federal dredge and fill permit, and that it should have "clearly articulated" its reasons for deviating from New Jersey's coastal protection program. *Id.* at 638.

The case of *American Rivers v. Federal Energy Regulatory Commission,* 129 F.3d 99 (2d Cir. 1997), also demonstrates the materiality of the state certification process in federal licensing proceedings. That case involved the analogous Clean Water Act's § 401 state

certification process. 33 U.S.C. § 1341(a). The Second Circuit court remanded a licensing proceeding to FERC because FERC had refused to incorporate state-imposed § 401 certification conditions into the license. 129 F.3d at 99, 102.

The Court of Appeals in its *Fitzsimmons* decision expressly noted that its decision could result in a reopening of FERC's record. *Id.* at 80-91. The court, in holding that the case was not moot, stated that the Tribe "can use our ruling to ask FERC to reopen the City's application." *Id.* at 91. It also stated:

> The Tribe counters that, armed with a state court judgment that DOE acted improperly, it could petition FERC and then the federal courts, if necessary, to have FERC reopen the City's application. We agree.

Id. at 90.

Here, federal law explicitly requires that FERC issue licenses in full compliance with the CZMA, and refrain from issuing a license until it determines that it complies with the CZMA and the laws, regulations and policies comprising the federally-approved state program. 16 U.S.C. § 1456(c)(1)(A). The Cushman license application CZMA consistency certification process was an utter travesty, where both responsible federal and state agencies turned a blind eye to the laws and the considerable effects of the Cushman project on the environment and the Tribe's interests. Ecology expressly found that the Project did not comply with the CZMA and did nothing, and the Washington Court of Appeals found that doing nothing was absolutely illegal. *Fitzsimmons,* 97 Wash. App. 84.

The *Fitzsimmons* case is also material because it is precedential. To the Tribe's knowledge, there are no similar rulings by federal or state courts declaring illegal a state's attempt to waive a CZMA consistency review, when the state expressly finds the project to be inconsistent with a federally-approved coastal protection program. Thus, it appears to be the first time that an aggrieved party has obtained a state court decision to that effect, which is clearly what the National Oceanic and Atmospheric Administration ("NOAA") intended when it drafted the consistency review regulations:

> As far as instances where a state agency concurs with respect to the consistency of a Federal action when, in fact, the approved State program requires an objection, two points require emphasis. **First, if a State fails to enforce its own legal requirements and criteria which are incorporated in its approved program, it is probable that there**

> **would be third party recourse to State court proceedings to compel State agency adherence to the requirements of the State program.**[3]

NOAA, Proposed Regulations, *Federal Consistency With Approved Coastal Zone Management Programs,* 41 Fed. Reg. 42,728-42,891, 42884 (1976).

4 Remand is Warranted Because There Has Been a Change in Conditions of Fact and Law, and By the Public Interest.

FERC will, upon motion or *sua sponte,* reopen proceedings for "good cause" and if it has "reason to believe that reopening of a proceeding is warranted by any changes in conditions of fact or of law or by the public interest." 18 C.F.R. §§ 385.716(a), (c). Reopening can occur after the "initial decision or, if appropriate, the revised initial decision is served. *Id.* at § 385.716(c).

As described above, there is "good cause" for a court to remand the matter to FERC to ensure that Section 307 of the CZMA is carried out in a meaningful, legal manner. A remand, and a full CZMA consistency review could even resolve some of the many issues complained of in the numerous petitions filed in this case, particularly those of the state agencies whose programs are covered by Washington's Program.

There has also clearly been a "change [] in condition of fact or of law or by the public interest." 18 C.F.R. §§ 385.716(a), (c). The *Fitzsimmons* case established legal precedent for CZMA consistency reviews in Washington state, and other state and federal courts will likely cite the case in future decisions. It also confirmed the fact that no legal consistency review ever occurred during the FERC proceedings.

OCRM should require the State of Washington to conduct a full review and advise FERC of its findings as to consistency of Tacoma's application. OCRM should require the State to take steps that ensure it will not violate the law in the future.

Enclosed for your reference are the following documents:

1. Order of the Supreme Court of Washington in *Skokomish Tribe v. Fitzsimmons,* No. 6877-1 (January 5, 2000).

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[3] NOAA's second point underscored its ability to terminate financial assistance to a state if it determined that the state failed to adhere to and was not justified in deviating from the federally-approved program. *Id.*

2. Opinion of the Washington State Court of Appeals in *Skokomish Tribe v. Fitzsimmons*, No. 23367-3-II (August 20, 1999).

Sincerely yours,

MORISSET, SCHLOSSER, AYER & JOZWIAK

Mason D. Morisset

cc: The Honorable Denny Hurtado, Chairman, Skokomish Indian Tribe
The Honorable Joseph Pavel, Vice Chairman, Skokomish Indian Tribe
Richard A. Guest, Esq., Tribal Attorney, Skokomish Indian Tribe
Jim Parks, Director of Natural Resources & Fisheries, Skokomish Indian Tribe
Joan Marchioro, Esq., Washington State Department of Ecology

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Washington 2000 312 Evaluation: Finding Regarding Federal Consistency Review of the City of Tacoma Hydroelectric Project and Issues Raised by the Skokomish Indian Tribe

OCRM reviewed the Washington Coastal Zone Management Program's (WZCMP's) implementation of the Coastal Zone Management Act (CZMA) Federal Consistency requirement. Upon federal approval of a state's coastal management program, the state must adequately implement its approved program, and, as such, is obligated to conduct Federal Consistency reviews and concur or object to federal actions in accordance with the state management program's enforceable policies. See 65 Fed. Reg. 77123-77175, 77126-127 (December 8, 2000) (Final Rule revising the Federal Consistency regulations) for a detailed discussion regarding state obligations under Federal Consistency.

During the evaluation, OCRM found that, generally, the Department of Ecology (Ecology) has adequately implemented its Federal Consistency obligations. OCRM did find that in one case, Ecology did not fulfill its obligations. Ecology reviewed the City of Tacoma (the City) application for licensing of a hydroelectric project at Lake Cushman for consistency. Ecology had concerns with the City's proposal and had spent considerable effort to negotiate with the City, FERC and others. At the end of the CZMA consistency review period, Ecology waived its consistency review, and thus, its consistency obligations. The Skokomish Indian Tribe sent a letter to Office of Ocean and Coastal Resource Management (OCRM) urging OCRM to require Ecology to adequately enforce the WCZMP in this case.

While Ecology's action was inadvisable, it was an aberration and OCRM has not seen any pattern of avoiding its consistency obligations. As such, OCRM does not believe that a necessary action or program sanction is appropriate. Indeed, such measures would not affect the City's project, because a State court ordered Ecology to issue a decision based on its enforceable policies. The State did so, and objected to the City's project. Unfortunately, Ecology's objection was issued long after the CZMA six month deadline for the issuance of a state's consistency decision. Thus, FERC is under no CZMA obligation to withhold or deny its license because of Ecology's objection. FERC, presumably, could choose to give effect to the State court decision and reconsider the City's license in light of Ecology's objection. FERC has a trust responsibility to the American Indians to protect tribal rights and sovereignty. At this time, FERC has an opportunity to consider its trust responsibilities to the Skokomish Tribe and whether to reopen the City/WCZMP consistency matter.