

PART I OVERVIEW

A. Summary of the Ohio Coastal Management Program

The State of Ohio has developed the Ohio Coastal Management Program (OCMP) describing current state coastal legislation and management policies. With the exception of implementation of Ohio's new coastal erosion program mandated by O.R.C. Chapter 1506.06-.09 and amendments to Ohio's Coastal Management Act, the OCMP proposes no new state programs, regulations, or laws. It is based on an approach termed "networking," which is a framework and process for linking existing state programs, agencies, and laws into a system that will meet Federal requirements for an effective state coastal management program.

Part II of this document describes the laws, regulations, and programs that are the basis of the OCMP. Chapter 5 includes 41 policy statements and authorities, which set forth the goals of coastal management in Ohio, and various policies and authorities embodied in statute and regulations.

In 1988, the Ohio legislature enacted the Ohio Coastal Management Act, S.B. 70 (O.R.C. Chapter 1506) which provides a comprehensive framework for the OCMP and requires the Ohio Department of Natural Resources (ODNR) to identify and manage Lake Erie coastal erosion areas, implement the Lake Erie Access Plan, and administer the leasing of state submerged land. As a result, having significantly enhanced its management capability and having completed most of the development of the coastal erosion program, the state now seeks Federal approval of its program. This summary briefly describes the key aspects of the program and the benefits of participation in the Federal CZM program.

1. Program Authorities and Organization

The OCMP is a "networked" program made up of several Ohio natural resource protection and hazard management programs. The lead agency for implementing the program, as prescribed by the Ohio Coastal Management Act, is the ODNR. Within ODNR the Office of Coastal Management (OCM) has the lead for coordinating the programs of ODNR and other state agencies into a comprehensive CZM program. The organizational structure of the program and specific means of coordinating the various agencies included in the program are discussed in Chapter 4 of Part II.

State laws and regulations included in the OCMP are summarized in policy statements which are organized into nine issues listed below. Detailed descriptions of each policy, its underlying authority and implementation process are provided in Chapter 5 of Part II of this document.

Coastal Erosion and Flooding

The Ohio DNR is responsible for implementing a comprehensive coastal erosion and flood plain management program with the elements listed below. The ODNR is currently completing development of the erosion management program pursuant to changes to Chapter 1506 enacted in May 1994. This program is described in detail in Management Policies, Chapter 5 of Part II of this document. Maps delineating Lake Erie coastal erosion areas are currently available for public review. State statutory authorities require the DNR to:

- Delineate 30 year coastal erosion areas;

- Enforce rules regulating new structures in coastal erosion areas;
- Allow local authorities to adopt erosion area management regulations in compliance with state policies;
- Administer a permit system for erosion control structures;
- Provide technical assistance for erosion control projects and permit process standardization;
- Coordinate with the Army Corps of Engineers as provided for in the Rivers and Harbors Act of 1899;
- Enforce compliance by local governments with the National Flood Insurance Program (NFIP);
- Require that state agencies, in licensing and permitting, mandate compliance with the NFIP when their regulatory jurisdiction preempts local regulations, and prohibit financial disaster assistance within noncompliant counties and municipalities; and
- Regulate design and construction of dams, dikes and levees.

Water Quality

The Ohio Environmental Protection Agency (Ohio EPA) is responsible for implementing the state's water quality program. The objectives of this program are to:

- Assure attainment of State Water Quality Standards;
- Provide financial support for research and pollution abatement projects;
- Promote soil and water conservation and prevention of agricultural and urban sediment pollution in cooperation with ODNR; and
- Implement the Ohio Nonpoint Source Management program in cooperation with ODNR through a broad matrix of authorities.

Wetlands and other Ecologically Sensitive Resources

The ODNR and Ohio EPA share authority for protecting Ohio's coastal wetlands and other ecologically sensitive resources. The Ohio EPA regulates certain activities in wetlands through its state water quality laws, particularly through certification of federally-permitted and licensed activities pursuant to section 401 of the Clean Water Act. Ohio EPA's certification process includes a sequenced review which requires projects to avoid, minimize, and mitigate for any loss of wetlands. The ODNR also has authority to acquire, manage, and restore coastal wetlands. The programs require the state to:

- Regulate wetland development activities through section 401 certification of compliance with the State's water quality standards, including the antidegradation policy;
- Develop and maintain a statewide wetlands inventory and data base;
- Acquire, protect and restore coastal wetlands;
- Protect habitat of rare and endangered species;
- Restrict the taking and possession of threatened native animal species; and
- Restrict the taking, removal, transportation and sale of endangered or threatened native plant species.

Ports and Shoreline Development

The ODNR has broad authority to protect the public trust in Lake Erie waters and underlying lands through the submerged lands leasing program, submerged lands preserves, and permits for salvage and recovery of submerged abandoned property.

Recreation and Cultural Resources

The ODNR is responsible for implementing a comprehensive plan to improve public access to Lake Erie's shoreline and waters through the following principal programs:

- Protect public access rights through the submerged lands leasing program;
- Provide for public access within the state nature preserve system, state parks system and state wildlife areas;
- Prepare, maintain and update a Lake Erie public access facilities inventory; assess needs and prepare plans and policy recommendations to increase public access;
- Provide grants for public access improvements;
- Protect historically and archaeologically significant resources and abandoned submerged property;
- Regulate watercraft safety; and
- Require licensure of hunters, trappers and anglers and provide hunter and trapper education.

Fish and Wildlife Management

The ODNR is responsible for management of all commercial and non-commercial taking of fish and wildlife as well as the protection of non-game and endangered species. The ODNR is required to:

- Regulate the taking of fish and wildlife;
- Protect all wildlife including nongame and endangered species;
- Investigate water pollution, fish kills and stream litter; and
- Protect fish habitat.

Environmental Quality

The Ohio EPA implements a broad range of air quality, solid waste, and hazardous waste programs to protect Ohio's natural resources so as to:

- Attain and maintain National Ambient Air Quality Standards;
- Regulate hazardous, solid and infectious waste facilities;
- Enforce requirements of the Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and
- Establish long range solid and hazardous waste management plans and hazardous waste pollution prevention plans.

The Ohio Department of Health regulates marina construction. ODNR, Ohio EPA and other state

and local law enforcement officers prohibit the dumping of litter.

Energy and Mineral Resources

The ODNR implements management programs regarding oil and gas, and mineral development for Lake Erie as well as surface mining, while the Ohio Power Siting Board is responsible for the coordinated review of major energy facilities. Key authorities:

- Require certification of major utility facilities;
- Require 10-year demand, resource and site inventory forecasts for energy generation and transmission activities;
- Regulate oil and gas extraction;
- Regulate removal of minerals and other substances from Lake Erie and from under its lake bed; and
- Regulate permit issuance for surface mining.

Water Quantity

The ODNR implements several authorities that affect the withdrawal of waters from Lake Erie. These programs:

- Regulate water diversions from Lake Erie;
- Require large facilities to register capacity and submit annual withdrawal reports; and
- Develop a long-term water resources plan for the Lake Erie basin.

2. Boundary

The Ohio coastal area includes all of the waters of Lake Erie to the international boundary with Canada, the islands in the lake, the bed of the lake, and adjacent shorelands within Ohio. The inland coastal management boundary of the Ohio coastal area, which is described in Chapter 3 of Part II, includes all shorelands subject to erosion or flooding, estuarine areas and wetlands, and other areas the use of which may directly and significantly affect Lake Erie waters. The inland extent of the boundary varies based on the biogeographic features of the area. For example, the boundary extends inland approximately 16 miles along the Maumee River while in urban areas, the coastal boundary generally is less than a half mile from the shore. The inland boundary was developed based on substantial public input.

3. Geographic Areas of Particular Concern

The OCMP, based on a public participation process, has designated the following area as geographic areas of particular concern: critical fish habitat, ports and harbors, state nature preserves and wildlife areas, coastal erosion and flood hazard areas, public parks and access areas, wetlands, historic and archeological sites and those portions of Areas of Concern designated by the International Joint Commission that lie within the proposed OCMP management boundary. Seven specific areas are identified as Areas for Preservation and Restoration - these are primarily state nature preserves of exceptional value. The APR designation helps guide resource managers to restore or preserve the specific ecological, historic, or aesthetic values of these areas. These areas and a process for future designation of special management areas are described in Chapter 6 of Part II.

4. Other Special Planning Requirements of the CZMA

The CZMA requires that states specifically address the issue of shoreline erosion, shorefront access, and energy facility siting as part of program development. The OCMP responses to these requirements are found in Chapters 8, 9, and 10 of Part II.

B. Changes the Program Will Make

Existing state authorities will be used to implement and enforce the Ohio Coastal Management Program. The program will result in changes in the way coastal resources are managed in the state by requiring the ODNR to monitor all state actions which could affect coastal resources, and to resolve conflicts between state agency decisions and the provisions of the OCMP. The program will also enhance implementation of core programs addressing hazards, wetlands, and access.

Ohio's objective in developing a coastal management program is to establish a comprehensive, coordinated approach for the protection, preservation and orderly development of the state's coastal resources. Specific management activities, including the operation of Ohio's core regulatory programs, are conducted by a variety of individual agencies. This collection of individual activities is tied together into a comprehensive program or "network" by Ohio's coastal management law, O.R.C. 1506.03, which requires that all state agency projects and permits be consistent with the OCMP.

The Coastal Network section of the ODNR's Office of Coastal Management is the lead entity for reviewing state and Federal agency actions to ensure consistency with the OCMP. Chapter 4 of Part II of the document describes the procedures that OCM will use to implement state consistency requirements. These procedures include draft Memoranda of Understanding (MOU) between ODNR and several other state agencies. These MOUs provide that disagreements between agencies that cannot be resolved at the agency level will be referred to the governor for resolution. In addition, section 307 of the CZMA requires that Federal agency actions be consistent with the OCMP, once it is approved by OCRM. Chapter 7 of Part II describes how Ohio will implement the federal consistency provisions of the CZMA.

The CZMA provides incentives and a national direction to assist states in addressing coastal issues and problems. The following are the principal anticipated effects of Federal program approval:

- Federal section 306 grants estimated to total \$800,000 annually will be made to Ohio to assist in program implementation activities by the state and local entities; and
- State implementation of the Federal consistency provisions of the CZMA will ensure that Federal activities, federally licensed and permitted activities, and Federal assistance to state and local governments are consistent with the OCMP.

A more detailed description of the effects of federal approval of the OCMP is provided in Part III of this document.

C. The Federal Coastal Zone Management Act

In response to intense pressure on coastal resources, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act of 1972 as amended [CZMA], (16 USC 1451). The CZMA authorizes a Federal program to encourage coastal states and territories to develop comprehensive coastal management programs. The CZMA has been reauthorized on several occasions, most recently in 1996 with the enactment of the Coastal Zone Protection Act of 1996 (P.L. 104-150). The program is administered by the Secretary of Commerce, who in turn has delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service (NOS). Currently, 30 states and territories have coastal programs approved by the Assistant Administrator of the National Ocean Service.

The CZMA affirms the national interest in the effective protection and careful development of the coastal zone by providing assistance and encouragement to coastal states to voluntarily develop and implement management programs for their coastal areas. The CZMA authorizes financial assistance grants under section 305 for program development and section 306 for program implementation to provide coastal states and territories with the means for achieving these objectives. The Section 305 program development section was re-authorized by Congress in the 1990 amendments to the CZMA (P.L. 101-508, November 5, 1990) and in the 1996 amendments to the CZMA (P.L. 104-150, June 3, 1996). OCRM awarded the ODNR a section 305 grant of \$135,000 on October 1, 1992 to complete development of the OCMP, with subsequent grants of \$138,000 in 1993 and \$100,000 in 1995.

Sections 305, 306, and 307 of the CZMA and implementing regulations published on June 28, 1996, as codified at 15 CFR Part 923, provide the requirements and procedures for state management program development and Federal approval. In summary, the requirements for program approval are that a state develop a management program that among other things:

1. Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the state or territorial government;
2. Re-examines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive, and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;
3. Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. Uses and areas subject to management should be based on resource capability and suitability analyses and socio-economic considerations;
4. Identifies the inland and seaward areas subject to the management program;
5. Provides for consideration of the national interest in planning for the siting of facilities; and

6. Includes sufficient legal authorities and organizational structure to implement the program and to ensure conformance to it.

In arriving at these substantive aspects of the management program, states are obligated to follow an open process which involves providing information to and considering the interests of the general public, interest groups, local governments, and regional, state, interstate, and federal agencies.

Section 303 of the CZMA provides guidance on specific national objectives that warrant full consideration during the implementation of approved state coastal management programs.

Section 305 of the CZMA authorized four annual grants to states desiring to develop a coastal management program. After its management program receives federal approval, the state is then eligible for annual grants under section 306 to implement the program. Section 306A of the CZMA also provides that states may use a portion of their section 306 awards for low cost construction projects that result in the preservation of important natural areas, improved public access, or renewal of urban waterfronts.

Section 307 contains the Federal consistency provisions of the CZMA to ensure that Federal actions are consistent with the state's federally approved management program. Paragraphs (1) and (2) of section 307(c) require that Federal activities and development projects in or directly affecting the coastal zone be consistent to the maximum extent practicable with a federally approved state management program. Subparagraphs (A) and (B) of section 307(c) require that federally licensed and permitted activities affecting the coastal zone also are consistent with federally approved state management programs. Section 307(d) requires Federal assistance to state and local governments for projects affecting the coastal zone to be consistent with federally approved state management programs. Federal regulations implementing section 307 are found at 15 C.F.R. Part 930.

Section 309 establishes a coastal enhancement grant program. This section provides that a portion of section 306 funds is available to states to develop program changes which strengthen their CZM program's ability to address particular coastal issues. State efforts to seek such improvements are meant to focus on priorities based on a self-assessment of the nine objectives listed in section 309. These objectives include, among others, stronger wetland protection, improved management of coastal hazards and additional public access.

Section 312 directs the Secretary to evaluate the performance of state coastal management programs on a continuing basis. OCRM formally reviews the implementation of each state program on a three year cycle.

Section 315 establishes a National Estuarine Research Reserve System to preserve representative estuarine areas for long-term scientific and educational purposes. The Old Woman Creek National Estuarine Research Reserve, located east of Huron, Ohio, was designated in 1980.

The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) established a new Coastal Nonpoint Pollution Control Program (CNPC), in addition to updating the CZMA. The State of Ohio has agreed to submit its updated Nonpoint Source Management Program as the basis for an approvable CNPC to NOAA and U.S. EPA within 30 months of program approval (see Appendix J).

After Ohio submits its coastal nonpoint program, NOAA and EPA will make a final determination regarding its compliance with section 6217.

D. Cross Reference to Program Requirements

How the Ohio Coastal Management Program Meets the Requirements of the Coastal Zone Management Act:

<u>CZMA Section</u>	<u>Requirements</u>	<u>CZMA Approval Regulations (15 C.F.R. Section)</u>	<u>Program Document</u>
306(d)(1)	Full participation/program adequacy.....	923.3	Full document
306(d)(2)(A)	Boundaries.....	923.31 - 923.34	Ch. 3, App. A,B
306(d)(2)(B)	Uses subject to management.....	923.11	Ch. 4, 5
306(d)(2)(C)	Areas of particular concern.....	923.21, 923.22	Ch. 6
306(d)(2)(D)	Means of control.....	923.41	Ch. 4, 5
306(d)(2)(E)	Guidelines on priorities of uses...	923.21	Ch. 6
306(d)(2)(F)	Organizational structure.....	923.46	Ch. 4
306(d)(2)(G)	Shorefront planning process.....	923.24	Ch. 9
306(d)(2)(H)	Energy facility planning process...	923.13	Ch. 10
306(d)(2)(I)	Erosion planning process.....	923.25	Ch. 8
306(d)(3)(A)	Plan Coordination.....	923.56	Ch. 4, App. Q
306(d)(3)(B)	Continuing consultation mechanisms.....	923.57	Ch. 4, App. Q
306(d)(4)	Public Hearings.....	923.58	Ch. 2, App. Q
306(d)(5)	Gubernatorial review and approval	923.48	Part II (Gubernatorial Letter)
306(d)(6)	Designation of recipient agency....	923.47	Ch. 4
306(d)(7)	Organization.....	923.46	Ch. 4
306(d)(8)	Adequate consideration of national interests.....	923.52	Ch. 10, App. Q

306(d)(9)	Areas for preservation/restoration...	923.22	Ch. 6
306(d)(10)(A)	Administer regulations; control development; resolve conflicts.....	923.41	Ch. 4
306(d)(10)(B)	Powers of acquisition, if necessary	923.41	Ch. 5, 9, App.Q
306(d)(11)	Techniques of control.....	923.41 - 923.44	Ch. 4
306(d)(12)	Uses of regional benefit.....	923.12	App. Q
306(d)(13)	Inventory and designation of coastal resources of national significance and enforceable policies to protect such resources.....	No Regulations	Ch. 6
306(d)(14)	Public participation in permitting consistency and other similar decisions.....	No Regulations	Ch. 4, 7, App.Q
306(d)(15)	State agency adherence to program	No Regulations	Ch. 4
306(d)(16)	Enforceable policies to implement Coastal Nonpoint Source Program required by CZARA 6217.....	6217 Guidance issued Jan. 1993	Ch. 4, App. J
307(b)	Consideration of Federal agency views.....	923.51	App. Q
307(c)&(d)	Federal consistency procedures	923.53	Ch. 7
307(f)	Incorporation of Federal air and water quality standards.....	923.45	Ch. 5, App. Q