

FEDERAL CONSISTENCY AND THE COASTAL ZONE MANAGEMENT ACT:
THE 1990 AMENDMENTS AND THEIR AFFECT ON ALASKA

by

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Table of Contents

Acknowledgements	i
List of Figures	iii
List of Tables.	iv
List of Acronyms	v
Abstract	1
Introduction	1
The Federal Consistency Provision	3
Section 307 Language	3
Secretary of the Interior v. California	6
The 1990 Amendments	7
The Consistency Review Process	9
Alaska’s Coastal Management Program	12
Past CZMA Studies	14
Objectives	18
Methodology	18
Results	19
Discussion	25
Was there an increase in the overall number of reviews?	25
Did the geographic scope of reviews expand?	26
Was there a change in the types of activities reviewed?	27
Was there a change in the number of federal agencies involved in consistency reviews?.	29
Did the amendments affect consistency determinations?	30
Conclusions and directions for future study	31
References	33

List of Figures

Figures

- (1) Federal Consistency Review Process – Direct Federal Agency Activities10
- (2) Federal Consistency Review Process – Activities Requiring Federal License
or Permit & OCS Plans 11
- (3) ACMP Coastal Zone Boundary 13

List of Tables

Tables

(1)	1990 Section 307 Amendments – Geographic Scope	7
(2)	1990 Section 307 Amendments – Consistency Standard	8
(3)	Review Totals	19
(4)	Activity Types by Consistency Trigger	20
(5)	% of Permits and Licenses Involved in Reviewed Projects	21
(6)	Type of Activities Reviewed	22
(7)	Federal Agency Involvement - % of Overall Reviews	23
(8)	Decisions of Consistency Determinations	25

List of Acronyms

ACMP.....	Alaska Coastal Management Program
BIA.....	Bureau of Indian Affairs
BLM.....	Bureau of Land Management
COE.....	Army Corps of Engineers
CZMA.....	Coastal Zone Management Act
DGC.....	Division of Governmental Coordination
DOI.....	Department of the Interior
EPA.....	Environmental Protection Agency
FERC.....	Federal Energy Regulatory Commission
ICM.....	Integrated Coastal Management
MMS.....	Minerals Management Service
NOAA.....	National Oceanic and Atmospheric Administration
NPDES.....	National Pollution Discharge Elimination System
OCRM.....	Office of Coastal Resources Management
OCS.....	Outer Continental Shelf
OCSLA.....	Outer Continental Shelf Lands Act
USFS.....	United States Forest Service
USFWS.....	United States Fish & Wildlife Service

FEDERAL CONSISTENCY AND THE COASTAL ZONE MANAGEMENT ACT: THE 1990 AMENDMENTS AND THEIR AFFECT ON ALASKA

ABSTRACT: Under the Coastal Zone Management Act, participating states were given two incentives to design programs for managing their coastal resources. One of these incentives was “federal consistency” which allowed states to review either direct federal actions or projects involving federal licenses, permits, or funding for consistency with the state coastal management program. Debates over the consistency provision centered on the scope of what activities were eligible for review. In response to the 1984 Supreme Court decision, which implied that the ability of states to review activities outside of their designated coastal zone boundary was limited, Congress amended the CZMA, and in doing so potentially increased the geographic scope of reviews. This study examines the effects of these amendments on consistency reviews conducted by Alaska. The objectives of the study are to determine if the overall number of reviews changed, if the geographic scope of reviews was expanded, if there was a change in the types of activities reviewed, if the types of agencies involved were affected, and if there was any change in the state response to consistency determinations. Overall, the study found little evidence that the amendments had significant affects on state reviews of federal consistency determinations. While the questions raised in the study are still valid, several problems hampered the effectiveness of the study, in particular difficulties in attributing the cause of results and the lack of complete data.

Introduction

The Coastal Zone Management Act (CZMA), passed by Congress in 1972, outlined a broad set of national goals and objectives in an effort “to preserve, protect, develop, and where possible, to restore or enhance” coastal resources [16 U.S.C. § 1452 (1)]. Under the CZMA, each coastal state could design a program for the management of their coastal resources based on policy guidelines established by Congress and the federal Office of Coastal Resources Management (OCRM), a unit of the National Oceanic and Atmospheric Administration (NOAA). With state participation in the CZMA voluntary, Congress established two strong incentives for state involvement, the first in the form of federal funds to help create and

implement state programs. The second incentive, outlined in Section 307 of the CZMA and referred to as “federal consistency,” provided participating states with a mechanism for reviewing federal activities that affect resources within their coastal zone (Godschalk, 1991), a format that was unique in its state-federal cooperative structure (LaLonde, 1993).

Implementation of the federal consistency provision has been contentious, however, with disagreements between state and federal agencies, and between different departments at the federal level over the scope of activities subject to consistency review by the states (Eichenberg & Archer, 1987). Central in this debate were differing interpretations of the language used to define the geographic scope of the federal consistency provision.

In 1984, the Supreme Court addressed the problem, ultimately ruling in favor of a strict geographic interpretation of the “directly affecting” language used in Section 307. The implication of this decision was that the right of states to review activities located outside their coastal zone was limited. In response, Congress amended Section 307 in 1990, with the intent of reversing the Supreme Court decision and reaffirming the rights of states to review activities located outside their approved coastal zone if resources in the coastal zone are affected (Kalo, Hildreth, Rieser, Christie, & Jacobson, 1999).

This study will examine the affect of this amendment on federal consistency reviews conducted by the state of Alaska. The comparison will focus on the location and type of activities reviewed and addresses the following questions: 1) Was there a change in the overall number of reviews? 2) Did the geographic scope of reviews expand? 3) Was there a change in the types of activities reviewed? 4) Was there a change in the number of federal agencies involved in consistency reviews? and 5) Did the amendments affect state concurrence with consistency determinations?

The strong federal presence in Alaska makes it an excellent choice as the study site. The federal government owns and manages large tracts of land in Alaska, roughly 60 percent of land in the coastal region (Gallagher, 1990), and consequently, yields incredible influence over the management of its coastal resources. Oil, timber, minerals, and several important fisheries are all found within Alaska's coastal zone. These resources are of great importance to the federal agencies who have jurisdiction over their management, to the state government of Alaska, which relies on their development to provide revenue for the state, and to the local communities for whom these resources offer employment, recreational, and subsistence opportunities (Gallagher, 1990). It is unlikely that there is another coastal state that must interact as often and extensively with the federal government as does Alaska, or that has a greater percentage of its coastline controlled by federal agencies. The federal consistency provision thus provides the state with an important tool to ensure that the goals and policies of the Alaska Coastal Management Program (ACMP) are met.

The first half of this paper discusses the history of the federal consistency provision, including a review of past CZMA studies, an examination of the ACMP and why Alaska was chosen as the as the subject for this study, a statement of the research objectives, and the methodology used. The second half of the paper contains the study results, a discussion of the results, and concludes with consideration of the problems encountered in the study and the potential for future research on this topic.

The Federal Consistency Provision

Section 307 Language

In the original version of the CZMA, upon approval of a state coastal program by the Secretary of Commerce, any federal agency "conducting or supporting activities directly

affecting the coastal zone” was required to do so “in a manner which is, to the maximum extent practicable, consistent with approved state management programs” [16 U.S.C. § 1456 (c)(1)]. In addition, any federal “development project in the coastal zone” needed to meet this same standard of consistency with the state coastal management program [§ 1456 (c)(2)].

The CZMA further required that any activity needing a federal license or permit that is “affecting land or water uses in the coastal zone” be “conducted in a manner consistent with approved state management programs” [§ 1456 (c)(3)] (Kalo et al., 1999). The federal consistency provision also addressed the granting of federal assistance to state and local governments in Section 307 (d), stating that a federal agency “shall not approve proposed projects that are inconsistent with a coastal state’s management program.”

For the purposes of the CZMA, the “coastal zone” was defined as:

“the coastal waters (including the lands therein and thereunder) and the adjacent shorelands... strongly influenced by each other... The zone extends ...seaward to the outer limit of State title and ownership under the Submerged Lands Act...The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters...Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents” [§ 1453 (1)] (Christie & Hildreth, 1999).

Each state determined the boundary of its respective coastal zone, extending it seaward three nautical miles from the shoreline and a variable distance inland¹. According to the CZMA,

¹ The lone exception to this is Florida, whose Gulf of Mexico seaward boundary extends out nine miles (Kalo et al. 1999). The inland boundaries of the coastal zone for each state varies, such as Hawaii’s inclusion of the entire state in the coastal zone, California’s 1000 yard coastal strip, and North Carolina’s coastal zone boundary that includes all counties that are adjacent to the shoreline (Christie & Hildreth, 1999).

federal land could not be included in the state coastal zone, although it might be subsumed by the coastal boundary. Despite the exclusion of federal lands from the coastal zone, federal management of these lands was still subject to state regulations outlined in the state coastal management program (Christie & Hildreth, 1999). This meant that federal activities occurring outside the coastal boundary could be reviewed for consistency if they affected resources within the coastal zone.

Through the federal consistency provision, Congress intended to give states more control over federal activities occurring along their coasts (Eichenberg & Archer, 1987). While there is some indication that the provision successfully coordinated state and federal management of coastal areas and resources (Lowry, Jarman, & Machida, 1993), federal consistency has been quite controversial. There have been disagreements among agencies at the state and federal level, as well as between individual federal agencies, most notably the Department of the Interior (DOI), Department of Justice, and the CZMA's administrative agency NOAA, over differing interpretations of the type and location of activities that were subject to review (Eichenberg & Archer, 1987).

These differences were highlighted in the early 1980's by DOI plans for the sale of Outer Continental Shelf (OCS) oil leases off the California coast. The Outer Continental Shelf Lands Act of 1953 (OCSLA) defined the OCS as the submerged lands beyond the three-mile state waters "and of which the subsoil and seabed (belong) to the United States and are subject to its jurisdiction and control," an area that extended to a sea depth of 600 feet, as agreed upon internationally (Kalo et al., 1999). The OCSLA established the DOI as the agency responsible for management of OCS resources, and authorized the Secretary of the Interior, through the

Minerals Management Service (MMS), to lease tracts of land for oil and gas development (Kalo et al., 1999).

Secretary of the Interior v. California

In the early 1980's, the MMS proposed plans to hold lease sales of OCS tracts for oil and gas development off the coast of California. The state of California argued that these plans required that the MMS make a consistency determination, thus allowing the state to review the action, even though the lease sales were located outside the state coastal zone (Kalo et al., 1999). The DOI countered that lease sales did not meet the "directly affecting" criteria established by Section 307 for implementing the federal consistency provision (Eichenberg & Archer, 1987). When mediation failed to resolve the conflict, litigation ensued, with the issue ultimately argued in the Supreme Court in 1984. In the case of Secretary of the Interior v. California, a 5-4 majority ruled that OCS lease sales were not subject to consistency reviews because they were located outside the state coastal zone.

Although the Court acknowledged that this opinion held only for OCS oil and gas lease sales, the decision had the effect of advocating a strict interpretation of the "directly affecting" language used in Section 307. The Court's decision implied that only actions occurring within the identified "coastal zone" were subject to review, thus narrowing the geographic scope of the federal consistency provision. This led proponents of state control over coastal resources to worry that the ruling could potentially be applied by other federal agencies interested in limiting the consistency review process (NOAA, 2000).

In response to the Supreme Court decision, Congress amended Section 307 (c) (1)(A) in 1990, in effect, reversing the impact of the Court's 1984 decision. The intent of Congress was to ensure that all activities affecting resources within the coastal zone, including those with direct,

cumulative, or secondary effects, would be subject to review regardless of the location of the activity (NOAA, 2000).

The 1990 Amendments

In the 1990 amendments, federal activities requiring a consistency determination were defined as any activity “within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone,” a change from the initial “directly affecting the coastal zone” language (Table 1). The amendments also redefined which federally licensed or permitted activities were subject to the federal consistency provision, from those “affecting land or water uses in the coastal zone” to activities “in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone” (Table 1).

Table 1
1990 Section 307 Amendments – Geographic Scope

Federal Action	Original 1972 Language	1990 Amended Language
Direct Federal Activity and Development Projects Sect. 307 (c) (1)-(2)	“directly affecting the coastal zone”	“within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone”
Federally Licensed and Permitted Activities Sect. 307 (c) (3)(A)	“affecting land or water uses in the coastal zone”	“in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone”
OCS Exploration and Development Plans Sect. 307 (c) (3)(B)	No direct reference to OCS activities is made	“affecting any land use or water use or natural resource of the coastal zone”

Source: (Kalo, Hildreth, Rieser, Christie, & Jacobson, 1994)

With the 1990 amendments, Congress left no doubt that OCS activities, including leasing, were subject to consistency review, stating that, “any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act” must be consistent with the states coastal management program [Section 307 (c) (3)(B)].

The 1990 amendments also changed the consistency standard for the review of activities, from those that are “consistent with approved state management programs” to activities that are consistent “with the enforceable policies of approved State management programs” (Table 2). For these purposes, NOAA defined “enforceable policies as “State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private Section and public land and water uses and natural resources in the coastal zone” (NOAA, 2000). This definition specifically excludes any state coastal management program goals from being held as a standard for consistency.

Table 2
1990 Section 307 Amendments – Consistency Standard

Federal Action	Original 1972 Language	1990 Amended Language
Direct Federal Activity Sect. 307 (c) (1)–(2)	“to the maximum extent practicable, consistent with approved state management programs”	“consistent to the maximum extent practicable with the enforceable policies of approved State management programs”
Federally Licensed and Permitted Activities Sect. 307 (c) (3)(A)	“complies with the state’s approved program and that such activity will be conducted in a manner consistent with the program”	“complies with the enforceable policies of the state’s approved program”
OCS Exploration and Development Plans Sect. 307 (c) (3)(B)	No direct reference to OCS activities is made	“complies with the enforceable policies of such state’s approved management program”

Source: (Kalo, Hildreth, Rieser, Christie, & Jacobson, 1994)

While the amendments redefined the geographic scope of the federal consistency provision, potentially expanding the number of projects that are eligible for review, the inclusion of “the enforceable policies” standard could result in restricting the type of activities in which the federal consistency provision might be applied (Lowry et al., 1993).

The Consistency Review Process

The consistency review process varies depending upon who is initiating the activity. In direct federal actions (Figure 1), the agency proposing the activity is responsible for determining if its action is consistent with the state program. For those projects requiring federal permits and licenses, the project applicant is required to make a statement indicating that the project is consistent with the state coastal program (Figure 2). Under both scenarios, the affected state reviews the project or activity, and may then either concur with or object to the consistency determination.

For all reviews, regardless of the role of the federal agency involved, if the state concurs with the determination, the project may proceed and relevant federal permits and licenses may be issued. If upon review, the state objects to the determination, there are several alternative scenarios. If the determination is for a direct federal action, such as an Army Corps of Engineers (COE) harbor dredging project, the agency may go ahead with the activity, but must provide the state with a statement outlining why the project is consistent with the state coastal management program (NOAA, 2002). In instances where disagreements occur over the consistency determination, informal talks are encouraged to work out differences. If these fail, disputes may be resolved through mediation, supervised by the Secretary of Commerce, or by an appeal to the Secretary of Commerce. Ultimately, the state may have to pursue litigation in an effort to stop the activity (Eichenberg & Archer, 1987).

The state has more power to stop projects that require federal licenses or permits. If the state objects to the statement of consistency made by the applicant, any federal licenses or permits may not be issued, effectively stopping the activity. In this case, the applicant may pursue mediation, appeal, or litigation in an effort to demonstrate consistency with the state program.

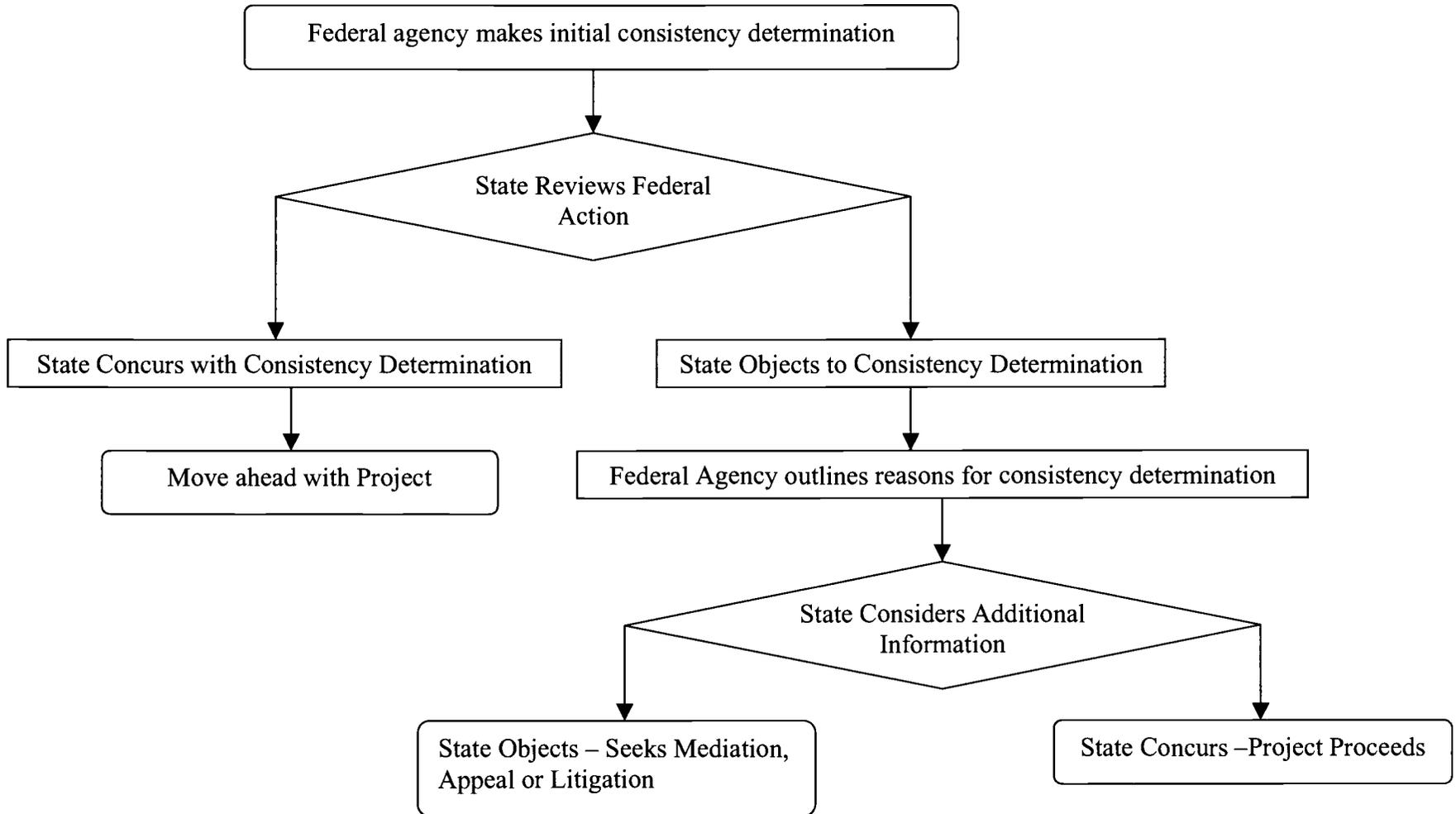


Figure 1 - Federal Consistency Review Process - Direct Federal Agency Activities

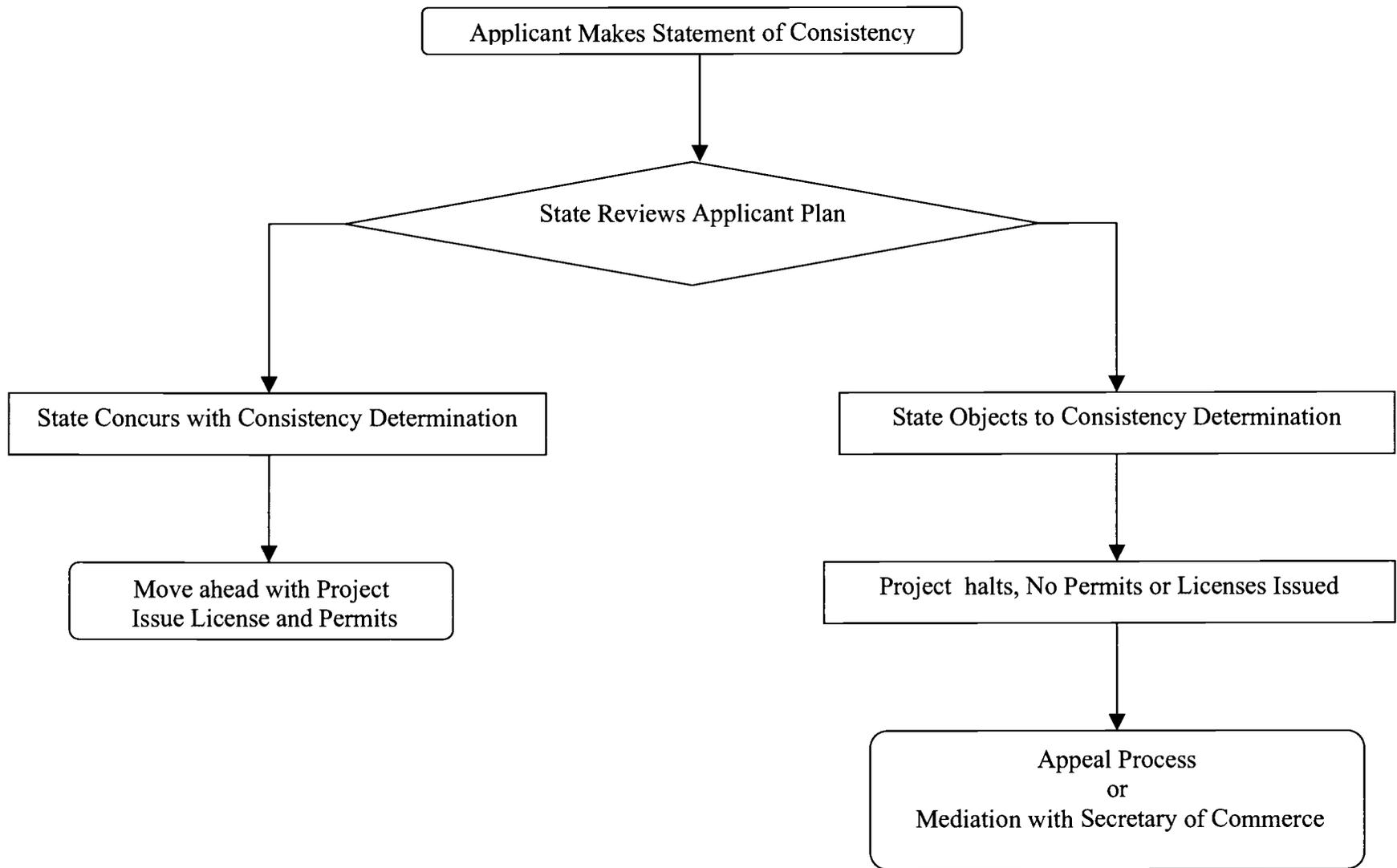


Figure 2 - Federal Consistency Review Process – Activities Requiring Federal License or Permit & OCS Plans

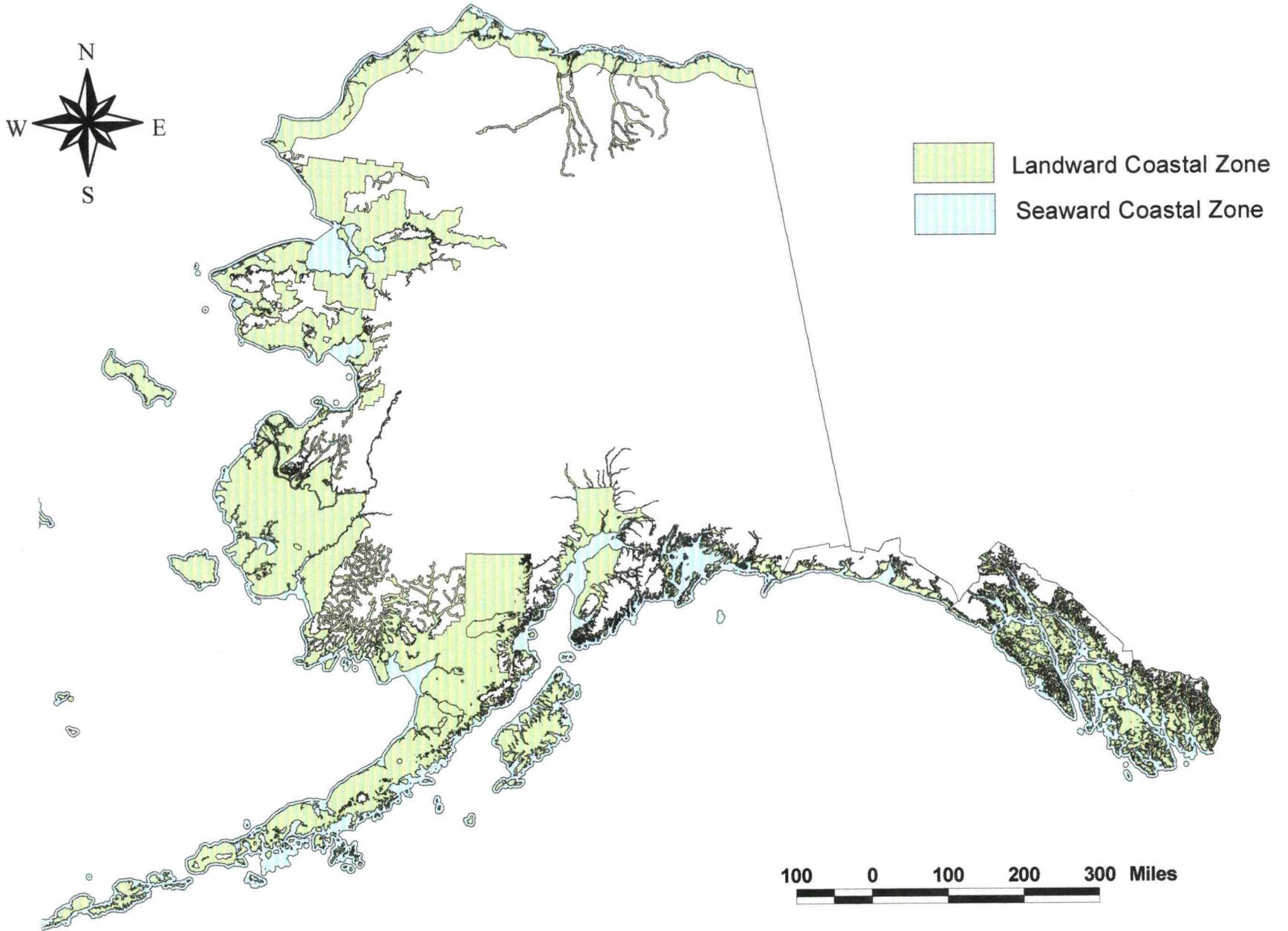
Alaska's Coastal Management Program

Alaska has over 33,000 miles of coastline, ranging from the arctic coastal plains in the far north to the temperate rainforests in the southeastern portion of the state. The coastal areas are of critical importance to the character of the state, providing employment, revenue, and cultural opportunities. The majority of the population, approximately 74% in 2000 (OCRM, 2002), lives in coastal communities. Many of the most important economic activities in Alaska, such as fishing, oil and gas production, timber harvesting, and tourism, are located in the coastal zone.

The CZMA mandates that each participating state designates the coastal zone boundary according to the definition outlined in the Section 304 (1), with the seaward boundary set as the limit of state waters, 3 miles in the case of Alaska. In creating the inland boundary of Alaska's coastal zone, the state government made a concerted effort to address the biological and physical factors and characteristics of the state, and examine the "general relationships between the marine environment and the terrestrial environment." In particular, the state focused on the "geophysical relationships" and "biological links" between these two environments (State of Alaska, 1979). The result is that Alaska has an extensive coastal zone, reaching as much as 200 miles inland from the coastline, and extending up most major rivers (Figure 3).

Alaska uses a "networked" approach to coastal management, with one state agency in charge of administering the ACMP, but the responsibility for planning, development, and implementation of the program residing with each of the 35 local districts (State of Alaska, 1979). Districts aligned with incorporated cities and boroughs are classified as Coastal Resource Districts, while unincorporated regions are called Coastal Resource Service Areas. The lead agency in charge of administering the ACMP is the Division of Governmental Coordination (DGC), which is responsible for carrying out the guidelines and criteria designed by the Coastal

Figure 3 - ACMP Coastal Zone Boundary



Policy Council and, since its inception in 1984, for reviewing all federal consistency determinations. The DGC is also responsible for reviewing the local coastal district's management programs to ensure that they are consistent with ACMP policies. Under the ACMP, all state agencies are also required to comply with ACMP policies, with enforcement taking the shape of a state consistency review (as opposed to Federal) performed by the DGC.

Past CZMA Studies

One of the goals of this study is to provide information for use in evaluating the CZMA. Evaluations provide an opportunity to examine how well a program is meeting its goals and objectives. Patton (1997) defines evaluation as “the systematic collection of information about the activities, characteristics and outcomes of programs to make judgements about the program, improve program effectiveness, and/or inform decisions about future programming.” An important factor in the success of any evaluation is the quality of the information available. According to Colt (1994), a comprehensive evaluation “seeks to verify the actual outcomes of particular management actions and to generate insight into how particular management reforms will enhance the attainment of management goals.” Problems related to evaluating programs are highlighted by the difficulty in determining what is the “outcome” of the actions taken, with “informational uncertainties” leading the evaluator to rely on “qualitative perceptions” that cannot be directly tested.

Several researchers have studied the use of evaluations to examine the success of Integrated Coastal Management (ICM) programs. The need to create a framework for conducting evaluations is discussed by Olsen, Tobey, and Kerr (1997), who quote the International Group of Experts on the Scientific Aspects of Marine Environmental Protection, “(W)hen an evaluative framework is in place it will be possible to document trends, identify their likely causes and

objectively estimate the relative contributions of ICM programs to observed social and environmental change.”

Since its passage in 1972, there have been several efforts to examine the CZMA. While each study has addressed a different aspect of the CZMA, certain themes are repeated, including difficulties in attributing results, the reliance on qualitative data, and the challenges of determining program outcomes.

The CZMA allows for latitude in how each state creates the framework to implement its goals and policies. One option for states is to establish a networked system using existing agencies under the lead of a single coordinating agency to administer the coastal program, as is the case in Alaska. Born and Miller (1988) studied the effectiveness of using the network system to achieve CZMA goals using both interviews and examination of written records. Focusing on “substantive coastal outcomes and desired institutional changes” they reported that networked systems were effective management frameworks, although, they suffered to a greater degree from the problem of attributing program successes and had more problems with interagency coordination than other systems.

Gallagher (1990) conducted a detailed study of one networked program, examining Alaska’s consistency review process. Gallagher outlined the history of poor communication between agencies responsible for reviewing and granting permits for coastal activities, and the state’s attempt to streamline the process under the DGC. He examined data on consistency reviews to determine types and percentages of activities reviewed and to quantify the number of projects found to be consistent with the ACMP. Gallagher also used surveys of permit applicants and government representatives to evaluate perceptions of the review process and to offer opportunities for comment on ways for improvement.

Lowry, Jarman, and Machida (1993) examined the federal consistency provision of the CZMA by surveying state coastal officials about the effectiveness of consistency reviews. Coastal areas are the site of a variety of resource uses, not all of which are compatible, often resulting in conflict between government agencies at all levels due to overlapping jurisdiction. One of the goals of the CZMA was to create a framework for encouraging cooperation and coordination between the different agencies and government levels responsible for coastal management. The federal consistency provision offered states the opportunity for greater input and control over decisions regarding federal activities that affect their coastal resources.

Despite the potential of the consistency provision to influence federal activity, Lowry et al. found that, “(A)lthough much has been written about the federal consistency process, almost no empirical analysis has been done on the program.” They cite a 1985 report produced by the OCRM, finding that not withstanding its length and “substantial amount of descriptive data” the “report contains little analysis of these data and no conclusions or recommendation.”

Comparing data from the OCRM report with data gathered in their survey, Lowry et al. quantified consistency reviews by state, the type of activity, and the consistency determination. Their study found that while states concurred with the consistency determinations in over 90 percent of the reviews, many of these decisions had stipulations attached. They identified two types of conflict, those related to “policy” and those involving “location-specific” conditions. They concluded that their survey data combined with the limited amount of litigation related to its implementation, “attests to the efficacy of the consistency provision as a tool in defining federal and state roles in coastal management.” The authors highlight the potential for further study of the issue, stating, “Time will tell whether the 1990 amendments will be equally successful.”

While evaluation is a key element for the successful implementation of any program, Knecht, Cicin-Sain, and Fisk (1996) state that it is even more critical for “programs based on new concepts and programs seeking to address new problems or to use new approaches.” Despite being such a program, there has been insufficient evaluation of the CZMA and state programs established to implement its goals and policies. Knecht et al. believe this lack of CZMA assessment is in part due to four problems identified as the “federalist problem,” “process versus substance problem,” the “lack of outcome-related information and data,” and the “attribution problem.” In their study, they use a survey of managers, stakeholders, and academics to examine perceptions on CZMA effectiveness, acknowledging their choice in methodology is in part a response to “the absence of substantive indicators of program performance.”

In a paper outlining a methodology for conducting CZMA effectiveness studies, Hershman et al. (1999) discuss the usefulness of program evaluations as tools for gauging success and providing information for program improvement. Their evaluation model focused on a “review of the processes *and outcomes* of all approved state coastal programs.” Their study “strove to be a truly ‘systematic’ study, a key requirement for program evaluation” by using similar methodologies while examining all state programs. An important part of an effective evaluation methodology is clearly defining terms, which facilitates the sharing of information and allowing researchers to make state-to-state comparisons. A survey of state CZM program managers conducted as part of the study found that “there was a plea for elevated attention by the national program office to the importance of the federal consistency rules so that state programs would have greater leverage over federal activities and permitting functions.”

Objectives:

The main objective of the study is to examine the impacts of the 1990 amendments to Section 307 of the Coastal Zone Management Act on the ACMP's federal consistency reviews. Specific questions addressed in this study are:

1. Did the total number of reviews increase?
2. Have the 1990 amendments resulted in a change in the geographic scope of activities reviewed by the state of Alaska?
3. How has the type of activities reviewed been affected? Are there more types of activities reviewed? Have the types of activities reviewed changed?
4. Have the number and type of federal agencies involved in reviewed activities changed?
5. Did the amendments affect state concurrence with consistency determinations?

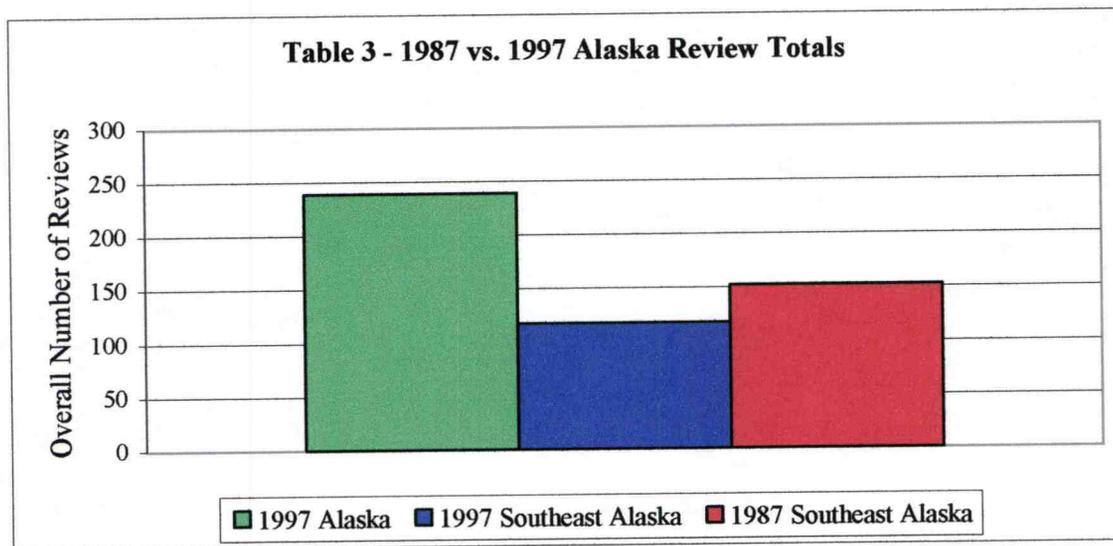
Methodology

Three databases were created using federal consistency review information from the DGC. The first database focused on reviews conducted in the southeast region of Alaska, for the calendar year 1987, with the second containing data for southeast Alaska in 1997. The last database was composed of review information for the entire state, from the 1997 calendar year. 1987 was chosen because it predates the 1990 CZMA Section 307 amendments, but not the 1984 establishment of the DGC as the agency in charge of consistency reviews, nor the 1984 Supreme Court decision in *Secretary of the Interior v. California*. The choice of 1987 is also an effort to be consistent with Gallagher's study (1990) on the Alaska consistency review process. The decision to use 1997 was based on its post amendment status, and the availability of data from the DGC.

Each database included information on the project title, DGC review number, project location, type of activity as classified by the DGC, the federal agencies involved, and the DGC decision on the consistency determination. This information was then used to create tables highlighting the comparison between the three databases, from which to address the study's objectives. The impact on the geographic scope of reviews was determined by plotting the location of each review on an ArcView GIS coverage of Alaska containing the coastal zone boundary, and identifying which projects were located outside the coastal zone.

Results

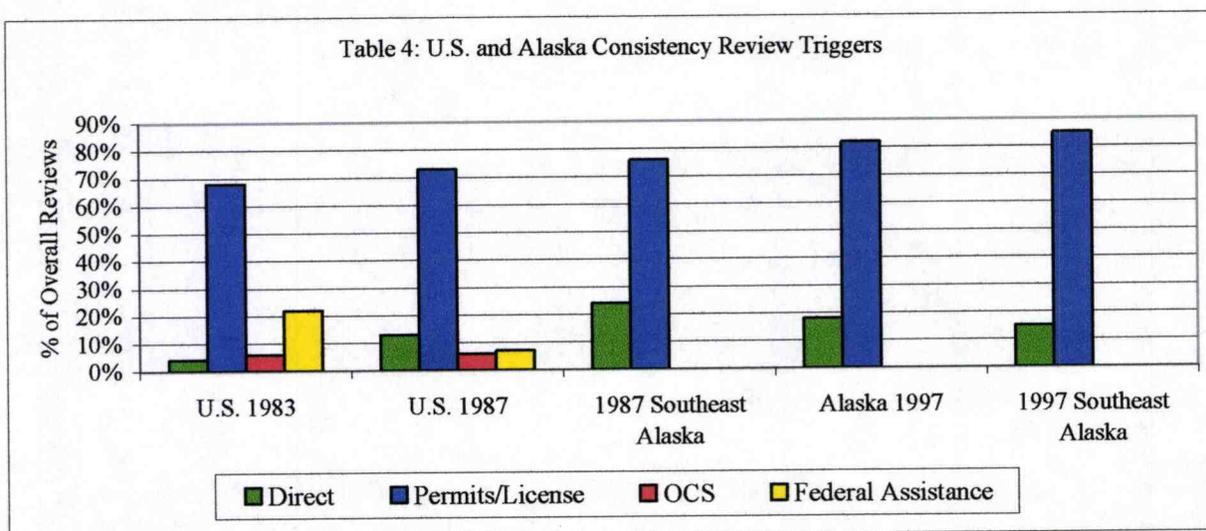
In 1997, the DGC performed federal consistency reviews on 239 projects located throughout Alaska. Of these 239, 118 reviews were conducted for activities occurring in the Southeast portion of the state, a decrease of over 20%, from the 152 reviews the DGC performed on projects in Southeast Alaska in 1987 (Table 3).



For the three sets of reviews examined in the study, only one project occurred outside of the state coastal boundary; an OCS oil and gas exploration well located on the North Slope and

reviewed in 1997. All of the other projects reviewed for federal consistency were located within the state's coastal zone.

Most reviews were initiated as the result of the applicant receiving a federal license or permit. This was the case in 82% of the projects reviewed in 1997 for the entire state, 85% of the 1997 southeast region reviews, and 76% of the 1987 southeast Alaska reviews. The number of federal consistency reviews triggered by direct federal agency activities was far fewer, ranging from 15% for 1997 southeast region reviews, to 24% for the 1987 reviews (Table 4).



U.S. 1983 data from OCRM (1985)

U.S. 1987 data from Lowry, Jarman, Machida (1993)

OCS = Outer Continental Shelf Permits

In all, there were 14 different types of permits or licenses issued for projects reviewed in 1997, nine for projects reviewed in the southeast region in 1997, and five types issued for projects reviewed in southeast Alaska in 1987 (Table 5). The majority of these projects, over 90% for each study group, required COE authorization, primarily through the issuance of Section 10 and/or Section 404 permits. In Section 10 of the Rivers and Harbors Act of 1899, the COE was given regulatory authority over all construction along the navigable waterways of the U.S. Under the authority granted to them in Section 404 of the 1972 Clean Water Act (CWA), the

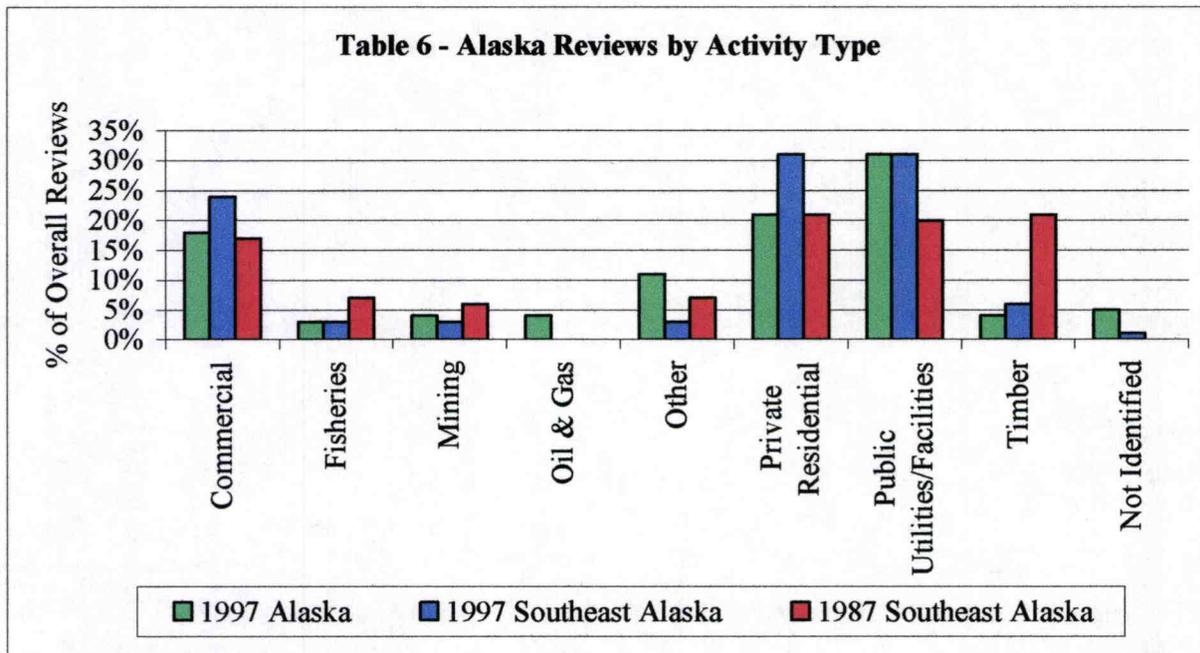
COE regulates the discharge of dredged or fill material in U.S. waters, which for the purpose of the CWA, includes wetlands (Kalo et al., 1999).

Table 5 - % of Permits and Licenses Involved in Reviewed Projects*

Year	Permit/License	%
1997 Alaska	COE - Section 404	45%
	COE - Section 10	36%
	COE - General Permit	10%
	EPA - National Pollutant Discharge Elimination System	2%
	USFS - Special Use Permit	2%
	BLM - Geophysical Exploration Permit	1%
	BLM - Permit to Drill	<1%
	BLM - Plan Operation Approval	1%
	BLM - Right of Way	1%
	BIA - Right of Entry	<1%
	FERC - Hydroelectric License	1%
	USFWS - Special Use Permit	<1%
	MMS - Exploration Plan	<1%
	USFS - Plan of Operations	<1%
1997 Southeast Alaska	COE - Section 10	44%
	COE - Section 404	37%
	COE - General Permit	11%
	USFS - Special Use Permit	3%
	BLM - Plan Operation Approval	1%
	BLM - Right of Way	1%
	EPA - National Pollutant Discharge Elimination System	1%
	FERC - Hydroelectric License	1%
	USFS - Plan of Operations	1%
	1987 Southeast Alaska	COE - Section 10
COE - Section 404		23%
EPA - National Pollutant Discharge Elimination System		7%
BLM - Plan Operation Approval		1%
BLM - Right of Way		1%

**Percentages based on the total of reviewed projects that required permits or licenses only*

The DGC classifies each reviewed project according to its type of activity. The results for the three study groups are similar in most respects (Table 6), although there are several categories of particular interest. The most striking of these is the dramatic decrease, from 1987 to 1997, in the percentage of timber-related projects located in southeast Alaska. In 1987, 21% of the projects reviewed were classified as timber activities, a number that decreased to only 6% in 1997.



1997 Alaska data is for federal reviews only – 239 total
 1997 Southeast Alaska data is for federal reviews only – 118 total
 1987 Southeast Alaska data is for federal reviews only – 152 total

While the southeast region had less timber related projects in 1997, there were significantly higher percentages of commercial, residential, and public facilities and utilities projects. In 1997, 31% of the reviews throughout the entire state and the southeast region were for public utilities and facilities projects, in contrast to only 20% for southeast Alaska in 1987. The 1997 southeast Alaska data stands out as well, because of the high percentage of reviews for commercial and residential projects. Combined, these three activities comprised 86% of the reviews undertaken in the southeast in 1997, compared with 70% for the entire state in 1997, and 58 percent for southeast Alaska in 1987.

Also of interest, albeit to a lesser degree, is the absence of any oil and gas projects in southeast Alaska for both 1987 and 1997, although this is to be expected given the lack of these resources in the region.

Table 7 – Federal Agency Involvement - % of Overall Reviews

Agencies Involved	1997 Alaska	1997 Southeast Alaska	1987 Southeast Alaska
Army Corps of Engineers	91%	97%	80%
US Forest Service	9%	15%	11%
Bureau of Land Management	3%	3%	2%
EPA	2%	3%	8%
Bureau of Indian Affairs	1%	0%	2%
Federal Aviation Admin.	1%	1%	0%
FERC	1%	1%	0%
US Air Force	1%	0%	0%
US Fish & Wildlife Service	1%	0%	0%
National Marine Fisheries Service	0%	0%	1%
National Park Service	0%	0%	1%
US Bureau of Mines	0%	0%	4%
US Coast Guard	0%	0%	2%
USGS	0%	0%	1%
Federal Highway Admin.	<1%	1%	1%
MMS	<1%	0%	0%
US Dept. of Defense	<1%	0%	0%
US Dept. of Energy	<1%	0%	0%
US Postal Service	<1%	0%	0%
US Public Health Service	<1%	1%	0%
Total	15	8	11

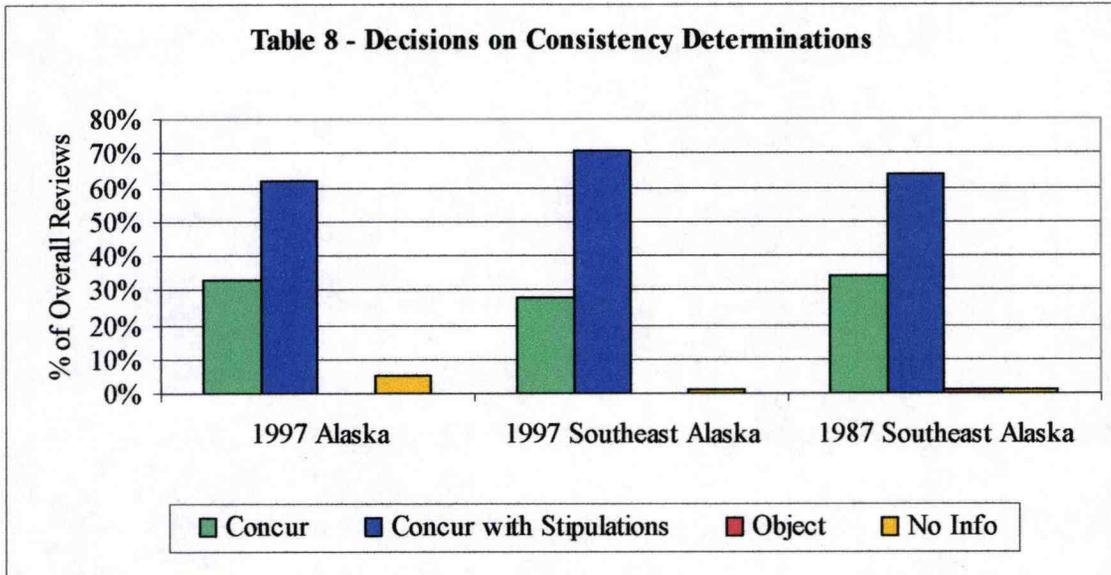
In 1997, the 239 projects reviewed throughout the state had 15 federal agencies represented either as applicants or as regulatory authorities responsible for issuing permits or licenses (Table 7). The COE was involved in 91% of the projects reviewed, by far the highest percentage, followed by the U.S. Forest Service (USFS), with 9%. Of the remaining 13 agencies, none were represented in more than three percent of the reviewed projects. The southeast Alaska data for

1987 and 1997 showed a slight decrease in agencies represented, from 11 in 1987 to eight in 1997. The COE was again the federal agency most frequently involved in reviewed projects, with 80% of the 1987 projects and 97% of the 1997 projects, while the Forest Service was second with 11% and 15% respectively.

The main role of the federal consistency provision is to ensure that federal actions are consistent with state management goals. The study indicates that an overwhelming number of reviewed projects were consistent with the ACMP. In only one case did the state object to the consistency determination, for a 1987 project requiring a Section 10 COE permit in southeast Alaska. For the rest of the projects, the DGC concurred with the consistency determination made by either the federal agency or applicant initiating the activity.

Roughly one-third of all reviews resulted in the DGC agreeing that the activity, as planned, was consistent with the state coastal management program (Table 8). In the remaining two-thirds of the reviews, this concurrence was based on the applicant meeting certain stipulations. This ratio held for each data set, and generally, all the activity types. The most noticeable exception to this was timber projects, where stipulations were placed on only one-half of the reviewed projects.

Of note is the lack of consistency determination information for five percent of the reviews conducted in 1997. While it is not likely that the availability of this information would significantly change the ratio of “consistent” to “consistent with stipulations” determinations, it is possible that the state may have objected to some of these projects.



Discussion

Was there an increase in the overall number of reviews?

The data for southeast Alaska in 1987 and 1997 provides the best comparison of any change in the overall number of reviews performed by the DGC. There is a notable difference between the two years, with 1987 having roughly 29% more reviews than 1997. At first glance, this would seem to lead to the conclusion that the 1990 amendments had the effect of decreasing the number of projects reviewed. It is more likely that this decrease is the result of yearly fluctuations in the number of projects proposed, resulting from factors such as a changing economy, shifts in resource management policies and priorities, and population changes.

According to Valentine (1994), the overall number of consistency reviews, both state and federal, conducted for each fiscal year between 1989 and 1993 for southeast Alaska, averaged 122, with a high of 159 in 1991 and a low of 104 in 1992. Lorraine Marshall, DGC Project Review Coordinator in Juneau, estimates that over 80% of all consistency reviews are federal, while the number for 1997 was 90%. Using 85% as a guide, these numbers adjust to an average

of 104 federal consistency reviews per year with a high of 135 and a low of 88. In this context, the number of federal reviews undertaken in 1987 and 1997 are consistent with Valentine's data.

Examining timber activity provides an example of how changes in the economy and resource management can influence the number of consistency reviews for a given year. In 1987, the DGC reviewed 32 timber-related projects in southeast Alaska, a number that dropped to 7 in 1997. Much of this drop can be explained by the significant decrease in the amount of yearly timber harvests beginning in the early 1990's, a result of changing Forest Service policies and the closure of area pulp mills in 1994 and 1997 (Allen, Robertson, & Schaefers, 1998).

This highlights one of the problems encountered in this study, the difficulty in assigning causation. This is compounded by the lack of data for DGC reviews of projects located throughout the state in the year 1987. Difficulties with attribution and data availability are not unique to this study, but have been cited in past CZMA research (Born and Miller, 1988; Colt 1994; Knecht, Cicin-Sain, and Fisk, 1996) as major problems confronting any study examining the results achieved by coastal management programs.

Did the geographic scope of reviews expand?

When examining the results, evidence that the 1990 amendments affected the geographic scope of projects reviewed by the DGC for consistency with the ACMP cannot be determined. Only one reviewed project was located outside the Alaska coastal zone, an oil and gas exploration well in OCS waters on the North Slope near Prudhoe Bay. The right of states to review the exploration and development of OCS oil and gas was not immediately restricted by the Supreme Court ruling in *Secretary of the Interior v. California*. The intent of Congress in amending the CZMA in 1990 was to clarify and reaffirm the right of states to review federal activities located outside of the state coastal zone if they affect resources in the coastal zone,

including MMS plans for lease sales (NOAA, 2000). The lack of information on reviews of projects located throughout the entire state of Alaska in 1987 makes any analysis of the impacts of the 1990 amendments impossible.

A discussion of the geographic scope of consistency reviews must include an examination of Alaska's coastal boundary. The state created its boundary based on the interactions between the physical and biological features found throughout the state, despite the difficulties inherent in performing such a task, given the 33,000 miles of coastline in question (State of Alaska, 1979). The result is that Alaska has an extensive coastal zone, reaching as much as 200 miles inland from the coastline, and extending up most major rivers. By creating a coastal zone that accounted for the biological and physical relationships between the inland and ocean regions, the state succeeded in addressing the needs of coastal resources and ensuring that most activities affecting those resources would be located within the coastal zone.

Was there a change in the types of activities reviewed?

Any impact the 1990 amendments might have on the types of reviewed activities would be indicated by changes in either the type of projects, as classified by the DGC, or the type of permits and licenses involved. Given the lack of data available for statewide DGC reviews prior to 1990, an examination of the results for southeast Alaska in 1987 and 1997, provide the best comparison of any potential impacts on project types. The most notable differences between the two years is the decrease in timber projects and the increase in the percentage of commercial, residential and public utilities or facilities projects. These results, however, are more indicative of a transitioning economy and an increase in the local population (Allen et al., 1998). There is no strong evidence that the amendments had any effect on the types of activities reviewed.

One of the questions posed by Lowry et al. in their 1993 paper was if adding the “enforceable policies” qualifier to Section 307 would have the effect of limiting the types of activities that are reviewed. A comparison of the 1987 and 1997 southeast region data showed an increase in the different types of permits and licenses that were involved in consistency reviews. This would indicate that the “enforceable policies” language did not restrict the types of activities reviewed.

A comparison of the number of direct federal actions reviewed, in contrast to those triggered by the need for a federal license or permit, might indicate a change in the application of the consistency provision. More reviews of direct federal actions may be evidence of an increased application of the consistency provision over federal lands. While the percentage of reviews triggered by direct federal actions increased from four percent for the 1983 data from the OCRM 1985 Draft Federal Consistency Study, to 13% for Lowry’s 1987 data, then up to 18% for the entire state of Alaska in 1997, the results for southeast Alaska contradict this trend. In 1987, 24% of the DGC reviews of projects in the southeast region were for direct federal activities, a number that dropped to 15% in 1997.

Given that the 1990 amendments should have increased the geographic scope of the federal consistency provision, as hypothesized by Lowry et al. (1993), this decrease would appear to be a result of something other than amending Section 307. This change may indicate a reduction in the overall federal presence in southeast Alaska over a period of ten years. With only two years worth of data, more research into this question is necessary to identify if these results are part of a trend towards reduced federal activity in Alaska. It would be interesting to see if, when comparing DGC reviews between 1984 – 1989 and 1990 – 2000, there are similar results.

Was there a change in the number of federal agencies involved in consistency reviews?

The study does not reveal any significant changes in the total number of federal agencies involved in DGC reviews, or the frequency with which these agencies are participants in reviewed projects, as a result of the 1990 amendments. In each data set, the majority of the projects reviewed involved COE actions, or required COE permits. This is consistent with the 1983 OCRM data and the Lowry et al. (1993) study relying on 1987 results. Both of these studies used information from several states, and both show that 63% of the total reviews involved COE Section 10 and Section 404 permits. The percentage for the Alaska data is slightly higher, with 78% of the total 1997 DGC reviews involving COE Section 10 and 404 permits. The numbers for southeast Alaska for both 1987 and 1997 are similar with 79% and 83% of the reviews involving these two COE permits. This is not surprising, given the physical characteristics of the state. In the southeast, most communities only have a narrow strip of land, positioned between steep mountains and coastal waters, in which to develop. It is common therefore, to build structures that abut navigable waters, requiring a Section 10 permit. In the rest of the state, the presence of wetlands is common, requiring a Section 404 permit to develop.

The most striking difference between the OCRM and Lowry et al. results and the results from this study is the number of reviews for projects relying on federal assistance. In the OCRM study, 22% of the projects involved federal assistance, decreasing to seven percent for Lowry's 1987 study. The DGC database did not identify which projects included federal assistance; therefore, it is impossible to reach any conclusions about the impact of the amendments on reviews that are triggered by these activities.

Did the amendment affect state concurrence with consistency determinations?

It does not appear that amending the federal consistency provision had any effect on consistency determinations. The DGC objected to less than one percent of the consistency determinations for projects located in southeast Alaska in 1987, while none of the projects reviewed in 1997 were found inconsistent with the ACMP. These numbers are consistent with the OCRM and Lowry et al. studies showing over 97% and 99% concurrence with state programs respectively. What did differ between the data from this study and the other earlier studies, was the percentage of projects that were consistent based on the applicant meeting certain stipulations. The 1983 OCRM results showed that states required additional stipulations in 17% of the projects reviewed, a number that increased to 30% for Lowry's et al. study using 1987 data. The results from this study indicates that 62% of the projects reviewed throughout the state in 1997 were determined to be consistent with the ACMP only after placing certain stipulations on the project.

The percentage of projects receiving conditional approval by the DGC varies little between the 1987 and 1997 southeast data and the 1997 data for the entire state. This implies that amending the CZMA in 1990 had little effect on consistency determinations made by the DGC. That the DGC placed stipulations on roughly two-thirds of its reviewed projects, a number much greater than the national average for 1983 and selected states in 1987, may indicate that project applicants are not familiar with ACMP standards. It also implies that the state takes an active role in working with project applicants to ensure projects be consistent with the ACMP. Indeed, the lack of any objections by the DGC of consistency determinations for projects reviewed in 1997 may be indicative of the importance the DGC places on communication between the state and project applicants.

Conclusions and directions for future study

The study shows no evidence that the 1990 amendments to the CZMA affected federal consistency reviews in Alaska. What the study does not address, however, is the intangible affect the amendments might have on project design and implementation. It is possible that by amending the CZMA and broadening the scope of activities that are subject for review, some potential projects were not undertaken or were modified to meet ACMP standards. These types of impacts are very difficult to identify, yet are no less important than those that can be quantified.

In light of this, the questions examined in this study are still valid, particularly given recent changes to both the NOAA rules on Section 307, the first change to federal consistency regulations since 1979 (NOAA, 2000), and the ACMP consistency review process. In addition, the current Bush administration has expressed interest in revising the current rules governing the federal consistency provision, particularly in relation to OCS oil and gas development (NOAA, 2002).

The study is hampered by several problems, among which the lack of consistency review data is foremost. In order to gain a true perspective into the affect of the 1990 amendments on the consistency review process in Alaska, it is necessary to compare data from before and after passage of the amendments. While the DGC maintains a database containing statewide consistency review information dating back to the early 1990's, information on earlier reviews exists only for the southeast region. The result is that direct comparisons could only be made for southeast Alaska, effectively making the study of OCS activities moot because of their absence in this part of the state.

A second problem limiting the effectiveness of the study is its scale. Increasing the number of states involved in the study, as well as the number of years, would present a more comprehensive national perspective of trends and results. By focusing only on Alaska, the results are influenced by variables such as changes in the local economy and population. The affects of local and regional factors could be mitigated by examining consistency reviews from multiple states over a series of years both before and after the amendments.

The study highlights the difficulty of compiling quantitative data related to federal consistency reviews. As a result, most studies focus on analysis of qualitative data, frequently gathered through the use of surveys. While this provides valuable information on the perceptions of those involved in the review process, it lacks the ability to examine the tangible results of amending the CZMA, something that is possible with quantitative methods. It is this quantitative analysis that is missing from much of the debate over the affects of the federal consistency provision.

There still exists a need to examine the question of how the 1990 amendments affected the geographic scope of consistency reviews. Despite the importance of federal management on Alaska's coastal resources, the ACMP's extensive coastal zone boundary reduces the potential for studying this question by effectively including inland areas that would likely be the location of activities affecting those resources. Future studies would do well to focus on states such as California, with its 1000-yard inland coastal zone boundary, or other states that created coastal boundaries based more on man-made jurisdictions than on natural characteristics and features.

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