



Appendix B.
*The Puerto Rico Program and The Coastal
Zone Management Act*

THE PUERTO RICO COASTAL ZONE MANAGEMENT PROGRAM AND THE COASTAL ZONE MANAGEMENT ACT

The federal *Coastal Zone Management Act of 1972* (CZMA), as amended, authorizes the U.S. Department of Commerce (USDOC) Secretary to grant funds to coastal states, in this case the Commonwealth of Puerto Rico, in order to administer the Management Program. This shall be done in accordance to Section 306 of the CZMA.

The CZMA establishes requirements that must be satisfied before the Secretary approves a management program. This appendix relates the PRCZMP with the requirements of the CZMA and the corresponding regulations according to *Code of Federal Regulations* (15 CFR, Part 23).

REQUIREMENTS OF SECTION 306 (D) OF THE CZMA

In accordance with Section 306 (b), the USDOC Secretary can grant funds to any coastal state only if it is found that the state's Management Program meets the requirements of Section 306(d), which establishes the Program elements to be considered. These elements are:

(1) BOUNDARIES

The Management Program must include an identification of the boundaries of the coastal zone subject to the management program. (Section 306(d)(2)(A)).

(a) Inland Boundary

Section 304 of the CZMA establishes that the coastal zone *extends inland from the shorelines only to the extent necessary to control shore lands, the uses of which have a direct and significant impact on coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise.*

In Puerto Rico, the coastal zone includes:

1. A coastal strip on the Main Island of Puerto Rico extending (a) 1,000 meters inland from the shoreline and (b) additional distances where necessary to assure the inclusion of key natural systems of the coast. (see Map 3).
2. All islands in the Commonwealth¹, other than the Main Island of Puerto Rico. The coastal zone, thus, includes the entire area of Vieques, Culebra, Mona, along with the other offshore islands and cays.²

(b) Territorial sea

Section 304 defines the term coastal waters as those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

¹ Other Commonwealth's terrestrial jurisdictions.

² Includes all the islands of Vieques and Culebra, except federal excluded lands.

In the Commonwealth of Puerto Rico, the coastal zone extends seaward up to nine nautical miles (3 marine leagues or 10.35 terrestrial miles) and includes islands and cays under the Commonwealth's jurisdiction.³ (For the purposes of this Program the Commonwealth accepts the 9-mile limit. However, the Commonwealth does not relinquish any authority it may have over areas lying beyond the 9 mile limit specified).

The territorial waters also include the submerged lands under the Puerto Rico's territorial waters, which property rights belong to the Commonwealth.

(c) Islands, transitional and intertidal areas, salt marshes, wetlands, and beaches

Section 304 states that the coastal zone includes the "islands, transitional and inter-tidal areas, salt marshes, wetlands, and beaches. The Puerto Rico coastal zone includes all such coastal features.

The islands were discussed in the internal limit section.

The transition and inter-tidal areas in Puerto Rico correspond to the maritime zone. It includes the space in Puerto Rico's coasts that the sea bathes with its flow and ebb, where the tides are sensitive and the greatest waves during storms, where tides are not sensitive, and includes lands taken from the sea, the actions and accretions caused by it, and the river margins up to the point they are navigable and where the tides can be felt.

Salt-marshes- Salt marshes are typical from temperate ecosystems. However, in Puerto Rico, estuaries and some type of mangroves are considered salt marshes.

In Puerto Rico, wetlands are classified as palustrine, lacustrine, riverine, estuarine, and marine⁴ (The wetland categories are described in Chapter 3).

The beaches are the sea's or the ocean's shores formed by non-consolidated sand, occasionally gravel or pieces of stone, in almost flat surfaces, with a slight slope, with or without characteristic vegetation. Its origin can be terrigenous, marine or volcanic.

(d) Interstate limits

Puerto Rico has no common limit with any state or U.S. territory.

(e) Excluded federal lands

Section 304 defines the coastal zone as excluding "those 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." An opinion of the U.S. Attorney General has established that all lands owned, leased, held in trust, or otherwise used as solely by the Federal Government are excluded from the Coastal Zone by the Act.

³ The coastal zone external limit was modified in 2003 by an RPC according to 48 USC § 749 and 16 USC § 1453(1)).

⁴ This classification system for wetlands was proposed by Cowardin et al. (1977) and is used by the USFWS to draw maps and conduct inventories of U.S. wetlands.

The PRCZMP excludes those lands in the Puerto Rico coastal zone whose exclusion is required by Section 304. These include lands that belong, is leased, held in trust, or otherwise used by the Federal Government, as presented on Map 32). The Commonwealth Government does not relinquish any authority it may have, aside from the requirements of the CZMA, over lands excluded from the coastal zone for purposes of the Coastal Zone Management Program only.

Several maps presented (i.e. Map 14) show resources and other characteristics of the coastal zone without considering federal limits. These maps intend to show the extension of the coastal resources, in spite that some of them are excluded from the CZMA.

(2) USES SUBJECT TO MANAGEMENT

The Management Program must identify land and water uses which have a direct and significant impact on the coastal waters (Section 306(d) (2) (b)). These uses are subject to the terms of the management program.

For this determination, the following definitions were developed:

Impact— Any modification in coastal waters' elements such as quality, quantity, living and aesthetical resources or human or natural use thereof. Impacts can be both, negative or positive.

Direct— Indicates a causal relationship denoting that the impact on coastal waters derives as a consequence from the action or use.

Significant impacts- Are those which affect the characteristics of the coastal, marine and estuarine ecosystems; affect other uses of coastal waters; affect the interest of the public; are inevitable; or serve short term objectives to the disadvantage of the long term objectives.

When applying these definitions, the following uses subject to the management were determined:

- (a) all uses of coastal waters and the submerged land,
- (b) all the uses of the maritime zone (*zona marítimo terrestre*- the publicly owned "maritime zone" along the shorefront),
- (c) all the uses within areas that are or will be designated as Natural Reserves and
- (d) the following major uses: land subdivisions, urbanizations, industrial projects, urban waterfronts, commercial centers, hotels, tourist villages and trailer camps.

Permitted uses will be determined, in each case, by reviewing the development proposal in light of the policies set forth in the Puerto Rico's Land Use Plan Objectives and Public Policies (1995), including additional policies established in the PRCZMP, the policies and standards of the Environmental Quality Board (EQB), the Puerto Rico Planning Board (PRPB), the Regulations and Permit Administration (RPA), and the Department of Natural and Environmental Resources (DNER). Most actions require a permit from the USACE, subject to the evaluation of the DRNA.

In addition, both Commonwealth and Federal law require the preparation of environmental impact statements before taking any action that would significantly affect the environment.

(3) AREAS OF PARTICULAR CONCERN

The CZMA also states that the Management Program must include an inventory and designation of Areas of Particular Concern (Section 306 (d) (2) (c)).

Areas of Particular Concern (APC's) for the PRCZMP have been designated as Special Planning Areas on Chapter 4. (see Map 21.)

Guidelines regarding priorities of uses in these areas, including lowest priorities, are found below. These designations are based on:

- (a) A review of natural and man-made coastal resources. An inventory of such resources appears in Chapter 3.
- (b) Consideration of the following factors contained in 15 CFR 923.21:
 - i) Areas of unique, scarce, fragile or vulnerable natural habitat; unique or fragile, figuration; historical significance, cultural value or scenic importance (including resources on or determined to be eligible for the National Register of Historic Places.);
 - ii) Areas of high natural productivity or essential habitat for living resources, including fish, wildlife, and endangered species and the various trophic levels in the food web critical to their well-being;
 - iii) Areas of substantial recreational value and/or opportunity;
 - iv) Areas where developments and facilities are dependent upon the utilization of, or access to, coastal waters;
 - v) Areas of unique hydrologic, geologic or topographic significance for industrial or commercial development or for dredge spoil disposal;
 - vi) Areas or urban concentration where shoreline utilization and water uses are highly competitive;
 - vii) Areas where, if development were permitted, it might be subject to significant hazards due to storms, slides, floods, erosion, settlement, salt water intrusion, and sea level rise;
 - viii) Areas needed to protect, maintain or replenish coastal lands or resources including coastal flood plains, aquifers and their recharge areas, estuaries, sand dunes, coral and other reefs, beaches, offshore sand deposits and mangrove stands.

Based on these criteria, in the PRCZMP of 1978, 26 areas were recommended as Areas for Preservation and Restoration (APR's) from which, to this date, 21 have been designated as Natural Reserves.

APC's in Puerto Rico contain a resource feature that both: (1) has outstanding value when judged by the criteria set forth above, and (2) has potential for more than one use or may be sought by potentially incompatible users. Thus, APC's represent areas of significant conflict- present or potential- over future use. Although all of Puerto Rico is subject to direct planning and control by the Commonwealth Government, the presence of significant conflicts makes these areas of particular concern to the Commonwealth, which are subject to more intensive planning and management.

(4) MEANS OF EXERTING COMMONWEALTH CONTROL⁵

The PRCZMP must include an identification of the means by which the state proposes to exert control over the land and water uses, including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions. (Section 306 (d) (2) (d)).

Chapter 4 presented a description of the powers and programs of the PRPB, RPA, EQB and the DNER. Special reference is made to the following statutes and regulations:

STATUTES

- a) **Puerto Rico Planning Board (PRPB), Organic Law**, No. 75 of 1975, as amended.
- b) **Regulations and Permits Administration (RPA)**, Organic Law No. 76 of 1975, as amended. Also, the laws to which Law No. 76 makes reference, through which the RPA's Administrator shall exercise his authority and functions. These are:
 - Law No. 92 of 1953, Airport Zone Act
 - Law No. 374 of 1949, as amended, which govern historic and tourist sites
 - Law No. 89 of 1955, as amended, created the Institute of Puerto Rican Culture
 - Law No. 3 of 1951, Buildings and Other Historic Structures Act
 - Law No. 3 of 1961, To Control Buildings in Flood Prone Zones Act
 - Law No. 168 of 1949, Puerto Rico Buildings Regulations
 - Law No. 135 of 1967, as amended, For the Certification of Blueprints and Specifications Act
 - Law No. 25 of 1962, Neighborhood Facilities Act
 - Law No. 427 of 1951, for the collocation of signs and announcements in Puerto Rico's streets⁶
 - Law No. 104 of 1958, Horizontal Property Act⁷

⁵ These mean or legal authorities are the enforceable policies of the Program, along with policies included in Chapter 3 and the OPP-PRLUP. According to the CZMA, the term "enforceable policy" means State [Commonwealth] 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 and public land and water uses and natural resources in the coastal zone.

⁶ Repealed by the "Uniform Signs and Advertisements Act of Puerto Rico", Law No. 355 of 1999.

⁷ Amended and renamed by Law No. 103 of 2003 as the Condominiums Act.

c) **Environmental Quality Board (EQB)**, Environmental Public Policy Act, Law No. 416 of 2004

d) **Department of Natural and Environmental Resources (DNER)**, Organic Law of the Department of Natural and Environmental Resources, and the following acts which it refers:

- Hunting Law, Law No. 374 of 1950
- Fishing Law, Law No. 83 of 1936⁸
- Forestry Law, Law No. 22 of 1917; Law No. 19 of 1925 (planting); Law No. 38 of 1930 (forest reserves); Law No. 307 of 1946 (land acquisition); and Law No. 149 of 1945 (nurseries)⁹
- Mining Law, Law No. 6 of 1954¹⁰
- Joint Resolution No. 4 of 1967, Watershed Act
- Watershed Protection and Flood Prevention Act, Law No. 28 of 1964

OTHER STATUTES:

- a) Law No. 144 of 1976, as amended (extraction of materials from the earth's crust)
- b) Law for the Conservation and Development of Culebra, Law No. 66 of 1975, as amended
- c) Law No. 70 of 1976 (wildlife)¹¹
- d) Law No. 132 of 1975 (squatters)
- e) Law No. 211 of 1946 (Soil Conservation Districts)
- f) Law No. 21 of 1969 (penalizes littering in public and private places)
- g) Law of Ports for the island of Puerto Rico of 1886
- h) Law of Piers and Ports of 1968
- i) Civil Code of Puerto Rico, 31 LPRA, Art. 254
- j) Law No. 38 of 1949, (beach concessions)
- k) Law No. 128 of 1977 (created the Energy Affairs office)
- l) Law No. 136 of 1976, Preservation, Development, and Use of the Puerto Rico Water Resources Act
- m) Penal Code of Puerto Rico, Law No. 115 of 1974, repealed and replaced by The New Penal Code of the Commonwealth of Puerto Rico, Law No. 149 of 2004

⁸ Repealed and replaced by the "New Puerto Rico Fisheries Act", Law No. 278 of 1998.

⁹ All these laws were repealed and substituted by "Puerto Rico Forests Act", Law No. 133 of 1975, as amended.

¹⁰ Repealed and replaced by the "Mining Act", Law No. 9 of 1993.

¹¹ Repealed and replaced by the "New PR Wildlife Act", Law No. 241 of 1999.

- a) Law No. 82 of 1979, Organic Law of the Corporation for the Development of and Administration of Marine, Lacustrine and Fluvial Resources (CODREMAR)¹²
- b) Law No. 80 of 1979, amendment to Law Relating to Control of Development on Floodable Areas¹³
- c) Law No. 111 of 1985, Puerto Rico Caves, Caverns or Sinkholes Protection and Preservation Act, as amended¹⁴
- a) Law No. 48 of 1986, Boating Safety, Protection of Bathing Beaches, Registration of Recreational Vessels Act ¹⁵
- b) Law No. 150 of 1988, The Puerto Rico Natural Heritage Program Act¹⁶
- c) Law No. 83 of 1983 (Amendment to the Organic Law of the Department of Natural Resources)¹⁷
- d) Senate Joint Resolution No. 2683, To Establish the Natural Hazard Mitigation Planning Program¹⁸
- e) Executive Order 4784-B (E.O. on the Coordination of Executive Functions for Disasters and Emergencies)¹⁹
- f) Executive Order 4974-E (E.O. Creating a Program for the Management and Mitigation of Flood Hazards) ²⁰
- g) Resolution JPE-039, Waiver of permits for DNER passive recreational projects²¹
- h) Administration Bulletin No. 5126-A (E.O. to Establish Earthquake Safety Commission)²²
- i) Inter-agency Agreement on Joint Enforcement between the RPA and the DNER on the Process to Intervene in the Relation to the Legality of Structures, Uses, and Acts in the Maritime Zone, the Coastal Zone, and Lands under the Jurisdiction of the DNER.²³

¹² Added by an RPC on December 28 1989. This act was repealed by Law No. 61 of 1990, as amended, known as the "Act for the Promotion and Development of the Fishing and Aquaculture Industry".

¹³ Added by RPC on December 28, 1989.

¹⁴ Added by RPC on December 28, 1989.

¹⁵ Added by RPC on December 28, 1989. This law was repealed and replaced by the "Puerto Rico Navigation and Aquatic Safety Act", Law No. 430 of 2000.

¹⁶ Added by RPC on September 13, 1991.

¹⁷ Added by RPC on December 28, 1989.

¹⁸ Added by RPC on September 13, 1991.

¹⁹ Added by RPC on November 29, 1988.

²⁰ Added by RPC on November 29, 1988.

²¹ Added by RPC on November 29, 1988.

²² Added by RPC on September 13, 1991.

²³ Added by RPC on December 20, 2004.

REGULATIONS

a) Puerto Rico Planning Board

- Regulation No. 3, Land Subdivision and Urbanization Regulation²⁴
- Regulation No. 4, Puerto Rico Zoning Regulation
- Regulation No. 7, The Building Regulation²⁵
- Regulation No. 12, Regulation for the Certification of Construction Projects
- Regulation No. 13, The Floodable Areas Regulation
- Planning Regulation No. 17, Zoning Regulations for the Coastal Zone and the Access to Beaches and Coasts of Puerto Rico²⁶

b) Department of Natural and Environmental Resources

- Regulation for the Extraction, Excavation, Removal and Dredging of Earth Crust Components, Regulation No. 2305
- Regulation on the Conservation and Management of Wildlife, Exotic Species and Hunting in the Commonwealth of Puerto Rico, Regulation 3416
- Fishing Regulation, Regulation No. 6768
- Regulation to Control the Extraction, Possession, Transportation and Sale of Coralline Resources, Regulation No. 2577²⁷
- Regulation for Use, Surveillance, Conservation, and Management of the Territorial Waters and Submerged Lands Thereunder and the Maritime Zone, Regulation No. 4860²⁸

c) Environmental Quality Board

- Regulation for the Management of Non-Hazardous Solid Waste, Regulation No. 5717
- Puerto Rico Water Quality Standards Regulation, Regulation No. 6616
- Regulation for the Control of Atmospheric Pollution, Regulation No. 5300

²⁴ This regulation replaced Regulation No. 9, "The Neighborhood Facilities Regulation" and the Regulation No. 11, "The Simple Subdivision Regulation".

²⁵ Repealed by the Puerto Rico Building Code, effective on December 8, 1999.

²⁶ Added by RPC on November 29, 1988.

²⁷ Added by RPC on November 29, 1988.

²⁸ Added by RPC on June 24, 2003.

(5) USE PRIORITIES IN PARTICULAR AREAS

The PRCZMP must include broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority. (Section 306(d)(2)(E)).

There are various priority uses for APC's (Special Planning Areas or SPAs), as detailed below.

For mangrove wetlands, use priorities are derived from policy established in Chapter 3, section on Mangrove Wetlands. These priorities are as follows:

- a) (Highest priority). Uses specified in the mangrove wetlands policy as being permitted in Natural Reserves (for example, burrowing crabs or pipelines).
- b) Uses specified in the mangrove wetland policy as being permitted in other mangrove wetlands, such as research, nature studies, aquaculture, or similar resource dependent activities.
- c) (Lowest priority). All other uses.

The SPA of Puerto Rico Mangroves has a Management Plan adopted by the PRPB in 2003, by Resolution PU-002-2003- Mangle PR. This document specifies priority uses on these areas.

For other APC's. The Program provides for detailed planning, regulation and enforcement, so that natural systems will be protected in so far as practicable in each case, consistent with achievement of needed economic development. In some cases, development disruptive of natural systems may be unavoidable. Such development will be permitted, however, only after full consideration of location and design alternatives that would cause less disruption of natural systems. (The Commonwealth's environmental impact statement procedure, already described, assures this evaluation). As a result of this policy, the priority of uses for APC's (except for mangroves) is as follows:

- a) **Highest priority**- Uses that maintain the integrity of estuaries and coastal waters.
- b) Coastal- dependent uses that cannot practicably be redesign or relocated to cause less impact on natural resources. (See Chapter 3 on Coastal Dependent Uses).
- c) Uses strongly benefited by coastal location including: (1) industries such as power plants that need cooling waters or which uses large quantities of imported products; and (2) industries that serve or are supplied by water related industries and, therefore, seek locations near them and which cannot practicably be redesign or relocated to cause less impact on natural systems. (See Chapter 3, section on Coastal Dependent Uses).
- d) Non-dependent, non-related uses that retain flexibility of future use and do not prematurely or inalterably commit shorelands to more intensive uses. (See Chapter 3, Section on Coastal Dependent Uses).
- e) **Lowest priority**. Non-dependent, non-related uses that cause a permanent or long-term change in the features of coastal shore-lands or coastal waters.

In addition to mangroves, in the PRCZMP (1978), were designated seven APC's as Special Planning Areas. Of these, three have management plans adopted by the PRPB and incorporated into the Land-Use Plan for Puerto Rico. These management plans specifies appropriate uses for these areas of concern and those that are priorities or most beneficial.

Special Planning Areas with adopted management plans are:

- Piñones-Loíza
- Sudoeste- La Parguera Sector
- Laguna Tortuguero

Other Special Planning Areas have final drafts of their management plans, some of which are under the consideration of the PRPB. These are:

- Boquerón Sector and Guánica Sector
- Bajura de Isabela-Aguadilla
- Bahía de Jobos
- Pandura-Guardarraya

Once these management plans are approved, they will establish the appropriate uses for the APC's.

(6) ORGANIZATIONAL STRUCTURE

The Program must include a description of the organizational structure proposed to implement the program, including the responsibilities and interrelationships of local, area wide, State, regional, and interstate agencies in the management process. (Section 306(2)(d)(2-F)).

In 1978, former Governor of Puerto Rico designated the DRN²⁹ as the lead agency for administering the PRCZMP. This decision reflects the two emphases of the Program, as described in Chapter 4: Guiding Development on Public and Private Property and b) Active Management of Coastal Resources.

a) Guiding Development on Public and Private Property. Responsibility for developing guidance function, which are for policy-making, planning and regulatory nature, is concentrated in the PRPB. The issuances of permits pursuant to PRPB regulations, as well as some other largely ministerial duties, are the responsibility of the RPA. Additional policies and regulations have been established by the EQB and the DNER. All four agencies are described in Chapter 4.

The responsibilities of the PRPB, which is administratively attached to the Office of the Governor, are extremely broad. The PRPB is responsible for the full range of public objectives, for considering the full range of methods available to achieve them, and for the entire area of the

²⁹ Currently the DRNA, through the Reorganization Plan of 1993.

Commonwealth. Guiding development in the coastal zone is thus only one of many “sectors” for which the PRPB has planning responsibilities.

The development guidance emphasis of the PRCZMP, as explained in Chapter 4, is not one of establishing a new guidance process at the Commonwealth level, since such a process has been operative for many years. Rather, the Program emphasis is on refining existing process- by fine tuning regulations and by making more site- specific decisions before development proposals are submitted, so that the process may respond more sensitively to the problems and opportunities of the immediate littoral area.

Although, many of the need refinements must ultimately be accepted or rejected by the PRPB, the range of PRPB’s duties dictates that this agency will be responsible for initiating them and pressing for their adoption and implementation. Other agencies with narrower ranges of responsibilities, are better able to focus on the needs of individual sectors such as this. In the case of coastal management, principal sectorial responsibility is assigned to the DNER by its Organic Law. (By its Organic Law, the PRBP is obligated to assist agencies in preparing and implementing their functional and sectorial plans and programs.

b) Active Management of Coastal Resources. Active management of coastal resources is the second emphasis of the PRCZMP, with particular attention on public lands and waters. This emphasis includes measures to protect and maintain costal resources (i.e. regulating resources extraction, franchising, surveillance and enforcement). It also includes measures to enhance public use and enjoyment of the resources (i.e. property acquisition, beach cleaning and provision of recreational facilities). The established responsibilities of the DNER, explained in Chapter 4, make it the appropriate agency to be responsible for this aspect of the Program as well.

Linkages among the four principal agencies responsible for implementing the PRCZMP are of critical importance. These are described in Chapter 4.

REQUIREMENTS OF SECTION 306 (c) OF THE CZMA

(1) ADOPTION, PARTICIPATION, FEDERAL POLICY

Before approving any program submitted by a coastal state, in this case the Commonwealth of Puerto Rico, the Secretary of the USDOC must ascertain “***whether the State have developed and adopted a management program for its coastal zone in accordance with the rules and regulations promulgated by the Secretary (USDOC), after notice, and with the opportunity of full participation by the federal agencies, state agencies, local governments, regional organizations, port authorities and other interested parties or individual, public or private, which is adequate to carry out the purposes of this Act and is compatible with the policies stated in Section 303***”. (Section 306 (d) (1)).

a) Public participation

During the elaboration process of the PRCZMP, an extensive public participation process was carried out, including public hearings in December of 1977 and January and April of 1978. The comments were included in the document of the PRCZMP finally adopted in 1978.

For this process of revision and update of the PRCZMP, the public participation approach included the following activities:

- Interviews with key informants: Interviews were conducted to individuals selected for their expertise and knowledge on the principal subjects of the PRCZMP. The interviewees represented the academy (University of Puerto Rico and the Metropolitan University), collaborators of the “Puerto Rico and the Sea” document and a representative of the San Juan Bay Estuary Program.
- Distribution of digital copies of the final draft of the revised and updated document in the 44 coastal municipalities to scrutiny by local government personnel and the general public.
- Publication in a newspaper of broader circulation, on the availability of the document for review by citizens and the schedule for the public meetings.
- Invitations by email to individuals and environmental and community-based organizations related to the subject.
- Public meetings in the following municipalities throughout Puerto Rico during September 2008: San Juan, Ponce, Cabo Rojo, Arecibo, Vieques and Culebra.

The comments submitted by the public and the corresponding actions are presented in Appendix D.

b) Federal participation

Descriptions of federal agencies that affect the coastal zone are presented in Appendix A. Federal agencies participation in the initial formulation of the PRCZMP (1978) includes four elements:

- 1) Consultation arising out of meetings on the Culebra Segment in 1975, which generated discussions on coastal zone activities, programs and problems. This raised expectations on the need of a Program for Puerto Rico, which was finally adopted in 1978 and is reviewed and updated in this document.
- 2) Informal consultations on the preparation of the document. Both, in the preparation of this document and in the process of revising and updating, Federal agencies were consulted for information on their programs and technical advice. These communications were handled by phone or in writing.
- 3) Meetings to review the draft document. Both, in developing and in the process of revising and updating the PRCZMP, meetings and telephone consultations with staff of federal agencies were executed, particularly with NOAA staff to review and discuss the draft of the reviewed and updated PRCZMP. The final draft document, which incorporates comments from the public meetings, will be submitted to the NOAA staff for review.

Federal agencies also participate in the following manner:

- Informal consultation in the process of developing plans, policies and regulations. For example, in drafting management plans for Natural Reserves and Special Planning

Areas, as well as in the preparation of the DNER's regulations, this Agency seeks for technical and policy advice from the federal agencies.

- Consultation and coordination with federal agencies affected by the Program's implementation. This occurs through the Federal Consistency Review Process, administered by the PRPB.

c) Commonwealth's agencies consultation

Descriptions of Commonwealths' agencies affecting the coast are presented in Appendix A. The comments of these agencies to the final draft of the revised and updated PRCZMP presented on public meetings on September 2008 are included in Appendix D.

In this revision and update process, Commonwealth agencies participated through the following means:

- Steering Committee: At the beginning of the process of revising and updating the PRCZMP, a steering committee was created. It consisted of staff from various divisions and units of the DNER and staff from the Coastal Zone Unit of the PRPB.
- Interviews with key informants: Interviews were conducted to individuals selected for their expertise and knowledge on the principal subjects of the PRCZMP. The interviewees represented the DNER's staff, the PRPB, the RPA, the Institute of Puerto Rican Culture and the State Historic Preservation Office.
- Informal Consultations: Commonwealth agencies have participated in preparing the document through informal consultations, to obtain technical, programmatic and policy advice.
- Review of several drafts of the revised and updated PRCZMP prior to the public consultation process.

d) Local governments

The coastal zone includes portions of 44 municipalities.³⁰ Before the public meetings process in September 2008, copies in digital format of the revised and updated draft of the PRCZMP were delivered to these municipalities, so it can be reviewed by the municipalities' officials and by the general public.

The comments from the coastal municipalities to the document and corresponding actions are found in Appendix D.

e) Regional organizations

Municipalities in Puerto Rico are able to organize in consortiums for planning the use of their territories. Currently, there is only a consortium organized for this purpose in the North coast: Camuy- Hatillo- Quebradillas. These Municipalities are working together on the final phase of their Land Use Plan. In these municipalities, as well as in other coastal towns, copies of the revised and updated draft of the PRCZMP for evaluation were provided.

³⁰ In Puerto Rico, the municipalities have the legal power to manage land use after having their Municipal Land Use Plans approved by the PRPB. At the moment, 13 of the 44 coastal municipalities have an approved Municipal Land Use Plan, while the remaining are in some stage of preparation.

f) Port authorities

Participation of the Puerto Rico Ports Authority within the PRCZMP is presented in Appendix A.

g) Consistency with the Federal policy in Section 303 of the CZMA

Through its policies and implementation authorities, the PRCZMP intends to be consistent with and to enhance the national policies of Section 303 of the CZMA by:

- *to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations*
- *to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development, which programs should at least provide for-*
 - *the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone,*
 - *the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence, and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands,*
 - *the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters,*
 - *priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists,*
 - *public access to the coasts for recreation purposes,*
 - *assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features,*
 - *the coordination and simplification of procedures in order to ensure expedited governmental decision-making for the management of coastal resources,*
 - *continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies,*
 - *the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decision-making,*

- *assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies, and*
- *the study and development, in any case in which the Secretary considers it to be appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise; and*
- *to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise and improved predictability in governmental decision-making;*
- *to encourage the participation and cooperation of the public, State and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this chapter;*
- *to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use practices affecting the coastal and ocean resources of the United States; and*
- *to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.*

(2) COORDINATION WITH LOCAL, AREAWIDE, INTERSTATE PLANS AND GOVERNMENTS

a) Local, areawide and interstate plans

The State must have coordinated its Program with local, areawide, and interstate plans applicable to areas within the coastal zone- (i) existing on January 1 of the year in which the State's management program is submitted to the Secretary; and (ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency (Section 306 (d) (3) (A)).

In the initial elaboration process of the PRCZMP in 1978, there was not any plan applicable within the coastal zone developed by a local, areawide, regional or interstate agency. For this reason, this requirement was not applicable.

Currently, local plans and area plans associated with land uses in the coastal zone have been developed after the adoption of PRCZMP and are subject to revision and adoption by the PRPB. Also, these plans are revised and commented by the DNER.

b) Effective mechanisms for continuing coordination

The State should have “established an effective mechanism for continuing consultation and coordination between the management agency...and with local governments, interstate agencies, regional agencies, and area-wide agencies within the coastal zone to assure full participation of those local governments and agencies in carrying out the purposes of this title...” Special provision is made for any management program decision that will conflict with local zoning. (Section 306 (d)(3)(B)).

The Commonwealth Government consults with the various entities, when appropriate, for their participation and guidance to ensure continuous coordination between their programs and the PRCZMP. Government agencies responsible for development guidance in Puerto Rico- PRPB, DNER, EQB and PRA- have established consultation and information exchange mechanisms among agencies and the general public. On the other hand, formal and informal mechanisms to promote public participation must be included:

- Public information programs of the Commonwealth’s agencies
- Public hearings required by the Commonwealth law before adoption of plans and regulations, and
- The presence of private citizen members of the EQB.

In the particular case of the revision and updating of the PRCZMP, no formal mechanisms are required, since all Commonwealth programs must be updated in response to changing conditions. Accordingly, revisions and updates to the PRCZMP will be a regular part of the PRPB and the DNER activities. Although there is no formal requirement for consultation, during this revision and update process various mechanisms for public participation were incorporated.

(3) PUBLIC HEARINGS

The State must have held public hearings in the development of the Management Program. (Section 306 (d)(4)). Section 311 requires that “all public hearings required under this chapter must be announced at least thirty days prior to the hearing date and, that all documents and other agency materials are available at the time of the announcement.”

According to the CZMA provisions, during the preparation of PRCZMA (1978) public hearings were held in San Juan, Ponce and Mayagüez on January 24, 26 and 31 of 1978. Public notice of the hearings was published in three newspapers. Copies of the document’s draft were available to the general public at the time of the public notice at the PRPB and the DNR.

During the revision and update process, public meetings were held in San Juan, Cabo Rojo, Vieques, Culebra, Ponce and Arecibo. Public notice of these meetings was published with 15 days notice in a newspaper. Copies of the revised and updated draft of the PRCZMP were distributed to the 44 coastal municipalities and were available for review by the public in the DNER and the PRPB offices. Also, the document was available at the Program’s link at the DNER’s Web page.

It should be noted that during this process of review and update, public meetings were held and not public hearings. This was because the process does not include significant changes to the

PMZCPR nor the inclusion of new policies, except for those incorporated for the past years by the RPC mechanism.

(4) REVIEW AND APPROVAL BY GOVERNOR

The Management Program and any changes thereto must have been reviewed and approved by the Governor (Section 306 (d) (5)).

The PMZCPR was approved by the former Governor of Puerto Rico, Carlos Romero Barceló, on July 12, 1978 and the letter of approval was included in the original document.

(5) DESIGNATION OF A SINGLE AGENCY

The Governor must have designated a single agency to receive and administer the grants for implementing the management program (Section 306 (d) (6)).

In the 1978 PRCZMP, the Governor of Puerto Rico certified the DNER as the single designated agency to receive and administer grants for implementing the Coastal Management Program. The DNER was also designated as the lead agency for implementation of the Coastal Management Program. Responsibilities delegated to the DNER were described in Chapter 4.

Among the DNER statutory powers, conferred by its Organic Law, are powers to advise the Governor, the Legislative Assembly and other governmental bodies concerning the implementation of public policy governing natural resources; to make contracts and agreements with Federal, States and Commonwealth agencies in order to achieve the objectives of the DNER on its programs and to accept funds from these agencies.

These powers, explicitly or by implication, include the capabilities required by NOAA to accept and administer grant funds, to monitor and evaluate management of Puerto Rico's coastal resources and to make periodic reports to NOAA, the Governor and the Legislature, and to request approval from NOAA to changes to the Management Program whenever needed.

(6) ORGANIZATION FOR IMPLEMENTATION

The State must be organized to implement the Management Program (Section 306 (d) (7)).

Commonwealth organization for implementation of the Program has been described in Chapter 4.

(7) AUTHORITY FOR MANAGEMENT

The state must have authority to implement the Program, including the authority required under subsection 306(d) of the CMZA.

The authorities of the PRPB, RPA, EQB and the DNER to administer land and water regulations and guide development are described in Chapter 4. Authorities to acquire land are set forth below in Section 306 (d).

(8) CONSIDERATION OF THE NATIONAL INTEREST

Before approving a management program submitted by a coastal State, the Secretary shall find that...the Management Program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the sitting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.

In order to meet the requirements of national interest, states must:

- Describe which national interests were considered in the planning for and sitting of facilities... during the Program's development and the sources relied upon for such consideration;
- Indicate how and where the consideration of those national interests is reflected in the substance of the Management Program, including, where appropriate, indication of when and where national interests in identified facilities may compete or conflict with other national interests in coastal resources conservation...;
- Describe a process for continued consideration of identified national interests...during program implementation...including a clear detailed description of administrative processes.

a) Identification and consideration of national interests in the Commonwealth's coastal area

Through comments and policy statements of affected Federal agencies, the DNER has identified and included these agencies considerations of particular interest in the development of the PRCZMP. Also, federal legislations and Presidential Executive Orders have been consulted to define the national interests applying to Puerto Rico's coastal zone.

b) National interests considered

The PRCZMP (1978) considered the objectives of the federal agencies related to national defense energy production and transmission, transportation and recreation.

National Defense

The Department of Defense, the NAVY, ARMY, the Air Force and the National Guard, were contacted during the period of Program development. The following were major objectives of national defense:

- to ensure sovereignty of the Nation and protect its citizens from physical harm or expropriation and
- to establish and maintain the facilities necessary to carry out the first objectives.

The Commonwealth recognizes the importance of national defense facilities. Even though Naval presence in the Commonwealth have declined during last decades, it remains significant in terms of facilities and area. While the management program excludes federally owned and leased land from the coastal zone, it anticipates that the defense agencies will conform to the PRCZMP to the maximum extent practicable and that federal consistency mediation procedures will be used as necessary.

Specifically, the following policies found in Chapter 3 indicate how and where on the Management Program the national interest in defense facilities are considered.

- Special protection of wetlands and
- Criteria for diking, filling, dredging and deposit of dredged sediments.

Energy production and transmission

Related agencies in some way to this subject are the Department of the Interior, the USACE and the Department of Energy. In developing the PMZCPR (1978) the objectives of the National Energy Plan were considered. The following were the major objectives for energy:³¹

- To reduce dependency on foreign oil and vulnerability to supply interruptions, and
- To have renewable and essentially inexhaustible sources of energy to sustain economic growth.

National interest in energy production was considered in the Section of Coastal Dependent Uses. Also, specific policies for energy facilities are included in the PRLUP-OPP in Chapter 2.

Transportation

Federal agencies related to Transportation are: the various agencies under the U.S. Department of Transportation, the US Coast Guard, and the USACE. In the development of the PRCZMP (1978) the “National Transportation Needs Study” was considered. It established the following objectives for Puerto Rico:

- To develop a balanced transportation system
- To provide safe, efficient and convenient access via one or more modes of transportation for the movement of people, goods and services, to, from and through the coastal zone.

National interest in transportation facilities is recognized in the PRLUP-OPP. Furthermore, the importance of transportation facilities is reflected in the dredge and filling criteria, found in Chapter 3.

Recreation

Federal agencies related to recreation are the NPS and the USFWS. Also, in the preparation of the PRCZMP (1978) the “National Historic Preservation Act” of 1966, was revised and the SCORP,

³¹ Both objectives still relevant under the national security goals, which include: developing and deploying new energy technologies, reducing our dependence on foreign energy sources, ensuring that America remains competitive in the global marketplace, among others, presented in the *US Department of Energy Strategic Plan* of 2006.

which was also included in this revision and update. The following were the major objectives for recreation:

- Recreation should be considered as equal among competing users of the coastal areas
- To provide high quality recreational opportunities to all people of the US while protecting the coastal environment
- To protect existing recreation areas from adverse contiguous uses
- To accelerate the identification of non-cost transfer or surplus and under-utilized federal property

National interest in recreation was described and considered in Chapter 3, in the following sections: reefs, mangroves, dunes, beaches, coastal forests, historic, cultural and recreational places. The policies and objectives found in Chapter 2 present further consideration.

c) Continued consideration

All affected Commonwealth agencies are committed, as the result of the approval of the PRCZMP to consider the national interest in making permit decisions and approving plans for or in the coastal zone. To identify the national interest, Puerto Rico will rely on comments and policy statements of Federal Agencies, Federal legislation, Presidential executive orders, plans, reports and studies by relevant agencies and testimony at public hearings and other public input.

Decision points where the national interests can be considered are detailed in Chapter 4, in the development control process for the RPA and the PRPB. Furthermore, Federal agencies will be consulted during the development of management plans for the Natural Reserves and Special Planning Areas.

(9) AREAS FOR PRESERVATION OR RESTORATION

The Management Program must make provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or aesthetic values (Section 306 (d) (10).

Areas recommended in the PRCZMP (1978) for preservation and restoration and those designated after the documents approval as Natural Reserves are detailed in Chapter 4 and described in Appendix C.

In all cases, the objective of designation is to preserve important natural features and values. As indicated in Chapter 4, formal designation of areas of preservation and restoration is to be done by statute or administratively by the PRPB.

REQUIREMENTS OF SECTION 306 (D) (10) OF THE CZMA

AUTHORITY FOR MANAGEMENT

The State, acting through its chosen agency or agencies has authority for the management of the coastal zone in accordance with the Management Program. Such authority shall include power--

- ***to administer land use and water use regulations to control development to ensure compliance with the management program, and to resolve conflicts among competing uses; and***
- ***to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.(Section 306(d)(10)).***

Statutory power to adopt and administer land and water use regulations, and to control development is granted by the statutes described in Chapter 4.

The power to resolve conflicts among competing uses is inherent in the planning and regulatory powers conferred by the PRPB. As described in Chapter 4, the Governor is explicitly empowered to resolve conflicts between the PRPB and the EQB.

The DNER has the power to acquire property pursuant to its Organic Law and under the “Natural Heritage Program Act”, Law No. 150 of 1998. The Puerto Rico Lands Administration, has broad power to acquire lands or interests therein, by expropriation or otherwise, according to its Organic Law.

REQUIREMENTS OF SECTION 306 (D) OF THE CZMA

(1) TECHNIQUES FOR CONTROLLING LAND AND WATER USES

The management program must provide “for any one or a combination of the following general techniques for control of land and water uses within the coastal zone...(B) Direct State land and water use planning and regulation...” (Section 306 (d) (11))

The Commonwealth uses the method explained in Section 306(d)(11) of the CZMA: *Direct Commonwealth land and water use planning and regulation.*

(2) ASSURING LOCAL REGULATIONS NOT UNREASONABLY RESTRICTIVE

The Management Program must provide for a “method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit (Section 306 (d) (12)).

There are no local regulations for land and water uses anywhere in Puerto Rico. The PRPB Organic Law empowers the agency to delegate some of its powers, including the development of land use plans and its corresponding zoning ordinances. Currently, the delegation is carried out

through the “Autonomous Municipalities Act”, Law No. 81 of 1991. However, the PRPB, retains the power to approve such plans.

REQUIREMENTS OF SECTION 306 (H) OF CZMA

SEGMENTATION

If a state Coastal Zone Management Program is adopted in Segments, the state must adequately provide for the ultimate coordination of the various segments of the Management Program into a single program. (Section 306(h) of the CZMA of 1972).

The Culebra Segment of the PRCZMP was adopted prior to the remainder of the PRCZMP in 1978. It was developed to respond to the urgent coastal zone management needs of the Culebra island and its surrounding keys and waters.

Following approval of the full PRCZMP, the Culebra Segment was incorporated to it. Management measures described in the PRCZMP apply to Culebra as well as the rest of Puerto Rico and Vieques.

In the particular case of Culebra, the island is subject to the provisions of the Law for the Conservation and Development of Culebra, Law No. 66 of 1975 and the Authority for the Conservation and Development of Culebra. These measures were created to address the particular needs of Culebra.

The process of revising and updating the PMZCPR extended the process to the Culebra Segment and also added a Vieques Segment to the revised and updated PRCZMP. However, the latter does not contain additional specific policies for Vieques.

REQUIREMENTS OF SECTION 307 OF THE CZMA

FEDERAL CONSISTENCY

In addition to general requirements for cooperation that the CZMA places on all federal government agencies, specific requirements address the consistency of federal activities, development projects, licenses and permits with the and financial assistance with the Coastal Program. (Section 307 (c (1, 2, 3) and d)).

a) Standards for Determining Consistency

In determining whether federal activities, development projects, licenses and permits, and financial assistance are consistent with the PRCZMP, the following criteria shall be applied.

1. The Objectives and Public Policies for the Puerto Rico Land Use Plans (1995) adopted by the PRPB. (Included in Chapter 2).
2. The following additional policies and criteria:
 - Policy on special protection for mangroves (Chapter 3, section on Mangroves)

- Policy on appropriate access to Federal beaches hereafter declared surplus (Chapter 3, section on Beaches)
 - Policy on public access to beaches (Chapter 3, section on Beaches)
 - Criteria for diking, filling, dredging, and deposit of dredged sediments (Chapter 3, Section on Coastal Waters, and
 - Policy on sites for coastal dependent development (Chapter 3, section on Coastal-Dependent Uses)
3. Water Quality Standards adopted by the EQB (Chapter 3, section on Coastal Waters)
 4. The following policies, regulations and administrative means incorporated for the past years to the Program, by means of RPC:
 - Law No. 82 of 1979, Organic Law of the Corporation for the Development of and Administration of Marine, Lacustrine and Fluvial Resources (CODREMAR)³²
 - Law No. 80 of 1979, amendment to Law Relating to Control of Development on Floodable Areas
 - Law No. 111 of 1985, Puerto Rico Caves, Caverns or Sinkholes Protection and Preservation Act, as amended
 - Law No. 48 of 1986, Boating Safety, Protection of Bathing Beaches, Registration of Recreational Vessels Act
 - Law No. 150 of 1988, The Puerto Rico Natural Heritage Program Act
 - Law No. 83 of 1983 (Amendment to the Organic Law of the Department of Natural Resources)
 - Regulation to Control the Extraction, Possession, Transportation and Sale of Coralline Resources, Regulation No. 2577
 - Regulation for Use, Surveillance, Conservation, and Management of the Territorial Waters and Submerged Lands Thereunder and the Maritime Zone, Regulation No. 4860
 - Planning Regulation No. 17, Zoning Regulations for the Coastal Zone and the Access to Beaches and Coasts of Puerto Rico
 - Executive Order 4784-B (E.O. on the Coordination of Executive Functions for Disasters and Emergencies)
 - Executive Order 4974-E (E.O. Creating a Program for the Management and Mitigation of Flood Hazards)

³² Added by an RPC on December 28 1989. This act was repealed by Law No. 61 of 1990, as amended, known as the "Act for the Promotion and Development of the Fishing and Aquaculture Industry".

- Administration Bulletin No. 5126-A (E.O. to Establish Earthquake Safety Commission)
 - Resolution JPE-039, Waiver of permits for the DNER passive recreational projects
 - Inter-agency Agreement on Joint Enforcement between the Regulations and Permits Administration (RPA) and the Department of Natural and Environmental Resources (DNER) on the Process to Intervene in the Relation to the Legality of Structures, Uses, and Acts in the Maritime Zone, the Coastal Zone, and Lands under the Jurisdiction of the DNER
 - Senate Joint Resolution No. 2683, To Establish the Natural Hazard Mitigation Planning Program
5. Any policy, regulation, and additional plans, including plans for the Special Planning Areas and Natural Reserves, which will be incorporated into the Program in the future.

Federal agencies administering authority within the Puerto Rico coastal zone boundary are required to administer said authority in conformance with Section 307 of the CZMA and NOAA implementing regulations.

b) Commonwealth Agency Responsible for Consistency Review

The PRPB is the single agency designed to receive and review and make final decisions on consistency certifications and determinations. The DNER advises and assist in the evaluation of the applications. All official information, notice, etc. will go to the PRPB and will come from the PRPB.

c) Federal Activities and Development Projects

Section 307(C)(1) and (2) of the CZMA, require that the Federal activity, including development projects, significantly affecting the coastal zone, “shall be conducted in a manner which is, to the maximum extent practicable, consistent with approved state management program”.

In the case of excluded Federal lands, activities on these lands with an impact on the coastal zone beyond the boundaries of the Federal properties will be subject to this provision, as will the activities beyond the boundary of other coastal zone that will significantly affect the coast. Federal agencies themselves, determine whether or not an activity or project will significantly affect the coastal zone and whether or not it is consistent, to the maximum extent practicable, with the Coastal Management Program. The Federal agency, must, however, notify Puerto Rico of its proposed action and its consistency determination.

Certain categories of Federal actions can generally be acknowledged as not affecting the coastal zone. These include:

- (1) radio transmission and maintenance of navigation aids placed or authorized by the US Coast Guard; and
- (2) any action for which the agencies’ environmental impact procedures, established pursuant to the “National Environmental Policy Act” of 1969, does not require issuance of an Environmental Impact Statement or negative declaration.

Other activities and projects generally can be considered as significantly affecting the coastal zone. These include:

- Federal agencies applying for licenses and permits;
- development projects in the coastal zone;
- land acquisition in the coastal zone;
- road construction in the coastal watershed;
- waste discharge in the coastal watershed;
- activities affecting or altering surface runoff quality or quantity in the coastal watershed; and
- dredge, fill, development, construction, or waste discharge in coastal waters.

To save time and funds and to avoid conflicts involving substantial commitments of resources, consistency should be assessed at the earliest possible time. Preferably, it should take place as an integral part of the earliest planning and budgetary decisions.

The PRPB is the single Commonwealth agency responsible for reviewing Federal agency determinations that their projects and activities are or are not consistent with the PRCZMP. The PRPB's A-95 project notification process will be used and, as necessary, extended, to provide specific opportunity for review of consistency determinations. If a Federal consistency determination is under review, an item will be added to the A-95 notification requesting reviewing agencies to comment whether the project or activity is consistent with the coastal Management Program. The DNER Coastal Zone Division will be among the recipients of A-95 notification in such cases.

d) Federal Licenses and Permits 307 C (3)

CZMA Section 307 C (3) provides that any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the enforceable policies of 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. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. 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.

Table B-1 lists the types of Federal licenses and permits which may significantly affect the coastal zone, which the Commonwealth wishes to review for consistency with the Coastal

Management Program. Such revision is desired only for those licenses and permits authorizing activities within the boundaries of the coastal zone. If it is found that the issuance of other kinds of other Federal permits and licenses causes significant effects on coastal land and water uses, the list will be expanded through appropriate NOAA procedures for changes to the Program.

Table B-1 designates the single Commonwealth Agency, responsible for consistency review of each listed type of Federal license and permit. If the same Commonwealth agency is responsible, both for consistency review and for review under another Federal or Commonwealth law, or regulation, the two types of review will be combined. In all cases, the review process will include notifications of the type required for A-95 clearance. Reviewing agencies will be requested to comment whether the license or permit is consistent with the Coastal Management Program. The DNER Coastal Zone Division will be among the recipients of the notifications.

Table B-1

Federal licences and permits which must be certified for consistency with the Puerto Rico Coastal Management Program	
Type of Federal Licence or Permit	Commonwealth Agency responsible for preliminary consistency review*
<u>Department of Defense- USACE</u>	
Permits and licences required under Sections 9 and 10 of the Rivers and Harbor Act of 1899	DNER
Permits and licences required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, Ocean Dumping	DNER
Permits and licences required under Section 404 of the Federal Water Pollution Control Act of 1972, as amended	DNER
<u>Nuclear Regulatory Commission</u>	
Permits and licences required for siting and operation of nuclear power plants	PRPB
<u>Department of Interior- Bureau of Land Management</u>	
Permits for pipelines right of way	DNER
<u>Department of Homeland Security- US Coast Guard</u>	
Permits for construction of bridges under 33 USC 401, 4591-507 and 525-534	PRPB
Permits for deep-water ports (33-CFR 158 et seq.)	PRPB
<u>Department of Energy- Federal Energy Regulatory Commission (FERC)</u>	
Permits for construction and operation of natural gas pipelines and terminal facilities	PRPB
<u>Department of Interior- USGS (Section 307 (c) (3)(b))</u>	
OCS plans that describe in detail Federal licence and permit activities (Review pursuant to Section 307 (c) (3)(b) of the CZMA	DNER

* Final consistency review is the responsibility of the PRPB.

e) Federal Assistance 307 (d)

CZMA section 307 (d) establishes consistency requirements for federal financial assistance to the Commonwealth and to local governments. Federal assistance includes any grants, loans, contracts, subsidies, insurances, insurances, or other forms of financial aid. If any such said “affect the coastal zone”, it must be consistent with the Management Program.

The PRPB is the single Commonwealth agency responsible for determining if the Federal assistance significantly affecting the coastal zone is consistent with the CZMP. The PRPB's A-95 notification process will be used to review financial aid applications to assure consistency with the Coastal Management Program.

In cases in which Federal assistance may affect the coastal zone, an item will be added to the A-95 notification, requesting reviewing agencies to comment whether the assistance is consistent with the Coastal Management Program. The DNER's Coastal Zone Division, will be among recipients of A-95 notifications in such cases.

f) PROCESSING OF COMMENTS ON CONSISTENCY

Puerto Rico will rely upon the public notice provided by the Federal agency reviewing the applications for Federal licenses or permits. If this notice does not satisfy the minimum requirements of NOAA's regulations adopted pursuant to Section 307, the Commonwealth's agency will give additional required notice. The Commonwealth's agency will consult with the affected Federal agencies to determine whether the federal notice comply with the NOAA regulations.

The Commonwealth's agency will review all comments within the time limit specified in the NOAA's regulation. In addition, the Commonwealth's agency will make its own initial determination of consistency. If timely comments are received suggesting that the action is not consistent, or if the Commonwealth's agency itself makes an initial determination that the action is not consistent, the responsible agency will attempt, through negotiation, to modify the project or take other appropriate measures to achieve consistency. If the conflict cannot be solved to the mutual satisfaction of all reviewers, the responsible agency will review all comments and make a determination of consistency or lack of consistency on behalf of the Commonwealth.

REQUIREMENTS OF SECTION 307 (F) OF THE CZMA

AIR AND WATER POLLUTION CONTROL REQUIREMENTS

The management program must incorporate the requirements established by, or pursuant to, the Federal Water Pollution Control Act, as amended, and the Clean Air Act, as amended (Section 307 (h)).

The policies and requirements of the Federal "Water Pollution Control Act" and the "Clean Air Act" are the minimum water and air pollution control requirements applicable to the PRCZMP and are incorporated by reference.

The PRCZMP has been developed in consultation with the EQB, which is the Commonwealth agency responsible for pollution control. While the revised and updated draft of the PRCZMP was placed under consideration of the EQB as well as other agencies.

REFERENCES

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