

## COMMENTS AND RESPONSES

This Part includes a synopsis of all written comments received on the proposed South Carolina Coastal Management Program. The full text of all written comments received has been prepared as an attachment to this Final Environmental Impact Statement and will be sent to all those commenting on the South Carolina Coastal Management Program DEIS. Additional copies of the attachment can be obtained from the Office of Coastal Zone Management.

The Office of Coastal Zone Management, in consultation with the State of South Carolina, has responded to the comments listed in this Part. The responses appear directly following each summarized comment. Strictly editorial comments have been forwarded directly to the State for inclusion in the FEIS and do not appear in the synopses which follow.

The Citadel  
William Bruce Ezell, Jr.  
May 17, 1979

### Comments

1. Under Section VIII, Dredging (pages III-55 to III-59), the authors of this section failed to note the most important (albeit a negative one) ecological impact of the disposal of dredged material. . .namely the production of mosquito larvae within fissured, dried dredged material. In the South Carolina Coastal Zone dredged material disposal sites in the State's harbours and along the Atlantic Intra-Coastal Waterway (AIWW) are known sources of important mosquito species such as Aedes taeniorhynchus and Aedes sollicitans. The impact of these two arthropods upon the health and well-being of residents of South Carolina is well known and should have been cited in the EIS.

Under Dredging, Disposal Policies (pages III-57 to III-58) the report fails to cite the need for well-planned and ecologically sound policies for mosquito control efforts within dredged material disposal sites, regardless of the local sponsor or nature of the project.

No mention is made of the need to manage dredged material disposal sites in such a manner that mosquito breeding is suppressed or eliminated, (page III-57). I feel that the policies relating to the disposal of dredged material should allow for water management techniques that allow for mechanisms that restore tidal flushing action to the disposal site. In this manner the introduction of a variety of marine life (such as predatory fish) would tend to decrease mosquito production.

### Response

1. The South Carolina Coastal Council recognizes the effect of certain activities in the coastal zone on mosquito populations--most especially the activities of dredged material disposal and creation of impoundments. The Council agrees that the coastal management program should address the problems of mosquito production and control because of the significant adverse impacts that certain mosquito species can have on the human population.

Dredge policies now indicate that mosquito control must be considered by SCCC in permit decisions regarding disposal of dredged material. The Mosquito (Vector) Control Division of DHEC is notified and responds to all permit applications from the SCCC. The SCCC relies heavily on these recommendations in making its permit decisions based on the technical expertise of this Division.

Please see changes to the management program document on pages III-54 policy #1(d) and III-57 policy #1(d).

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### Comment

2. The Waterways Experiment Station of the U.S. Army Corps of Engineers recently completed a massive research effort on the ecology and management of dredged material under the Dredged Material Research Program (DMRP). Some of these studies include:

A study of the locations and mosquito potential of all dredged material disposal sites in the Charleston Corps of Engineers District in South Carolina;

A study of the ecological impact of dredging on marshland that was based in South Carolina. The report fails to note the importance of the introduced plant Phragmites communis (common reed), and also fails to note the historical association of freshwater mosquitos within diked estuarine ponds.

## Response

The Coastal Council takes note of the several studies and reports brought to its attention by these comments, and would point out that its bibliography was not intended to be all-inclusive. The Council appreciates having these studies and reports identified for future reference.

Various discussions of plant species which appear throughout the program document are not intended to be academic, all-inclusive treatments of the subject. The Coastal Council is aware of the potential importance of Phragmites communis and appreciates its being cited in the comment. Also, in response to the comment on freshwater mosquitos, please see Response No. 1.

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## Comment

3. In Volume II, under Areas of Particular Concern (pages F-2 to F-4), the report fails to cite the importance of Drum Island in Charleston Harbour as a Bird Rookery. Drum Island is also a major source of salt marsh mosquitoes for downtown Charleston. The occurrence of large numbers of birds and mosquitoes within the same proximity suggests a potential for the transmission of the encephalitide viruses to man. The public health aspect of this phenomenon was not addressed in the EIS.

## Response

Federal regulations contain certain criteria which sites or areas must meet in order to be designated as Geographic Areas of Particular Concern. To date, Drum Island does not meet these criteria. As sites, other than those listed in the Appendices, come to meet these criteria, they will automatically become GAPCs. The Council welcomes nominations from all interested parties for future GAPCs.

County of Charleston  
Max Askey  
May 18, 1979

Comments

1. The Charleston County Mosquito Abatement Program endorses the statement made by the South Carolina Department of Health and Environmental Control, Division of Vector Control, and recommends that it be incorporated into the Impact Statement.

The State of South Carolina Coastal Management Program and Draft Environmental Impact Statement is insufficient in its statements concerning mosquitoes.

Response

Please refer to response No. 1 to The Citadel and response No. 1 to the South Carolina Department of Health and Environmental Control.

Comments

1. In a number of instances, a good, sound management policy is reduced by insertion of such words as "should not," "discouraged," "to the extent possible," or "unless no feasible alternative exists. . .". Following are only some of the specific policy areas with which there is concern with the terminology.

- a. Guidelines for Evaluation of all Projects (page III-14.8) ". . .no feasible alternative" and "any substantial environmental impact" is minimal. In this statement how can substantial environmental impact be minimal. Also, if "no feasible alternative" must remain in this statement, then no action must be considered as a viable alternative.
- b. Page III-15.II.1) "The extent to which the activity requires a waterfront location or is economically enhanced by its proximity to the water." Perhaps the underlined portion of this statement should be deleted because it opens the door for approval of almost any residential development. It is a known fact that proximity to water enhances almost any residential lot value.
- c. Page III-16.1(b) "Residential development which would require filling or other permanent alteration of salt, brackish or freshwater wetlands will be prohibited, unless no feasible alternatives exist . . .". Again, the decisiveness of this policy statement is weakened by the phrase "unless no feasible alternatives exist." The phrase should either be omitted or no action considered as a feasible alternative.

Responses

- a. Please note editorial changes to guidelines which reflect your concerns. Also please note revised definition of "feasibility," which allows for a "no action" alternative.
- b. This guideline must be viewed in the context that it is a general consideration for evaluation of all projects in the critical areas, and other specific rules and regulations will also be employed in the review and evaluation of individual permit applications. The economic consideration is not an overriding one. The language explicitly tracks Section 15(A) of the South Carolina Coastal Management Act of 1977.
- c. See Response a., above. In addition, it should be noted that some Council certifications have already been denied for the filling of freshwater wetlands for residential development when it was thought that feasible alternatives existed. It should be noted that the thrust of this statement is consistent with EPA's §404(b)(1) guidelines [230.5(b)(8)], i.e., that other site or construction alternatives are not practicable.

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Comment

2. Page III-20. This section concerning port facilities should also include a requirement for considering intensified use of existing facilities for expansion such as highrise container storage, etc.

Response

Resource Policies (1) and (3) p. III-19-20 read in conjunction address the concern expressed in this comment. (In addition, Recommended Policy (2) specifically covers this point.)

Comment

3. Page III-22.11. The policy on roads and highways should include a provision requiring bridge construction techniques which avoid dredging or filling, thus preserving the marsh below the bridge.

Response

Resource Policies (1)(a) and (2)(a) and (b), p. III-22 address the concern expressed in this comment. Feasibility in the case of bridging wetlands refers to engineering capabilities and extremes in cost differential.

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Comment

4. Page III-31. Where temporary access roads through wetlands are required to reach a land parcel to be logged, a performance bond should be required of the applicant in an amount adequate to have the temporary fill removed and marsh restored after the logging activity is complete, should the applicant fail to remove the material himself.

Response

Requiring a performance bond would be unnecessary duplication since any applicant must observe the requirements or conditions of a permit in order to continue an activity legally or face punitive enforcement action. This applies to removal of temporary roads or other structures if such a request is made a stipulation of permit issuance.

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Comment

5. Page III-55.1(d). "Dredging for establishment of new canals which involves permanent alteration of valuable wetland habitats, especially for the purposes of creating waterfront lots from inland property or for creating dead-end canals, will be prohibited unless the Council finds there will be no significant environmental impacts." This is a highly inconsistent statement. You cannot permanently alter valuable wetlands and replace them with a dead-end canal development and still have ". . .no significant environmental impacts." Unfortunately, it is in reality quite possible for a politically influenced Council to conclude that there will be no significant environmental impact from such a development. Therefore, we suggest that portion of the statement which reads ". . .unless the Council finds there will be no significant environmental impacts" be deleted.

Response

Please note the change in language on page III-55, Policy 1(d). The State agrees that the permanent alteration of wetlands almost always has significant environmental impacts. Changes in policy language are intended to strengthen the Council's ability to prohibit such activities unless an overwhelming public interest exists. Also this revised policy language is intended to extend the application of this policy to upland areas as well (non-wetland areas).

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Comment

6. Page V-5 and V-23. Table 1 on page V-5 lists the NPDES program and air emissions permits as items under DHEC's responsibility, while on page V-23, EPA is responsible for these programs. Since the EPA has delegated these programs to DHEC, it seems the State would direct the applicant to determine consistency. In any case, the EPA is not entirely clear on the consistency procedures within this plan and suggests additional discussions prior to the FEIS.

## Response

Please note deletion of "Permits to operate for air emissions," page V-5. Also note the correction on page V-23, which has deleted from the list subject to consistency review those permit activities which have been delegated to DHEC.

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## Comment

7. The Draft EIS portion of the CZM plan recognizes the importance of wetlands and points to the unlikelihood of their being filled. However, the policies preceding the DEIS contain too many stipulations (often the same word or phrase) which could allow approval of an environmentally destructive project. As stated earlier, most of the time the stipulation involves the word "feasible" which is defined in the glossary section of the document. However, even with this definition, terminology involving the word feasible is ultimately discretionary and can lead to arbitrary decisions. For this reason, a number of the policy statements are weakened in their effectiveness when they contain this terminology.

## Response

Please refer to Response No. 7, NRDC comments. Also please note that editorial changes have been made to policies which eliminate unnecessary qualifiers.

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## Comment

8. It appears that some areas containing high quality wetland habitat have been excluded from the "critical area" category and are not delineated on the maps depicting "areas of unique natural resource value." Most of these excluded areas are positioned upstream on various major rivers such as the Waccamaw and Cooper, as well as their tributaries. If this is indeed the case, it seems arbitrary to exclude them.

## Response

"Critical area" is defined by a geographical boundary which generally includes salt and brackish wetlands and is defined for the purpose of the direct permit issued by the Council. "Areas of unique natural resource value" is a designation which only applies to GAPCs. Designation as a critical area does not necessarily imply designation as an area of unique natural resource value.

It would be impossible to single out and map every area of high quality wetland habitat as an area of unique natural resource value. However, the Coastal Council has adequate jurisdiction over all quality wetlands through review and certification of State permits, direct Council permits, and Federal consistency of Corps of Engineer and other Federal permits.

The SCCC recognizes that other high quality wetland habitat areas do exist in the coastal zone and would welcome working with EPA in considering additional areas for nomination as GAPCs.

In addition, please note Audubon Response No. 11 and NRDC Response No. 1(c).

Comment

1. The SCCMP should discuss the certification requirements and legal authorities on hydroelectric projects under FERC's licensing jurisdiction which are located outside of the coastal zone but may significantly affect the coastal zone.

Response

The State agrees that a clearer discussion should be included regarding consistency not only for Federally licensed projects outside of the coastal zone which may directly affect the coastal zone but also for direct Federal activities and development projects, Federal assistance, and OCS activities. Therefore, please note the changes in the document which include under operational guidelines for each category the consistency of these development projects and activities outside of the coastal zone. The changes are found on page V-17, page 23, and page 32. Also, please note the addition of projects under FERC's licensing jurisdiction.

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Comment

2. Future alternatives for power supply in South Carolina are discussed on page IV-36. We would like to point out that the President's National Energy Plan includes installation of small hydroelectric generating facilities at existing dam sites. There are a great number of retired small hydroelectric powerplants in South Carolina, which could be reactivated or redeveloped to provide electric energy needs. We believe that the development of small hydroelectric power at existing dams should be considered as an alternative power supply for South Carolina.

Response

The State agrees, and the inclusion of the possible development of small hydroelectric generating facilities at existing dams has been added on page IV-36, 7th paragraph under Future Alternatives.

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Comment

Liquefied Natural Gas (LNG) Policies

3. There is concern about the wording used in the State's LNG policies, as presented on page IV-48. The expression "areas of significant population" is not sufficiently clear to permit a reasonable determination of available LNG sites. Also, we are opposed to the inclusion of areas that are "likely to become significantly populated. . ." in the State's prohibition. If a facility were located in a sparsely populated area, it is likely that economic and aesthetic factors would automatically limit any future population increases.

Policy V on page IV-48 is inappropriate. The State's intention appears to be to minimize truck transportation of LNG throughout South Carolina. However, the State's recommendation that LNG be moved by pipeline is technically infeasible. More likely, the LNG would first be regasified at the import terminal before being transported by pipeline as a gas. The proposal that safeguards for LNG truck transportation be as strenuous as those for LNG tankers is unacceptable. LNG tanker transportation is regulated in a variety of ways by the Coast Guard. If the State wishes to develop standards for LNG truck transportation it should do so in cooperation with the Department of Transportation. However, South Carolina should avoid singling out LNG transportation for stringent regulation when many volatile and potentially more dangerous liquid fuel transportation situations are being overlooked.

Response

Note the change on page IV-49 which strikes "likely to become significantly populated." The State agrees that future population patterns are difficult to predict. Areas of significant population are any areas other than rural areas.

Also please note the language change on page IV-49 which clarified that the State's intention is to encourage regasification of LNG to be moved through pipelines unless no feasible alternatives exist.

The State does intend to minimize truck transportation of LNG through urban areas. Rather than developing standards for LNG truck transportation now which may never be needed, the intention of the State is to go on record that those standards might need to be developed in conjunction with any specific facility planning to locate in the coastal zone.

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Comment

4. Uses of Regional Benefit

As acknowledged by OCZM, South Carolina presents a very restrictive list of proposed uses of regional benefit. From the State's general definition many more facilities would qualify under uses of regional benefit. The list of uses of regional benefit should be expanded to include all energy producing and transportation facilities.

Response

The CZMA (See §923.12 OCZM Rules and Regulations) allows states the flexibility to determine what uses they consider to be land and water uses of regional benefit. The State's determination that parks and transportation facilities are their only URBs is directly related to the rural character of the coastal counties and results in an acceptable approach to defining URBs. The SCCMP has determined that energy production and transmission facilities are in the national interest but are not uses of regional benefit.

Comment

The State's proposed program, while infinitely better than no program at all, needs to be amended in several respects in order to meet all the requirements of the Federal Coastal Zone Management Act. The National Audubon Society therefore recommends that NOAA approve the program conditionally, subject to strengthening amendments to remedy the following shortcomings.

1. The DEIS notes that the State's "critical areas" will receive "more intensive attention through the direct permitting system, while the remainder of the coastal zone will be managed through cooperation with other State agencies and their adherence to coastal program policies."

We believe that the entire coastal zone must be covered by the permit system if the letter and the spirit of the Federal Coastal Zone Management Act are to be met. "Cooperation" by and "memoranda of agreement" with other State agencies cannot take the place of a permit system covering all of the coastal zone and administered by a single agency, the Coastal Council.

Response

The State of South Carolina has two levels of management concern within its identified coastal zone. As noted in your comments, the identified "critical areas" will be more intensively managed through direct regulation by the South Carolina Coastal Council than the remainder of the coastal zone. The State's approach for management of all remaining areas within the eight coastal counties relies upon a "networking" approach which our regulations specify as an acceptable method of land and water use planning and regulation (see §923.43 Rules and Regulations). Additionally, OCZM believes that South Carolina's "networking" approach is highlighted and strengthened by Sections 7(A) and 8(B)(11) of the South Carolina Coastal Management Act. In particular, §8(B)(11) provides the Council with a veto power over proposed State agency actions that would contravene the State's approved coastal management program. In this respect, we believe that South Carolina's "networking" approach in areas of the coastal zone outside of the "critical areas" is much stronger than simple "cooperation" and coordination.

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Comment

2. The State Program's use of "considerations" and "policies" is somewhat confusing and could lead to unnecessary confusion, misunderstanding and conflict. We recommend that "considerations" and "policies" be combined into a single set of guidelines, policies or standards that clearly set forth what is required and what is recommended under the program.

Response

The discussion on pages (III-12) - (III-15) shows the difference between the enforceable policies (on which the Council bases its final decisions both on activities which it directly permits as well as those which it reviews for compliance or noncompliance with the management program) and the guidelines or considerations which assist the Council in making an evaluation of activities but not a final decision. Page III-15 also explains that there is also a category of recommended policies which the Council cannot enforce but can encourage applicants to follow.

As indicated, the considerations listed on p. III-14 and 15 are general guidelines for evaluation of all projects. In addition to this general review, individual projects are reviewed and evaluated based on the Resource Policies for the specific type of activity. The difference between policies for the critical areas, for the coastal zone, and recommended (or enhancement) policies is explained on p. III-15. All guidelines and policies are required (or enforceable) except those specifically labelled as recommended.

General program guidelines (p. III-14) as contained in the program document are enforceable guidelines upon which the SCCC will base permit decisions in the critical areas, review and certification in the coastal zone, and Federal consistency determination in the coastal zone.

Comment

3. The DEIS states that the proposed program's policies "provide specific guidance for the further orderly development" of South Carolina's barrier islands. If that is indeed so, then we suggest that the program violates the letter and the spirit of the Federal and State coastal zone management laws. "Development" of barrier islands has long been one of the major problems in South Carolina and other coastal States, has caused the degradation of many barrier islands and has adversely affected people, wildlife and marine resources, and the environment. We recommend that the program be amended to make it clear that it is not intended to "develop" any of the State's now undeveloped barrier islands.

Response

The Federal CZMA does not require that States prohibit the further development of barrier islands. However, the State of South Carolina has taken a strong position on the future development of undeveloped barrier islands along its coast. Policy #1(h)(p. III-22 of the DEIS) indicates the State's intention to severely restrict, if not prohibit, the use of public funds for the construction of roads or bridges to undeveloped barrier islands. This type of public investment policy will have a major impact on the development potential for these islands. While this and similar policies do not prohibit island development, they severely restrict development because of the enormous expense involved in road and bridge construction to the private developer. The above referenced policy represents a strong commitment to protect the integrity of the fragile barrier island system.

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Comment

4. On page II-3, the DEIS says that State legislation "has authorized the Council or any person adversely affected by any violation of the Act to bring suit in the circuit court of the county where the violation occurs." We hope that the definition of "any person adversely affected" includes any individual or organization concerned about the wise conservation and use of natural resources and not just any person adversely affected personally and/or economically. If the proposed program does not already do so, we recommend that it be amended to make this clear.

Response

The definition of "person" (Section 3(K) of the South Carolina CZM Act) is an all-inclusive one. The meaning of "any person adversely affected" (Section 18 of the South Carolina CZM Act) is intended to include any individual or organization concerned about the wise conservation and use of natural resources. The Natural Resources Defense Council has used this right by serving as an intervenor in an appeals process.

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Comment

5. On page 13 of Part III, the DEIS says that "decisions made according to the rules and regulations enable a predictability which is economically beneficial and essential for environmental protection." What may be "economically beneficial" may not necessarily be "essential for environmental protection." We recommend that the discussion be clarified.

Response

Please see change in the wording on page 13 of Part III. In addition, please note Response No. 2, EPA. These changes note and clarify that both economic and environmental considerations are a part of SCCC permit decisions.

Comment

6. On pages 14-15 of Part III, the DEIS says: "If the project would have a significant negative impact on a priority use, it would be discouraged or disallowed." We believe that language leaves far too much discretion to the Coastal Council, which will implement the program. If the program is indeed designed to "protect the primary purpose or use of the area," then any project that "would have a significant negative impact on a priority use" should be "disallowed," not merely "discouraged."

Response

See change on p. 14 and 15 of Part III and on p. IV-2 (Implementation, line 5) of Part III (Program Document).

If a project would significantly permanently impact the priority of use it would be prohibited. Lesser impacts would require a heavily conditioned permit to mitigate those anticipated impacts.

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Comment

7. The definition of "feasibility" on page V-45 cites many factors but fails to provide clear guidelines for the impartial and objective determination of "feasibility."

"Feasibility" must be defined more clearly and the areas in which "feasibility" will be a determining factor must be reduced to a bare minimum if the State's proposed program is to meet the requirements of Federal law.

Response

Please see Response No. 7 Natural Resources Defense Council, which fully discusses changes to both the definition of "feasibility" and specific policy changes which have been made to the program document.

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Comment

8. On page 28 of Part III, the DEIS says that the SCCC has changed "should" to "shall" in many policies in its program in response to NOAA's request. Nevertheless, the word "should" still remains in too many of the policies. That, once again, gives the SCCC much more discretion in implementing the program than the Federal Coastal Zone Management Act allows. We recommend that the word "should" in all policies be changed to "shall" or "must" wherever necessary to meet the requirements of Federal law.

Response

Please see Response No. 7 Natural Resources Defense Council, which fully discusses changes to both the definition of "feasibility" and specific policy changes which have been made to the program document.

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Comment

9. We agree with NOAA's finding, on page 34 of Part III of the DEIS, that the State's consistency procedures "do not appear to be specific enough." We recommend that approval of the program be conditioned upon further clarification of the consistency requirements.

Response

Please note changes made to the Federal Consistency Section of the FEIS. If you have further concerns about the clarity or specificity of the "operational guidelines" for Federal Consistency, your specific comments would be helpful to both our staff and the State's staff.

Comment

10. On page 37 of Part III, the DEIS says the cumulative effects of numerous small projects are "beyond the purview" of the SCCC under the proposed program.

We recommend that this part of the proposed program be amended to require more complete review and regulation of small projects that could, cumulatively have a significant effect upon coastal resources.

Response

As a point of clarification, Part III of the DEIS is a part of OCZM's and the State's assessment of the environmental impact of Federal approval of South Carolina's coastal management program. The statement referenced in your comment is not intended to be a part of the State's proposed program, rather an objective review of some of the impacts associated with approval of the program. We believe that the State's program as defined fully meets the requirements of the Federal Act. While the State's ability to regulate small projects, such as single family residential development, is limited, we believe they will be able to adequately address the issue of cumulative impacts in part through their Guidelines for Evaluation of All Projects (DEIS, Part II, p. III-14). Specifically guideline #7 addresses the issue of cumulative impacts. Where a State permit is required: "The possible long-range cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area" must be considered.

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Comment

11. Finally, we want to comment upon an issue that the State's proposed program and the DEIS do not address. Federal regulations require a State to "designate geographic areas that are of particular concern, on a generic or site-specific basis or both," in its coastal zone management program. South Carolina's law requires the State's Coastal Council to "inventory and designate areas of critical State concern within the coastal zone, such as port areas, significant natural and environmental, industrial and recreational areas." On page IV-1, the DEIS says that the "areas of critical State concern" parallel the "geographic area of particular concern" requirements mandated by the Federal legislation.

The State's proposed program defines "geographic areas of particular concern" as including "areas of unique natural resource value" and "those offering substantial recreational value" and "those of vital importance in protecting and maintaining coastal resources." (Page IV-1) The State's proposed program includes in the criteria for designating a natural resource area as a geographic area of particular concern the following (page IV-4): "The area is unusually large or undisturbed in comparison to others of a similar kind, thus affording a unique opportunity for scientific observations or recreation." "The area represents superior habitat for species which while not endangered or threatened, are of vital importance as commercial or sports-oriented coastal resources;" and "the area affords maximum recreational opportunities in the coastal zone because of access to. . .waterfront. . .and/or wide range of active and passive recreation opportunities in a natural setting."

Despite those clear mandates in Federal and State law, the State's proposed coastal zone management program fails to include, in its inventory and designation of areas of critical State concern, some of the areas of most critical concern in the State's coastal zone--especially St. Helena Sound and Port Royal Sound.

The South Carolina Water Resources Commission's "Port Royal Sound Environmental Study" noted a few years ago:

"Most of Port Royal Sound and the associated St. Helena Sound constitute a large part of South Carolina's remaining coastal area.

"The cleanliness of these areas--in a time when pollution is rampant--should be regarded as a natural resource for the nation.

"The chemical quality of the waters of Port Royal Sound was generally excellent and indicative of high quality water.

"Port Royal Sound and adjoining waters supported a wide variety of marine fish which included several species of sport and commercial value. A total of 47 species was recorded in the collections.

"The most productive of the 20 foot trawl sampling stations in the Port Royal estuary in terms of overall numbers and biomass was the Colleton River location near Victoria Bluff. . . This river system is of considerable significance to marine fishery resources. . .The Port Royal estuary. . .is of prime importance as a habitat for white shrimp, blue crab and commercially important fin-fish species.

"At all stations Port Royal Sound is apparently an unstressed ecosystem at the moment." (Page 219.)

The facts seem clear enough: Port Royal Sound, according to the State agency study and according to supportive studies by Federal agencies, is clearly an area of "particular concern" under the Federal law and an area of "critical State concern" under South Carolina law.

Until and unless coastal areas, such as Port Royal Sound, are inventoried and designated as areas of particular concern, and until and unless other changes are made in the proposed program to enable it to meet all the requirements of Federal law, we respectfully suggest that Federal law prevents NOAA from unconditionally approving the State's proposed program.

As we noted earlier, we commend the State for its efforts to date to improve its management of the coastal zone. We look forward to working with the State as it strives to bring its program into full compliance with Federal law.

#### Response

Port Royal Sound and St. Helena Sound have not been designated as Geographic Areas of Particular Concern (GAPCs) at this point for several reasons. First, the State management authority which presently exists in these areas is thought to be adequate to ensure reasonable protection of the coastal resources. All of Port Royal and St. Helena Sounds are within the direct jurisdiction of the Coastal Council for "critical areas." Any activity or alteration proposed for the waters or wetlands in these areas must first obtain a Council permit, with review and evaluation of such application based on the Rules and Regulations, plus input from Federal, State and local agencies as well as interested citizens and groups.

Designation as a GAPC carries with it the requirement (§923.21, Federal Regulations) that priorities of use be developed for the area. Because of the extensive size, diversity of natural characteristics and competing uses of Port Royal Sound, drafting one set of priorities for the entire area would be a difficult if not impossible task. The resulting priorities might not be in the best interest of responsible resource management throughout the sound.

The Coastal Council and its staff would, however, welcome the opportunity to talk directly with and work with the Audubon Society in consideration of formal nomination of these and other areas as GAPCs, now and in the future.

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#### Comment

12. On page IV-19, the DEIS lists facilities owned and managed by the State Ports Authority as designated areas of particular concern. However, not included is the State Ports Authority's property on the Colleton River in the Victoria Bluff area. We respectfully request an explanation for this omission.

#### Response

The State Ports authority's property on the Colleton River was not listed on page IV-19 because of the fact that no port facilities exist on this site. The Council's list was intended to include only active port sites.

A portion of property is currently being transferred to the S.C. Wildlife and Marine Resources Department. Once it becomes a part of either the Heritage Trust Program or a Gam or Wildlife Management Area it will be included as a GAPC.

Comments

1. Statutory Limitations

The Natural Resources Defense Council finds that the major weaknesses in the South Carolina Coastal Management Plan flow from weaknesses in the enabling legislation. Specifically, the critical areas over which the Coastal Council has direct permitting authority do not include sand dunes beyond the first row of dunes adjacent to the ocean, freshwater wetlands, or barrier islands.

a. Regarding sand dunes, some special protection is afforded to areas beyond the first landward dune by erosion control policy and by the designation of these dune areas as areas of special resource significance. However, policies affecting construction and development in these dune areas state only that proposals for such activity "should demonstrate reasonable precautions" to prevent negative impact on adjacent critical areas.

b. Freshwater marshes are also designated as special resource areas and activity below the highwater mark in freshwater marshes must be permitted by the State Budget and Control Board and thus reviewed by the Coastal Council. Policy provides that filling or other significant alteration of a productive freshwater marsh "will not be approved where feasible alternatives exist." The effectiveness of this policy and the strictness of its application is questionable.

c. Barrier islands, also designated as special resource areas, are protected by policies which call for "an overwhelming public interest" to be demonstrated before public funds are expended to provide access to previously undeveloped islands and for a comprehensive approach considering the natural "carrying capacity" of an island to accompany any proposals for the extension of public services. However, these policies would not affect private development on a smaller scale, which is more likely to occur on islands which are not purchased by the State.

Response

1. a. Sand dunes other than the first primary ocean-front dune (within the critical area) are afforded protection through the authority of the Council to review and certify all permits of other State agencies (see Policies p. III-71). In addition, much residential development which might not otherwise come under State permit jurisdiction, will be subject to Federal consistency review by the Council when application is made for FHA financing (notification through the A-95 process). The policies affecting these dunes in the section "areas of special resource significance" have been revised, please note change in program document. Absolute prohibition or restriction of development in these areas is not felt to be necessary to protect the resource. Precautions to avoid significant disruption of the dune formations and especially to eliminate impacts on the crucial primary dune are the main focus of the Council in managing these areas.

b. As noted by the commentor, the State does have management authority over freshwater wetlands below mean high water. Outside the critical areas but within the coastal zone, the Coastal Council must certify each application before the S.C. Budget and Control Board may issue the permit. Since adoption of the S.C. program by the General Assembly, the Council has already denied such certification in freshwater wetlands on several occasions, specifically for residential lot purposes. In addition, the Council will have Federal consistency review over Army Corps of Engineers permits in these areas.

Policy language in many instances affecting freshwater wetlands has been revised, and the definition of feasibility has also been modified. Please note response to Comment No. 7 and see changes to program document.

c. South Carolina's State level management of already developed barrier islands is accomplished primarily through the direct permitting authority of the SCCC over identified "critical areas" which include: coastal waters, beaches, primary ocean-front sand dunes, and tidelands. In addition to this control, the SCCC has certification (and veto power) authority for State-level activities occurring on barrier islands. This certification authority assures that no activities can occur on the barrier islands that would contravene the State's approved coastal management program and all policies contained therein.

Of particular importance in providing protection for currently undeveloped barrier islands is the policy you cite (policy 1-(h) p. III-22). While this policy does not prohibit any further development of undeveloped barrier islands, it indicates that the State will not support (financially) new construction of roads and/or bridges to undeveloped barrier islands. OCZM believes that this policy will significantly affect the kind and level of future development on the affected islands. Where private development on a smaller scale does occur, we believe that the State management over "critical areas" coupled by the State's review and certification authority over other State actions will provide adequate protection of the resource. We believe that this type of State-level public investment policy is an important management tool and are very supportive of the State's use of such a policy to further protect their coastal barrier islands.

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Comment

2. It is not clear that an applicant must specifically demonstrate that substantive environmental considerations have been made or that alternative methods of carrying out a project have been examined before a proposal is submitted to the Council or to another regulatory agency.

Response

The permit applicant must in all cases provide the basic information required in the application and by the Rules and Regulations for Permitting. This list is shown on p. V-6 of the program document. This data is generally adequate for Council staff to evaluate environmental considerations and possible alternatives. Please note #8 of the list on p. V-7 which reserves the right of the Council to request additional information when necessary. It is Council policy to encourage pre-application conferences with applicants; and in practice on major or controversial permit decisions there are usually several meetings with the applicant to discuss just such matters as environmental considerations and options. The Council makes the determination of conformance with the rules and regulations and of feasibility of alternatives, not the applicant. The Council plans to write a "Developer's Handbook" in the near future which will help applicants better understand the need for coastal resource management and identify reasonable, more environmentally acceptable alternatives.

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Comment

3. The term "no feasible alternative" should be replaced by a broader standard. The burden should be on the permit applicant to show before any permit is issued for activity in a critical area:

- a. No significant resource deterioration will take place.
- b. There is a clear public benefit connected with the activity.
- c. There is no feasible alternative.

Response

Please refer to the State's revised definition of "no feasible alternative" which appears in the program "glossary." While the State has determined that an applicant does not have to meet all three standards identified here by NRDC, changes have been made to the document which require the applicant to show that:

- a. Any substantial environmental impacts can be minimized; and
- b. An overriding public interest can be demonstrated; or
- c. No feasible alternative exists.

Also please refer to NRDC Comment and Response No. 7.

Comment

4. Local government regulations outside the critical areas are beyond the authority of the Coastal Management Plan. Some uses which could have significant coastal impacts may not be affected by the management plan. Specifically, small residential projects and roads or other access ways which are privately funded could conceivably escape regulation by the Council or any other State regulatory agency.

Response

While local government regulations outside the "critical areas" are not subject to State regulation, Section 10(B) of the South Carolina Coastal Management Act requires any city or county exercising zoning authority to submit regulations and ordinances affecting "critical areas" for Council review (for conformance to the management program) and adoption. The State's proposed management program has not identified small-scale residential development, etc., occurring outside of the "critical areas" to be of State-level management concern. Therefore, it is not subject to direct State regulation. However, it should be noted again that the SCCC has review and certification (including veto power) authority over State actions occurring within the State's eight-county coastal zone. Any activity occurring outside the "critical areas" that is subject to State regulation is therefore subject to conformance with coastal program policies.

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Comment

5. The SCCMA does not require a determination of State or private ownership before a permitting decision affecting property whose ownership may be questionable is made.

Response

While nothing in the S.C. Coastal Act of 1977 or the Rules and Regulations requires a determination of ownership before permitting decisions are made, the Council has stipulated that in instances where ownership of tidelands is questionable, the applicant will be required to provide a statement from the Attorney General as to whether or not there is a dispute with the State regarding ownership before the SCCC will consider the application as completed. If the Attorney General fails to respond within 60 days, the application will be processed.

Section 15(c) of the Act requires the Council to act upon permit applications within 90 days, so the Council could in no way withhold its decisions until such lengthy legal issues are resolved. Section 22 of the Act specifies that the Council has no authority with regard to the right, title or interest of individuals or the State in such tidelands, so the Council can in no way be involved in settlement of such disputes. However, in terms of its mandate to protect navigation and public access, the Council feels it appropriate to provide appropriate State agencies the opportunity to institute action. Please note addition to program document (p. V-7).

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Comment

6. The Attorney General is not empowered by the Coastal Management Act or by any other South Carolina legislation to bring an action on behalf of public interest in access to or use of land. Where development is anticipated on beach property or other areas that have been previously used for recreation by the general public, important public rights can be lost without some means of determining whether the public rights have been acquired.

Response

Public access is discussed in the Beach and Shoreline Access Section of the program document (IV-61). That section defines "existing public access," which constitutes a basis of every Coastal Council permitting decision which requires consideration of public access. This definition, which includes availability of transportation and actual use by the general public with reasonable frequency, is not limited to dedicated access ways. Thus, private individuals may appeal permit decisions which fail to comply with the mandate that existing public access be considered. Also, the Attorney General does have authority to protect the public interest in access to or use of land independently of the Coastal Management Act.

## Comment

7. Policies which combine non-mandatory language with specific protective options have been carefully scrutinized. Since the "protective measures" option in itself affords the permitting authority a great deal of flexibility and discretion, the use of the word "should" instead of "shall" or "must" brings enforceability into serious question.

The section in the statement on "General Policy Impacts" assumes that policies regarding the filling of wetlands will be narrowly interpreted, that the Program requires adequate consideration of alternative plans for erosion control, sedimentation and water quality, and that the "feasibility" definition will prevent activities which would be harmful to the environment. All of these assumptions again are clearly subject to attack. For example, the South Carolina Coastal Council has permitted a section of Charleston Harbor to be filled for parking places. The Plan does not require a clear showing that water quality, sedimentation, and erosion control alternatives have been examined and the best measures employed but only that alternatives be considered. The "feasibility" definition is pregnant with possibilities for discretion which can allow development at the cost of damage to environmental resources.

Natural Resources Defense Council finds that the enabling legislation in South Carolina should be amended to cure the defects cited here and that the Management Program should be changed to reflect those amendments and to require the application of policies which allow for much less discretion in the protection of unique and valuable coastal resources.

## Response

Allowance for flexibility has been a consideration throughout development of the program policies. Because of the geographic extent of the coastal zone and its variety of natural characteristics and development pressures, a flexible performance standard approach was selected as the only practical framework for effective resource management. Policies too narrow in their definition or scope could result in types of projects or specific circumstances not being covered. Absolute prohibitions or restrictions generally were not possible in the policy language because of the taking issue, which is specifically mentioned in Section 2(c) of the Act.

The S.C. Coastal Council does retain some discretion in permitting decisions in the critical areas, review and certification throughout the coastal zone, and Federal consistency determinations. Because of the comprehensive scope of a coastal management program there will often be trade-offs inherent in the review, evaluation and decision-making regarding project proposals. A certain amount of discretion will be present in any permit decisions, especially those which involve a variety of considerations (natural resource protection, national interest considerations, uses of regional benefit, shoreline access, etc.).

The Council was created for the purpose of dealing with these trade-off situations, in South Carolina, to achieve a balance between coastal resource protection and the economic growth which is badly needed in coastal areas of South Carolina (see p. I-30, Coastal Economy). Rather than being made by administrative staff, the permit and certification decisions on significant or controversial projects are discussed and debated openly at public meetings of the Council. The membership of the Council is representative of both the coastal areas and inland parts of the State. In addition, a complete appeals procedure is available to the applicant and any affected parties.

The Council must be guided by the policy language of the S.C. Coastal Management Act of 1977, the program Goals and Objectives and the general guidelines for evaluation of all projects. It must also enforce the Resource Policies, including the Rules and Regulations for Permitting. While they do allow some flexibility, these policies are specific enough to ensure that the Council does not act in a manner which would constitute an abuse of its discretion.

To strengthen the level of predictability in response to this comment and other commentors, the following modifications have been made in the program document.

(1) The definition of "feasibility" has been clarified. Specifically, the no action alternative has been mentioned as a part of the feasibility concept. (The glossary has been shifted to a more prominent location in the program document, p. v, following the Table of Contents.)

(2) All of the Resource Policies for the coastal zone have been reviewed and re-evaluated. The policy language has been changed in numerous cases. Specifically, duplicative or unnecessary "qualifying" type phrases have been eliminated. See changes to program document. Those policies for the critical areas extracted from the Rules and Regulations for Permitting have not been re-drafted at this time.

Comments

We find that process well developed, structured and described. The integration of the South Carolina Coastal Council (SCCC) into the State's overall facility approval process through the mechanism of SCCC participation in the PSC process for facilities sited in the coastal region should provide effective communication and balance in decision-making.

1. The prohibition against siting nuclear power plants in areas of significant population (policy) may be a permissible restriction to include in a coastal zone management program if premised on considerations within the reach of the Coastal Zone Management Act, i.e., the impact on the land and water uses of the coastal zone from siting nuclear power plants in areas of significant population. If, however, the prohibition is premised on considerations of radiological health and safety in areas of significant population, the prohibition may be inconsistent with NRC's preemptive authority under the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974. We also presume that the reference to "overall safety and environmental impacts" of the plans for waste disposal (policy) is directed to non-radiological safety and environmental impacts affecting the land and water uses in the coastal zone.

Response

Your assumption is correct. South Carolina's prohibition against siting nuclear power plants in areas of significant population is based upon the impact on the land and water uses of the coastal zone. Additionally your presumption that the reference to "overall safety and environmental impacts" is directed to non-radiological safety and environmental impacts affecting land and water uses of the coastal zone is correct.

South Carolina Department of Health and Environmental Control  
S. Michael Loving  
May 21, 1979

### Comment

1. The Division of Vector Control, SCDHEC, is interested in activities in the coastal zone primarily as they relate to mosquito production and control. Although many coastal activities affect mosquito populations, the two which constitute the greatest problem are spoil disposal areas for hydraulically dredged material and impoundments in the marsh which, in South Carolina, are managed primarily for waterfowl foods.

We recognize the need to perform hydraulic dredging operations to maintain desired channel depth, create boat slips, etc. We, however, do not approve of the creation of new disposal areas. Whenever possible we would like to see existing disposal areas used in preference to creating new ones.

In regard to waterfowl impoundments, it has been our experience that, in most cases, management for duck foods need not be incompatible with water management for mosquito control. Since this is the case, we do not, in principle, oppose waterfowl impoundments. However, many such impoundments in South Carolina are permitted to produce mosquitoes far in excess of acceptable levels. Since the Council policy is that management plans are a condition of permitting and are enforceable, we would like to see more detail about management plans in public notices to which we might make specific recommendations.

We would like to see more overt concern for this problem than one vague reference to "adverse impacts on public health and welfare. . ." on page III-57 relative to placement of spoil disposal areas.

We would like to assert at this point that mosquitoes are most efficiently controlled by rendering their breeding sites unsuitable by water management. Tidal flushing of certain kinds of breeding places is an excellent mosquito control technique. Often this can be accomplished by minimal marsh ditching to allow the tide in. While this undesirably results in temporary disruption of some marsh areas the overall net change in marsh productivity is increased by creating additional low marsh areas subject to daily tides.

We are strongly in favor of this practice and wish to go on record as supporting such projects. In addition, the Charleston County Mosquito Abatement Program has offered to provide orientation training for Council staff members to assist them in considering mosquito control as a factor in evaluating permit applications. We would like to recommend that this be done.

### Response

1. The South Carolina Coastal Council recognizes the effect of certain activities in the coastal zone on mosquito populations--most especially the activities of dredged material disposal and creation of impoundments. The Council agrees that the coastal management program should address the problems of mosquito production and control because of the significant adverse impacts that certain mosquito species can have on the human population.

Dredge policies now indicate that mosquito control must be considered by SCCC in permit decisions regarding disposal of dredged material. The Mosquito (Vector) Control Division of DHEC is notified and responds to all permit applications from the SCCC. The SCCC relies heavily on these recommendations in making their permits decisions based on the technical expertise of this Division.

Please see changes to the management program document on pages III-54 Policy #1(d) and III-57 Policy #1(d).

We believe that the South Carolina Coastal Council has closely approached the intent of the Federal and State statutes.

Our general acceptance is based upon the following achievements of the South Carolina Coastal Management Plan.

- o The Program is well organized and clearly presented in understandable terms with a minimum of superfluous verbage.
- o With rare exception, it closely adheres to statutory authority and Federal requirements.
- o The Program is quite strong in its protection of coastal resources, but affords the reasonable degree of balance and predictability essential for a capital-intensive industry such as ours to exist.
- o The national interest in oil, gas, and other energy resources is recognized.
- o The structure and organization for implementing the Program appears to be a system which will work.

For the purpose of this hearing, we would like to reiterate several suggestions we have made to the South Carolina Coastal Council, which were apparently rejected, which we feel will improve the Program.

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Comment

1. "The extent to which a proposed use is in the national interest" should be added to the list of considerations which guide the Council's action on a permit application for a project in a critical area. (Page III-15.)

Response

The requested addition cannot be made on page III-15 because the section is quoted from the South Carolina Coastal Management Act. However, the consideration of national interest is required in Section 8(B)(6) of the South Carolina Act and throughout the National Interest Section Chapter II,c,1 of the Program Document.

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Comment

2. There still appears to be inadequate authority for State override of local land and water use regulations which could exclude uses of regional benefit. Activities considered by the Program to be of regional benefit are extremely narrow and should be enlarged to include those uses of national interest. (See attached comments dated October 1978, relating to the South Carolina Management Program Discussion Draft, pages 5, 6, and 7.)

S.C. Petroleum Council  
Response

The authority for URB implementation is based on the eminent domain powers of the State, and in no way relies on review of or control over local ordinances or regulations. (See also the response to U. S. Department of Interior comment No. 12.) Local governments may not "unreasonably" exclude any uses within their jurisdiction since they cannot act in an arbitrary and capricious manner, as pursuant to local zoning enabling legislation. (Section 6-7-710, S. C. Code of Laws, 1976, as amended.)

The list of URBs is limited and the justification for this is explained in the program document under "Findings", p. III-8. Under NOAA's Approval Regulations, states have the option of defining uses in which there may be a national interest involved in planning for and siting facilities as uses of regional benefit, however, this is discretionary with the state.

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Comment

3. The glossary section of Chapter V should be moved to a separate chapter with a clear notation that the terms defined apply to all chapters of the Program.

The Program developers are to be commended for their conscientious effort on a difficult job. We trust the implementation phase of the Program will obtain broad acceptance and achieve the desired objectives.

Response

Please note that the Glossary now appears in Part II, page v, immediately following the Table of Contents.

Comment

1. In the listing of concerns identified to be in the national interest under Part 3, Coastal Resources on page 9 and on page III-5, it is suggested that prime agricultural and forest lands be included in the listings. Such lands have been recognized as being of national interest and concern for the production of food and fiber to meet future needs of our growing population. A writeup on Prime Agricultural and Forest Lands should be added on page III-7.

Response

While prime agricultural lands and forest lands are acknowledged to be of national importance in South Carolina and the nation as a whole, OCZM regulations allow States to define the "national interest," in concert with State and Federal agencies, according to their own identified criteria. The resource policies contained within the State's proposed program are designed so as to protect the integrity of this valuable resource in South Carolina's coastal zone.

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Comment

2. Part II, page I-51 and I-52, tables F-3 and F-5. Considering the substantial economic value contributed by agriculture and forestry it would seem most inappropriate to classify these areas as UNDEVELOPED LAND, including a category called "Vacant." It is suggested that the land use tables for Berkeley, F-3, and Dorchester, F-5, be given the same breakdown as for Charleston, F-4, changing Undeveloped Land to Resource Production and showing breakdowns for agriculture, water, forests, etc.

Response

See Response No. 1 under the U. S. Department of Agriculture, which submitted essentially the same comment.

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Comment

3. Part III, page 6, fourth paragraph reads "approximately 25% of the county is marsh or wetland and almost 50% vacant, undeveloped (includes forested areas)." Here again, the economic value of forest lands hardly merits the classification "undeveloped," and it is suggested this section be rewritten to reflect resource production and its varied values.

Response

The language in this paragraph has been modified to reflect the Council's recognition of the value of agricultural and forest areas. Also see Response No. 1 under the U. S. Department of Agriculture which explains the source of the data used in this and other sections.

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Comment

4. Part II, page III-31, Section B. The second paragraph indicates that timber harvesting can have severe impact on coastal ecosystems. Research in this area conducted by the Southeastern Forest Experiment Station, Forest Service, U.S. Department of Agriculture at Charleston does not show any significant adverse impact on water quantity or quality in the Coastal Zone, and the South Carolina 208 Nonpoint Source Silvicultural Advisory Committee could find no data to show "severe impacts."

Response

See reference on p. III-31, Section B. New language describes the environmental impacts of improper timber practices and cites sources for those findings.

Comment

5. Page III-43. We would question Policy (1)(b) noting that parks and open spaces are preferred uses in wetland areas, flood prone areas, etc. Recreational use is only one of the uses for such areas. However, production of high quality forest products (including swamp hardwood species) is the major use of many wetland and flood prone areas, providing employment, income and raw materials for forest industries in coastal zone counties.

Response

The Council recognizes that needs occur for important uses other than that of parks and open spaces in wetland areas, flood prone areas, etc. The uses of parks and open spaces have been identified as preferred uses because they have less potential for adverse environmental impacts than do other uses.

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Comment

6. Page III-33. In addition to the five types of industrial manufacturing listed, consider adding a sixth: Industries that depend directly on the non-marine environment for raw materials. (This would include sawmills, veneer and plywood mills and other forest-based industries.) Also, there are a number of "cottage" industries that depend on the non-marine environment of the coastal areas (ex. the making of straw baskets, cypress cuttings and cypress knee materials, etc.). (According to figures on page I-32 the 1975 delivered value of forest products in the coastal zone was \$52.1 million, compared to the 1976 value of the fisheries catch cited as \$14 million, page I-32.)

Response

The list on page III-33 is a quotation from Coastal Ecosystem Management by J. Clark. The list refers only to major types of industrial manufacturing and is not intended to be all-inclusive. Industries that depend directly on the non-marine environment for raw materials are considered to be included in #3 of the list.

Comment

1. The following should be listed as "national interests" in the South Carolina Coastal Management Program:

- a. Maintenance of navigation.
- b. Interstate commerce.
- c. Flood control.
- d. Disaster relief measures.
- e. Wetlands and floodplains.

Response

Note the change in the Program Document on p. III - 5, where maintenance of navigation and wetlands have been included as concerns of national interest.

Interstate commerce, flood control, and flood plains are already important concerns which the Council presently considers.

Disaster Relief Measures have not been added. Under the South Carolina Coastal Management Act in Section 13(D)(6), the Permitting Rules and Regulations in Section 30-5-A(6), and the Federal Regulations in Section 930.32(b), the Council would waive permit and certification requirements in disaster and emergency situations, thereby facilitating national interests in this area.

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Comment

2. The South Carolina Coastal Program does not contain specific procedures to assure that national interests will be handled differently from local interests. The program merely states that national interests will be "considered" by the Council during its usual review, certification and permitting procedures. No special steps are outlined to prevent a national interest from being relegated to a priority even lower than local concerns.

Response

The South Carolina program describes the national interest in planning for and siting of facilities. (See page III-5.) It details the sources relied upon for this description. The program also delineates how and where the national interest is reflected in the substance of the management program. The final requirement under NOAA's Approval Regulations is that the State establish a process for continued consideration of the national interest, including procedures and decision points. This requirement contemplates that this continuing consideration occur as part of a State permit procedure. The South Carolina Coastal Council considers the national interest in facilities during its direct permitting and its review and certification process. §306(c)(8) of the Federal Statute requires that the national interest be considered, not that it be given priority accommodation or otherwise treated apart from other considerations.

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Comment

3. The Charleston District provided the Council with a list of the disposal areas used and controlled by the Corps for exclusion from the South Carolina Coastal Zone. The purpose of seeking their exclusion was to prevent Corps activities within the disposal areas (but not significantly affecting adjacent areas) from being subject to the 90-day consistency process. Often, these activities must be carried out or modified quickly due to changing weather conditions, equipment availability, schedules, etc. To date, the Council has neither included these areas nor responded to the Corps giving reasons why they should not be included. This matter should be settled before the program is approved in order to comply with Sections 306 and 307 of the CZMA.

## Response

The identified disposal areas are held through a lease which does not assure the Corps of Engineers sole use of the areas as stipulated by §923.33(a) for the area to be designated a Federally excluded land. The SCCMP recognizes that Corps of Engineers activities carried out in these disposal areas are continual. The program does not require separate notification and certification of individual and on-going activities which are reviewed as part of the project as a whole.

Please note Response No. 4 below also.

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## Comment

4. Sections dealing with the nature of activities to be managed or reviewed by the Council are extremely vague. For example, on page III-12 under the heading "Definition: Activities with a 'Direct and Significant Impact'," any action merely located in a critical area satisfies the definition. Similarly, the phrases "detrimental environmental impact" and "adverse effects" can be widely construed to include even the smallest, almost imperceptible effects. It appears that little effort has been made to establish true criteria for determining which activities have significant effects and should be reviewed or managed by the Council.

## Response

Critical areas are defined in the South Carolina Coastal Management Act and are so designated because they are fragile areas which are directly linked to the coastal waters. Impacts of all activities in the critical areas are not adverse but should be reviewed and managed to determine the nature and degree of the impact and to minimize or eliminate any adverse impacts. Federal activities which are considered to have a direct impact on the critical area are specifically identified. Page V-17 lists the Corps of Engineers activities which are evaluated for consistency. Also note the changes in language on page V-17 which more clearly specify the activities to be included for review.

The definition of Direct and Significant Impact on p. III-12 was developed as criteria to support the listing of activities subject to management (a requirement of the Federal regulations, §923.11). While all activities in critical areas would not necessarily result in substantial or significant environmental impact, they should have careful management attention to ensure that no such impact would result. Any alteration in a critical area requires a permit from the Council because of the fragile nature of the resources in these areas. This part of the definition is clearly mandated by the South Carolina Coastal Management Act of 1977.

The phrase "detrimental environmental impact" is applied only with reference to impact on the critical areas. While it does leave room for some interpretation, the intent is to consider only discernible or measurable and substantial type impacts. The same basic interpretation is applied to the phrase "adverse effects," and the Council can be expected to be reasonable in its use of this language. See also response to Westvaco, Comment No. 2.

In practical application, projects outside the critical areas will be subject to management when the permit of another State agency is required (and, therefore, review and certification is in effect). This will generally be major projects.

In response to the specific area of concern of the Corps, Federal activities considered to have a direct effect on the coastal zone are identified in Chapter V of the program document. Page V-17 lists those Corps of Engineer activities which will be evaluated for consistency. Also note the language changes on this list which more clearly indicate that the activities to be included for consistency review take into account on-going or maintenance type projects which are reviewed as a whole. See also response to Comment No. 3.

Comment

5. Chapter 30-10 of the Rules and Regulations denotes that the Coastal Council will exert permitting jurisdiction seaward of U.S. 17 in Georgetown and Horry Counties and the Budget and Control Board landward of this line. This split in jurisdiction has a serious effect on the Corps of Engineers' permitting program as a major portion of the AIWW in Georgetown and Horry Counties lies landward of U.S. 17, thereby out of the Council's critical zone. In addition, the split of jurisdictional authority in this area raises the question as to which State agency, the Council or the Board, will serve as the local sponsor for easement grants in those areas located outside the critical zone in the coastal area.

Response

The Coastal Council will review the consistency determinations for Federal activities whether they occur within the permitting jurisdiction of the Council or elsewhere in the coastal zone. Likewise, the Coastal Council is the local sponsor of all dredge material easement grants throughout the coastal zone.

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Comment

6. Various policies in the program document refer to control of public funds. Additionally, "Funding Policies" have been listed for the erosion control program on page IV-55 "Public Funds," as used in the program, must be defined. There is an implication that Federal funds are included (DEIS, page 8). Since Federal agency funds are appropriated by Congress under existing law, they should not be included. Inclusion of Federal funds would also be in conflict with Section 930.32 of the consistency regulations.

Response

Under provisions contained in §307 of the CZMA, Federal Assistance projects are subject to the policies contained in an approved State Coastal Management Program. This means that where the State has developed policy which is binding on State-level actions, relevant Federal actions are also bound to these same policies. The funding policies referenced on page IV-56 of the DEIS are clearly intended to be binding on both State-level actions and Federal agencies which are required to be consistent with these funding policies.

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Comment

7. DEIS, Part III, Page 16. The second paragraph states that because much residential development is outside the Coastal Council's jurisdiction, the policy will not generally affect residential shoreline development. Does this mean that residential development will have priority over water dependent activities?

Response

No, residential development will not have an assumed priority over water-dependent activities.

Small scale residential development will generally not be regulated by the South Carolina Coastal Program in cases where such development is adjacent to the shore but outside a critical area and meets all environmental standards and does not require water access. It is not anticipated that residential development will have an adverse effect on the availability of sites for water-dependent activities as there are ample shorefront sites available to accommodate a wide range of development activities which are consistent with the goals and policies of the SCCMP.

Comment

8. Pages IV - 78 through IV - 113. As noted in earlier comments provided to the Council, this section appears curiously out of place in a chapter otherwise devoted to management areas and management practices, and appears more suited to Chapter I. If it remains in the Program, this section should be revised to provide support for the many unqualified and sweeping statements made, particularly in the parts which discuss the impacts of transportation and shoreline modification.

Response

Pages IV-77 through IV-144 have been completely rewritten since the public hearing draft reviewed by the Corps. However, the Council would welcome future communication with the Corps on this section of the document.

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Comment

9. Page III-51. Policy (1)(a). The terms "significant negative impact" and "overriding socio-economic considerations" should be defined in order to provide sufficient predictability.

Response

The term "significant negative impact" is not defined in the program document because determination of significant negative impacts is felt by the Council to be a decision which must be made on a case-by-case basis taking into consideration the relative value of the resource or resources in question (i.e., the relative productivity of an already severely impacted marsh area when compared with a pristine one). See also Response No. 4 to Westvaco.

The term "overriding socio-economic considerations" also is not defined in the program document because of the difficult if not impossible task of formulating such a definition. Moreover, this determination is also felt by the Council to be one which should be made on a case-by-case basis taking into consideration all relevant policies as well as its overall goal of balancing economic development with protection of the environment.

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Comment

10. Page III-56. Policy (2)(h). "A specialized form of dredging activity" should be more clearly defined.

Response

The words "a specialized form of dredging activity" are intended to refer to the dredging of navigational channels and access canals to create waterfront lots as opposed to dredging performed for the purpose of maintaining already existing navigation channels. This policy is a direct quotation from the Council's rules and regulations which were previously adopted by the State General Assembly and thus are law. The wording of these policies cannot be changed without consent of the General Assembly.

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Comments

11. Page III-56, 2.a. The phrase "and there are no feasible alternatives" should be deleted or modified to show that in some cases there are feasible alternatives to dredging in wetland areas, but that these feasible alternatives might be more disruptive or otherwise less acceptable.

Response

Please refer to the definition of feasible (feasibility) in the Glossary on page v (after the Table of Contents). This definition along with all of the policies for protection of coastal resources show that a feasible alternative would be one that must be less disruptive and thus more acceptable than the original proposal.

Comment

1. Page I-51, page I-52, and page III-29, paragraph 2. In each of these three instances, there is a reference to agricultural land as being "undeveloped." We believe it is incorrect to so classify this land. Current agricultural practices require a high investment in developmental activities to achieve optimal production. A distinction may be drawn between agricultural development and urban development.

Response

The land cover categories used in tables on p. I-51 and 52 were defined in land use data received from the Regional Planning Councils in the coastal zone. Regarding p. III-29, paragraph 2, please note change to the program document. This change recognizes the investment in and economic importance of agricultural land in the South Carolina coastal zone.

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Comment

2. Page III-31, Item B, Policy 1. This statement is not clear. A permit is not required for the activities described within this policy. We have referred this concern to the South Carolina State Forester.

Response

Outside the critical areas but within the coastal zone, permits from the South Carolina Budget and Control Board may be required for these forestry activities if they are proposed for areas below mean high or ordinary high water. In review and certification of such permit applications, the Council would base its review on the policies on p. III-31.

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Comment

3. Page III-5, Paragraph 5, Item 3 - Suggest adding - g) Prime forest lands; and a narrative describing their values on page III-7. This suggested narrative is:

Prime forest land includes much of the land base presently classified as commercial forest land, as well as large acreages now in other uses such as cropland and pasture land. Land, upon which there are irreversible uses such as urban areas or large impoundments, is not included under this definition.

USDA's prime lands program identifies prime lands so they may be considered when planning for other uses. The prime forest lands program includes several phases, i.e., timber, wildlife, recreation.

Response

See Response No. 1 to the S. C. State Commission of Forestry.

Comment

1. Page V-1, Permitting Authority - Direct Federal activities/development projects are not subject to the Council's permit process, and thus should be added to the listing of exempted activities.

Response

The reference on page V-1 under "Permitting Authority" tracks the language of Section 13 of the S.C. Coastal Management Act of 1977. This section of the Act specifically lists those activities exempted from the State permit requirements in the critical areas, and since this appears directly in the Council's enabling legislation, other exemptions cannot be added to the list. The Council has reached a specific working agreement with the Charleston District of the U.S. Army Corps of Engineers that harbor and navigation maintenance in South Carolina will not be subject to State permit requirements, provided that the Council has opportunity to review and comment on these projects. This arrangement is expected to continue under the Federal consistency process. The Council would welcome discussion with other branches of the Department of Defense to work towards similar, individual agreements for direct Federal activities/development projects which take place outside Federally excluded lands.

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Comment

2. Page V-16, Department of Defense, Item 7 - We recommend that this item be rewritten as follows:

"Construction or major modifications to sewage or drainage ditches or canals."

We do not feel that routine maintenance of existing drainage ditches and similar facilities will significantly affect the coastal zone, and thus will not require a consistency determination.

Response

The Council agrees that certain types of routine maintenance would not have direct effects on the coastal zone. The State's concern is only for construction and maintenance of sewer and drainage facilities located in coastal waters and wetlands which unarguably would have direct effects. The wording of item 7, p. V-17 has been rewritten to reflect this intent.

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Comment

3. Page V-16, Department of Defense, Item 9 - We feel that this item is unnecessary and should be deleted in order to avoid confusion. An action which has a ". . .potential negative impact on coastal lands and waters" would be considered as ". . .significantly affecting the coastal zone," and thus would require a consistency determination.

Response

Since it is agreed that activities with potential impacts on coastal lands and water would require a consistency determination, the Council does not believe that inclusion of item 9, p. V-17 is confusing. It simply reiterates that these types of actions would be considered to have direct effect on the coastal zone. Please note that the word "negative" has been deleted in item 9, in response to a request by the Charleston District, Army Corps of Engineers.

U.S. Department of Energy  
Robert J. Kalter  
May 9, 1979

Comments

The Department of Energy has reviewed the South Carolina Management Program and Draft Environmental Impact Statement. We concur in your proposed administrative action to grant approval of the proposed program.

We find that policies for implementation of this administrative system give adequate consideration to energy interests.

Response

Comments accepted.

The proposed SCCMP appears to be a well-balanced program. The South Carolina Coastal Management Act of 1977 clearly provides the necessary authority and framework for the program. Adoption of the program by both the General Assembly and the Governor constitutes a strong State commitment to coastal resource management. The program is to be commended for its general recognition of the overall ecological values to the coastal zone.

Comment

1. Many SCCMP policies covering activities undertaken within the State's critical areas are ambiguous. We feel that many of the SCCMP policies, particularly critical area policies, fail to provide this predictability and are so indefinite that their enforceability is questionable. Since the means of resolving conflicts is by judicial review or appeal, we consider the questions of clarity and enforceability to be extremely important, especially in light of our Department's responsibility to be consistent with the program, once approved.

Response

The Rules and Regulations for Permitting in the critical areas were adopted by the Coastal Council and were subsequently ratified by the State General Assembly. Thus, they were made law and are subject to change only by the General Assembly.

The Council anticipates the revision of a number of its rules and regulations during its first year of program implementation. Among the categories of policies to be studied for change are: residential development, parking facilities, mineral extraction, manufacturing, impoundments, and agriculture.

In its review of policies, the Council will give careful study and consideration to the comments and suggestions of the U.S. Fish and Wildlife Service received in November 1978 as a part of the Department of the Interior's comments on the program Discussion Draft. DOI is encouraged to work with the SCCC staff during program implementation to ensure that relevant changes are considered for review and change.

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Comment

2. The Department is concerned about the relationship of local governments to the SCCMP, and the involvement of local governments continues to be essentially voluntary, despite the provisions of the State Coastal Management Act. We would like to see the SCCMP discuss more completely whether the Coastal Council intends to require that local governments abide by and enforce program policies, and how the Council will insure that local governments do not unreasonably restrict uses of regional benefit and/or facilities of national interest.

Response

SCCMP is based on direct State control (Technique B) and therefore does not require that local governments abide by and enforce program policies. The State's program is based upon State-level control over identified "critical areas" and Council certification of State agency actions occurring throughout the coastal zone. The Council staff has already begun a far-reaching effort of meeting with all local governments in the critical areas and offering considerable assistance to bring all local government ordinances in line with the SCCMP. Chapter III, C, 1 and 2 discuss the procedures which the State will use to protect uses of regional benefit and concerns of national interest.

Comment

3. We request that the program acknowledge the continuing interest of Federal agencies in geographic areas of particular concern (GAPCs) by providing the opportunity to nominate additional potential sites or categories. In this regard, we think the Council should consider five additional or supplementary types of GAPC's: spawning habitats for anadromous fish, shore- and wading bird rookeries, certain sites eligible for inclusion in the National Register of Historic Places, potential mineral sites, and earthquake hazard areas.

Response

Note program change on page IV-2 which corrects the inadvertant omission of providing for Federal agencies to nominate future GAPCs. We think the suggestions for additional GAPCs merits serious consideration. The Coastal Council staff looks forward to the opportunity of discussing with regional D.O.I. staff both the supplementary types of GAPCs identified by D.O.I. and specific GAPC sites for possible future nomination.

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Comment

4. We are unable to determine specifically how the SCCMP addresses the requirements of the Federal Act regarding areas for preservation or restoration. We request that the final document provide a separate discussion of the means by which the State proposes to meet this requirement and of the specific criteria and procedures by which areas can be designated for preservation or restoration.

Response

The Areas of Unique Natural Resource Value (pages IV-3 through 17) and Areas of Special Historic, Archeological or Cultural Significance (pages IV-22 through 28) in conjunction with the procedures for considering GAPCs and the designated priority of uses address the requirements of the Federal Act regarding APRs. Please note changes (p. IV-3) to program document which more clearly reference APRs.

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Comment

5. We believe the State's Federal consistency procedures are based upon an incorrect reading of the appropriate Federal regulations in at least two instances: development projects on excluded Federal lands and negative determinations. The Department believes that to automatically require a consistency determination for all development projects undertaken on excluded Federal lands is contrary to the intent of the Federal Consistency Regulations and could place an unreasonable burden on a Federal agency (specific comments regarding the activities of the U.S. Fish and Wildlife Service on refuges are included in the attachment). We also believe that the SCCMP's statements concerning negative declarations are too broad and should be modified to reflect those limited circumstances where the Federal Regulations indicate that such determinations should be made.

Response

The State notes its inaccurate interpretation of the Federal Consistency Regulations on page V-17. Please see correction. Note change on page V-20 of SCCMP which, along with the four criteria contained in the note on page V-17, more clearly specifies the instances where a consistency determination for a Federal activity is not required.

Comment

6. It is not clear that Federal agencies will have an opportunity to review the comprehensive ports management plan which, upon completion, is to be incorporated into the SCCMP. We request the opportunity to review this plan either prior to SCCMP approval or as an amendment to the approved program.

Response

A draft Ports Management Plan is currently under review. The Coastal Council has taken no action on the Ports Plan pending the comments being received. Federal agencies and interested parties can review this study at the current time by requesting a copy from the South Carolina Ports Authority. In addition, the Council intends to circulate the draft Ports Plan, with refinements, for comment by all State, Federal and local agencies and interest groups before any Council action is taken.

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Comment

7. While the map in the Appendix and the regulations in Appendix F depict and define the areas, there is no simple preliminary definition of terms such as "tidelands," "beaches," and "coastal waters," which can be referred to when reading the program document. Moreover, the concept of "tidelands" is complicated by the differentiation in the program between saltwater and freshwater wetlands. In order to avoid confusion over what areas are subject to the direct permitting authority of the Council, we suggest that the Boundaries Section of the document (pp. III-3 and III-4) contain a concise explanation of each term, perhaps supplemented with a simple schematic diagram.

Response

The terms referred to are all defined in Section 3 of the South Carolina Coastal Management Act (Appendix B, Vol. II). In addition, revisions have been made to the Glossary which include a further definition of "tidelands." This addition to the Glossary is referenced on page III-3.

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Comment

8. One of the considerations (#7, p. III-14) in the Council's review and certification of permit applications in the coastal zone will be ". . .the possible long-range, cumulative effects of the project, when reviewed in the context of other possible development and the general character of the area." The Council's adoption of this policy will help assure that primary, secondary and cumulative impacts of an activity will be considered in the review process.

However, in regard to activities which occur within the State's critical areas, it is not specifically stated on page III-15 that the Coastal Council will apply the same consideration in their approval or denial of a permit application. The program should clearly and specifically indicate what the Council's "critical areas" policy is in this regard.

Response

The Council recognizes that adequate, comprehensive evaluation of all permit applications must include the cumulative effects of each project. When the program is viewed as a whole, it can be seen more readily that the cumulative effects of projects will be factors considered by the Council in the granting or denying of permits. Section 2(B)(1) of the State's Coastal Management Act makes the balance of coastal development with environmental protection one of the specific policies which the Council must follow.

Please refer to the discussion which has been added to Chapter V(B), Project Evaluation Procedure, for further information on this point. The requested consideration is not specifically added on the list on page III-15 because the guidelines for evaluation of all projects in critical areas are a direct quote from the South Carolina Coastal Management Act.

Also please refer to Audubon Comment No. 9.

Comment

9. The Department is most concerned about the frequent use of the word "should" in the resource policies. When "should" is used in the context of a policy, the policy can be considered a recommendation of an unenforceable nature. Consequently, nearly all of the policies governing activities within the critical areas could be no more than recommendations. In fact, even the policies which describe what factors will be considered by the Council in their decisionmaking role are stated in this manner. Members of the Council are therefore provided a tremendous amount of flexibility as to how the policies are interpreted and the program implemented, and other decisionmakers are not given adequate direction.

Response

Please note change to policies in the FEIS. Many policies have been revised to eliminate unnecessary qualifiers and in some instances "should" has been changed to "shall" or "must." Also please refer to Response No. 7 - NRDC comments and associated changes to the document.

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Comment

10. We feel that terms or phrases used in the policies are subject to varying interpretations and should, therefore, be defined so as to clarify the Council's intent. In this regard, we note that the SCCMP now contains a definition of "feasibility" (as in the often-used phrase "unless no feasible alternative exists") on page V-45, which we are glad to see. However, there are other terms which we believe should also be defined. For example, in Policy #2a on page III-17, which deals with residential development in critical areas, we recommend that the phrase "strictly for private gain" be either specifically defined or removed from the policy.

(p. III-54). Policy #2a. We suggest, that the term "undisturbed" be defined or otherwise clarified.

Response

The definition of "feasibility" has been further clarified, and the Glossary relocated in a more prominent place in the program document (see page v after the Table of Contents).

The Council has not attempted to specifically define the phrase "strictly for private gain" because it is felt that this concept is generally understood to imply that no public benefit would accrue from completion of the project under consideration. Legal and economic considerations, as well as philosophical aspects, could be debated ad infinitum in any attempt to reach a specific definition. In practice, the Council has interpreted this phrase in denial of a permit application from an individual for filling of marsh above mean high water to create a residential lot.

A definition of "previously undisturbed wetlands" has been added to the Glossary.

Please note change to policies in the FEIS. Also please refer to Response No. 7 - NRDC comments and associated changes to the document.

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Comment

11. We think the chapter on policies should better reference the requirements of Executive Order 11990, Protection of Wetlands, and of Executive Order 11988, Floodplain Management. As a specific example, Policy #1b on page III-30 which deals with agricultural activities within the coastal zone addresses only tidal wetlands. Since approximately 50 percent of South Carolina's coastal zone wetlands are non-tidal, a major gap in coverage exists and should be rectified.

Response

Coastal management programs should contain policies addressing wetland and floodplain uses or impacts which are consistent with the Executive Orders on Wetlands and Floodplains. It is not necessary to delineate the specific requirements of each Executive Order.

It is sufficient that wetland policies minimize the destruction, loss or degradation of wetlands and preserve and enhance their natural values. Floodplain policies must reduce risks of flood loss, minimize the impact of floods on human safety, health and welfare, and preserve the beneficial values served by floodplains.

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Comment

12. The document acknowledges that the currently identified URBs constitute a "limited number of activities" (p. III-8), but states that because of the rural character of much of the coastal zone "ample suitable site locations remain available for most proposed uses." An additional argument present is that local and county governments "have not exhibited any trend toward excluding particular types of activities." While this may be true at the present time, we suggest that the Council consider establishing some mechanism for monitoring local actions concerning other "uses of regional benefit."

The program emphasizes the fact that the Council has the authority to review local ordinances, regulations, etc., to determine if uses of regional benefit could be arbitrarily excluded (p. III-9).

The most important means that the State has to prevent unreasonable exclusions by local governments is its eminent domain authority. No procedures have been established for invoking the eminent domain authorities of the Budget and Control Board or Development Board. Who determines that an unreasonable exclusion is threatened? What standards are used to make determination? Does the council have the ability to require other State agencies to use the eminent domain authority?

Response

The Council would welcome the opportunity to work closely with DOI staff in formulation of such a monitoring mechanism to identify activities for inclusion as URBs in the future.

The authority for URB implementation is the State's eminent domain powers. Review and evaluation of local ordinances, as mandated by §10 of the South Carolina Act is simply an additional mechanism that may, in some instances, strengthen this section of the program.

While the Council has no direct authority to invoke the eminent domain powers of other State agencies, these agencies are bound by §7(A) of the Coastal Act to implement their authorities in keeping with the coastal program. The statute includes the URB section, and Memoranda of Agreement between the Council and these agencies document this cooperation. In addition, while the Council would not be the sponsor agency for these URB projects, it would obviously be in the interest of the sponsor agency to use its eminent domain power to realize the achievement of its proposed project. Given the scope of URBs contained in the SCCMP (i.e., transportation, recreation) the questions raised about the exercise of eminent domain by the Budget and Control Board are not relevant. However, the various State agencies are required to exercise their authorities when appropriate as a result of being "networked" into the proposed SCCMP.

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Comment

13. We are concerned about the use priorities which are established for shellfish areas. Both commercial and recreational shellfish areas are recognized as GAPCs, but it appears that use priorities are only established for commercial lease areas (p. IV-13). In remedying this apparent omission, we suggest that the State define highest priority uses as those which enhance the shellfish resource and improve or restore its harvestability. We further suggest that uses which degrade the productivity or harvestability of the shellfish grounds be specifically prohibited.

Response

The State of South Carolina agrees with concerns raised about use priorities for shellfish areas. Please note changes to the document (p. IV-13) which clarify that the priorities of use apply to both commercial and recreational shellfish areas.

Comment

14. We note with interest the reference to the Charleston earthquake of 1886 on p. I-7, which apparently is not followed up by any subsequent discussion of earthquake hazards or program policy considerations. In view of the devastating nature of the 1886 disaster, it seems that some evaluation and identification of potential earthquake hazard areas in the coastal zone is warranted.

Response

A fuller discussion of earthquake hazards has been added to Chapter I, Part II. The State has recognized the potential hazards associated with earthquake fault areas with program policies where appropriate.

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Comment

15. We note that there appears to be a present lack of information on coastal zone hydrology, and we recommend that the Council take appropriate actions during program implementation to fill such information gaps. We feel that the management program (particularly as articulated in the policies in Chapter III) could then be strengthened by including information on the interrelationship between surface water and ground water within the coastal zone.

Response

The South Carolina Water Resources Commission has extensive ground water studies presently underway for the coastal zone. As improved information becomes available in the future, the Council will certainly refine and strengthen its program. The Council welcomes continued close cooperative efforts with DOI staff to develop both data and new policy proposals in the future.

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Comment

16. We also recommend that your discussion of Federal activities (pp. V-15 through V-20) be revised to reflect the recent Department of Justice opinion that Federal activities are subject to the consistency requirements of Section 307(c)(1) of the Federal Act only where such projects are likely to directly affect a State's coastal zone. As you know, the Department is currently working with your office to assure that the Justice opinion is implemented appropriately.

With regard to Federal licenses and permits (p. V-23), we do not agree that all geological and geophysical exploration permits issued by the U.S. Geological Survey directly affect the coastal zone. We believe that this review should be limited to drilling operations only. Also, States will not have the opportunity to review and approve "applications for permit to drill" (listed as Item 2 under Permits Associated with OCS Activities on p. V-23) if the OCS plan describing the drilling activity was subject to consistency review pursuant to 307(c)(3)(B).

Response

The program document has been revised to reflect the recent Department of Justice Opinion which states that Federal Consistency provisions shall apply to Federal activities which directly affect the coastal zone. This opinion requires deletion of reference to "significant" effects on the coastal zone.

The State continues to want to review the license and permit activities referenced above. However, if during program implementation, this review appears unwarranted, the program document will be refined to reflect this change in emphasis.

Comment

17. Draft Environmental Impact Statement. We believe that the DEIS concentrates on the program's positive impacts and fails to describe adequately the environmental "trade-offs" which can be expected to occur.

Response:

OCZM believes that the discussion in Part III, Chapters 4, 5, and 6 of the South Carolina DEIS adequately addresses the potential environmental trade-offs that could occur as a result of Federal approval of the South Carolina Coastal Management Program. South Carolina is currently implementing a major portion of the program (i.e., the permitting and State level consistency/certification procedures) under the mandate of the South Carolina Coastal Management Act. The effects of Federal approval are basically those associated with Federal consistency and the effect that additional Federal dollars will have on the State's ability to better implement its permitting and program implementation activities. We believe that the negative environmental effects associated with these activities are negligible.

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Comment:

18. On page IV-20, under "Mining Operations," the report states that "Extraction of minerals by mining is a basic and essential activity, making an important contribution to the economic welfare of this State and the Nation." Because of this importance, we believe that South Carolina should include mineral resources in the list of national interests on page III-5.

Response

The South Carolina coastal program identifies mining operations as Geographic Areas of Particular Concern at the State level, but does not concur that these would always be of scope or significance to warrant national interest designation.

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Comment

19. In South Carolina, the SCORP Exchange Council is the vehicle for continuing coordination and citizen participation in the SCORP planning process. The South Carolina Coastal Council is a member of the SCORP Exchange Council. Because of this, we recommend all major actions involving coastal recreational and cultural resources have SCORP Exchange Council involvement.

Response

The objectives of the SCORP Exchange Council for recreation are adopted as objectives of the coastal program, as shown on p. III-42. Continued close cooperation with both DOI and SCORP will be Council practice in the future.

U.S. Navy (6th Naval District)  
Hugh A. Benton  
May 7, 1979

Comment

1. Our one objection is to the "Note" on page V-16. It is much too restrictive and is an over-zealous definition of what constitutes "significantly affecting the Coastal Zone." It is a ruling imposed only on Federal agencies as no other person or body is required to submit all its development projects within the coastal zone to the State for approval. In fact, it effectively grants the State final review authority for all military construction, an authority certainly not contained, or contemplated, within the Act of 1972. Hence, it is requested that the "Note" be deleted in its entirety.

Response

See change in the program document on p. V-17. The document was in error and the change now reflects a proper interpretation of §307 of the CZMA.

Westvaco  
W. D. Baughman  
May 18, 1979

Westvaco Corporation takes a keen interest in the proposed South Carolina Coastal Management Program. Westvaco manufactures paper, packaging, chemicals and lumber. Over one million acres of forestland are managed in the Southeast to supply our mills with wood fiber. One-half million acres comprise Southern Woodlands, most of which is in South Carolina. Approximately 350,000 acres lie in the Coastal Zone of South Carolina as defined in the Coastal Management Program. Westvaco has a longstanding record of firm commitment to the multiple-use concept, that is, the management of our timber resources in conjunction with water, wildlife and recreational values.

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Comment

1. Of particular concern is the definition of wetlands to include upland freshwater areas that affect estuarine systems. Plainly a liberal interpretation of this definition could have far-reaching impacts on our operations. For example, please reference "Roads and Highways" (p. III-21). Many acres of productive timberland are accessible only through wetlands as defined by the program. Most Westvaco roads constructed through wet areas are fill roads, and use of culverts maintains the general natural drainage pattern. Bridging these areas, as recommended in the program, would not be economically feasible.

Response

Freshwater wetlands are included in the definition of areas subject to management within the coastal program. However, the language of the resource policies for wetland protection, specifically those on p. III-22, does not place an unnecessary burden on timber production and associated activities since bridging of wetlands is required whenever feasible. The definition of "feasibility" as shown in the glossary contains the concept of economic as well as environmental consideration, which must all be balanced.

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Comment

2. In reference to "Forestry" (p. III-31), management of logging operations so that drainage characteristics remain at pre-existing water quality, volume and rate of flow will prove difficult if not impossible. Any logging operation will disrupt those parameters to some extent, but the majority of these disruptions are temporary and not considered serious. Perhaps acceptable limits to changes in quality, volume and flow should be developed, along with monitoring mechanisms.

Also in reference to "Forestry," avoidance of disruption of freshwater marshes for timber-related activities is a very broad policy. Would increased runoff in a swamp which eventually drains into a marsh constitute disruption? Again, the potential impact on our operations appears to be quite large.

Response

The SCCMP recognizes that management of logging operations in a manner that ensures drainage characteristics are unchanged is a difficult task. The policies which guide the Coastal Council in its decisionmaking are intended to limit the adverse effect that timber operations may have on coastal resources. We recognize that in South Carolina, it may, in many cases, be difficult to avoid completely the disruption of freshwater marshes for timber activities. Policy #1(b) on p. III-31 is intended to minimize such disruption and to ensure that alternatives are considered where possible. All the policies in the section on Forestry are sufficiently flexible for the applicant to demonstrate special constraints or conditions for specific project proposals.

Comment

3. We also have concern for the prohibition of dredge or strip mining operations in critical areas "unless no feasible alternatives exist and the benefits of mining outweigh the adverse impacts" ("Mineral Extraction," p. III-32). We request that the phrase "unless no feasible alternatives exist" be omitted, and a provision added whereby minerals may be mined in critical areas if acceptable reclamation measures are employed. We hope that the availability of mineral resources will weigh heavily as a benefit. The language, however, certainly leaves room for unreasonable restrictions on mineral resource utilization.

Response

Because of their value as coastal resources and their fragile nature, certain "critical areas" of the coast were identified in the 1977 South Carolina Coastal Management Act. These critical areas--beaches, primary sand dunes, coastal waters, and tidelands--as well as other wetlands are intended to receive special management attention. Extensive mineral extraction activities generally would not be compatible with resource protection in these areas. The policy referenced on p. III-32 is not unreasonably restrictive since feasibility of alternatives, as well as the benefits of obtaining mineral resources must be considered by the Council.

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Comment

4. Under "Wildlife and Fisheries Management" (p. III-51) the wording again is too broad. Certain interpretations of "significant negative impact," "healthy and viable condition" and "to the maximum extent possible" could have serious implications for forest management activities.

Response

The Council will interpret these phrases reasonably, relying on the biological expertise of staff from both SCWMRD and the Coastal Council. Note the language of policy 1) a), p. III-51, which states: "In reviewing permit applications relative to wildlife and fisheries resources, social and economic impacts as well as biological impacts will be considered."

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Comment

5. We also suggest that under "Boat Ramps" (p. III-48, 1d and 2a), a more detailed definition of "environmentally acceptable materials" be developed.

Westvaco certainly shares the Council's commitment to conservation of South Carolina's coastal resources. It is our opinion, however, that in the above areas the language is too all-inclusive for effective implementation of the plan in the manner intended.

Response

See change to program document, p. III-46 under "Findings."

The document now has a discussion of the factors which make materials unacceptable for boat ramp construction.