

APPENDIX F

Federal Consistency Review



Barnegat Inlet looking from Island Beach toward Barnegat City. PHOTO COURTESY OF THE OCEAN COUNTY HISTORIC SOCIETY.

What would the world be once bereft
Of wet and of wilderness? Let them be left
O let them be left, wilderness and wet;
Long live the weeds and wilderness yet.

--Gerard Manley Hopkins

**FEDERAL CONSISTENCY REPORT
FOR THE BARNEGAT BAY NATIONAL ESTUARY PROGRAM****BACKGROUND**

The National Estuary Program (NEP) was established by the Clean Water Act (CWA) of 1987, Section 320. The purpose of the NEP is to identify, protect, and restore estuaries of national significance. The Barnegat Bay National Estuary Program (BBNEP) was nominated as an NEP by the Governor of New Jersey in 1995. In April 1996, the Management Conference was convened to oversee development of a Comprehensive Conservation and Management Plan (CCMP). There is a federal consistency review requirement for the NEP. This is distinct from the federal consistency requirement of the federal Coastal Zone Management Act (CZMA), conducted as part of the state's coastal zone management program. In the Barnegat Bay region of New Jersey, the coastal zone management program is administered through the Coastal Area Facilities Review Act (CAFRA). Revised regulations have recently been promulgated, and the current regulations are known as CAFRA II.

The federal consistency review procedures being recommended for New Jersey for the BBNEP are explained below.

PURPOSE OF REVIEW

EPA guidance states that the goal of the federal consistency review process is to ensure that federal actions do not adversely affect CCMP goals, and that they support actions proposed for the CCMP where possible. In addition, under an agreement between the U.S. Environmental Protection Agency (USEPA) and the National Oceanic and Atmospheric Administration (NOAA), CCMPs are submitted for determination that they are consistent with the coastal zone management plans of the affected states.

The major tasks in the federal consistency review process follow:

Consistency of Federal Actions with the CCMP

1. Development of an inventory of federal programs and development projects to be reviewed for consistency with the CCMP.
2. A one-time assessment of these programs/projects for consistency with the CCMP. Development of consistency review criteria were based on the goals, objectives, and actions of the Barnegat Bay CCMP. Using those criteria, the inventory was reviewed to identify programs that may be inconsistent with the Plan.
3. Setting up and implementing a continuing process to review individual federal projects for consistency with the CCMP. Numerous programs and projects were identified that have the potential to conflict with the Plan.
4. Concurrence of the U.S. Fish and Wildlife Service and National Marine Fisheries Service on the Endangered Species Act and of the State Historic Preservation Office on the National Historic Preservation Act.

Activities that affect the quality of the Barnegat Bay National Estuary are supported and regulated, either directly or indirectly, by federal, state and interstate agencies. Because government-sponsored activities have a wide variety of objectives, it is possible that some activities may be inconsistent with the goals of the CCMP for the bay and watershed.

The need for coordination among governmental programs and program goals that will affect the Management Conference (and ultimately, the CCMP), has been addressed in Section 320(b) (7) of the CWA, as amended.

"Purpose 7" states that:

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“The purpose of a Management Conference shall be to . . . review all federal financial assistance programs and federal development projects in accordance with the requirements of Executive Order 12372, as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes of the CCMP.” It further specifies that the review shall not be limited to EO 12372 programs, but may include programs listed in the most recent Catalog of Federal Domestic Assistance that may have an effect on the goals and objectives of the Plan.

Concurrence of the CCMP with the Endangered Species Act and the National Historic Preservation Act

The Barnegat Bay National Estuary Program also needs concurrence with two additional Acts—the National Historic Preservation Act and the Endangered Species Act. Under Section 106 of the National Historic Preservation Act, Federal agencies that fund, permit, license, approve, or carry out actions in the CCMP may be required to consult the State Historic Preservation Office to determine if a site is listed on or eligible for listing in the National Register of Historic Places. If a site is listed or eligible for listing, then the agency must determine if there is a potential for adverse effects to the site as a result of the proposed action. Section 7(a)(2) of the Endangered Species Act directs Federal agencies, in consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, to ensure that actions they authorize, fund, or carry out are not likely to jeopardize listed species of their designated critical habitat. Section 7(a)(2) consultation may be required during CCMP implementation where Federal agencies authorize, fund, or carry out an activity that may affect listed species. Each Federal agency must determine if consultation is necessary on a case-by-case basis. See Section 12.10 of the CCMP for further discussion of this topic.

It is well to note that the U.S. Fish and Wildlife Service and National Marine Fisheries Service have both been integral participants in the Barnegat Bay National Estuary Program from the very beginning. Both agencies are represented on the BBNEP Management Committee as well as on the Science and Technical Advisory Committee. Both agencies have made constructive contributions to the development of the CCMP, and they have both rendered their approval within the Management Conference approval process for the action items listed in the CCMP. At the end of this appendix are copies of the formal concurrence letters from each of the respective federal and state agencies.

Federal Consistency Review Process

To fulfill the requirements of Section 320 of the Clean Water Act, the following steps were taken:

1. An inventory was first compiled of federal assistance programs listed in the Catalog of Federal Domestic Assistance, direct federal development projects, and federal license and permit programs.
2. For the one-time review of federal programs, such programs that are likely to either positively or negatively affect the CCMP implementation have been screened against appropriate criteria in USEPA guidance to determine their inclusion and possible effect on CCMP implementation. These criteria are presented below.

Criteria for Consistency

The following criteria for determination of consistency for whether programs encourage or support the objectives as listed in the CCMP were developed by the Management Conference.

More specific criteria are whether the programs encourage or support the proposed CCMP actions in the following ways. Programs or projects are inconsistent if they inhibit these activities or harm the resources that they seek to protect or restore.

- Complies with existing management plans or supports continued development of interstate management plans for a wide variety of living resources and habitats;
- Encourages development of tools for such compliance, including Geographic Information Systems (GIS) and community classification systems;
- Encourages or provides for restoration of a variety of valuable habitats, including wetlands, streams, stream corridors, riparian and wetland buffer zones, artificial reefs, oyster reefs, shorelines, and large forested upland tracts;
- Reduces loss of wetlands;
- Protects shorelines;
- Promotes sustainable development;
- Reduces nonpoint source (NPS) pollution and protects water quality and quantity through watershed-based planning, best management practices (BMPs), and riparian corridor protection;
- Promotes improved land-use planning to protect water quality and reduce sprawl;
- Encourages regional coordination;
- Encourages redevelopment and compact development;
- Encourages water conservation and integrated planning for water supply and wastewater;
- Promotes better coordination and planning for dredging, including dredged material disposal;
- Encourages development and use of pumpout facilities;
- Improves public access to the river and bay;
- Addresses information and resource needs of the Toxics Management Strategy;
- Encourages wise use of chemicals by residents and businesses;
- Supports development and implementation of toxic water quality criteria;
- Helps to identify sources of contaminated sediments and identify control measures;
- Promotes regional information sharing and development of GIS;
- Supports private sector efforts to achieve all these objectives and activities;
- Supports public education activities, including newsletters, other outreach material, ecotourism promotion, hands-on activities for volunteers, and curricula development; and
- Supports existing and expanded monitoring plans, including volunteer monitoring.

Federal Consistency Review Strategy

After conducting a one-time assessment and identifying potential conflicts with the CCMP (Table F-1), the following was considered and a subsequent strategy was concluded.

Executive Order (EO) 12372, which established a procedure for state and local government review of federal assistance programs and development projects, was implemented by all federal agencies in 1983. A requirement of the CWA is compliance with EO 12372 for the review of federal assistance programs and development projects. These reviews, known as state clearinghouse reviews, are coordinated in New Jersey by the Department of Community Affairs, Division of Community Resources.

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In 1988, the USEPA and NOAA entered into an agreement designed to avoid conflicts and duplication regarding the NEP and the Coastal Zone Management Program. One provision is that, after concurrence by the state governor and approval by the USEPA administrator, the USEPA and NOAA will encourage and/or require, to the extent permitted by law, that the CCMP be submitted for incorporation into the Coastal Zone Management Program, as appropriate.

Therefore, the consistency review requirement of the NEP can be met by integrating the process into the existing state Coastal Management Plan (CMP) consistency review process, or, as is currently being done in New Jersey, through the EO 12372 process. The BBNEP would be available to participate, as appropriate under existing appeal and mediation procedures, in assisting the state in the resolution of consistency determinations.

Note also that potential inconsistencies among coastal activities can be addressed through the Management Conference itself. Under Section 320(b) (7) of the CWA, as amended, the Management Conference has such authority, as described above. However, the goal of the review process established under Purpose 7 is to complement the state's existing review processes rather than duplicate them, and the current recommendation is that the BBNEP would be best served by using existing processes.

The appropriate ongoing review programs in the state of New Jersey have the staff and experience necessary to perform federal consistency reviews, whereas the costs and start-up time, in addition to the lack of experienced personnel, could make the undertaking of a separate federal consistency review prohibitive to the BBNEP.

The Management Conference has also raised concerns regarding the review of non-federal programs for consistency with the CCMP. These concerns will be addressed through existing state and local review procedures, such as CAFRA II review by the state of New Jersey and Ocean County's cross-acceptance review of municipal master plans.

For the continuing review process, which evaluates individual projects for consistency with the CCMP, New Jersey's EO 12372 process and single point of contact (state clearinghouse) will be used. Under the EO process, agencies must accommodate state comments, or explain in writing why they cannot. The EO process, used by most states, does not only focus on environmental protection; it covers all federal actions and can be used to further the consistency review of the BBNEP CCMP. NJDEP will conduct project reviews under the EO process considering the BBNEP CCMP. This process will provide additional assurance that project review will be consistent with the goals of environmental protection.

Consistency of the CCMP with Coastal Management Programs

Under Section 307(c) of the CZMA of 1972, as amended, and implementing regulations in 15 CFR 930, consistency with an approved state coastal zone management program is required: (a) for direct federal activities and development projects, (b) for activities requiring federal licenses or permits, and (c) for activities receiving federal financial assistance. In New Jersey, the program and the review of federal activities for consistency with the state's CMP, known as CAFRA II, is administered by the New Jersey Department of Environmental Protection (NJDEP).

The 1988 USEPA/NOAA agreement states that:

- "CCMPs developed under the NEP will voluntarily, as a matter of policy, be submitted for review under the federal consistency provisions of Section 307(c) of the CZMA of 1972, as amended."
- New Jersey, pursuant to the federal and state consistency provisions of CAFRA II, already has a review process in place. Based on a review of the CCMP and a consistency review submitted by the NEP (USEPA Region II will prepare such a review for the BBNEP), New Jersey will review the overall approval and adoption of the CCMP, and each proposal within it, for consistency with the policies of CAFRA II, which are specific with respect to use and development of coastal resources.
- The study area for the BBNEP covers all of Ocean County, New Jersey, which is nearly coincident with the boundaries of the Barnegat Bay watershed.

- For the CCMP consistency review with the state CAFRA II, under Section 307(c) of the CZMA, the USEPA will send a formal consistency determination to the NJDEP at the same time that the final CCMP is submitted to the governor of New Jersey and the USEPA administrator. The NJDEP will determine the consistency of the BBNEP CCMP with the CAFRA II and implement enforceable BBNEP CCMP actions accordingly.

CCMP Actions with Potential Conflicts

CCMP actions were designed to meet the stated Program Goals and Actions. To the extent that federal programs are geared toward environmental protection, there should be no conflict with CCMP actions. However, federal programs that contain an element of economic development, construction, or infrastructure improvement may conflict with CCMP actions. It will be through the continued deliberation of the BBNEP Management Conference that such conflicts will be resolved and an accepted accommodation of development and environmental protection will be reached.

Federal Development Projects in the Barnegat Bay Watershed

Two existing federal projects are focused in the coastal area of the Barnegat Bay watershed. One project, a beach erosion control and hurricane project, extends along the coastal barrier from the Manasquan Inlet to the Barnegat Inlet. It is sponsored by the U.S. Army Corps of Engineers and the NJDEP. This project is in the feasibility stage and an environmental impact statement is under review. This project potentially conflicts with the goal of environmental protection, but by proposing an alternative that does not include hard coastal structures, the project reduces that potential. Members of the Management Committee, as representatives of the respective agencies, will take part in the review of this proposal.

The second project is the Barnegat Bay Restoration Study, which is also a joint feasibility study by the Corps and the NJDEP. It has been incorporated into the CCMP as Action Item 6.2. As the BBNEP has made a commitment to participate in the progress of this effort, this resolves any potential conflict of interest that may arise.



*A bountiful catch. PHOTO COURTESY OF THE TUCKERTON SEAPORT,
A PROJECT OF THE BARNEGAT BAY DECOY AND BAYMEN'S MUSEUM, INC.*

FEDERAL CONSISTENCY REVIEW

TABLE F-1. Federal Program Consistency with the Barnegat Bay National Estuary Program

Catalog of Federal Domestic Assistance	Program Title	Agency	Potential to support BBEP CCMP	Potential to conflict with BBEP CCMP	Priority?
10.200	Grants for Agricultural Research, Special Research Grants	USDA-ES	X	-	-
10.069	Conservation Reserve Program	USDA-FSA	X	-	-
10.072	Wetlands Reserve Program	USDA-NRCS	X	-	-
10.901	Resource Conservation and Development	USDA-NRCS	X	X	-
10.902	Soil and Water Conservation	USDA-NRCS	X	-	-
10.903	Soil Survey	USDA-NRCS	X	-	-
10.904	Watershed Protection and Flood Prevention	USDA-NRCS	X	-	-
10.906	Watershed Surveys and Planning	USDA-NRCS	X	-	-
10.912	Environmental Quality Incentives Program	USDA-NRCS	X	-	X
10.913	Farmland Protection Program	USDA-NRCS	X	-	-
10.914	Wildlife Habitat Incentive Program	USDA-NRCS	X	-	X
10.768	Business and Industry Loans	USDA-RB-CS	X	X	-
10.769	Rural Development Grants	USDA-RB-CS	X	X	-
10.854	Rural Development Loans and Grants	USDA-RB-CS	X	X	-

TABLE F-1. (continued)

Catalog of Federal Domestic Assistance	Program Title	Agency	Potential to support BBEP CCMP	Potential to conflict with BBEP CCMP	Priority?
10-410	Very Low to Moderate Income Housing Loans	USDA-RHS	X	X	-
10-411	Rural Housing Site Loans and Self-Help Housing Land Development Loans	USDA-RHS	X	X	-
10-433	Rural Housing Preservation Grants	USDA-RHS	X	-	-
10-766	Community Facilities Loans and Grants	USDA-RHS	X	X	-
10.760	Water and Wastewater Disposal Systems for Rural Communities	USDA-RUS	X	X	-
10.762	Solid Waste Management Grants	USDA-RUS	X	X	-
10.770	Water and Waste Disposal Loans and Grants	USDA-RUS	X	X	-
11.300	Grants for Public Works and Economic Development	DOC-EDA	X	-	-
11.302	Economic Development-Support for Planning Organizations	DOC-EDA	X	-	-
11.307	Economic Adjustment Assistance	DOC-EDA	X	X	-
11.405	Anadromous Fish Conservation Act Program	NOAA	X	-	-
11.407	Interjurisdictional Fisheries Act of 1986	NOAA	X	-	X
11.417	Sea Grant Support	NOAA	X	-	X

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TABLE F-1. (continued)

Catalog of Federal Domestic Assistance	Program Title	Agency	Potential to support BBEP CCMP	Potential to conflict with BBEP CCMP	Priority?
11.419	Coastal Zone Management Administration Awards	NOAA	X	-	X
11.420	Coastal Zone Management Estuarine Research Reserves	NOAA	X	-	-
11.426	Financial Assistance for National Centers for Coastal Ocean Science	NOAA	X	-	-
11.427	Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program	NOAA	X	-	-
11.429	Marine Sanctuary Program	NOAA	X	-	-
11.433	Marine Fisheries Initiative	NOAA	X	-	-
11.441	Regional Fishery Management Councils	NOAA	X	-	-
11.444	Aquaculture Program	NOAA	X	X	-
11.463	Habitat Conservation	NOAA	X	-	-
11.473	Coastal Services Center	NOAA	X	-	-
11.474	Atlantic Coastal Fisheries Cooperative Management Act	NOAA	X	-	-
11.477	Fisheries Disaster Relief	NOAA	X	-	-
11.478	Center for Sponsored Coastal Research Coastal Ocean Program	NOAA	X	-	X
12.100	Aquatic Plant Control	ACOE	X	-	-

TABLE F-1. (continued)

Catalog of Federal Domestic Assistance	Program Title	Agency	Potential to support BBEP CCMP	Potential to conflict with BBEP CCMP	Priority?
12.101	Beach Erosion Control Projects	ACOE	X	X	-
12.102	Emergency Rehabilitation of Flood Control Works or Federally Authorized Coastal Protection Works	ACOE	X	-	-
12.104	Flood Plain Management Services	ACOE	X	-	-
12.105	Protection of Essential Highways, Highway Bridge Approaches and Public Works	ACOE	X	X	-
12.106	Flood Control Projects	ACOE	X	X	-
12.107	Navigation Projects	ACOE	X	X	-
12.109	Protection, Clearing and Straightening Channels	ACOE	X	X	-
12.110	Planning Assistance to States	ACOE	X	-	-
12.111	Emergency Advance Measures for Flood Protection	ACOE	X	X	-
12.300	Basic and Applied Scientific Research	ONR	X	-	-
12.301	Basic and Applied Scientific Research	ONR	X	-	-
12.600	Community Economic Adjustment	DOD-OEA	X	X	-
12.607	Community Economic Adjustment Planning Assistance	DOD-OEA	X	X	-

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TABLE F-1. (continued)

Catalog of Federal Domestic Assistance	Program Title	Agency	Potential to support BBEP CCMP	Potential to conflict with BBEP CCMP	Priority?
12.612	Community Base Reuse Plans	DOD-OEA	X	X	-
12.613	Growth Management Planning Assistance	DOD-OEA	X	X	-
14.218	Community Development Block Grants/Entitlement Grants	HUD-CPD	X	X	-
14.2246	Community Development Block Grants/Economic Development Initiative	HUD-CPD	X	X	-
15.605	Sport Fish Restoration	FWS	X	-	-
15.611	Wildlife Restoration	FWS	X	-	-
15.614	Coastal Wetlands Planning, Protection and Restoration Act	FWS	X	-	-
15.615	Cooperative Endangered Species Conservation Fund	FWS	X	-	-
15.616	Clean Vessel Act	FWS	X	-	X
15.618	Administrative Grants for Federal Aid in Sport Fish and Wildlife Restoration	FWS	X	-	-
15.623	North American Wetlands Conservation Fund	FWS	X	-	-
15.805	Assistance to State Water Resources Research Institutes	USGS	X	-	-
15.976	Migratory Bird Banding and Data Analysis	USGS	X	-	-

TABLE F-1. (continued)

Catalog of Federal Domestic Assistance	Program Title	Agency	Potential to support BBEP CCMP	Potential to conflict with BBEP CCMP	Priority?
15.916	Outdoor Recreation - Acquisition, Development and Planning	NPS	X	X	-
15.918	Disposal of Federal Surplus Real Property for Parks, Recreation, and Historic Monuments	NPS	X	X	-
15.919	Urban Park and Recreation Recovery Program	NPS	X	-	-
15.925	National Maritime Heritage Grants	NPS	X	-	-
20.005	Boating Safety Financial Assistance	USCG	X	-	-
20.006	State Access to the Oil Spill Liability Trust Fund	USCG	X	-	-
20.007	Bridge Alteration	USCG	X	X	-
20.205	Highway Planning and Construction	FHA	X	X	-
20.219	Recreational Trails Program	FHA	X	X	-
20.312	High Speed Ground Transportation - Next Generation High Speed Rail Program	FRA	X	X	-
20.500	Federal Transit-Capital Investment Grants	FTA	X	X	-
20.505	Federal Transit-Metropolitan Planning Grants	FTA	X	X	-
20.507	Federal Transit-Formula Grants	FTA	X	X	-

FEDERAL CONSISTENCY REVIEW

TABLE F-1. (continued)

Catalog of Federal Domestic Assistance	Program Title	Agency	Potential to support BBEP CCMP	Potential to conflict with BBEP CCMP	Priority?
20.509	Formula Grants for Other than Urbanized Areas	FTA	X	X	-
20.514	Transit Planning and Research	FTA	X	X	-
20.515	State Planning and Research	FTA	X	X	-
20.801	Development and Promotion of Ports and Intermodal Transportation	DOT-MA	X	X	-
66.419	Water Pollution Control-State and Interstate Program Support	EPA	X	-	X
66.433	State Underground Water Source Protection	EPA	X	-	-
66.454	Water Quality Management Planning	EPA	X	-	X
66.456	National Estuary Program	EPA	X	-	X
66.458	Capitalization Grants for State Revolving Funds	EPA	X	-	X
66.460	Nonpoint Source Implementation Grants	EPA	X	-	X
66.461	Wetlands Protection-Development Grants	EPA	X	-	-
66.463	National Pollutant Discharge Elimination System Related State Program	EPA	X	-	-
66.500	Environmental Protection-Consolidated Research	EPA	X	-	-

TABLE F-1. (continued)

Catalog of Federal Domestic Assistance	Program Title	Agency	Potential to support BBEP CCMP	Potential to conflict with BBEP CCMP	Priority?
66.600	Environmental Protection Consolidated Grants Program Support	EPA	X	-	-
66.605	Performance Partnership Grants	EPA	X	-	X
66.606	Surveys, Studies Investigations and Special Purpose Grants	EPA	X	-	X
66.608	One Stop Reporting	EPA	X	-	-
66.609	Children's Health Protection	EPA	X	-	-
66.700	Consolidated Pesticide Enforcement Cooperative Agreements	EPA	X	-	-
66.701	Toxic Substances Compliance Monitoring Cooperative Agreements	EPA	X	-	-
66.604	Environmental Justice Grants to Small Community Groups	EPA	X	-	-
66.710	Environmental Justice Community/University Partnership Grants Program	EPA	X	-	-
66.713	State and Tribal Environmental Justice	EPA	X	-	-
66.801	Hazardous Waste Management State Program Support	EPA	X	-	-
66.802	Superfund State Site-Specific Cooperative Agreements	EPA	X	-	-

FEDERAL CONSISTENCY REVIEW

TABLE F-1. (continued)

Catalog of Federal Domestic Assistance	Program Title	Agency	Potential to support BBEP CCMP	Potential to conflict with BBEP CCMP	Priority?
66.804	State and Tribal Underground Storage Tanks Program	EPA	X	-	-
66.805	Leaking Underground Storage Tank Trust Fund Program	EPA	X	-	-
66.806	Superfund Technical Assistance Grants for Citizen Groups at Priority Sites	EPA	X	-	-
66.807	Superfund Innovative Technology Evaluation Program	EPA	X	-	-
66.808	Solid Waste Management Assistance	EPA	X	-	-
66.809	Superfund State Core Program Cooperative Agreements	EPA	X	-	-
66.810	CEPP Technical Assistance Grants Program	EPA	X	-	-
66.811	Brownfield Pilots Cooperative Agreements	EPA	X	-	-
66.708	Pollution Prevention Grants Program	EPA	X	-	-
83.536	Flood Mitigation Assistance	FEMA	X	X	-
83.537	Community Disaster Loans	FEMA	X	X	-
83.548	Hazard Mitigation Grant	FEMA	X	X	-
83.551	Project Impact-Building Disaster Resistant Communities	FEMA	X	X	-