



APPENDIX J

Federal Consistency Report



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Peconic Estuary Program

Comprehensive Conservation and Management Plan

Federal Consistency Report

September 2000



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FEDERAL CONSISTENCY REPORT FOR THE PECONIC ESTUARY PROGRAM

Background

The National Estuary Program (NEP) was established by the Water Quality Act of 1987, which amended the Federal Clean Water Act. The purpose of the NEP is to identify, protect and restore estuaries of national significance. The Peconic Estuary was nominated for the NEP by the Governor of New York in 1991. In 1993, 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, conducted as part of the State's coastal zone management program.

The Federal consistency review procedure being applied for the Peconic Estuary is explained below. The procedure was originally developed by the Long Island Sound Study and New York–New Jersey Harbor Estuary Program for their CCMPs. The State of New York has decided to apply this procedure to the Peconic Estuary.

Purpose of Review

EPA guidance defines the goal of the Federal consistency review process as to ensure that Federal actions do not adversely affect CCMP goals, and that they support actions proposed in the CCMP where possible. In addition, under an agreement between the U.S. Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) (see below), CCMPs are submitted for determination that they are consistent with the coastal zone management plans of the affected State or States. The major tasks in the Federal consistency review process are:

- Consistency of Federal actions with the CCMP:
 1. Development of an inventory of Federal programs and projects to be reviewed for consistency with the CCMP, and a one-time assessment of these programs/projects for consistency with the CCMP.
 2. Setting up and implementing a process to continually review individual Federal projects for consistency with the CCMP.
- Consistency of the CCMP with coastal zone management plans:
 3. Determination whether the CCMP is consistent with affected State CZM plans.
 4. Concurrence of the State with the determination.



Consistency of Federal Actions with the CCMP

Activities that affect the quality of the Peconic Estuary are both supported and regulated, both directly and/or indirectly, by Federal, State and local 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 Peconic Estuary.

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 Clean Water Act, as amended. "Purpose 7" states that:

"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."

In 1992, EPA 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(s) and approval by the EPA Administrator, EPA and NOAA will encourage and/or require, to the extent permitted by law, that the CCMPs 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 in New York. PEP 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 Clean Water Act, 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 process rather than duplicate them, and PEP would be best served by using the existing process.

The appropriate ongoing review program in the State of New York has 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 PEP. Concerns have also been raised at the Management Conference regarding the review of non-Federal programs for consistency with the CMP. These concerns would be addressed in the existing State review programs, which require the review of certain non-Federal activities and programs¹ and allow the review of activities outside the coastal zone if they affect the coastal zone².

¹ These concerns would be addressed in the existing State CMP, which requires the activities of State agencies to be consistent with the State's coastal policies or, in the case of the Villages of Greenport and Sag Harbor, the policies of their State-approved Local Waterfront Revitalization Programs.

² In New York State, this applies only to Federal activities.



Consistency of the CCMP with Coastal Management Programs

Under Section 307(c) of the Coastal Zone Management Act (CZMA) of 1972, as amended, and implementing regulations (see 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 York, the program and the review of Federal activities consistency with the State's CMP is administered by the New York State Department of State.

The 1988 EPA/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.”

The State of New York, pursuant to the Federal and State consistency provision of their existing coastal management program, already has a review process in place. Based on a review of the CCMP and a consistency review submitted by EPA Region II, the State reviews the overall approval and adoption of the CCMP, and each proposal within it, for consistency with policies of their CMP, which is very specific with respect to use and development of coastal resources.

Area to be included for Federal Consistency Review

The study area for the Peconic Estuary Program includes the waters of Peconic Bay to an imaginary line connecting the eastern end of Plum Island and Montauk Point. The land-based area includes the surface water, storm water, and ground water contributing areas.

Federal Consistency Review for the PEP in New York

The Federal consistency review requirement under Section 320(b)(7) for the PEP will be delegated to the State of New York because of the previously mentioned advantages of using the existing process under the State's CMP, rather than establishing a new process under the PEP. Upon acceptance of the final CCMP for the Peconic Estuary Program by the Administrator of EPA, the CMP in New York will take all necessary actions to include the enforceable components of the CCMP in the CMP and its existing Federal consistency process.

To accomplish this incorporation, the New York Department of State (NYDOS) must review the final CCMP and the consistency determination submitted by EPA to determine its consistency with New York's approved CMP. Having New York CMP program staff serve on the CCMP work groups and the Management Committee has helped to ensure that consistency. New York's Federally approved CMP must, if necessary, be amended and approved by NOAA. All steps must be in accordance with NOAA's established regulatory and statutory procedures, including public review and comment. Note that any Federal action that affects New York's coastal zone can be reviewed for consistency with the State's CMP. An “inconsistent” decision, however, must be based on enforceable coastal policies (*i.e.*, those that are based on existing State law and regulation). New York's review of the PEP CCMP indicates that all of the committed actions, and many recommended actions, in the CCMP applicable to New York, are based on existing State law and regulation. New York's review also did not indicate the need for New York to enact new legislation or regulatory authority to help



implement any recommended CCMP actions. Thus, most of the CCMP will be enforceable under New York's CMP.

The PEP Office should be notified of Federal activities that are subject to Federal consistency review with regard to the CCMP. To accomplish this, PEP will request to be added to the NYDOS project review notification list. The PEP Office may comment on the activities and, when the review is complete, shall be notified of the results. If the PEP office comments on any Federal actions, it must do so in timely manner so the State can adhere to the prescribed time frames established by regulation in the *Federal Register* by NOAA for review/approval. As part of the consistency review determination under the CMP, New York will ensure that each action is consistent with the enforceable components of the CMP.

If necessary, New York will amend its CMP to incorporate the enforceable components of the CCMP for the PEP. The review process shall consider all Federal financial assistance and development activities as well as all other Federal actions including the issuance of Federal permits which are listed in the State's CMP. State actions not requiring Federal consistency review are often subject to review under the existing State consistency review process, and a formal or informal agreement should be established between New York and the PEP whereby the PEP Office is notified of the projects that may affect achieving the CCMP goals, strategies and proposed actions for the PEP. The PEP will be best served by utilizing the State's existing CMP for its Federal consistency review requirements.

For the CCMP consistency review with the State CMP under Section 307(c) of the CZMA, EPA will send a formal consistency determination to the NYDOS at the same time that the final CCMP is submitted to the Governor of New York and the EPA Administrator. The NYDOS will determine the consistency of the PEP CCMP with the CMP and implement enforceable PEP actions that are consistent with the CMP.

Federal programs and activities subject to consistency review by New York State are identified in the State's CMP. In some areas, State programs are reviewed under State-approved Waterfront Revitalization Plans. The inventory of Federal programs is provided in Table 1.

Criteria for Consistency

The general criteria for determination of consistency are whether programs encourage or support the objectives listed in the CCMP.

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 management plans for a wide variety of living resources and habitats;
- Encourages development of tools for such compliance, including GIS and community classification systems;



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- 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 NPS pollution and protects water quality and quantity through watershed-based planning, 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 dredge material disposal;
 - Encourages development and use of pump-out facilities;
 - Improves public access to the estuary;
 - Encourages wise use of chemicals by residents and businesses;
 - Supports development and implementation of toxics water quality criteria;
 - Helps to identify sources of contaminated sediments and identify control measures;
 - Promotes regional information sharing and development of Geographic Information Systems;
 - Supports private sector efforts to achieve all these objectives and activities;
 - Supports public education activities, including newsletters, other outreach materials, ecotourism promotion, hands-on activities for volunteers, and curricula development; and,
 - Supports existing and expanded monitoring plans, including volunteer monitoring.



Table 1. Inventory of Federal Programs for Consistency with the Peconic Estuary Plan.

Catalog of Federal Domestic Assistance*	Program Title	Agency**	Potential to support PEP CCMP	Potential to conflict with PEP 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	-
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	-



**Table 1. Inventory of Federal Programs for Consistency with the Peconic Estuary Plan.
(continued)**

Catalog of Federal Domestic Assistance*	Program Title	Agency**	Potential to support PEP CCMP	Potential to conflict with PEP CCMP	Priority?
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
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	-	-
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	-



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(continued)**

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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	-
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	-	-
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	-



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(continued)**

Catalog of Federal Domestic Assistance*	Program Title	Agency**	Potential to support PEP CCMP	Potential to conflict with PEP CCMP	Priority?
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	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	-
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	-	-



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(continued)**

Catalog of Federal Domestic Assistance*	Program Title	Agency**	Potential to support PEP CCMP	Potential to conflict with PEP CCMP	Priority?
66.500	Environmental Protection-Consolidated Research	EPA	X	v	-
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	-	-
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	-	-



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(continued)**

Catalog of Federal Domestic Assistance*	Program Title	Agency**	Potential to support PEP CCMP	Potential to conflict with PEP CCMP	Priority?
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	–

* 2000 Catalog of Federal Domestic Assistance, Executive Office of the President, Office of Management and Budget

** Agency Names:

- ACOE — Army Corps of Engineers
- DOC — Department of Commerce
- DOC-EDA — Department of Commerce - Economic Development Administration
- DOD-OEA — Department of Defense - Office of Economic Adjustment
- DOT-MA — Department of Transportation - Maritime Administration
- EPA — Environmental Protection Agency
- FEMA — Federal Emergency Management Agency
- FHA — Federal Highway Administration
- FRA — Federal Railroad Administration
- FTA — Federal Transit Administration
- FWS — Fish and Wildlife Service
- HUD-CPD — Department of Housing and Urban Development — Community Planning and Development
- NOAA — National Oceanic and Atmospheric Administration
- NPS — National Park Service
- ONR — Office of Naval Research
- USCG — U.S. Coast Guard
- USDA — U.S. Department of Agriculture
- USDA-ERS — USDA Economic Research Service
- USDA-ES — USDA Cooperative State Research, Education and Extension Service
- USDA-FSA — USDA Farm Services Agency
- USDA-NRCS — USDA Natural Resources Conservation Service
- USDA-RB-CS — USDA Rural Business-Cooperative Service
- USDA-RHS — USDA Rural Housing Service
- USDA-RUS — USDA Rural Utilities Service
- USGS — U.S. Geological Survey



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