

# Federal Standard Magnuson-Stevens Conservation and Mgmt Act Coastal Zone Management Act

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## Federal Standard

- In Oct 1972, the Congress enacted three landmark pieces of legislation, two of which provided partial waivers of federal supremacy
  - The Federal Water Pollution Control Act, amended in 1977 and renamed the Clean Water Act (CWA), (included partial waiver),
  - The Coastal Zone Management Act (CZMA) and;
  - The Marine Protection Research and Sanctuaries Act were.



# The Partial Waivers

- The CZMA and the CWA provided those partial waivers:
  - ▶ The CWA required state water quality certification demonstrating that the proposed discharge of dredged material into waters of the U.S. would not violate applicable state water quality standards
    - The water quality certification programs are administered by the states with EPA oversight
  - ▶ The CZMA required that federal agency actions be “consistent to the maximum extent practicable” with enforceable policies of state coastal zone programs
    - The CZMA programs are administered by the states with NOAA oversight
    - All 35 coastal states, including Great Lakes states participate, except Alaska



## 1978 DCW Memo

- Almost immediately following the CWA amendments of 1977, the partial waiver of federal supremacy caused O&M budgets to skyrocket.
- In July 1978 the DCW, issued a compliance guidance memorandum outlining new policies for Corps maintenance dredging activities
- The DCW made clear the Corps had no mandatory obligation to maintain projects that were not economically justified
- The memo directed the districts to defer maintenance when problems occurred and to essentially request that either project sponsors or the state fund requirements the Corps deemed excessive



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## New Maintenance Dredging Regulation underway in 1983

- The 1978 policy memo was to be the centerpiece of the new rule
- The new rule would replace the old 209.145 rule in place since July 1974 with 33 CFR 335-338
- Ops Chiefs wanted a means by which they could re-gain control over the O&M dredging budget
  - ▶ Federal standard term was codified
  - ▶ Requires the Corps select the least costly dredged material disposal alternative meeting the compliance requirements of the 404 guidelines or ocean discharge criteria
  - ▶ Federal standard serves as a baseline for comparing other alternatives



## The 1988 Final Rule

- 33 CFR 335-338, adopted as a final rule in April 1988
- The federal standard codified at 335.7, “Definitions” and 336.1(c) (1), “Navigation and Federal Standard.”
- The fundamental purpose is to establish a baseline from which operations project managers can determine if the dredged material plan selected meets environmental compliance obligations and is within the funds budgeted and appropriated for the project



## The 1988 Final Rule (continued)

- The rule provides deferral of maintenance guidance
- Provides explicit guidance on how to deal with excessive state requirements.
- The rule also provides an environmental compliance template for all the applicable environmental laws and regulations.



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# Magnuson-Stevens Fishery Conservation and Management Act

## Essential Fish Habitat



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# Magnuson-Stevens Fishery Conservation and Management Act (MSA)

- Enacted in 1976
- Established 8 Fisheries Management Councils
- Two substantive amendments in 1996- Sustainable Fisheries Act and again with the MS Reauthorization Act in 2007
- Administered by NOAA
- Established a requirement for federal agency actions at 50 CFR 600



## MSA Regulations

- Federal Agency Consultation Regulations published at 50 CFR 600.920
- Requires that federal agencies:
  - ▶ Consult when essential habitat will be adversely impacted
  - ▶ Must consider NOAA conservation recommendations
  - ▶ Must include descriptions of measure proposed to avoid, mitigate or offset impacts
  - ▶ When recommendations not accepted, the federal agency must explain reasons including scientific justification



# EFH consultation procedure: Summary

1. **Federal Agency consults** with NMFS for actions that may adversely affect EFH
  - ▶ Section 305 (b)(2), MSA; 50 CFR 600.920(a)
  
2. **NMFS provides conservation recommendations** to federal agency
  
3. **Federal agency responds** to NMFS' conservation recommendations
  - Section 305 (b)(4)(B); 50 CFR 600.920(k)



# Coastal Zone Management Act



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## CZMA

- Enacted in October 1972 during the same period as CWA and MPRSA
- Originally, the rule required projects be consistent to the maximum extent practicable
  - Changed to projects must be fully consistent for applicants and;
  - Consistent to the maximum extent practicable for federal activities
  - Federal agencies cannot use absence of funds excuse for not being consistent to maximum extent practicable



# Mediation of Disputes

- NOAA advocates use of mediation when disputes arise
  - Corps determined mediation not in our best interest
    - Would be required to abide by the outcome
    - NOAA has never sided with the federal agency
    - States testify before Congress in support of NOAA's budget
    - Symbiotic relationship between states and NOAA precludes fair treatment in mediation



