

A black and white photograph of a beach scene. In the foreground, several brown pelicans are perched on wooden pilings. One pelican on the left is preening. In the background, a large, light-colored building with a balcony is visible. The text 'Chaparral' is written vertically in a large, stylized font on the right side of the image. The title 'Federal Consistency Review' is centered in the middle of the image.

Federal Consistency Review

Brown pelicans, San Juan Bay.

CHAPTER EIGHT: FEDERAL CONSISTENCY REVIEW



Western Suárez Canal.

A KEY ELEMENT IN THE SUCCESSFUL implementation of the Management Plan is that federal assistance programs are compatible with the Plan's goals and objectives. Recognizing the need to coordinate among federal government programs and the national estuary programs (NEPs), Congress, under Section 320(b), requires that each NEP review federal financial assistance programs and development projects to determine if these are consistent with the Management Plan. Specifically, Purpose 7 of Section 320(b) 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 and objectives of the CCMP.

...Such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372, but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the [CCMP].

Carrying out this review ensures that federal agencies will not promote or conduct activities that are inconsistent with the goals, objectives, and actions included in the San Juan Bay Estuary Management Plan. Moreover, the review provides the opportunity to find ways in which federal programs can support the implementation of the Management Plan.

THE FEDERAL CONSISTENCY REVIEW PROCESS

On July 14, 1982, the President of the United States signed Executive Order 12372, "Intergovernmental Review of Federal Programs", directing states to establish a process to coordinate, evaluate, and review plans and proposals prepared by state and municipal agencies and projects and activities to be performed directly by the federal government in the specific jurisdiction. To implement this Executive Order, the Governor of Puerto Rico signed Administrative Bulletin No. 4763-A in which the Puerto Rico Planning Board (PRPB) is designated as the state entity with the authority and responsibility to implement the coordination and review process. Through the established process, the Government of Puerto Rico can evaluate all requests for federal funds and express its official position. The process also allows for the opportunity to compile important information concerning the activities and resources.

The PRPB has established an office which coordinates the appropriate reviews. This office is known as the Single Point of Contact (SPOC). The functions of the SPOC are to:

- Implement the requirements of Administrative Bulletin No. 4763-A;
- Maintain a data base of federal funds requested;
- Keep the Governor informed about the quantity and the purpose of the requested funds and about the federal projects being performed by the federal government in Puerto Rico. The Governor is informed through his Advisor in Federal Affairs;
- Inform potential applicants of the availability of federal funds and about changes or new laws and regulations;
- Assist the PRPB in becoming an advisory entity in Federal Affairs and its impact on the state's economy; and
- Offer guidance and technical assistance to all applicants.

Since National Estuary Programs must conduct a consistency review, all programs listed in the Catalog of Federal Domestic Assistance are reviewed. The 1998 Catalog of Federal Domestic Assistance lists 1,381 programs administered by 57 federal agencies.

For the San Juan Bay Estuary Program, the federal consistency review consists of two parts:

- 1) A one-time inventory and review of federal assistance programs and direct federal development projects which may be inconsistent with the goals and objectives of the Management Plan.
- 2) Development of a procedure for identifying and resolving inconsistencies between the Management Plan and future federal activities.

THE SJBE FEDERAL CONSISTENCY REVIEW

A review of programs in the 1998 Catalog of Federal Domestic Assistance identified 85 programs and 3 projects that could be inconsistent with the goals of the Management Plan. (See Table 13 at the end of this chapter.) When these 88 programs and projects were reviewed to determine if,



Bloodwood (Pterocarpus officinalis) forest. Courtesy of PR Conservation Trust.

indeed, they were inconsistent with the Management Plan, no inconsistencies were found. However, one of the programs has the potential to conflict with the Management Plan, and six additional programs or projects have the potential to either conflict or support the Management Plan. The remaining 81 programs or projects were found to support the goals of the Management Plan. Regarding the seven programs that have the potential to conflict, it was determined that the programs were not inconsistent, but that a specific activity performed under these federal programs could have an adverse impact on the estuary if it is not properly coordinated with the SJBE Program.

To ensure that the federal programs, activities, and projects remain consistent with the Management Plan, the SJBE Program proposes

that it be included in the "List of Link Agencies" (Lista de Agencias Enlace) which provide comments to the SPOC on every federal program. It is envisioned that this will be achieved through an Administrative Order by the Chair of the PRPB. The SJBE Program Office Executive Director will be designated by the Implementation Committee Point of Contact (ICPOC). The ICPOC will be responsible for receiving the appropriate federal financial assistance applications and notifications of proposed federal development projects, routing materials to appropriate Implementation Committee members, synthesizing comments, and transmitting the official Implementation Committee view to the Federal Applications Review Office (SPOC) in the PRPB.

In addition, the San Juan Bay Estuary Partnership will continue to foster the cooperative approach that has characterized the program since its inception. This approach, which has already ensured that many of the responsible agencies collaborated in the development of the Management Plan, will help in the resolution of future inconsistencies through consensus building.

COORDINATION WITH THE COASTAL ZONE MANAGEMENT PROGRAM

In 1972, Congress enacted the Coastal Zone Management Act to develop a national coastal management program that would comprehensively manage and balance the competing uses of and impacts to any coastal use or resource. The Puerto Rico Coastal Zone Management Program is the result of a joint effort between the Department of Natural and Environmental Resources (DNER) and the PRPB and was approved by the U.S. Department of Commerce in 1978. It requires that federal activities, including activities requiring federal permits and/or federal financial assistance, be consistent to the maximum extent practicable with the enforceable policies of the coastal management program.

The coastal zone consistency process is another mechanism to avoid potential conflicts between federal actions and the goals and objectives of the SJBE Program. With respect to the SJBE, the coastal zone includes a coastal strip extending 0.6 miles (1 km) inland from the shoreline and all of the estuarine water bodies, even if they are located further inland. In addition, there are activities that, even if taking place outside the defined coastal zone, are subject to consistency review. These activities are:

- Road construction in the coastal watershed;
- Waste discharge in the coastal watershed; and
- Activities affecting or altering surface runoff (quality or quantity) in the coastal watershed.

Although the DNER administers the Puerto Rico Coastal Management Program, the PRPB is the agency which administers coastal zone consistency procedures. Upon receiving a complete coastal zone consistency application, the PRPB requests comments from state and federal agencies and the public as appropriate. It is proposed that the SJBE Program Office be included in the mailing list of commenting entities. The SJBE Program Director would be the contact person and would follow the same procedures described for the federal consistency review. The comments presented by the SJBE Program would then be sent to the applicant for review. As appropriate, the PRPB might consult again with the SJBE Program. The PRPB would then notify the federal agency and the parties involved whether the Board concurs with or objects to a consistency certification within the granted period of time according to the federal consistency procedures.

Table 13. Federal programs and their relationship to SJBE Program goals.

Catalog of Federal Domestic Assistance	Program Title	Agency	Subject to review under EO 12372	Type of Potential Impact
10.072	Wetlands Reserve Program	USDA/NRCS	Yes	S
10.901	Resource Conservation and Development	USDA/NRCS	Yes	S
10.904	Watershed Protection and Flood Prevention	USDA/NRCS	Yes	S
10.906	Watershed Surveys and Planning	USDA/NRCS	Yes	S
10.912	Environmental Quality Incentives Program	USDA/NRCS	Yes	S
10.914	Wildlife Habitat Incentive Program	USDA/NRCS	Yes	S
10.762	Solid Waste Management Grants	USDA/Rural Utilities Service	Yes	S
10.763	Emergency Community Water Assistance Grants	USDA/Rural Utilities Service	Yes	S
10.764	Resource Conservation and Development Loans	USDA/Rural Utilities Service	Yes	S
10.765	Watershed Protection and Flood Prevention Loan	USDA/Rural Utilities Service	Yes	S
10.770	Water and Waste Disposal Loans and Grants	USDA/Rural Utilities Service	Yes	S
11.300	Economic Development - Grants for Public Works and Infrastructure Development	DOC/EDA	Yes	S
11.304	Economic Development - Public Works Impact Program	DOC/EDA	Yes	S
11.305	Economic Development - State and Local Economic Development Planning	DOC/EDA	Yes	S
11.405	Anadromous Fish Conservation Act Program	DOC/NOAA	Yes	S
11.419	Coastal Zone Management Administration Awards	DOC/NOAA	Yes	S
11.426	Financial Assistance for Ocean Resources Conservation and Assessment Program	DOC/NOAA	Yes	S

(TABLE CONTINUED NEXT PAGE)

S = Potential for support
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Catalog of Federal Domestic Assistance	Program Title	Agency	Subject to review under EO 12372	Type of Potential Impact
11.427	Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program	DOC/NOAA	Yes	S
11.433	Marine Fisheries Initiative	DOC/NOAA	Yes	S
11.439	Marine Mammal Data Program	DOC/NOAA	Yes	S
11.463	Habitat Conservation	DOC/NOAA	Yes	S
12.100	Aquatic Plant Control	DA/Chief of Engineers	Yes	S
12.101	Beach Erosion Control Project	DA/Chief of Engineers	Yes	S
12.104	Flood Plain Management Services	DA/Chief of Engineers	Yes	S/C
12.106	Flood Control Projects	DA/Chief of Engineers	Yes	S/C
12.107	Navigation Projects	DA/Chief of Engineers	Yes	S/C
12.108	Snagging and Clearing for Flood Control	DA/Chief of Engineers	Yes	S/C
12.109	Protection, Clearing and Straightening Channels	DA/Chief of Engineers	Yes	C
12.110	Planning Assistance to States	DA/Chief of Engineers	Yes	S
12.610	Joint Land Use Studies	DA/Economic Adjustment	Yes	S
12.613	Growth Management Planning Assistance	DA/Economic Adjustment	Yes	S
14.218	Community Development Block Grants/Entitlement Grants	DA/Community Planning and Development	Yes	S
14.225	Community Development Block Grants/Special Purpose Grants/Insular Areas	DA/Community Planning and Development	Yes	S

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14.227	Community Development Block Grants/Special Purpose Grants/Technical Assistance Program	DA/Community Planning and Development	Yes	S
14.228	Community Development Block Grants/States Program	DA/Community Planning and Development	Yes	S
14.244	Empowerment Zones Program	DA/Community Planning and Development	Yes	S
14.246	Community Development Block Grants/Economic Development Initiative	DA/Community Planning and Development	Yes	S
14.864	Economic Development and Supportive Services Program	DA/Public and Indian Housing	Yes	S
15.605	Sport Fish Restoration	DOI/Fish and Wildlife Service	Yes	S
15.608	Fish and Wildlife Management Assistance	DOI/Fish and Wildlife Service	Yes	S
15.611	Wildlife Restoration	DOI/Fish and Wildlife Service	Yes	S
15.614	Coastal Wetlands Planning, Protection and Restoration Act	DOI/Fish and Wildlife Service	Yes	S
15.615	Cooperative Endangered Species Conservation Fund	DOI/Fish and Wildlife Service	Yes	S
15.616	Clean Vessel Act	DOI/Fish and Wildlife Service	Yes	S
15.617	Wildlife Conservation and Appreciation	DOI/Fish and Wildlife Service	Yes	S
15.618	Administrative Grants for Federal Aid in Sport Fish and Wildlife Restoration	DOI/Fish and Wildlife Service	Yes	S
15.808	Research and Data Acquisition	DOI/Geological Survey	Yes	S
15.976	Migratory Bird Banding and Data Analysis	DOI/Geological Survey	Yes	S
15.919	Urban Park and Recreation Recovery Program	DOI/Park Service	Yes	S

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Catalog of Federal Domestic Assistance	Program Title	Agency	Subject to review under EO 12372	Type of Potential Impact
20.001	Boating Safety	DOT/Coast Guard	Yes	S
20.005	Boating Safety - Financial Assistance	DOT/Coast Guard	Yes	S
20.006	State Access to Oil Spill Liability Trust Fund	DOT/Coast Guard	Yes	S
20.106	Airport Improvement Program	DOT/FAA	Yes	S
20.219	National Recreational Trails Funding Program	DOT/FAA	Yes	S
20.514	Transit Planning and Research	DOT/FTA	Yes	S
20.515	State Planning and Research	DOT/FTA	Yes	S
20.801	Development and Promotion of Ports and Intermodal Transportation	DOT/Maritime Administration	Yes	S
20.808	Capital Construction Fund	DOT/Maritime Administration	Yes	S
20.812	Construction Reserve Fund	DOT/Maritime Administration	Yes	S
47.041	Engineering Grants	National Science Foundation	Yes	S
47.074	Biological Sciences	National Science Foundation	Yes	S
47.076	Education and Human Resources	National Science Foundation	Yes	S
66.651	Sustainable Development Challenge Grants	USEPA	Yes	S
66.419	Water Pollution Control	USEPA	Yes	S
66.454	Water Quality Management Planning	USEPA	Yes	S
66.456	National Estuary Program	USEPA	Yes	S
66.458	Capitalization Grants for the State Revolving Funds	USEPA	Yes	S

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66.460	Nonpoint Source Implementation Grants	USEPA	Yes	S
66.461	Wetlands Protection - Development Grants	USEPA	Yes	S
66.463	National Pollutant Discharge Elimination System Related State Program Grants	USEPA	Yes	S
66.500	Environmental Protection - Consolidated Research	USEPA	Yes	S
66.600	Environmental Protection Consolidated Grants - Program Support	USEPA	Yes	S
66.700	Consolidated Pesticide Enforcement Cooperative Agreements	USEPA	Yes	S
66.708	Pollution Prevention Grants Program	USEPA	Yes	S
66.604	Environmental Justice Grants to Small Community Groups	USEPA	Yes	S
66.710	Environmental Justice Community/University Partnership Grants Program	USEPA	Yes	S
66.713	State and Tribal Environmental Justice	USEPA	Yes	S
66.804	State Underground Storage Tanks Program	USEPA	Yes	S
66.808	Solid Waste Management Assistance	USEPA	Yes	S
66.810	CEPP Technical Assistance Grants Program	USEPA	Yes	S
66.811	Brownfields Pilots Cooperative Agreements	USEPA	Yes	S
66.950	Environmental Education and Training Program	USEPA	Yes	S
66.951	Environmental Education Grants	USEPA	Yes	S

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82.004	International Visitors Program	Information Agency	Yes	S
82.009	Professional Development - International Educators/Administrators	Information Agency	Yes	S
83.505	State Disaster Preparedness Grants	FEMA	Yes	S
83.535	Mitigation Assistance	FEMA	Yes	S/C
83.536	Flood Mitigation Assistance	FEMA	Yes	S/C

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