PART IX: NATIONAL INTEREST AND REGIONAL BENEFIT

A. NATIONAL INTEREST

Consideration of the National Interest

Recognizing the distinct and irreplaceable nature of the nation's coast, the United States Congress, in enacting the Coastal Zone Management Act of 1972 found that, "...there is a national interest in the effective management, beneficial use, protection, and development of the coastal zone." Further, Section 306(c)(8) of the Coastal Zone Management Act specifically requires that state management programs provide for adequate consideration of the national interest involved in the siting of facilities (including energy facilities...) necessary to meet requirements which are other than local in nature. This requirement is intended to assure that national concerns over facility siting are considered in the development and implementation of the coastal zone management programs.

In order to meet the requirements of subsection 306(c)(8) of the Coastal Zone Management Act and the 15 CFR Section 923.52 regulations, states must:

1) Describe which national interests in the planning for and siting of facilities were considered during program development.

2) Indicate the sources relied upon for a description of the national interest in the planning for and siting of the facilities.

3) Indicate how and where the consideration of the national interests is reflected in the substance of the management program.

4) Describe the process for continued consideration of the national interests in the planning for and siting of facilities during program implementation, including a clear detailed description of administrative procedures and decision points where such interests will be considered.

By itself, section 306(c)(8) of the federal CZM Act requires that adequate consideration of the national interest be given <u>only</u> with respect to major facilities which are necessary to meet requirements which are other than local in nature. However, as noted in a comment in the federal regulations, 15 CFR 923.52(c)(4), there is also a national interest in the use, management and protection of important state and national cultural and natural resource areas. These also merit adequate consideration in the state management program.

In response to the requirements and the comment noted above, the Coastal Area Management program staff undertook a thorough review of: 1) the state's coastal resources and uses, 2) federal laws and regulations, 3) policy statements and executive orders of the President of the United States, 4) state laws and regulations, 5) planning reports and studies prepared by federal, state and regional agencies, and 6) comments from public hearings and meetings on the CAM program. In addition, during the summer of 1978 questionnaires were sent to federal and state agencies, industries, trade groups, environmental

groups, and other interest groups on the regional, state and national level. The questionnaire provided an opportunity for them to identify facilities and resources they perceived to be in the national interest.

Based on the staff review of the sources cited above and response to the questionnaires, the CAM Advisory Board identified and recommended a list of facilities and resources in the national interest which resolved conflicts among conflicting opinions in light of both the federal requirements and the specific needs and characteristics of Connecticut's coastal area. The CAM Advisory Board's recommended identification of national interest facilities and resources was adopted by the General Assembly as section 3(14) of Public Act 79-535:

> "'Facilities and resources which are in the national interest' means: (A) adequate protection of tidal wetlands and related estuarine resources; (B) restoration and enhancement of Connecticut's shellfish industry; (C) restoration, preservation and enhancement of the state's recreational and commercial fisheries, including anadromous species; (D) water pollution control measures and facilities consistent with the requirements of the federal Clean Water Act, as amended; (E) air pollution control measures and facilities consistent with the requirements of the federal Clean Air Act, as amended; (F) continued operations of existing federally funded dredged and maintained navigation channels and basins; (G) energy facilities serving statewide and interstate markets, including electric generating facilities and facilities for storage, receiving or processing petroleum products and other fuels; (H) improvements to the existing interstate rail, highway and waterborne transportation system; (I) provision of adequate state or federally owned marine related recreational facilities, including natural areas and wildlife sanctuaries and (J) essential maintenance and improvement of existing water dependent military, navigational, resource management and research facilities;"

A full discussion of the justification for including each of these facilities or resources as in the national interest is included below (see p. II-266).

Continuing Consideration of National Interest Facilities and Resources in Implementation of the Coastal Management Program

Consideration of the national interest in the planning for, siting, managing and regulating of facilities and resources listed in Section 3(14) of CCMA is implemented through a number of methods. It should be noted that the majority of these facilities and resources are under state control or regulatory jurisdiction. Hence, the responsibility for considering the national interest lies primarily with the state.

The primary mechanism for insuring that facilities and resources in the national interest receive adequate consideration is the policy in section 2(a)(10) of Public Act 79-535 which establishes the following as applicable to state and local agencies:

"To insure that the state and the coastal municipalities provide adequate planning for facilities and resources which are in the national interest as defined in section 3 of this act and to insure that any restrictions or exclusions of such facilities or uses are reasonable. Reasonable grounds for the restriction or exclusion of a facility or use in the national interest shall include a finding that such a facility or use: (A) may reasonably be sited outside the coastal boundary; (B) fails to meet any applicable federal and state environmental, health or safety standard or (C) unreasonably restricts physical or visual access to coastal waters. This policy does not exempt any nonfederal facility in use from any applicable state or local regulatory or permit program nor does it exempt any federal facility or use from the federal consistency requirements of section 307 of the federal Coastal Zone Management Act."

This policy requires that adequate consideration be given to facilities and resources in the national interest under state and local authorities. Moreover, it requires that adequate consideration be given to the siting or regulation of these facilities and resources by requiring that any restriction or exclusion of them be based on reasonable grounds concerning their environmental impacts, water dependency, and restriction of coastal access.

In addition to this general policy which applies to all facilities and resources in the national interest, the CCMA contains specific policies for each of the facilities and resources, individually. These specific policies are listed in Part IV , Coastal Policies and Use Guidelines. References to the specific policies for each national interest facility and resource are provided in the discussions below (see p. II-266).

The CCMA established a number of requirements concerning implementation of state authorities which affect national interest facilities and resources. Section 20(a) requires that all state agency plans be revised to insure consistency with both the general national interest policy in section 2(a)(10) and the specific policies pertaining to each facility and resource. Section 20(b) requires that all state agency actions significantly affecting the environment, including programs, projects, acquisitions and grants be consistent with both the general national interest policy and specific use and resource policies. Similarly, section 21 requires that issuance of environmental permits by DEP be consistent with both the general national interest policy and the specific policies.

The CCMA also requires that implementation of local coastal management legal authorities consider national interest facilities and resources. Section 12(b) requires that in reviewing coastal site plans, local agency decisions must be consistent with both the general national interest policy and specific policies for individual uses and resources. Sections 8(a) and 9(a) require that voluntarily adopted municipal coastal programs must be consistent with both the general national interest policy and specific policies.

It should also be noted that tidal wetlands, shellfish concentration areas and federal navigation channels are also designated as "areas of particular concern" (see Part VIII) and that energy facilities and state recreation areas are also subject to special planning processes (see Part X).

Justification of Connecticut's Selection of National Interest Facilities and Resources

As previously noted, the basis on which facilities and resources were identified as in the national interest were extensive. Included in the exhaustive identification processes were numerous consultations with the public and state and federal agencies. In the context of the following justifications for Connecticut's determined national interest facilities and resources, relevant agencies are listed among the sources consulted. This listing also includes relevant state and regional agencies, public interest groups, state and federal laws and policy statements and relevant studies. (A complete listing of public participation and federal consultations is located in Appendix E of the Draft EIS. Table 10 of this appendix specifically documents federal consultation including the recipients of and respondents to a National Interest and Federal Consistency Questionnaire.) The objectives of citing the determined facilities and resources as in the national interest are summaries of specific policies contained in Part IV. References to the specific policies are provided.

1. Adequate Protection of Tidal Wetlands and Related Estuarine Resources.

In determining the national interest in tidal wetlands and related estuarine resources the following sources were consulted:

- Endangered Species Act of 1972
- Fish and Wildlife Coordination Act
- Marine Protection, Research and Sanctuaries Act of 1972
- Executive Order No. 11990 (protection of wetlands)
- Migratory Bird Act
- Executive Order No. 11988 (flood plain management)
- Fishery Conservation and Management Act
- Connecticut Tidal Wetlands Act of 1969
- Connecticut Forest and Park Association, Inc.

The major objectives of the national interest in tidal wetlands and related estuarine resources are:

To preserve tidal wetlands and prevent the despoliation and destructio thereof in order to maintain their vital natural functions;

to encourage the rehabilitation and restoration of degraded tidal wetlands;

to encourage the creation of wetlands (see p. II-70)

Protection of the state's tidal wetlands is in the national interest particularly in view of the substantial amount of destruction this resource has faced. It is estimated that only about one-half of the tidal wetlands Connecticut once had are in existence at the moment (about 15,000 acres). Wetlands play a significant role in the coastal ecosystem as they remove impurities caused by pollution, serve as a buffer from storms, and provide spawning, nursery and feeding areas for fish and wildlife. Two-thirds of the fish and shellfish population spend part of their life cycle in tidal wetlands

Connecticut recognized the value of tidal wetlands in 1969 with the passage of P.A. 69-695. This Act declared as public policy the preservation of the wetlands and prevention of their despoliation and destruction (C.G.S. Sec. 22a-28).

Many responses to CAM's national interest questionnaire identified tidal wetlands protection and enhancement as in the national interest for Connecticut. The State Council on Environmental Quality cited the importance of tidal wetlands as a habitat for endangered species. Other organizations citing tidal wetlands were the Connecticut Forest and Park Association and the Nature Conservancy.

Connecticut's Coastal Area Management Program recognized the national interest in tidal wetlands and the urgent need to protect this biologically valuable resource from further destruction. (In addition to "National Interest" policies and "Tidal Wetland" policies, see PartVIII, "Areas of Particular Concern.")

2. Restoration and Enhancement of Connecticut's Shellfish Industry.

In determining the national interest in Connecticut's shellfish industry, the following sources were consulted:

- CZMA (as amended) Section 16
- National Marine Fisheries Service
- Connecticut Department of Agriculture/Aquaculture Division
- Fish and Wildlife Service
- Fish and Wildlife Coordination Act
- Connecticut Forest and Park Association, Inc.
- Valley Regional Planning Agency.

The major objective of the national interest in Connecticut's shellfish industry is:

> To manage the state's shellfisheries in order to promote the economic benefits of commercial and recreational shellfishing, enhance recreational shellfishing opportunities, optimize the yield of all species, prevent the depletion or extinction of indigenous species, maintain and enhance the productivity of natural estuarine resources and preserve healthy shellfisheries resources for future generations. (see p. II-114)

Historically, Connecticut has been a leader in the shellfish industry. Many may recall the heyday of oystering in the state, particularly in the southwestern portion. Today however, commercial oystering is limited to a few active companies. In the 1800's, oystering was carried out by a fleet of over 450 vessels but by 1970 only 30 vessels were still active in Long Island Sound. Connecticut leases only about one-quarter of the shellfish beds it once leased. A major and disturbing reason for the decline of this industry was and continues to be severe pollution of the coastal waters. Numerous shellfish beds have felt the adverse impact of pollution, being closed for health reasons.

The national interest in this resource was cited by a number of agencies and interest groups. For example, the State Department of Agriculture, Aquaculture Division, stated that the shellfish industry and the lands required to produce the necessary seed to insure a continuing ability to grow oysters and clams is in the national interest. The National Marine Fisheries Service of the U.S. Department of Commerce identified the protection of living aquatic resources and their habitat in coastal waters, marshes and shoal areas as in the nationl interest.

Because of these factors, CAM views the restoration and enhancement of Connecticut's shellfish industry as a critical and national interest concern. (In addition to "National Interest" policies and "Shellfish Concentration Areas" policies, see Part VIII, Areas of Particular Concern.)

3. Restoration, Preservation and Enhancement of the State's Recreational and Commercial Fisheries, Including Anadromous Species.

In determining the national interest in the state's recreational and commercial fisheries, the following sources were consulted:

A Compilation of Federal Laws Relating to Conservation and Development of Our Nation's Fish and Wildlife Resources, Environmental Quality, and Oceanography. The Library of Congress, Congressional Research Service. January, 1975;

A Marine Fisheries Program for the Nation. U.S. Department of Commerce. July, 1976.

- Fishery Conservation and Management Act
- Fish and Wildlife Coordination Act
- Army Corps of Engineers
- National Marine Fisheries Service
- Regional Planning Agencies
- Connecticut Department of Environmental Protection, Fisheries Unit
- Connecticut Fisheries and Game Statutes (C.G.S. Chapter 490)

The major objective of the national interest in the state's commercial and recreational fisheries is:

> To manage the state's fisheries in order to promote the economic benefits of commercial and recreational fishing, enhance recreational fishing opportunities, optimize the yield of all species, prevent the depletion or extinction of indigenous species, maintain and enhance the productivity of natural estuarine resources and preserve healthy fisheries resources for future generations. (see p. II-156)

Closely related to the national interest identified in the previous section is the interest in recreational and commercial fisheries. Commercial fishing, as with shellfishing activities, was once extensive in Long Island Sound but has steadily declined in recent years, particularly since the 1950's. The factors contributing to the decline of the shellfish industry, primarily the pollution problems, are also responsible for the gradual decrease in recreational and commercial fishing opportunities.

The federal government, through the National Marine Fisheries Service of the Department of Commerce, regards protection of fisheries as in the national interest. Their response stated, "permitted uses of the coastal area should be designed to be compatible with, and potentially protective of, existing fishery resources and associated habitats such as wetlands, nursery and spawning grounds, commercial and recreational fishery grounds. In this sense, the national interest should be equivalent to Connecticut's for the purpose of ensuring environmental integrity."

4. <u>Water Pollution Control Measures and Facilities Consistent with the Requirements of the Federal Clean Water Act, As Amended</u>.

In determining the national interest in water pollution control the following sources were consulted:

Clean Water Act of 1977
U.S. Environmental Protection Agency
Connecticut State Plan for Conservation and Development
State Water Quality Management Plans
New England Interstate Water Pollution Control Commission
Connecticut Water Pollution Control Statutes - C.G.S. Chapters 474 and 474a.

The major objective of the national interest in water pollution control is:

> To preserve and enhance the quality of state waters for present and prospective future use for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes and agricultural, industrial and other legitimate uses. (see p. II-121)

An examination of the shellfish and fish industry in Connecticut has served to highlight the detrimental impact of water pollution. This form of pollution is no longer solely a concern for the "ecology-conscious" but has become a problem posing serious problems for all living things.

The federal Coastal Zone Management Act of 1972 recognized the importance of effective water pollution control measures in each state's development of a coastal management program. The Act states in Section 307(f), "notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended...or (2) established by the Federal Government or by any state or local government pursuant to such Acts." This section further stipulates that "such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control requirements applicable to such programs."

As the Connecticut coast continues to face development pressures, particularly in the area of energy facilities and production, meeting strict clean water standards becomes all the more crucial for Connecticut and the broader national interest.

5. Air Pollution Control Measures and Facilities Consistent with the Requirements of the Federal Clean Air Act, As Amended.

In determining the national interest in air pollution control the following sources were consulted:

- Federal Clean Air Act
- U.S. Environmental Protection Agency
- State Implementation Plan for Air Quality
- Connecticut State Plan for Conservation and Development
- Connecticut Air Pollution Statutes - C.G.S. Chapter 360.

To protect and enhance the quality of the state's air resources so as to promote the public health and welfare and the productive capacity of its population. (see p. II-135)

The inclusion of air pollution control measures as a national interest concern again stems from federal legislation -- the Clean Air Act. The federal Coastal Zone Management Act states in Section 307(f), "notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) establishing the...Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Act. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the...air pollution control requirements applicable to such program."

The national interest in air quality control also impacts on the successful protection and enhancement of other natural resources in the coastal area, some of which are themselves considered to be of national importance. Air quality standards also impact upon facility development as to whether the facilities can be sited outside the coastal boundary and whether the facility meets federal and state environmental, health or safety standards.

6. Continued Operation of Existing Federally Funded, Dredged and Maintained Navigation Channels and Basins.

In determining the national interest in federally funded, dredged and maintained navigation channels and basins the following sources were consulted:

- Sections 401 and 404 of the Federal Clean Water Act, as amended
- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- New England River Basins Commission, "Interim Plan for the Disposal of Dredged Material in Long Island Sound."

The major objectives of the national interest in these facilities are:

To initiate a long-range planning program for the continued maintenance and enhancement of federally maintained navigation facilities in order to effectively and efficiently plan and provide for environmentally sound dredging and disposal of dredged materials;

To encourage the maintenance and enhancement of existing federally maintained navigation channels, basins and anchorages;

To discourage the dredging of new federally maintained navigation channels, basins and anchorages;

To reduce the need for future dredging. (see pp.II-149 and II-190)

The Connecticut Coastal Area Management Program recognizes the particular national interest in the dredging and maintenance of existing navigation channels and basins given the substantial military presence of the state, the importance of the Connecticut coast as a center for commercial activity, and the frequent use of recreational harbors. The southeastern portion of the coast is the site of military facilities and industries involved in the construction of naval vessels. These facilities, a subject of the national interest themselves (see #10 - "Essential Military, Navigational, Resource Management and Research Facilities") depend on well maintained navigation channels.

Numerous harbors in the state are presently attempting to cope with the growing demand for recreational boating. The success of such facilities depends on adequately dredged and maintained navigation channels and basins.

The New Haven Terminal responded to the national interest questionnaire by emphasizing the importance of maintaining navigational channels for commercial activity. It felt that New Haven Harbor is in the national interest because it can handle deep craft ocean-going vessels. Additionally, this interested party stated "because of the limited amount of land adjacent to deep water, marine terminal facilities should be given priority in New Haven Harbor."

The U.S. Army Corps of Engineers is mandated by Congress to maintain navigability of Connecticut's harbors, ports and channels. The disposal of dredged materials has raised serious questions to both short and long term effects on the environment. Prior to the Tidal Wetlands Statute (C.G.S. Section 22a-28), Connecticut disposed of some dredged material by dumping it on tidal wetlands for reclamation purposes. This statute wisely stopped this practice. Presently, Connecticut generally disposes of it on land or in the Sound, but suitable land disposal sites are becoming scarce. The impacts from this activity are not fully known although the short term impacts appear to be minimal according to a state Department of Environmental Protection report ("Dredging and Dredged Spoil Disposal in Long Island Sound: A Discussion Paper", 1975). This report also stated "if deep water access in industrial ports, recreational harbors, slips and marinas in Connecticut is to be maintained, a 'solution' to the dredged materials disposal problem must be found." (In addition to "National Interest" policies and "Dredging and Navigation" policies, see PartVIII, "Areas of Particular Concern.")

7. Energy Facilities Serving Statewide and Interstate Markets, Including Electric Generating Facilities and Facilities for the Storage, Receiving or Processing of Petroleum Products and Other Fuels.

In determining the national interest in energy facilities the following sources were consulted:

- The Department of Energy
- The National Energy Plan
- The Federal Energy Regulatory Commission
- The Federal Energy Administration
- The Bureau of Land Management
- The Maritime Administration
- The U.S. Geological Survey
- The Department of Transportation
- The U.S. Army Corps of Engineers
- The Energy Research and Development Administration
- The Nuclear Regulatory Commission
- Long Island Sound Study
- Brookhaven National Laboratory
- Power Facility Evaluation Council
- Public Utilities Control Authority
- Sierra Club - Connecticut Chapter
- Northeast Utilities
- Connecticut Petroleum Council

Connecticut Office of Policy and Management
Southeastern Connecticut Regional Planning Agency
Connecticut Public Utility Environmental Standards Act, C.G.S Chapter 277a.

The major objectives of the national interest in energy facilities are:

To balance the need for adequate and reliable public utility services with the need to protect the environment and ecology of the state and to minimize damage to historic, scenic and recreational values;

To provide environmental quality standards for facilities furnishing public utility services;

To encourage research to develop new and improved energy technologies. (see p. II-163)

Most of the controversy surrounding the interpretation of the national interest requirements has arisen in regard to energy facility siting. Some organizations have read Section 306(c)(8) as requiring an affirmative commitment to the siting of energy facilities in the coastal area. Energy interests stress the language of Section 306(c)(8), which specifically mentions "energy facilities" in making their argument. However, a recent federal court decision* involving a challenge to the California coastal plan said that an affirmative commitment to energy facility siting is not required under the federal Coastal Zone Management Act. The national interest in energy is not to be placed above other national interests. It is not to be denied however, that energy facility siting is an important component of the national interest and must receive adequate consideration in a coastal management program.

A significant number of questionnaire responses identified energy facilities as in the national interest. For example, the U.S. Department of Energy stressed the need to make energy self-sufficiency a basic policy objective. The agency provided an extensive list of those types of facilities it considered to be in the national interest including facilities utilized for importing or exporting energy resources in international commerce, facilities for the transportation or marketing of energy resources in interstate commerce, facilities receiving special federal financial support for research and development, and facilities owned and/or operated by the federal government.

The Department of Energy also stated that it "does not conclude that energy projects must be permitted in the coastal zone simply because they are of larger than local nature." A management program must have a "balancing of the national interest in energy self-sufficiency with state and local interests involving social, environmental and economic factors."

* American Petroleum Institute v. Knecht, 456F Suppl 889 (C.D. Cal), August 31, 1978.

The federal Energy Regulatory Commission believes that a balancing of conflicts between energy facilities and other interests is not for federal agencies to determine. Rather, it is a problem "the state must decide on the basis of all national interest considerations along its coast."

The Power Facility Evaluation Council in Connecticut sited the national significance of nuclear facilities in Connecticut. They also made the observation that while generating facilities aren't necessarily coastal dependent, they require large quantities of water for cooling.

The Connecticut Coastal Area Management Program considers energy facilities serving statewide and interstate markets to be in the national interest, but an interest on a par with other resources and facilities of national importance.

8. Improvements to the Existing Interstate Rail, Highway and Waterborne Transportation System.

In determining the national interest in these transportation facilities the following sources were consulted:

Department of Transportation Act
Railway Safety Act of 1970
U.S. Coast Guard
Department of Transportation: Federal Highway Administration, Federal Aviation Administration
Maritime Administration
Brookhaven National Laboratory
U.S. Army Corps of Engineers
Connecticut Master Transportation Plan
New Haven Terminal
Connecticut Construction Industries, Inc.
Sierra Club, Connecticut Chapter
Northeast Utilities
- Connecticut Office of Policy and Management
- Connecticut Department of Transportation
- Long Island Sound Study

The major objectives of the national interest in these facilities are:

To make use of rehabilitation, upgrading and improvement of existing transportation facilities as the primary means of meeting transportation needs in the coastal area;

To enhance or not unreasonably impair the visual quality of the shoreline, coastal access and recreational opportunities in designing, constructing and improving coastal highways and shoreline rail corridors. (see p. II-170)

Connecticut's CAM Program considers the upgrading of existing elements of the transportation system to be in the national interest. Much

of the state's interstate highway network and rail corridor are located in or near the coastal boundary. Long Island Sound and Connecticut ports are the scene of extensive commercial activity. The transportation system has a direct relationship to future development in the coastal boundary as well as to health, access, and environmental quality concerns.

This national interest choice generated responses from a variety of agencies and interest groups. The Greater Bridgeport Regional Planning Agency listed the Bridgeport Harbor and associated dock and terminal facilities, rail lines and interstate routes as in the national interest. The Connecticut Chapter of the Sierra Club cited transportation, particularly the restoration of rails along existing rights of way on the shore as in the national interest. However, it did feel that construction of new interstate highways in the coastal area was not in the national interest.

Northeast Utilities was concerned about the adequacy of transportation facilities for fuels needed for generating facilities and transportation by water. Brookhaven National Laboratory considered transportation a high priority interest but also acknowledged that it must be balanced against the national interests in environmental legislation.

9. Provision for Adequate State or Federally Owned Marine Related Recreational Facilities, Including Natural Areas and Wildlife Sanctuaries.

In determining the national interest in these facilities the following sources were consulted:

- Federal Coastal Zone Management Act, as amended, Section 305(b)(7)
- The Nation-Wide Outdoor Recreation Plan
- Land and Water Conservation Fund Act
- Historic Preservation Act
- Connecticut State Comprehensive Outdoor Recreation Plan
- Heritage Conservation and Recreation Service
- National Parks Service
- Fish and Wildlife Service
- CAM Planning Report No. 25, "Coastal Recreation"
- Connecticut Marine Trades Association, Inc.
- Connecticut Chapter - Sierra Club
- Connecticut Forest and Park Association, Inc.
- Regional Planning Agencies
- Long Island Sound Study

The major objectives of the national interest in these facilities are:

To encourage public access to the waters of Long Island Sound by expansion, development and effective utilization of state owned recreational facilities within the coastal area that are consistent with sound resource conservation procedures and constitutionally protected rights of private property owners;

To make effective use of state owned coastal recreational facilities in order to expand coastal recreational opportunities including the development or redevelopment of existing state owned facilities where feasible. (see p. II-158)

Long Island Sound is an important natural and recreational resource serving an interstate area. Recreational uses include boating, bathing, fishing, nature study, etc. The number of recreational boats in use continues to decrease as does the construction of marinas and clubs. Additionally, the Sound is "home" to an avid contingent of recreational fishermen.

The Connecticut Marine Trades Association noted the growing demand for marine related recreational facilities. "Coastal dependent facilities that make use possible are in the national interest." The Connecticut Chapter of the Sierra Club cited the national interest in the preservation of coastal land for recreational use. The Nature Conservancy found critical natural and wildlife areas to be in the national interest as did the Connecticut Forest and Park Association. Finally, the U.S. Department of the Interior, Heritage Conservation and Recreation Service (formerly the Bureau of Outdoor Recreation) is "concerned about adequate access to the coast for recreational purposes for minorities, the handicapped and the underpriveleged."

The Connecticut Coastal Area Management Program considers state and federal recreational facilities, including natural areas and wildlife sanctuaries, to be in the national interest. Because of the high cost of waterfront property and because of the unique physiographic nature of Connecticut's coast due to the generally low wave energy in Long Island Sound, it is believed that only state or federal agencies will have the financial resources to acquire property parcels of sufficient size to warrant "national interest" designation. State and federally owned recreation areas are also discussed within "Shorefront Access and Protection Planning" (see Part X).

10. <u>Essential Maintenance and Improvement of Existing Water-Dependent Military, Navigational, Resource Management and Research Facilities</u>.

In determining the national interest in these facilities the following sources were consulted:

- Department of the Navy
- Department of Defense
- Department of the Air Force
- Brookhaven National Laboratory
- Connecticut Office of Policy and Management
- Regional Planning Agencies
- Department of Environmental Protection, Natural Resources Center
- Federal Coastal Zone Management Act
- Sea Grant
- U.S. Coast Guard

The major objectives of the national interest in these facilities are:

- To ensure adequate facilities for the national defense;
- To ensure adequate facilities for the safe and efficient operation of vessels;
- To ensure adequate facilities to improve the data base upon which coastal land and water use decisions are made. (see p. II-191, II-149)

The active presence of the military in Connecticut coastal area was outlined in number 6 concerning dredging and navigation channels. Obviously, military facilities are in the national interest because of their defense and security importance. Many commentators on the questionnaire listed military facilities as in the national interest. For example, the United States Department of the Navy, the major military unit on the coast stated, "all Navy facilities are in the national interest as each contributes to the national defense....Conflicts, if any, will be minimal since the Navy will be consistent with all coastal zone considerations to the maximum extent practicable and the requirements of NEPA will be met." Siting criteria considered by the Navy are nondegradation of the environment and attention to air and water pollution.

Another division of the armed forces, the U.S. Department of the Air Force, commented that national defense installations are in the national interest. It is Air Force policy to "plan, initiate and carry out environmental programs and actions in a manner to avoid adverse effects on the quality of the human environment, insofar as practicable, and with appropriate consideration of assigned missions and of economic and technical factors."

Brookhaven National Laboratory, National Center for Analysis of Energy Systems (Long Island), regards military facilities as a high priority but recognized the balancing process that must take place with national interests identified in environmental legislation.

State and regional agencies citing the national interest in military facilities were the Office of Policy and Management, the Valley Regional Planning Authority and the Southeastern Connecticut Regional Planning Agency. Electric Boat, a major defense contractor in the southeastern coastal area, must be viewed in conjunction with the national interest in military facilities.

Navigational facilities, including lighthouses, buoys and other aids, have also been declared as in the national interest. The basis of this designation lies in the use of these facilities for transportation. This use, in turn, serves the national interest in terms of interstate commerce, national defense, and recreation. This designation is consistent with the designation of federal navigation channels as discussed above.

In Section 302(a) of the CZMA the Congress found that "There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone." Connecticut's CAM Program has declared research and resource management facilities to be in the national interest in order to actively implement and effectuate the coastal policies of both the federal Coastal Zone Management Act and the Connecticut Coastal Management Act.

B. USES OF REGIONAL BENEFIT

Introduction

The federal CZM Act recognizes the importance of insuring that local agencies do not arbitrarily restrict or exclude land and water uses with benefits of importance to an entire region. Section 306(e)(2) of the federal CZM Act states:

> "Prior to granting approval, the Secretary shall also find that the program provides...for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit."

In order to meet the above requirements the federal regulations at 15 CFR 923.12 require the state to:

1)"Identify what constitutes uses of regional benefit" and

2)"Identify and utilize any one or a combination of methods, consistent with the control techniques employed by the state, to assure local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit."

Identification of Uses of Regional Benefit

The federal regulations recommend that the state consider two criteria in identifying uses of regional benefit. First, that the use have an effect on more than one local unit of government. And second, that the use have a direct and significant impact on coastal waters. The federal regulations note that uses in which there is a national interest will ordinarily meet

these two criteria. Thus, the regulations offer the state the option of defining uses of regional benefit as those uses in which there is a national interest. Connecticut has chosen this option.

The state has identified uses of regional benefit as those facilities and resources in which there is a national interest as defined in section 3(14) of the CCMA:

> "'Facilities and resources which are in the national interest' means: (A) adequate protection of tidal wetlands and related estuarine resources; (B) restoration and enhancement of Connecticut's shellfish industry; (C) restoration, preservation and enhancement of the state's recreational and commercial fisheries, including anadromous species; (D) water pollution control measures and facilities consistent with the requirements of the federal clean water act, as amended; (E) air pollution control measures and facilities consistent with the requirements of the federal clean air act, amended; (F) continued operations of existing federally funded dredged and maintained navigation channels and basins; (G) energy facilities serving statewide and interstate markets, including electric generating facilities and facilities for storage, receiving or processing petroleum products and other fuels; (H) improvements to the existing interstate rail, highway and waterborne transportation system; (I) provision of adequate state or federally owned marine related recreational facilities, including natural areas and wildlife sanctuaries and (J) essential maintenance and improvement of existing water dependent military, navigational, resource management and research facilities;"

All of these uses have a direct and significant impact on coastal waters (see subpart A of Part V). An individual discussion of the greater than local significance of each of these facilities and resources may be found in subpart A, p. II- 263.

Methods for Assuring That Local Regulations Do Not Unreasonably Restrict or Exclude Uses of Regional Benefit

A comment in the federal regulations, 15 CFR 923.12, describes several methods which individually or in combination may be utilized by the state to assure that local land and water use regulations do not unreasonably restrict or exclude uses of regional benefit, including:

1. "Statewide siting laws that supercede local regulations when necessary."

2. "Definition of what constitutes unreasonable restrictions or exclusions and identification of standing and an administrative or judicial mechanism to assure that such unreasonable restrictions or exclusions do not occur."

Connecticut has adopted a combination of these two approaches to assure that local regulations do not unreasonably restrict or exclude uses and resources of regional benefit. First, most of the facilities and resources defined in section 3(14) of the CCMA are either not subject to local regulation or are also subject to state regulatory jurisdiction which overrides local regulation. Second, the national interest policy in section 2(a)(10) of the CCMA requires that local decisions insure that restrictions or exclusions of the few regional benefit facilities subject to local regulation are reasonable. Moreover, section 17 of the CCMA requires DEP to review such local decisions, while section 19 authorizes DEP to seek judicial enforcement of the national interest policy where a local agency has failed to comply with it.

As noted above, most of the facilities and resources identified in section 3(14) of the CCMA are either under direct state or federal development control and, therefore, not subject to local regulation or they are under state regulatory control which preempts or overrides local regulations. Hence, restrictions or exclusions of uses of regional benefit by local regulations will seldom be an issue.

The control techniques applicable to each of the facilities or resources of regional benefit may be found by referring to the discussion of uses subject to the management program in Part V. The only facilities and resources of regional benefit not subject to the exclusive control of federal or state agencies or to state agency regulatory authority overriding local regulations are the following:

1. Energy facilities (excluding the siting of power generating facilities and electric and gas transmission lines, which are subject to the state Power Facilities Evaluation Council which may override local regulations under C.G.S. Chapter 277a).

2. Land-based improvements to the existing waterborne transportation system.

3. Land-based maintenance and improvements of existing water-dependent resource management and research facilities.

Local regulation of these three categories of uses is subject to the coastal site plan review requirements of sections 11 through 15 of the CCMA. Section 12 of the CCMA requires that the decisions of local agencies be consistent with all applicable policies in the Act, including the national interest and regional benefit policy in section 2(a)(10). As noted in subpart A, above, this requires that regulatory agencies insure that restrictions or exclusions of regional benefit facilities (i.e., national interest facilities) are reasonable. The policy also provides three criteria

for determining the reasonableness of restrictions or exclusions:

> "Reasonable grounds for the restriction or exclusion of a facility or use in the national interest shall include a finding that such a facility or use: (A) may be reasonably sited outside the coastal boundary; (B) fails to meet any applicable federal and state environmental health or safety standards or (C) unreasonably restricts physical or visual access to coastal waters."

Under the state's judicial case law on land and water use regulation a restriction or exclusion of facilities and resources of regional benefit will be deemed unreasonable and overturned by the courts if it is arbitrary; capricious; confiscatory; clearly erroneous in view of the reliable, probative and substantial evidence; or, in violation of constitutional or statutory provisions.

Section 17 of the CCMA requires DEP to monitor and evaluate the activities of municipalities to assure compliance with the requirements of the Act including the requirements of the national interest and regional benefit policy in section 2(a)(10). Moreover, section 19 of the CCMA authorizes DEP to appeal the decision of local agencies to the courts in order to ensure compliance with the policy. In addition, a project applicant and any other aggrieved party may seek court enforcement of the policy.