

# Effectiveness of State Coastal Management Programs in Providing Public Access to the Shore: A National Overview 1998



**Pamela Pogue and Virginia Lee**

Coastal Resources Center  
Rhode Island Sea Grant  
University of Rhode Island  
Narragansett, Rhode Island 02882

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*“The use of the world is finally a personal matter, and the world can be preserved in health only by the forbearance and care of a multitude of persons.”*

---Wendall Berry  
“The Unsettling of America”

# **Executive Summary**

## **Context and Purpose**

The purpose of the National Coastal Zone Management Effectiveness Study is to assess how well the national Coastal Zone Management (CZM) program, as developed and implemented by individual states, addresses the fundamental objectives of the Coastal Zone Management Act (CZMA). Five core objectives were addressed: providing public access to the coast; protecting wetlands, and estuaries; protecting beaches, rocky shores, bluffs, and dunes; promoting waterfront revitalization; and developing seaports. This report deals with public access to the coast.

Americans have traditionally displayed a passion for access to coastal waters. Yet, no federal legislation had ever mandated the preservation, enhancement, and provision of public access until the CZMA was passed in 1972. The Act states that “Congress finds and declares that it is the national policy ... to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs ... which programs should at least provide for ... public access to the coasts for recreational purposes ...” (PL 92-583).

In order to build a constituency for the integrated balance of coastal uses, the public must have the means to access and experience all that the coast has to offer. Access to the coast for swimming, fishing, sailing, or wandering the urban or beach shorefront improves quality of life, provides the opportunity to appreciate the beauty of coastal habitats, offers the chance to observe a working waterfront and port area, and enables one to appreciate the need for an equitable balance of uses. Constituencies are needed to support the CZM efforts to manage the coastline nationally, state-by-state, and locally, to support as many of these uses as possible while also considering the protection of coastal resources.

## **The Study Approach**

The first stage of the study was a state-by-state assessment of action taken by CZM programs since 1972 to provide for public access to the nation’s coasts. A five-state pilot inquiry was undertaken based on program literature and phone interviews with key state officials and coastal program managers from Oregon, Louisiana, Pennsylvania, Rhode Island, and South Carolina. Based on the pilot exercise, a standard questionnaire was designed, and sent to all coastal states and territories. From this survey, 29 state profiles were developed that characterize the approach of each coastal management program to providing public. The information gleaned from the individual states was synthesized, assessed and summarized in this report.

## **Conclusions**

**Coastal States and Territories Are Actively Working to Provide Public Access to the Shore -** Coastal access has been given significant attention by coastal states and territories and all 29 coastal programs are active in using tools and programs in the acquisition of access sites, providing future access, and fostering public education about the importance of safeguarding public access to the coast.

**State CZM Programs Are Adaptive** - The CZMA encourages each coastal state and territory to fulfill the Act's mandate using whatever tools and approaches are best suited to their own political and institutional setting. This is an advantage that might not have achieved had a centralized federal approach been taken.

**Technical Assistance and Public Outreach Are Key Activities** - Traditionally, acquisition and regulatory tools and programs provided the greatest amount and most effective means of public coastal access. Since funding to purchase coastal sites has dramatically decreased, emphasis has shifted to using technical assistance and public outreach.

**Accurate Monitoring Data Are Needed** – It is extremely difficult to assess quantitatively whether or not coastal states and territories are effectively meeting the mandate of the CZMA. Regular monitoring of quantitative indicators, assembled annually in a national database, would be valuable.

**Resource Protection Is Balanced with Public Access** - Coastal states are inventive and resourceful in providing coastal access in ways that also protect natural resources. Dunes are being preserved through the use of dune walkovers, wetlands are protected by catwalks, and sensitive habitats and wildlife are spared by enforcing regulations that limit public access.

**Networking is Critical** - Networked CZM states may be more successful in achieving the public access objectives of the national CZMA, since networking promotes partnerships and leverages funding—key elements for public access in a time of dwindling resources.

**The Public Trust Doctrine is Important** - The Public Trust Doctrine has had varying judicial success rates throughout the state coastal programs; however it remains an important tool for providing public access.

## **Recommendations**

**Develop Accurate Databases** – and conduct needs assessments in order to determine the effectiveness of the CZMA and each of the federally approved state coastal management programs, accurate data must be regularly collected, reported, and recorded. The types of tools and programs used to acquire public access should also be documented. NOAA's Office of Ocean and Coastal Resource Management (OCRM), together with the coastal states and territories, should revise, simplify, and combine the coastal states reporting requirements under Sections 306, 309, and 312. Once databases have been developed and an accurate baseline has been established, needs assessments should be conducted. Needs assessments are required to best determine how to meet the growing future demand for public access, and to target future public access sites effectively.

**Establish a Clearinghouse of Innovative Tools and Programs** - There is a need to establish a public access clearinghouse, one central location where states can readily provide, as well as obtain, information about successful tools and innovations used by other coastal programs around the country.

**Document CZM Public Access Successes** - NOAA needs to make stronger efforts at communicating the specific public access successes of state CZM programs. The many ways in

which CZM has provided public coastal access in creative, cost-effective, and opportunistic ways should be documented and shared for future successful collaborations with potential partners, such as private foundations, local government, non-CZM states, academia, and the private and commercial sector.

**Fund State CZM Programs to Provide Public Access** – Increased funding for the CZMA and coastal programs for public access is essential as coastal populations and need for access increase.

## 1.0 INTRODUCTION

### 1.1 The Purpose of the Study

The purpose of the National Coastal Zone Management Effectiveness Study is to determine how well the national Coastal Zone Management (CZM) program, as developed and implemented by individual coastal states, addresses certain core objectives of the Coastal Zone Management Act (CZMA). Four core CZMA objectives were chosen for scrutiny: natural resource protection, public access, coastal-dependent development, and waterfront revitalization. Analysis of each objective included a study of management processes, or tools, used in state programs, and a statement of the program results or outcomes flowing from the application of the tools. Additionally, case studies were included to illustrate particularly innovative ways in which core objectives were met in real-life practice. The study concludes with suggestions to improve the effectiveness of the national CZM program.

This report, one of five national summaries produced during the CZM study, deals specifically with the provision of public access to the coast. The other reports address protection of wetlands and estuaries; protection of beaches, rocky shores, bluffs, and dunes; promoting waterfront revitalization; and seaport development. While all these reports are important in assessing the overall effectiveness of the CZMA, this particular topic, coastal access, provides the public with the opportunity to experience the shore—whether that be an urban waterfront, coastal fishing pier or an open space—for a multitude of uses. It is essential that the public have personal experience with the coast in order to foster the stewardship necessary to balance uses and protect critical habitat for sustainable development of the coast.

### 1.2 National Policy Objectives

Providing public access to the coast is a fundamental goal of national coastal zone management legislation and a priority of individual state and territory programs that were developed in response to the CZMA.

In 1972, Congress passed the first CZMA and declared:

“It is the national policy ... to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs ... which programs should at least provide for ... *public access to the coasts for recreational purposes* ...” (PL 92-583).<sup>1</sup>

The Act required coastal and Great Lakes states and territories (hereafter “states”) to define a planning process for protecting and providing access to “... public coastal areas of environmental,

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<sup>1</sup> Coastal Zone Management Act of 1972.



recreational, historical, aesthetic, ecological, or cultural value” (16USC §11454(b)(7)).

Although initial legislation strongly encouraged the planning for preservation and provision of public access by state coastal programs by 1980, it became apparent that limited budgets in many CZM state programs prevented adequate implementation of the national objective for coastal access. As a result, the CZMA was amended in 1980 (Section 306A) (16USC §1451) to allow Section 306 funding to be used for 306A purposes. This included expanding existing public access through construction of low-cost improvements to public access areas, rehabilitating deteriorated urban waterfronts, and acquiring coastal property for new sites.

In 1990, Congress again amended the CZMA to include Coastal Zone Enhancement grants (Section 309) which may be awarded to a state for the adoption of procedures and enforceable policies to improve the effectiveness of a state program in eight key areas, one of which is the provision of public access.

As a result of these two CZMA amendments, public access to the nation’s coastal areas has been significantly increased.

## **2.0 THE BACKGROUND AND CONTEXT OF PUBLIC ACCESS**

Historically, the public has accessed the nation’s extensive shoreline through national, state, and local parks as well as streets, boat ramps, public piers, and boardwalks. Coastal management permits have also opened to the public valuable view corridors, rights-of-way, and redeveloped urban waterfronts. Yet, in spite of this progress, commercial, residential, and industrial use of the coastal zone often continues to limit or eliminate public access. Private ownership of the nation’s coastal uplands prevents the public from reaching intertidal zones and shorelines.

### **2.1 Insufficient Quantity and Quality of Coastal Access**

Prior to implementation of the CZMA, the decline in coastal public access could best be characterized in two ways: a limited number of public access sites, areas and facilities; and a degraded quality of those sites. The first issue, decline in the number of public access sites, was a result of the rapid privatization of the shoreline as coastal properties were purchased for residential, commercial, and industrial developments. There were great social and economic changes between 1931 and 1964, due to the wartime boom and postwar growth. Construction of large sewer and water treatment facilities, power plants, freeways, urban ports, and oil and gas processing facilities combined with residential development restricted physical and visual access to the shore. The result was a coast overcrowded with competing industrial, commercial, residential, and recreational uses.

From the early 1900s until the 1970s, coastal access was provided primarily through the National Park Service and the Bureau of Outdoor Recreation, both of the Department of Interior. The National Park Service provided staff for the park areas and constructed park facilities. A

substantial portion of its budget was used to construct, reconstruct, improve, and repair roads, bridges, and trails in the national parks.

In 1962, the Bureau of Outdoor Recreation was created and given the authority to coordinate federal plans and activities relating to outdoor recreation, conduct research, provide technical assistance, perform surveys to determine recreational demand, and review possible effects of transportation projects upon parks, recreation areas, and wildlife and waterfowl refuges. Most of the bureau's power lies in administering a grants-in-aid program that assists federal, state, and local agencies in acquiring and developing outdoor recreation areas and facilities. Revenues from entrance and user fees, taxes on fuel for motorboats, oil and gas revenues from the outer continental shelf, and funds received from the sale of surplus federal property were allocated to the fund. The Land and Water Conservation Fund financed the acquisition of land for outdoor public recreational areas and the preservation of water frontage and open space, and the development of public outdoor park and recreational areas, and their support facilities.

Between 1972 and 1984, the amount of public recreation lands in coastal and estuarine areas increased only 27 percent. Local need for coastal parks and facilities outstripped the amount of available coastal sites to meet these recreational needs. Federal and state parks experienced a dramatic increase in attendance over mid-1960 levels. Visitor data from federal parks and nature refuges along the coast show substantial increases in attendance. A new problem of decaying quality emerged. Not only were there not enough coastal public recreational areas and facilities for the dramatically increasing numbers of visitors, but the quality of what existed was in rapid decline, many of the sites were in disrepair, and in sites close to urban areas, the once pristine coastal environment and surrounding habitat was becoming degraded.

Although federal funding provided for the acquisition of coastal property for public use, there were insufficient allocations for the maintenance or operation of the property once acquired by a state or local entity. Sites were falling into rapid decay due to vandalism, litter, overgrowth, and neglect. There was no clear line of management responsibility for the sites, nor was there funding provided for site upkeep and improvement. In the same vein, sites were not improved to meet new needs for parking availability, handicapped access, or adequate signage to alert the public of site locations. Some states that aggressively pursued innovative funding sources to acquire access sites were confronted with the problem of not being able to allow the public on the property until some entity accepted the responsibilities of site maintenance, improvement, and legal liability.

## **2.2 Rising Demand for Public Access**

California was one of the first states to recognize and protect coastal resources for the public's use and enjoyment. By the late 1960s, the growing public sentiment for protection expanded. Public access was spurred by the creation of the San Francisco Bay Conservation and Development Commission (BCDC). Since 1965, BCDC has required nearly every shoreline developer to reserve the immediate shoreline of the property for public access, provide a property restriction to guarantee the public the permanent right to use the area, and improve the accessway with pathways, benches, landscaping, trash cans or signs, and most importantly, remain liable for the

access area. During the mid 1960s there were only four miles of shoreline that were accessible to the public within San Francisco Bay. Since then, approximately 150 miles have been opened to the public through the connection of individual access segments, sidewalks along streets, shoulders on roads or on new dedicated pathways.<sup>2</sup>

At the same time, many environmental groups joined together to assert rights to the use and enjoyment of the coast by the general public. Condominium towers blocked views of the shoreline, private developments barred people from access to the beach and publicly owned tidelands, and two years in a row, powerful landowner interests stopped environmental legislation that would protect coastal resources. So the people of California took control of the situation.<sup>3</sup>

In 1970, over 1,100 environmental bills were introduced in the California Legislature. The most important result of these efforts was the creation of the Coastal Alliance in 1971, which became a vigorous force that eventually spearheaded the effort for Proposition 20. Proposition 20, approved by the California voters in 1972, had three principal aims: (1) to establish a state policy of coastal protection; (2) to create commissions to exercise interim controls through a permit system; and (3) to provide for the study of coastal zone needs. Public approval of Proposition 20 by a substantial majority was truly a landmark event, and subsequently created a strong system of state and regional commissions with full planning and land use control powers in the coastal zone. California became the model by which other coastal states attempted to address coastal resource protection issues, including public access to the shore.

Today, nearly half of the nation's total population lives in coastal counties; approximately 110 million people crowd into a thin coastal region that encompasses only 11 percent of the nation's land area (excluding Alaska and the territories).<sup>4</sup> These coastal areas are among the most densely populated and rapidly growing counties in the nation. It is projected that the nation's coastal population will increase 60 percent by 2010 (Figure 1). This indicates an enormous need for providing more public access for increasing numbers of coastal residents as well as for seasonal tourists.

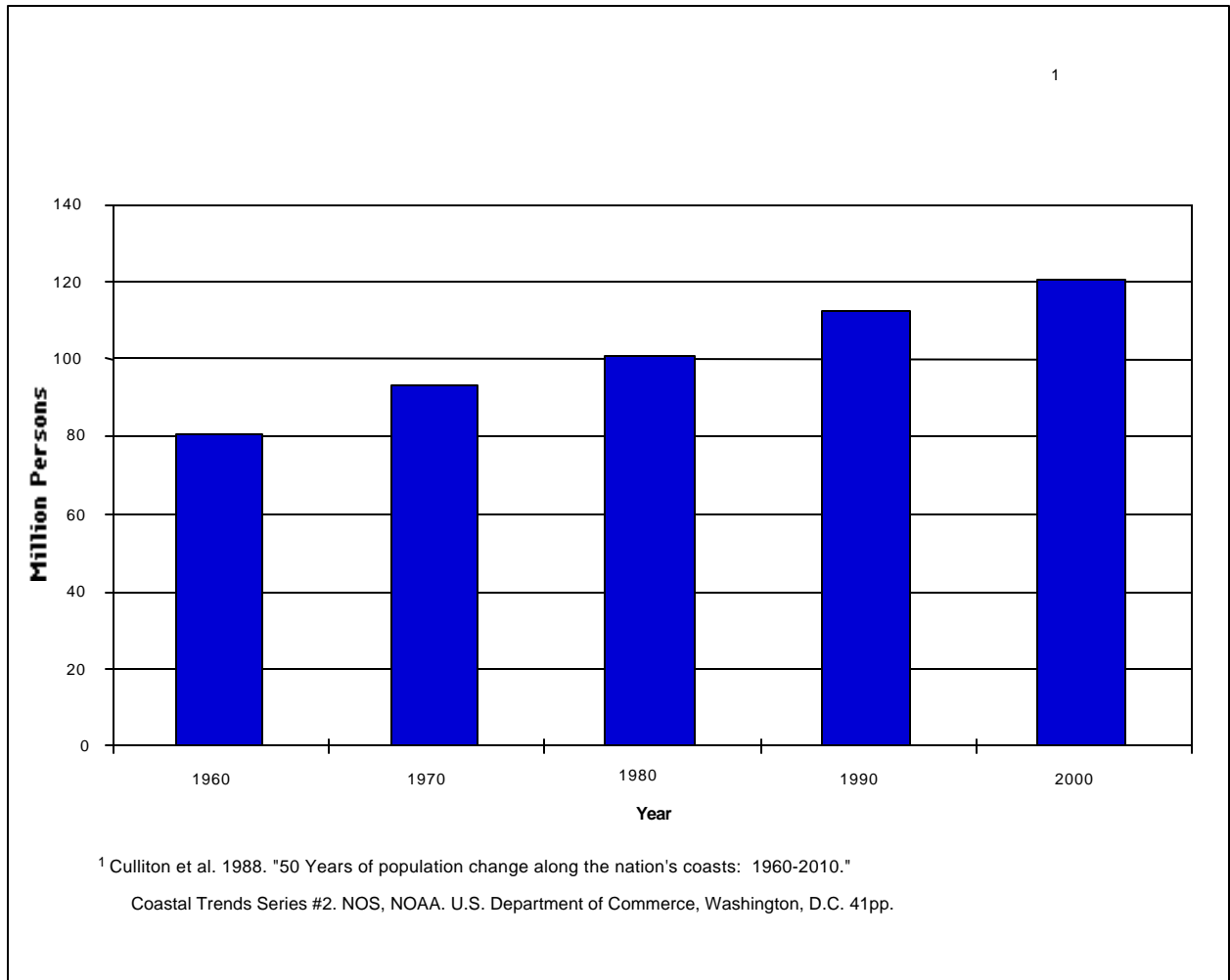
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<sup>2</sup> Travis, Will. Pers. Comm., 1998.

<sup>3</sup> Fischer, Michael. Pers. Comm., 1998.

<sup>4</sup> Culliton et al. 1988.

**Figure 1. U.S. Coastal Population Change, 1960-2000.**



The northeast coast (Maine to Virginia) is the most densely populated in the country, with more than 750 people per square mile of coastal county. From New Hampshire to New Jersey, there are at least 2,500 coastal county residents for every mile of shoreline (Table 1). This implies a huge demand for coastal access. By 2010, coastal county population density is expected to be five times greater than that of inland counties in the northeast, and 10 times that of the national average. Most of the increase will occur at the urban edges around Boston, New York City, Philadelphia, Baltimore, and Washington, D.C.

The Pacific coast is the second most densely populated region, with 27 million people living in coastal counties, mostly in southern California. The Pacific states are projected to have another 6 million more people in coastal counties by 2010, the largest increase in the nation. In addition to southern California (Los Angeles and San Diego counties), hot spots of growth will be the areas of San Francisco Bay and Puget Sound.

**Table 1. Context Factors For Public Access**

State	Year Approved	CZMP Program Type <sup>3</sup>	Coastline Miles <sup>2</sup>	% Public Land	# of Sites	Coastal Population <sup>1</sup>	Coastal Density per mile <sup>1</sup>
AL	1979	MLB	607	22	75	484,000	800
AS	1980	FN	126	~99	UNK	32,000	607 <sup>2</sup>
AK	1979	FN	3,904	87	335	466,000	13
CA	1978	CCL	3,427	60	850	23,091,000	6,551
CNMI	1980	FN	189	100	74	55,000	236 <sup>2</sup>
CT	1980	MLB	618	36	261	2,030,000	3,235
DE	1979	MLB	321	25	215	666,000	1,733
FL	1981	FN	8,436	23	1,692	12,357,000	1,815
GU	1979	FN	2,344	75	285	3,260	637 <sup>2</sup>
HI	1978	FN	1,052	26	802	1,108,000	1,044
LA	1980	CCL	7,721	UNK	22	2,045	171
MA	1978	FN	362.7	78	671	1,272,000	2,907
MD	1978	FN	3,190	UNK	725	3,339,000	1,027
ME	1978	FN	3,500	7	350	250,000	250
MI	1978	FN	3,224	30	1,494	4,641,000	1,579
MS	1980	FN	44	UNK	UNK	344,000	192
NC	1978	CCL	3,375	UNK	211	711,000	202
NH	1982/88	FN	18	78	157	2,553,000	2,553
NJ	1978/80	FN	1,792	UNK	UNK	6,979,000	3,898
NY	1982	MLB	2,625	41	298	15,026,000	6,738
OR	1977	FN	1,410	56	1150	1,086,000	1,140
PA	1980	FN	120	UNK	46	2,921	18,151
PR	1978	MLB	700	UNK	204	3,008,000	856 <sup>2</sup>
RI	1978	CCL	420	UNK	530	1,002	2,585
SC	1979	CCL	2,876	UNK	274	834,000	303
USVI	1979	MLB	175	UNK	30	1,845,800	771 <sup>2</sup>
VA	1986	FN	3,315	1	388	3,861,000	1,133
WA	1976	MLB	2,421	25	700	3,389,000	1,163
WI	1978	CCL	820	UNK	268	1,908,000	2,285

**Key:** CCL - Comprehensive Coastal Legislation  
 MLB -Mixed Legislative Basis  
 UNK - Unknown  
 FN - Fully Networked

<sup>1</sup>Culliton et al., 1988.

<sup>2</sup>COPR, 1992.

<sup>3</sup>Bernd-Cohen et al., 1995.

The coastal counties along the Great Lakes are the third most populous, containing 19 million people in 1988, and have the highest density per shoreline mile—nearly 4,000 people per mile. Future growth in the region, however, is expected to be slow.

The Gulf of Mexico—the fourth most populous coastal region—is home to 14 million people. Between 1970 and 1980, coastal population increased by 33 percent, and is projected to increase another 22 percent by 2010. In this region, Western Florida and the Texas coast will continue to have the most growth and associated demand for access to the coast.

The Southeast, until now, has had the smallest coastal population (237 people per square mile of coastal county), with most of the people living in eastern Florida (402 people per square mile). However, the Southeast is projected to experience the highest rate of growth (27 percent) by 2010. This will result in a regional average of 940 residents per shoreline mile. Coastal counties in Florida are expected to increase at the fastest rate and have the highest coastal population density in the region.

#### Demand for Multiple Coastal Uses

When the coastal management program was enacted in 1972, coastal lands were 11 percent federally owned, 12 percent non-federally owned (state, county or local government), and 67 percent privately owned. Ten percent of the coast was under uncertain ownership. The Atlantic coast from Virginia to Maine was 87 percent privately owned.<sup>5</sup>

In the decades since, rapid coastal development for competing private uses has grown faster than area dedicated to public recreation. NOAA data indicate that in the 1990s, 46 percent of new residential construction and 40 percent of new commercial and industrial building occurred in the coastal zone.<sup>6</sup> Large tracts of “gated communities” were developed along the coast, and homes sold at steep prices based on the water views and exclusion of the public. As local governments approved these types of subdivisions throughout the 1970s and particularly during the building boom of the 1980s, miles of coastline are purchased for exclusive private use.

In addition to residential development, recreation and tourism are an increasingly important part of the coastal economy. Recreational boat sales are one indication: they have risen dramatically from \$1 million in 1955, to \$3.5 million in 1970, to \$47 million in 1980, to over \$17 billion in 1995. The U.S. Coast Guard reports there were 11,734,710 boats registered in the United States and its territories in 1995.<sup>7</sup> Sports fishing and recreational boating require a physical means of getting to the coast to fish, including parking, boat docks, piers, and ramps and marinas. However, marina expansion and construction may conflict with public access to the coast when marina owners exclude general public traffic from their property. Successful tourism depends upon a healthy, clean environment, but also may require supporting facilities such as hotels, resorts, and infrastructure.

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<sup>5</sup>U.S. Army Corps of Engineers, 1971.

<sup>6</sup>COPR, 1992.

<sup>7</sup>Soundings, 1997.

Providing public access may, in turn, adversely affect other goals of the CZMA such as protecting critical habitats. An increased use in boating may impair water quality, beach-going may cause damage to the dune habitat and coastal development of public access facilities can negatively affect coastal sediment processes necessary for healthy beach habitat.

### **2.3 The Changing Context of the National CZM Legislation and Funding for Public Access**

The original CZMA, enacted in 1972, funded the development of coastal management policies, procedures, program administration and planning processes. Within several years, it was evident that planning activities were not sufficient to achieve the desired results of providing more coastal access for the public.

#### Section 306A Amendments to CZMA

Congress amended Section 306 of the CZMA (implementation of state coastal programs) in 1980 to provide states with a moderate amount of funds to provide public access to the coast for recreational purposes. Eligible projects were specified: the redevelopment of deteriorating and under-utilized urban waterfronts, the preservation or restoration of areas as specified within a state coastal program, and the provision of access to public beaches and other public coastal sites and waters. Funding categories for 306A projects were acquisition, low-cost construction, rehabilitation of urban waterfront areas, engineering designs, and appropriate educational, interpretive and management costs. States decided what, if any, portion of a core Section 306 implementation award they would spend on 306A projects. As federal dollars available for 306/306A implementation dropped from \$35 million in 1985 (the first year states were allowed to spend on 306A) to \$31 million (adjusted to 1985 dollars) in FY 88, states shifted to core program implementation rather than to provision of new, improved access.

#### Section 309 Coastal Zone Enhancement Grants

In 1990, in response to mounting public concern for the well-being of the nation's coastal resources, Congress created a new program under Section 309 of the CZMA to encourage all coastal states and territories to address coastal issues of national significance. The §309 program promotes new and continued efforts in planning as a means to accomplish CZMA objectives and goals, using funding as the means to get coastal programs to target specific issue areas using specified planning methods. One of these priority issues was public access. Under section 309(a)(3), the legislative objective for public access was to:

Attain increased opportunities for public access, taking into account current and future public access needs to coastal areas of recreational, aesthetic, ecological or cultural value.

Section 309 of the 1990 amendments to the CZMA required coastal states with federally approved programs to evaluate and complete an assessment on how public access was being addressed in their state and its coastal management program by characterizing its nature, describing and

evaluating the adequacy of programmatic efforts to address the area and reflect upon its relative importance.

Section 309 established a new, voluntary coastal zone enhancement grants program beginning in FY 91. The first phase of the program required each state to complete an assessment, using a format developed by OCRM, to analyze CMP performance in meeting their state coastal zone management program goals and the national public access objectives. The Act encouraged each coastal state with a federally approved coastal management program to devise multi-year enhancement strategies with the intention to lead “program changes” in the form of strengthened laws, regulations or other enforceable mechanisms to implement the strategies and provide greater protection for coastal resources. More specifically, states and territories could improve public access within their coastal management programs through the following methods:

- Regulatory, statutory, and legal systems such as local ordinances, implementation of federal consistency, and legal strategies based on the public trust doctrine
- Acquisition, improvement, and maintenance of public access sites
- Public access management plans that update site location and/or availability and studies that assess current and future demand for access
- Protection measures that minimize the potentially adverse impacts of public access on coastal resources and private property rights

### **3.0 METHODOLOGY**

#### **3.1 The Research Question**

The basic research question addressed in this component of the national CZM effectiveness assessment is: "How effective, overall, have the individual and collective state CZM program efforts been in providing public access to the shore for the people of this nation?" Specifically:

1. How important is the issue of public access for each coastal state?
2. What types of management policies, programs, processes, and tools are used by states for providing and maintaining public access?
3. Based on on-the-ground outcomes, supplemented by process indicators, what types of policies, processes, and tools employed by states are most effective for providing public access?

"Effectiveness" is regarded as the impact of state CZM programs in addressing public access, a core objective of the federal CZMA, as measured by outcome measures and processes given the importance of public access as an issue within that state.



### **3.2 Process Indicators**

"Process indicators" are intermediate measures of state coastal management program accomplishments relative to CZMA objectives. Process indicators after the objective of providing public access to the coast are classified in five categories:

1. Acquisition - purchase of coastal property for public access through public and/or private funding, or achieving public access to the coast through dedicated easements, the transfer of development rights or through legal action under the public trust doctrine
2. Planning Tools - public access inventory, coastal access sites mapped, or the completion of public management plans
3. Regulatory Tools - tax or liability breaks that might then provide a financial or legal incentive for private property owners to provide easements across their property to the shore, zoning overlays that place restrictions such as limiting building height or location on development projects in order to preserve public access viewsheds or implement permit conditions requiring the developer to either provide or improve public access
4. Technical Assistance - availability of engineering expertise to local government in public access site design, and/or site development and maintenance, or providing legal expertise to assist in legal research needs
5. Public Outreach - public awareness of the availability of public access within their state through access guides, signs, and interpretive display programs, and/or the knowledge of the relevant public access issues through the availability of public workshops, publications, and fact sheets

Coastal states are using different types of processes to both preserve public access and provide more access to the shore including acquisition, planning, regulatory, technical assistance, and public outreach tools. Section 4.2 discusses the different types of process indicators implemented by each of the 29 coastal states and territories to provide, improve and protect public access.

### **3.3 Outcome Indicators**

"Outcome Indicators" are quantitative, on-the-ground measures of CZM program accomplishments relative to CZMA goals. On-the-ground outcomes for public access are the results of CZM policy implementation decisions expressed as area (square miles, acres, feet, etc.), points (site numbers) or lines (linear miles or feet of shoreline frontage). Table 1 lists context factors such as the coastal population, number of coastline miles and coastal density; and outcome indicators such as the number of public access sites and percentage of public coastal land in the state.

### **3.4 The Research Design**

The public access assessment, like the other components of the national study, incorporated three major phases. During phase one, the study team clarified the purposes and objectives of the study, refined the research design, and identified research questions to assess the tools and techniques used by CZM programs to address core objectives. Together with OCRM and advisors, the team identified potential process and outcome indicators for assessing effectiveness of the state programs in meeting core objectives of the CZMA. The research design was verified in five test states: Oregon, South Carolina, Louisiana, Pennsylvania and Rhode Island.

Based on the results of this pilot test, a specific survey instrument was developed for collecting process and outcome data on how states provide public access to the shore. The survey was sent to all 29 CZM states and territories. In addition, it was used in completing phone interviews with state contacts, and served as the basis for completion of individual state CZM profiles. (Appendix A is an example state profile (Rhode Island), Appendix B is a copy of the survey instrument and Appendix C contains the profiles for each coastal state and territory, except Massachusetts and Wisconsin).

Next, a profile was prepared for each coastal state and territory that described: 1) coastal zone environmental and social setting; 2) CZM program authorities, management tools and evaluation; 3) resource and issues; and 4) process and outcome indicators (state profiles are available from OCRM). Analytical techniques were developed and applied to the data to evaluate outcomes and processes. Outstanding case examples of addressing the CZMA core objective of provided coastal access were identified and described. Primary methods included collection and summation of information on public access available from OCRM/NOAA and from each state. Documents, agency records, surveys, interviews and direct agency contacts were primary sources of information. A draft of each profile was faxed to each respective state or territory for review and comment prior to inclusion in this report. This phase includes Steps 5 to 8 of Figure 2.

In the final phase (Steps 9 and 10 of Figure 2), the team synthesized state-level profiles into a National CZM Program Evaluation. State-level data was analyzed, compared, and combined. The results of the use of CZM processes and tools were identified, and outstanding case examples were integrated into the report. Follow-up phone interviews and data requests were made to each coastal state—usually to multiple state agency or bureau staff.

Interim summary presentations of the national assessment were given at the Coastal States Organization meeting, December 1995, the Coastal Program Managers meeting, March 1995, and the Coastal Society Conference, July 1996 and Coastal Zone '97, July 1997. Final drafts of the national assessment were sent to OCRM for review in January 1997. Comments were incorporated into this final national report.

### 3.5 Lack of Reliable, Comparable, Outcome Data

#### No National Database

The greatest limitation of this study with respect to meeting the objective of determining CZM effectiveness nationally was the lack of baseline information. There were no quantitative data, from every state and territory depicting what public access existed prior to the enactment of the CZMA, making it nearly impossible to document over time how much access is being provided as a result of CZMA activity. There was no central agency assigned the responsibility of providing, securing, or tracking information about public access. The Department of the Interior National Park Service does document recreational access through its annual State Comprehensive Outdoor Recreational Planning process (SCORP). The SCORP plans consist of detailed state inventories dating back prior to the 1960s, however, the inventories make no distinction between coastal and inland public recreation areas, and include everything from baseball diamonds and tennis courts to public swimming pools and coastal parks. Separating out coastal recreational areas would have been a monumental task, far beyond the scope and resources of this project.

#### **Figure 2. Overall Research Process for the National CZM Effectiveness Study**

- Step 1. Clarify the purpose and utilization of the research (with OCRM and advisors).
- Step 2. Identify key research questions for each core objective.
- Step 3. Identify CZM processes states use to address core objectives and expected outcomes of implementing those processes (with test states, DE, PA, OR, RI and LA).
- Step 4. Identify social and environmental context factors, process and outcome indicators, and associated data needs (with test states).
- Step 5. Develop data collection procedures and preliminary analysis plan (based on test state results).
- Step 6. Collect available data, reports and documents, and fill out draft state profiles (for review by 29 approved state and territory CZM programs).
- Step 7. Revise state data analysis procedures based on the type and quality of data available from states.
- Step 8. Analyze data and summarize in a profile for each state using state-level analysis procedures.
- Step 9. Develop national evaluation synthesis procedures and present preliminary results at national conferences.
- Step 10. Synthesize evaluation results at the national level.

It is a reasonable expectation that determining the effectiveness of achieving the national public access objectives would be fairly straightforward, an exercise in counting up access points and categorizing various management tools, programs, and policies. Unfortunately, this was not the case. In addition to the lack of a national database of pre-existing and/or existing coastal public

access sites, none of the states had compiled an accurate statewide inventory of public sites prior to the enactment of their state coastal management programs nor do they regularly monitor and report number or quality of access sites acquired or improved in the years since the CZMA. This situation was not surprising as no standardized, on-the-ground outcome monitoring protocol exists for assessing state coastal management program performance relative to national CZMA objectives. Outcome data were scarce, and when data were available, they lacked comparability across state or regional efforts. Most importantly, the study was unable to link CZM program processes with quantitative information on outcomes in order to measure CZM program effectiveness.

### Institutional Memory

Another impediment was the heavy dependence on state and territory staff to complete the surveys and interviews (primarily because a national database did not exist). Many state programs are now 15 to 20 years old, and original senior staff and program managers have retired or moved on to other positions. As a consequence, the institutional memory of program activities that occurred even as recently as a decade ago has been lost. If there were files containing a history of the coastal program achievements, in many cases these files were inaccessible or lost. Many states could not answer some of the most basic questions concerning where pre-existing or even existing public access points are, or how much public access they have in terms of linear miles, points, or even acreage since program approval.

### Agency Staff Loads

Because many state coastal programs have suffered staff and budget cuts in the last several years; fewer staff are available to carry out the same or expanded workloads. This project placed enormous demands on staff time in terms of completing surveys, locating data, providing other points of contact, and reviewing drafts of our state profiles to determine inaccuracies or expand the text to include examples of creative approaches to providing coastal access. Unfortunately, the demands of this study, in many cases, overwhelmed the staff's capacity to respond in a timely fashion, if at all. Several never responded to the survey, letters, e-mails, or phone calls.

## **4.0 RESEARCH FINDINGS**

### **4.1 Public Access is an Important Issue**

With scarce resources and a multitude of conflicting uses to address, each state coastal zone program must set priorities among several core issues. Therefore, an important precondition for effectively providing public access is determining whether or not public access is considered a priority. Table 2 is a summary of the importance that states and territories attribute to public access. This ranking was required by the Coastal Zone Enhancement Grants amendment (Section 309) to the CZMA in 1990. A comparison of Table 1 with Table 2 indicates that those states with dense coastal populations usually consider public access to be a high priority.

The assessment of the data is complicated, however, by the fact that a few states, such as Oregon, addressed the issue of public access to their coast before the enactment of the CZMA and the creation of their state CZM program. Because they had been dealing with the public access issue

for so long and had been so effective, it is no longer a priority compared to issues, such as ocean resources, coastal hazards and cumulative impacts, which is now at the forefront for Oregon. Similarly, Louisiana had not ranked public access as a priority issue because the physical character of the coast did not lend itself to typical coastal activities such as beach-going. Wetlands, marsh, and swamps dominate the Louisiana coastline and make access difficult, so issues such as the protection of natural resources (e.g., wetlands) were a priority instead. Knowledge of the local context is important for interpretation of the effectiveness of each state in achieving this core goal of the CZMA. The context and the activities of each state and territory are described in more detail in the state profiles, (Appendix C).

#### *4.1.1 Public Access Given National and State Priority*

Section 309 of the 1990 amendments to the CZMA made public access a priority for both the national CZ program office (OCRM) and coastal states and territories. It required coastal states with federally approved programs to evaluate and complete an assessment of how public access was being addressed in the context of each state coastal management program by reflecting upon the relative importance of access as an issue and by describing and evaluating the adequacy of programmatic efforts to address the issue.

OCRM and the state coastal management programs invested considerable time and energy in the Section 309 program. Only 20 years earlier, public access issues were not even addressed by any other federal entity, let alone by 29 coastal states. Access improvements included the implementation of new planning methods, an increase in site acquisition, mandatory provision of public access as a precondition for permit approval for coastal development, and land use controls that preserve public access (as a few examples).

During the 1992 §309 assessment period, 16 states and territories identified public access as a priority enhancement area and applied to OCRM to fund a variety of innovative ways to improve public access. The types of program changes that were implemented by the 16 states included revised regulations, new legislation, executive orders, memorandum of agreements (MOAs) and local plan adoptions. Yet, in spite of the increased demand for public access, in fiscal years 1992 and 1993, federal funding for public access initiatives was a modest \$625,800.<sup>8</sup>

In the fall of 1996, coastal states repeated the §309 assessment process, this time addressing the coastal management program's progress on and/or changing status of the issue area within the state/territory since the first assessment. Each issue area was ranked again, and new strategies were developed. Results from the 1992 Assessments were compared against the 1996 Assessments to determine progress made in meeting the national public access objectives through the implementation of the §309 program and subsequent priority changes in issue area rankings. Thirteen CMPs ranked public access as a "high" priority in their 1992 assessments', of those, nine actually conducted one or more access-related projects under section 309. Of the four CMPs that ranked access as a high priority but then did not fund 309 work, one addressed access through section 306 and 306A, two performed 306A projects only, and one did nothing. However, four

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<sup>8</sup> Bernd-Cohen, T., et al. 1995.

other CMPs that ranked access as a medium or low priority did perform at least one access-related 309 project each. Finally, seven of the coastal management programs that ranked access as medium or low performed access work using Section 306 and/or 306A, suggesting that access was something of a priority, just not for §309 funding.

**Table 2. How coastal states ranked public access as a priority in 1992 and 1996.**

	<b>Rank '92</b>	<b>Funded</b>	<b>Rank '96</b>
AL	H		H
AK	L		H/L
AS	L		L
CA	H	Y	H
CT	H	Y	H
DE	L		L
FL	M	Y	M
GU	H	Y	M
HI	H	Y	H
LA	L		L
ME	M		M
MD	H	N	H
MA	L	Y	H
MI	M		M
MS	L		H
NH	L		L
NJ	M		M
NY	H	Y	H
NC	L		L
NMI	M		M
OR	L		L
PA	H	Y	M
PR	H	N	H
RI	H	Y	M
SC	H	Y	H
VI	H	Y	M
VA	H	N	H
WA	M		M
WI	var		var

## **4.2 Coastal States Use A Variety of Tools and Processes to Provide Public Access**

Coastal states use a wide variety of institutional structures, types of management plans and partnership arrangements in myriad creative ways to provide public access. Table 3 summarizes the suite of tools that are used most often and are considered to be most effective.

### *4.2.1 Acquisition of Waterfront Land Is the Most Commonly Used Tool for Public Access*

Acquisition, for the purposes of this study, is defined as the purchase of all legal rights to a property. A public entity may acquire ownership by purchasing the land outright or by exercising the power of eminent domain. Ownership of waterfront land by a public entity is the most effective way to secure public access along the coast. All 29 coastal states have used acquisition tools to provide public access. In doing so, they have employed at least 89 different types of acquisition programs or tools.

#### The Benefits of Acquisition

Acquiring land outright is the most effective means of securing long-term provision of public coastal access because the public ownership is clear and private incursions can be prohibited. It is also a way to secure perpendicular coastal access to the shore. Public ownership of coastal property not only increases the number of accessible sites but also the quality of the access. If state or local government owns the sites and sufficient funding is allotted, restrooms, lighting, trash receptacles, handicapped access, or any other facilities can be readily constructed to make the site attractive and safe for a wide variety of public uses.

#### The Limitations of Acquisition

The cost of coastal property is exorbitantly high. Federal, state and local budgets rarely have sufficient funding to purchase many sites. Moreover there is a scarcity of sites for sale. Most of the coastline is developed and/or is privately owned residential property. So, although demand for public access sites continues to increase, the ability of governments to acquire the land to create these access sites becomes even more constrained.

#### Acquisition with Public Funds

Public funding refers to the provision of federal, state and/or local funding for the purpose of acquiring coastal property for public access to the shore. These include federal initiatives such as the Section 306A program, Section 309 Coastal Enhancement Grants program, and other non-CZM initiatives such as the Land and Water Conservation Fund, the Department of Interior's Wallop/Breaux Act funding, and U.S. Fish and Wildlife Service's Dingle/Johnson Act funds. Each of these federal programs requires a match of nonfederal dollars. CZM programs have partnered with other state and local agencies to provide additional coastal access to the shore. Therefore, federal funding of the CZMA leverages other federal dollars and local private dollars for acquiring and improving public access.





Twenty-seven coastal states employed a public funding program (Table 3). Many of these states had public referenda to purchase larger tracts of coastal property. They leveraged available funding with other federal non-CZM programs and took advantage of the 306A funding available for coastal property acquisition. The federal acquisition funds are useful in leveraging state funds and help to maintain the ecological integrity, cultural heritage and public accessibility of coastal areas.

#### Public Funding—North Carolina

*Most of North Carolina's 306A acquisition funds were used to purchase two ecologically significant areas: Permuda Island and portions of Buxton Woods. The state matched \$987,066 in federal 306A funds with \$756,581 in state funds to purchase Permuda Island in Stump Sound, North Carolina. This 50-acre island is in the middle of pristine wetlands and prime oystering grounds. When a major development was planned for the island, local citizens lobbied the state to protect the island. Local, state and federal entities worked together to protect this environmentally and archeologically important coastal resource, and helped to maintain the cultural heritage of the local fishing community.*

*The other major North Carolina 306A acquisition was the partial purchase of the 3,000-acre ecologically significant Buxton Woods Maritime Forest on Cape Hatteras. Buxton Woods, important as a unique coastal habitat, storm buffer, recreational area and fresh water aquifer for the island, is under intense development pressure. North Carolina initially used \$1,021,127 in federal funds and \$578,000 in state funds to purchase 337 acres. The state purchased another 145 acres with \$800,000 in federal 306A funds and \$500,000 in state funds. In addition, Congress awarded North Carolina \$1.5 million in special FY 90 306A funds for the Buxton Woods acquisition. To expend these funds, the state will have to provide another \$1.5 million in matching funds for a total of \$3 million to purchase 600 more acres. It is this combination of both federal CZM and non-CZM funds that have made these access sites a reality for North Carolina.*

#### Public Funding—Maine

*Administered by the Department of Economic and Community Development/Office of Comprehensive Planning, the Land and Water Conservation Fund has played a major role in funding acquisition for public access along the state's coast. Revenues for the fund come from fees paid by offshore oil well leases to the federal government. The National Park Service dispenses the funds to the state annually. Maine's annual share has declined from a high of \$3.2 million to \$165,000 more recently.*

*Established in 1988 with a voter-approved \$35 million dollar bond issue, the Land For Maine's Future Program has acquired over 3,553 acres of coastal property with more than 16 miles of combined shore frontage. The Land for Maine's Future*

*Program is administered by the Natural Resource Policy Division of the State Planning Office.*

*Maine recently took its acquisition program one step further using a very innovative approach. The state developed an affinity credit card that will deposit a percentage of the amounts purchased by cardholders into the Land for Maine's Future Fund. The credit card is expected to generate between \$100,000 to \$200,000 for the fund.*

#### Acquisition Through Private/Public Alliances

The purchase of coastal land by private entities such as The Nature Conservancy, Audubon Society, local land trusts, or other nongovernmental organizations is another important means of providing public access. Private funding is often provided as a match for state and federal grants. Although public access must be a condition of the purchase, recreation within these parcels is commonly passive in nature. This, in turn, tends to limit the number of people using the site. Therefore, where environmentally fragile habitats exist, private acquisition is a particularly effective tool for balancing habitat protection with providing public access to the coast.

At least 22 states leverage private funding as an important acquisition tool (Table 3).

#### *Private/Public Alliances—California*

*The lack of new state or federal funding initiatives has prompted some local nonprofit land trusts and other nonprofit organizations to take on the responsibility of acquiring and managing shoreline access.*

*The California Coastal Conservancy is working to preserve, improve, and restore public access and natural resources along the coast of California. It builds trails and walkways, purchases threatened coastal land from willing sellers, enhances and restores wetlands and watersheds, protects open space and farmland, supports commercial fishing, helps cities develop and improve waterfronts, and crafts innovative solutions to land-use conflicts. The Conservancy undertakes projects in partnership with nonprofit organizations, landowners, local governments and other public agencies. It is funded primarily by bonds authorized by California voters.*

*The nonprofit, all-volunteer Moat Creek Management Agency now operates a creekside trail and trail head parking lot, which provides access to one of the best surfing and abalone diving spots in southern Mendocino County. The Conservancy helped this land trust to get started and is backing it up with a guarantee that if it goes out of existence or somehow defaults, the Conservancy will assume responsibility for accessibility. For years, surfers, abalone divers and others had used this trail, paying a small fee to a rancher to cross his land. Then, in 1981, the Coastal Conservancy bought the property to protect it against an unsuitable development that had been approved before the passage of the California Coastal Act.*

*Local residents offered to improve and maintain the trails under the Surfriders Foundation. In 1989, the Conservancy signed a contract and provided \$48,000 to Surfrider to improve the Moat Creek access, and to protect and restore riparian habitat that had been destroyed by vehicles driving off the trail. A small group of volunteers put up vehicle barriers, erected signs, and restored vegetation along the creek. Ever since, the Moat Creek Trail has been maintained and monitored with the help of students who pick up litter through the Adopt-a-Beach program. The Moat Creek organization signed a new contract with the Conservancy, joined the Land Trust Alliance and, through the Alliance, reduced their insurance costs.*

*Through the initial purchase by the Coastal Conservancy, a small group of concerned local citizens became stewards of a critical piece of coastal property and organized and partnered with other nonprofits. They have now become the new guardians of their local coastal area.*

#### Acquisition by Conservation Easement

Property easements, such as conservation easements, secure a limited legal right to utilize some aspect(s) of a piece of land. Easements may be acquired through the same means as those used in fee simple acquisition. An easement may be obtained through eminent domain, agreed purchase, or dedication.

A property owner may offer a conservation easement on their land to a public or nonprofit entity in exchange for the assurance that the land will only be utilized in a specific manner, such as for farming or grazing livestock. The conservation easement may be for the entire parcel of land or for a portion of it. If it is specified that the land be utilized for public access or recreation, this type of easement could be as valuable as fee simple ownership.

Twenty-five coastal states are using some type of an easement program in order to gain access across private property to the coast (Table 3).

#### Easements—Virginia

*The Virginia Conservation Easement Act of 1988 increases the ability of certain charitable corporations, associations, or trusts to acquire and hold conservation easements for the protection of historic, open space, and recreational value. The Virginia CZM program partnered with nonprofit organizations, federal and state agencies, and private entities (The Nature Conservancy, Division of Natural Heritage, local and county governments) to purchase a parcel of environmentally sensitive land located in Matthews County, Virginia. The piece is comprised mostly of wetlands, and fronts the Chesapeake Bay.*

*The Nature Conservancy owned the land but wanted the state to maintain the property. In order for the state to assume the responsibility for maintaining the property, there had to be a guarantee of public access to the parcel. Two 306A grants were awarded to the Virginia CZM program, first to purchase an easement to the land that provided the public with access across a portion of the parcel, and*

*then to develop a boardwalk over the wetlands and fragile habitat. As a consequence, valuable coastal open space was protected, and most importantly, the public was provided access across the land to coastal waters in a manner that protected fragile habitat.*

#### *Easements– Wisconsin*

*Easements have been used to link parcels to form a linear lakefront walkway along Lake Michigan in downtown Green Bay and Milwaukee. The lower lake, from Milwaukee around to Michigan, is one of the most heavily industrialized regions in the nation. The Wisconsin Coastal Zone Management Program used Section 306A funding to purchase easements over private property to connect with the remaining linear lake-front walkway.*

#### Acquisition by Transfer of Development Rights

The transfer of development rights (TDRs) separates the right to develop land from the property rights associated with land ownership. Property owners in sending zones transfer their development rights to land parcels in receiving zones, usually for money. The property in the sending zone is then limited in its future development depending upon which rights attached to it have been transferred. The amount of development is then increased on the receiving parcel and the rights to develop are therefore decreased on the sending parcel of land (typically the lot to be preserved). The benefits of TDRs are that they promote development and conservation in desirable locations, they provide economic relief to property owners affected by land use regulations, and they preserve land at low cost to the public. When implemented, TDRs can influence where development can occur and can be a successful tool for preserving open space, fragile economic resources, and historic landmarks.

Ten coastal states employ TDR as a means of acquiring public access.

#### *Purchase Development Rights– Michigan*

*Residents of Michigan's Old Mission Peninsula recently voted to approve the implementation of a Purchase of Development Rights (PDR) program in an effort to preserve high quality agricultural lands and coastal views. Peninsula Township will use revenues gained from a \$1.25 million property tax increase over the next 15 years to purchase development rights from participating farmers. Residential development pressures in this scenic area have threatened to put local cherry growers and other fruit producers out of business. Under the PDR proposal, property taxes that are assessed on a property's development potential would be reduced for participating farmers. Using Section 309 grants, the Michigan Coastal Management Program assisted the township in developing the PDR program and related educational materials. Peninsula Township's program will be the first of its kind in the Midwest.*

#### Conclusion on the Use of Acquisition as a Means for Providing Public Access

The ability of state and federal governments to purchase large tracts of coastal land for the purpose of providing large amounts of coastal public access is becoming less feasible with shrinking

budgets and rising coastal property values. Although relatively large parcels of land were acquired during the 1970s and 1980s through federal and state funding programs, this will probably not be the trend in the years ahead. Federal, state and local governments appear to be looking to other alternatives. Rather than purchasing land fee simple, more CZM programs are acquiring the rights to use coastal land with the objective of providing public access across private property to get to the shore. Coastal states provide incentives such as tax deferrals or abatements and liability waivers to encourage private property owners to grant easements across their property. In most cases, this has provided a “win-win” situation: the private land owner is satisfied with greatly reduced property taxes and/or a waiver of liability for the public use of a proportion of his property, and the public wins by gaining the perpendicular access needed to get to the shore.

As funding for the acquisition of larger tracts of coastal property has decreased, federal, state, and local agencies have been acquiring smaller tracts of coastal property. Acquisition of smaller parcels provides many benefits. First, the purchase cost is significantly less. Second, developing and maintaining these sites is significantly cheaper. Finally, smaller coastal parks diffuse the adverse impacts of the public on the surrounding habitat because these sites are smaller in size and typically offer less facilities in terms of parking or restrooms, therefore attracting fewer people.

The transfer, or purchase, of development rights has been a very effective means of protecting fragile environmental habitats as well as providing passive public access to the shore. Examples of TDRs and conservation easements illustrate the successful way in which CZM is meeting the difficult challenge to balance the right of the public to get to the shore with the protection and preservation of coastal resources.

#### *4.2.2 Regulatory Programs: Effective Tools Where Development or Redevelopment Is Occurring*

Public access to the coast can be provided by regulatory means including statutes enacted by state legislation; executive orders, regulations, county and municipal ordinances; and the application and implementation of the Public Trust Doctrine.

##### The Benefits of Regulatory Programs

Regulatory programs, depending on their purpose and design, can provide on-the-ground protection of existing public access and, in some instances, can provide additional public access to the shore. The level of success that regulations meet with depends upon the jurisdictional area covered, the types of prohibitions and limitations placed on activities within that area, the number and extent of exceptions and variances permitted, and the level of enforcement and penalties levied for violations. State laws that require public access as a condition of permit approval offer significant opportunity for the provision of public access to the shore.

Other benefits to the public include the incentives that states can offer to private landowners for providing easements across their property. These incentives take the form of tax deferrals and liability waivers to landowners granting easements to the public to cross their property to get to the shore. Tax and liability incentives are particularly important in areas of the country where much of the waterfront is privately held, and especially where coastal property is prohibitively expensive.

Zoning waterfront areas also enhances public access by requiring sufficient public parking and limiting building heights and locations to preserve visual access to the shore. Many urban areas mandate that developers provide public access as a condition of permit approval. Often they also require developers to enhance existing public access by including small parks, boardwalks, lighting, and benches as part of their waterfront development.

### The Limitations of Regulatory Programs

The most common limitation on the effectiveness of regulation as a means for providing public access to the shore is the lack of enforcement. There are two primary reasons for this lack budget cuts and the property rights issue related to “takings.”

The Fifth Amendment in the Bill of Rights promises that government may not take private land for public purposes without paying for it or “taking” it. “The general rule is that while property can be regulated to a certain extent, if the regulation goes too far, it will be recognized as a taking.” (U.S. Supreme Court Justice Oliver Wendell Holmes, 1922.) However, no one has the absolute right to use their property in a manner that may harm the public health or welfare, or damage the interests of neighboring landowners or the community as a whole. Therefore, there is a need to establish a fair balance between public need for land use restrictions and private economic interests. Local government, in particular, can often be intimidated by the term “takings” and it’s associated syndrome: “lawyer, lawsuit and legal fees.” As a result, many local governments will not establish regulations and/or zoning that support public access for fear of legal and financial repercussions—especially in the current political climate, which is anti-regulation and very supportive of private landowner rights. In fact, any type of regulatory “taking” is rare. The U.S. Supreme Court has held that the mere diminution of property values is insufficient to demonstrate a “taking.” Natural resource protection, scenic view ordinances, historic preservations, design controls, and protection of environmentally sensitive areas are all valid purposes for land use regulations.<sup>9</sup>

### Permit Conditions

Public access to the shore may be required as a condition for permit approval. Examples of permit conditions include the mandatory provision of parking facilities, handicapped facilities, the construction of boardwalks and small parks, and limitations of building size. Limiting building size and height is a means to preserve visual access to the coast. One of the most commonly used regulations—the provision of a public easement across the property to the shore—can solve the age-old dilemma of how to get to the public portion of the shore.

Twenty-one coastal states implement permit conditions for the enhancement or preservation of public access (Table 3). Very few of these states had any specific outcome data on the amount of public access secured by the enforcement of permit conditions.

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<sup>9</sup> Duerksen, J. and J. Roddewig. 1994.

### Permits– Connecticut

*The Connecticut Coastal Management Act requires that towns conduct a coastal site plan review of proposed development projects within the coastal boundary to determine their potential effects on coastal resources, public access opportunities, and water-dependent uses. Planning and zoning commissions and zoning boards of appeal conduct these reviews as part of the routine zoning and building permit review of local government. Developers are required to assess the potential impacts of their projects and to demonstrate that the proposed activities are consistent with the policies and standards in the Connecticut Coastal Management Act.*

*When the Mystic River Tavern was built, the developer was required to provide a section of the Mystic shorefront walkway, a system of public accessways that, when completed and linked together, will be more than 2.5 miles long and will run along the waterfront linking Route #1 with historic Mystic Village and the Mystic Aquarium. The developer of the Mystic River Tavern built a wooden walkway along the project's entire river frontage. The process of coastal site plan review will ensure that any future development adjacent to this part of the shorefront will provide additional sections of the walkway. So Connecticut provides an example of a win-win situation on the permit/public access issue.*

### Permits– Northern Mariana Islands

*The Northern Mariana Islands Coastal Resources Management Act authorizes the Northern Marianas Coastal Program to determine whether a proposed project would provide adequate public access to and along the shoreline before any permit for development may be issued. The Northern Marianas, through their coastal management program, protect public access, in remote locations on Saipan—areas traditionally used by the public. In those locations that may be affected by eventual development, public access will remain and be enhanced by the developer as part of the conditions for permit approval. These requirements may include a public access plan, access roads and trails, construction of shoreline facilities, and putting up signs. In addition, any project proposed within the lagoon, reef area, or other area of particular concern must be evaluated in terms of compatibility and potential impacts on public access and the surrounding environs.*

### Zoning

Zoning regulations that provide for, preserve, and/or enhance public access include county/municipal land use laws, which dictate how land is to be used. The various types of zoning regulations that can be of benefit are restrictions on building heights within the waterfront area to preserve coastal vistas; zoning overlay districts, which can protect and preserve water-dependent use and coastal habitats; and construction setbacks for residential, commercial, and industrial development. There are 13 states and three territories that implement zoning as a means to either protect, preserve, or enhance public coastal access (Table 3).

### Zoning– Maine

*In New England, the Maine Coastal Program, through the Department of Environmental Protection, has revised their model shoreland zoning ordinance to strengthen the protection of water-dependent uses and to enhance public access opportunities in municipal shoreline districts. The ordinance includes the establishment of a maritime district that gives priority to commercial fishing and maritime industries for access to the waterfront. Approximately 100 towns have incorporated these districts into their municipal zoning ordinances.*

### Zoning– Guam

*The Territory of Guam implements zoning ordinances to protect and provide public access opportunities. In Guam, there are two regulations enacted for the purpose of protecting clear view of the coast. Section 13417(a)(3)(b) of the Territorial Seashore Protection Act, a zoning overlay, requires that developers not interfere with or detract from the line of sight toward the sea from the territorial highway nearest the coast. The second regulation is from their zoning law and states that “no building or structure shall be erected or maintained, nor shall any existing building or structure be altered, enlarged, moved, or maintained, to exceed a height limit of 30 feet.” Both of these regulations are being implemented for new coastal construction.*



## Public Trust Doctrine

The National Public Trust Study defines the Public Trust Doctrine as follows:<sup>10</sup>

“In the United States, shorelands, bottomlands, tidelands, tidewaters, navigable freshwaters, and the plant and animal life living in these waters are accorded special treatment by the public, but held in trust by the State for the benefit of the public. Generically, the body of law pertaining to these lands, waters, and living resources is called the Public Trust Doctrine”.<sup>12</sup>

The Public Trust Doctrine establishes the right of the public to enjoy trust waters, lands and living resources for a wide variety of recognized uses. In the United States, each state has the authority and responsibility for applying the Public Trust Doctrine to public trust lands within its jurisdiction. However, there are significant differences in how coastal states handle public trust issues, and to the extent to which their legislatures, judiciaries, and administrative agencies have applied the Public Trust Doctrine and its underlying principles.

Incorporating public trust principles into state coastal management programs, zoning regulations, and adjudicatory decisions is an effective means of providing public access to coastal resources held in trust by state governments. Several coastal states have constitutional provisions, which, although they often do not use the term public trust, clearly recognize the responsibilities of the state to manage and preserve its public trust lands, waters and resources. Other states have taken a more expansive view of their trust responsibilities, extending them beyond traditional public trust resources<sup>12</sup> (Table 3).

Another issue under the Public Trust Doctrine is the extent to which the public has the right of access to pass over privately held land. In Maine, the scope of the application of public trust rights beyond those originally recognized is restricted. In 1989, the Maine Supreme Court ruled, by a slim majority, that public trust rights are limited to the traditional uses of fowling, fishing and navigation; not to be expanded to include recreational purposes, the state must pay just compensation to the owners of the land for an easement. [Bell v. Town of Wells, 557 A.2d 168 (ME)]<sup>12</sup>

Other states, by contrast, have recognized the Public Trust Doctrine as a critical tool needed to open access to public trust lands and waters, and have relied upon the courts, legislatures, and state government agencies to implement programs. For example, the New Jersey courts have recently held that the public must be given access to the dry sand areas as reasonably necessary under the Public Trust Doctrine. In a court case in 1984 which involved a quasi-public body, the Bay Head Improvement Association, which was restricting access to a beach held in trust by the association, the court held that the association’s restricted policies frustrated the public’s right to access the tidelands. The court made the logical connection between the recognition of a public trust beach and the right to access that beach even if that meant crossing private property. [Matthews v. Bay Head Improvement Association, 95 N.J. 306, 471 A.2d 355 (1984)]<sup>12</sup>

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<sup>10</sup> Slade, 1990.

### Public Trust Doctrine– Massachusetts

*In their efforts to secure public access for the redevelopment of urban waterfronts, Massachusetts towns were aided by a landmark ruling of the Massachusetts Supreme Judicial Court in 1979, which held that lands seaward of the historic extreme low water mark (such as filled tidelands and wharves) could be held by private parties “only to fulfill a public purpose,” and that the rights of the grantee to that land are ended when the purpose is extinguished. The consequences of this ruling are far-reaching, as there are over 40 Massachusetts communities with significant coastal landfill. In the city of Boston, for example, 570 acres of the Back Bay are located on filled Commonwealth tidelands. This means that any development on these lands would be restricted to projects that have a benefit to the public as a whole, rather than to a private developer. In 1983, the Massachusetts General Court made dramatic changes to the existing waterways licensing law. Following the 1979 Court ruling on tidelands ownership, the new legislation requires that development on Commonwealth tidelands must not only serve a proper public purpose, but the purpose “shall provide a greater public benefit than public detriment to the rights of the public in said lands.”*

*A recent enactment by the state legislature has given public officials an effective tool for acquiring public access, especially in urban areas. For a century, Massachusetts General Law, Chapter 91, has required a license for all structures built upon or filling tidelands.*

*Public access has also been used to safeguard coastal views as well as physical access. A particularly interesting example of this is Boston’s Harbor Hotel. The architectural design of the hotel, built during the late 1980s, was altered to incorporate an arch several hundred feet high, in order to preserve the view of Boston Harbor. Now, thousands of motorists on the Southeast Expressway can view the coast each time they pass the waterfront hotel.*

*Massachusetts regulates coastal development under the Public Waterfront Act (310 CMR 9.00, Ch.91) established in 1990. This act, through the Department of Environmental Protection (DEP), secures many public access benefits along the shoreline, particularly on filled tidal areas within developed ports and harbors. The Act requires public access as a condition of licensing a wide range of projects on tidelands, great ponds, and non-tidal rivers and streams. Activities requiring authorization include the placement of structures, filling, dredging, changes in use, and structural alteration. Chapter 91 of the Act provides towns with a powerful tool to encourage developers of waterfront property—much of which consists of filled tidelands—to provide public benefits, chief among which can be public access.*

### Public Trust Doctrine– Hawaii

*With its roots in customary Hawaiian law, the Public Trust Doctrine holds that public thoroughfares, easements, roadways, and trails were held in trust for the public. This principle was confirmed by the Ancient Highway Trails Act of 1893, which confirmed public ownership of all trails and accessways that were public at that time. It is now the basis for public ownership of all accessways and trails. The state has asserted this public claim when access is threatened by development or jeopardized by private landowners.*

### Liability Waivers and Tax Incentives

State laws that give incentives to landowners to provide easements across their property in the form of tax deferrals and liability waivers provide excellent opportunities for creating public access. Liability waivers provide a strong incentive for the litigation-wary landowner to provide public access by waiving legal liability for any accident or injury occurring on that portion of the property deeded as an easement for public use. Once the easement has been accepted by the proper state authorities and then authorized for public use, the landowner is immunized from legal and insurance liabilities.

Liability waivers are typically issued by state statute and granted in the case of donated easements. Because of the potential legal issues and expenses that could be incurred as a result of an injury on the property, the release from that responsibility has resulted in landowner liability waivers becoming one of the most popular incentives for providing a public easement across private property to reach the shore.

Sixteen states have enacted liability waivers for landowners providing public access easements (Table 3).

### Liability Waivers– Maine and Connecticut

*Maine: The Maine Tort Claims Act limits liability of the private landowners who allow the public to access their land for recreational or harvesting purposes. This has resulted in safeguarding traditional access for water-dependent uses in coastal regions where the landscape was being developed for tourism.*

*Connecticut: Connecticut limits landowner liability. A landowner who makes any portion of his land available to the public without charge for recreational purposes does not accept responsibility for nor incur liability for any injury occurring on the property. This has increased the number of public access easements across private property.*

Property tax deferrals or discounts are often linked to liability waivers. When private landowners provide public access, a property tax deduction or deferral is granted. Tax breaks may be granted for the donation of land as a public easement, for a deeded walkway, or even for the restriction of development to preserve the historical significance and/or environmental fragility of the land.

Eleven states and one territory are currently offering some form of a property tax break for these land donations. (Table 3).

#### *Tax Incentives– Washington and Florida*

*In Washington, the “Open Space Taxation Act” authorized the assessment and taxation of specified lands on the basis of current use, rather than true and fair value. The Act is designed to provide an incentive to property owners to limit land development in order to protect and conserve natural and scenic resources. In Washington, the open space tax relief program offers reduced property tax rates to owners of agricultural open space, timber lands, and open space lands in exchange for the owner agreeing to keep the designated parcel in its original use. This tax relief program is implemented at the local level, and each local government may implement their own policies regarding the continued protection of open space for public coastal access purposes. Therefore, offering owners of open space a reduced tax rate helps to keep those parcels reserved for open space, even for the provision of coastal visual access. This encourages and motivates them to provide easements across their parcels to the shore.*

#### *Tax Incentives– U.S. Virgin Islands*

*The U.S. Virgin Islands (USVI) offer a strong financial incentive for commercial/industrial landowners. Through the Industrial Development Program, landowners, in particular owners of hotels and resorts, who dedicate easements for public access may obtain the benefits of 100 percent exemption from USVI gross receipts, property, and excise taxes; or 90 percent exemption from USVI corporate income tax, and only a 10 percent tax on USVI customs duty. The tax benefits are available on 10- to 15-year terms, with possible five-year extensions.*

#### Agency Coordination

By spearheading the collaboration of multi-agency and state and local efforts, the CZMA often catalyzes agencies to work together to safeguard public access through the enforcement of coastal regulations. State CZM programs can leverage partnerships among other state and federal agencies and local governments to help them achieve the common goal of providing public access to the shore.

The benefits derived from this shared responsibility are far-reaching. Agency coordination in developing and implementing coastal regulations that mandate public access provides tremendous savings. The costs can be shared by assigning agencies different tasks such as policy development, implementation, enforcement, or monitoring to determine the impacts of the regulations.

By involving different agencies with varying jurisdictions, a diverse range of coastal public access opportunities such as highways, wharves, fishing piers, and bridges can be secured. Working with state and local historic societies, a CZM program can protect historically or culturally significant sites along the shoreline. By also working with the US Department of Fish & Wildlife, nature conservancies, and land trusts, there are opportunities to provide public access and protect sensitive habitat from further development.

### Conclusions on Regulatory Programs

Effective use of coastal regulations depends upon the political climate and will of those in power to implement the regulations. Many coastal states are pursuing legislation for tax breaks and liability waivers, in addition to statutory regulations.

Use of the Public Trust Doctrine and private property tax and liability incentives will become even more critical as coastal property becomes less available to the public. In the situations where coastal development has a 300-year history, such as Boston, Massachusetts; Newport, Rhode Island; and Connecticut's urban areas, aggressive use of the Public Trust Doctrine to secure public access on filled tidelands becomes crucial to maintaining public use of an urbanized, heavily developed shoreline.

### **4.2.3 Planning: Effective Networking Tools**

Planning programs, when combined with implementation through local land-use regulations, zoning and subdivision ordinances, and other actions, can provide on-the-ground protection of existing public access, and even accommodate future demands for public access. The level of impact that planning offers depends upon the integration and sharing of resources, the aggressiveness of the policies, the standards of implementation, and the amount of exemptions, special exceptions, and variances granted by local government. Twenty-five to 27 states use planning tools to provide public access to the shore (Table 3).

### The Benefits of Planning

There are many benefits associated with planning tools or programs when states use them to address the demand for public access. Access management plans foster integrated management of the coast between the state and local agencies and/or among many state agencies. Resources are shared (either funding or staff support and expertise), and this can have greater impact on preserving, enhancing, and providing additional public access opportunities. Most federal funding programs require planning for public access, by either determining need or identifying supply. By completing a planning exercise and developing priorities for public access, states and municipalities qualify for additional funding, often by federal agencies outside of the realm of NOAA. By leveraging the CZM efforts to complete the planning process, additional non-CZM dollars may become available for providing public access.

### The Limitations of Planning

The most critical phase of the planning process is implementation. The lack of staff, financial resources, or expertise to complete a plan that addresses public access issues is a common shortcoming of many coastal programs. State coastal staffs are frequently struggling to address immediate issues and may rarely have the luxury of planning for the future. Often, once a plan is completed, it sits on a shelf, never to be implemented. A public access plan may be completed and include steps for implementation, but since there is no funding for implementation, the plan is never carried out. Planning must include steps for implementation as well as sufficient financial resources to carry out the plan. Otherwise, even the most wisely crafted planning document will be worthless.

Another limitation of states' efforts in planning for public access is keeping them update. Several coastal states completed a fairly comprehensive plan addressing all of the key public access issues within their state. In some cases, demand analyses were conducted and state, regional, and local public access needs were assessed. However, these plans have not been updated in 10 to 15 years and therefore are presently of little value in addressing current key issues.

Indicators of the effectiveness of the planning tools and programs employed by states to meet the demand for public access include:

- The number of approved plans in which public access needs, improvements, and acquisition are explicitly discussed (e.g., through harbor management plans, statewide guide plans, special area management plans, and local comprehensive community plans)
- The amount of access (acres/linear miles) designated for public use by enforceable state or local plans
- The regular completion of statewide inventories of publicly held land
- Regularly updated statewide mapping of the amount and location of public access

#### Public Access Plans

Public access plans are meant to address key issues. The plans may outline the supply and demand issues of public access opportunities, identify the need for the improvement of existing sites in terms of site construction, development and maintenance, or target areas where additional public access is desired for the purpose of prioritizing future funding possibilities. Washington, Pennsylvania, Florida, Massachusetts, California, North Carolina, and South Carolina have all used public access planning to achieve successful results.

Twenty-five states have public access plans.

#### Public Access Plans– Pennsylvania

*Pennsylvania established Public Access Management Plans (PAMP) in 1995 in order to focus better its limited resources and help define how CZM can act as a facilitator in fulfilling public access needs in two coastal zones, the Atlantic coast and the Great Lakes coast. The objective of the PAMP is to consolidate all CZM and non-CZM resources, thus offering a broader spectrum of opportunities for providing public access. PAMPs will encourage a more coordinated approach among all public access providers in addition to sharing the limited resources available.*

*Pennsylvania took the PAMPs a step further in 1995 by establishing Memoranda of Understanding (MOUs), or letters of agreement, to develop stronger links between the appropriate public access providers. The MOUs are enforceable mechanisms that the state can use to ensure that agencies adopt the new public access policies and PAMPs. The MOUs are program agreements between the Department of Environmental Resources (DER) and other state agencies and/or commissions that detail the manner in which they will use their authorities in furtherance of the program's policies. The MOUs will more closely link state agencies' involvement,*

*provide an avenue to better coordinate and address the provision of public access, and direct limited resources toward providing public access opportunities in Pennsylvania's coastal zones.*

#### *Public Access Plans– Washington*

*The state of Washington has implemented the Shoreline Access Act, which encourages each municipality to develop a comprehensive shoreline access plan. This public access plan may be either a policy document establishing the framework for determining permit conditions, or it may be a comprehensive action plan, such as a waterfront enhancement plan, wherein the public access objectives are achieved through a combination of private permit conditions and public acquisition and development. These plans must include identified goals for public access; public/private implementation strategies; standards for private development; design and signage; and for providing privacy for adjacent landowners; and methods for determining and addressing conflicts with other CZMA goals, such as natural resource preservation.*

*The state guidelines specify that shoreline access programs must include plan elements that pertain to the restoration and preservation of the natural shoreline resources (such as scenic vistas), estuarine areas for fishing and wildlife protection, beaches, and other valuable natural or esthetic features.*

#### *Public Access Plans– South Carolina*

*South Carolina pursued a planning program with the objective of providing beach access and additional parking facilities. In 1988, the South Carolina Code of Laws was amended to include new provisions that require state and local communities to prepare comprehensive beach management plans. Within these plans the issue of beach access and parking had to be addressed. Specifically, beach management plans address the public access issue by requiring local communities to prepare as part of this larger plan a beach access program to preserve and enhance the existing public access. Each local comprehensive beach management plan must contain an inventory of public beach accesses and attendant parking, in addition to a plan for enhancing public access and parking.*

#### *Public Access Plans– Florida*

*Florida completed a statewide beach access study in 1987 in which beach access problems were defined and the nature, location, and severity of the shortage of public beach access was identified. The document, "Florida's Beach Access: Planning for the Future," identified the issue, the problems associated with beach access throughout the state, and made policies and technical recommendations to develop a comprehensive beach access program. Policy and legislative recommendations were identified to ensure adequate beach access throughout the state. Guidance was also provided which outlined the appropriate steps to be taken in developing a comprehensive beach access program. Information and findings provided in this report were used in establishing the "coastal element" of*

*Florida's Growth Management Legislation. Many of the findings of this 1987 report have been addressed, such as the need to provide incentives for private property owners to dedicate easements across their property and the need to develop areas that could be opened immediately to the public with slight improvements.*

#### Other Local/State Planning Efforts

Many coastal states are addressing public access needs indirectly through other planning efforts that are not specifically focused on the issue of public access. Even though public access may not be the direct target, addressing the issue of public access in relation to a specific project is sometimes (or often) critical to achieving a successful outcome. Examples of these types of planning efforts include harbor management plans, urban waterfront development plans and special area management plans.

Twenty-four states are addressing coastal access issues through statewide, regional, or local plans of other agencies (Table 3).

#### *Local and State Planning— Rhode Island*

*In 1988, the Rhode Island Coastal Resources Management Council (CRMC) developed guidelines for communities to use in developing harbor management plans. Harbor management plans identify user conflicts and issues of environmental and habitat degradation and poor water quality affecting municipalities' small harbor areas. One of the elements of a municipal harbor plan is the required completion of an inventory of all of the communities' public access sites. The purpose of this inventory is to prioritize those areas in need of further site development and maintenance. One of the benefits of harbor management planning is that particular attention is paid to the needs of boaters and fishermen. Identifying the supply and demand for boat ramps, fishing piers and public docks is the focus of these types of plans.*

*As a result of this planning process, the Town of North Kingstown, Rhode Island, which had previously listed only three public access sites, established a small working subcommittee to research all of the land evidence records and historic maps. The result of the committee's efforts was to identify over 90 existing and potential public access sites. The harbor management plan supported these findings. The plan was adopted by the town, which is now working together with the CRMC to formally designate those sites as public right-of-ways to coastal waters.*



### Local and State Plan– New York

*The State of New York, in a 1993 Section 309 project, developed regional coastal management programs (RCMPs) that refine the state coastal policies to reflect the unique characteristics of the distinct coastal regions of the state. These RCMPs act as substitutes for the state coastal management program. The regional plans address the areas of wetlands, cumulative and secondary impacts, coastal hazards and public access as components of regional coastal management programs. The RCMPs include an inventory and analysis of public access, trends identifying the use of coastal resources, revised policies and guidelines, and a public investment strategy. The first of these regional planning efforts occurred in Long Island Sound. There, appropriate standards were drafted for the entire New York State Long Island Sound Region (north shore of Long Island, New York City and the Long Island Sound shore of Westchester County).*

### Maps and Inventories

Inventories provide detailed information on the number, size and location of public coastal access sites statewide as well as the type of facilities and shoreline characteristics, locally or regionally. Maps and inventories can offer an integrated view of all of the uses occurring at public access areas, as well as the types of habitat located at the site and the potential impact that public access could have on these habitats. This will better prepare site designers to accommodate these variables into a site or park design that best provides for public use while mitigating negative impacts on the resource.

However, completing a thorough, accurate inventory is an expensive proposition. Therefore, in many cases what currently exists is an inventory that is out of date and/or has been completed for only a specified area or region within the state. Of the 39 coastal states and territories, only a few regularly update their access inventories and maps.

At least 25 coastal states/territories are completing inventories and mapping projects of their public access areas either regions within the state or statewide. (American Samoa and Puerto Rico are the only two coastal territories that have not completed inventories of public access areas.)

### Maps and Inventories– Maine and Massachusetts

*The Maine Coastal Program, with assistance from local and regional organizations, prepared an inventory and analysis of all shoreline access sites along the coast that are available to the public. The inventory helps to quantify what type of access is already available, to what extent it matches the need for access, and how best to meet future demand. Another benefit of the public access site inventory is that it provides a basis for state funding decisions regarding acquisition and development of coastal access areas.*

*In 1986 and 1987, the Massachusetts Department of Environmental Management (DEM) undertook a study to determine the extent and distribution of publicly owned and protected lands along the coast. This study involved a survey of land records for each municipality along the coast and resulted in a comprehensive*

*database (Coastal Property Inventory), which lists coastal properties owned by public agencies or by private nonprofit land organizations dedicated to protecting these lands and making them more accessible.*

### Agency Coordination

The purpose of The Open Space and Recreation Mapping Project of the Massachusetts Geographic Information System (Mass GIS) is to map all conservation and recreational lands in the state. This includes federal lands, municipal holdings, and lands held by trust and other nonprofit organizations. Recreational lands and facilities throughout the state will also be mapped, including private lands used for recreational purposes that are not necessarily protected by deed. All of this information is being compiled with the aid of Mass GIS in the Office of Environmental Affairs Data Center. The GIS data will be fully integrated with the 1995 update of the State Comprehensive Outdoor Recreation Plan. The final result will be a statewide database of open spaces and recreational facilities that can be viewed, analyzed, and queried using both maps and inventories.

In 1992, Mass GIS began to coordinate the statewide mapping of locally protected open space. Conservation commissions, planning agencies, land trusts, watershed associations, and parks and recreation directors, among many others, are helping to map local open spaces and recreation facilities for each municipality in the Commonwealth. On request and for a fee, GIS can provide maps of the state's coastline, protected and recreational open space, land use, census data, topography, and sensitive environmental areas. These coastal maps are important tools for the development of integrated coastal policy and planning. To date, over half the towns have provided data for this effort, and updates provided to Mass GIS keep the maps current.

### Conclusions on Planning Approaches to Preserving Public Access

Quite a few CZM programs have pursued aggressive planning efforts to designate coastal access sites. These efforts have provided the benefit of integrated coastal planning. Integrated planning addresses the need to balance public desire to get to the coast in both urban and rural areas with the need to protect coastal habitats. Integrated planning also allows multi-state and local agencies to share resources and coordinate policy implementation and development. The success of these plans depends upon the amount of public involvement that takes place throughout the entire process. Public participation in planning for public access creates increased public awareness of the severity of the issue.

Through the U.S. Department of Interior's "Land and Water Conservation Program" every state has a State Comprehensive Outdoor Recreation Plan, which is kept up-to-date, but does not differentiate recreational inland vs. coastal sites. Although many states have completed public access inventories, the accuracy and frequency of updating these inventories are inconsistent. Very few coastal states have any information about the number of public access sites and the extent of access to those sites prior to the implementation of their state CZM programs. This lack of baseline data makes it impossible to determine the effectiveness of the individual state CZM programs or to compare systematically the achievement across state programs.

As coastal populations increase, demand studies and needs assessments will become critical. Yet, very few states have completed needs assessments of future demand for public access—a first step in making plans to supply that demand.

Many coastal states do not have accurate up to date mapping of access sites—an important tool in developing a public access plan. Mapping is important for locating the number and proximity of access sites within a given area, for identifying potential user conflicts, and for identifying impacts on coastal resources by public access to the shoreline. Geographic information mapping systems can provide valuable information on the quantity and quality of access sites juxtaposed with coastal development patterns and location of sensitive habitat. Regularly updated maps and inventories create awareness of the supply and demand inequities. Mapping is also useful for identifying the most appropriate locations for future public coastal access.

#### Recommendations for Planning

Regular, accurate inventories of coastal public land should be completed as a quantitative measure of the effectiveness of state coastal programs in providing public access to the shore. Use of GIS, mapping, and inventories will enable coastal programs to share their data with other agencies, groups, and individuals. Mapping and data from the inventories will provide valuable information on existing site availability as well as on site dislocations and inequities. All of this information should be used to develop strategies on how best to meet the future demand for public access, including the diversifying number of locations of public access.

#### *4.2.4 Technical Assistance: Cost-Effective Tools to Provide and Enhance Public Access*

Technical assistance means providing expertise of all sorts to foster research, planning, site design, construction, and maintenance, which will result in the preservation and enhancement of public access. Technical assistance can range from legal expertise in assessing the statutes of right-of-ways to financial expertise in improving existing access sites, to engineering expertise in incorporating access into the design of urban waterfront revitalization projects.

#### The Benefits of Technical Assistance

The benefits offered by technical assistance can improve the quality of public access available and expand the variety of uses of a given site. Federal programs that grant funds for the design, development, construction, and maintenance of public access sites (such as the CZMA 306A program) for a particular group of users ensure the sustainability of various types of access. For example, federal funding programs exist for the development and improvement of piers and boat ramps specifically for fishing (e.g., Dingle/Johnson and Wallop/Breaux grants). After that base of funding is in place, local maintenance and site enhancement through “adopt-a-spot” programs can come into play, fostering stewardship of public access and providing sustainable solutions for continued high-quality public access.

#### The Limitations of Technical Assistance

The availability of technical assistance varies among the coastal states. In cases where technical expertise has been provided, it is often short-term. It is very difficult to document and measure the effectiveness of its impacts. For instance, quantitatively, there may be the same number of access

sites in 1990 as there were in 1970; however, many sites that were perhaps unusable in 1970 may be substantially improved and subsequently much visited. Yet, these qualitative improvements are not systematically counted and recorded.

Technical assistance, depending on the purpose and design, can provide on-the-ground improvements in public access. The level of success that results from technical assistance depends upon the availability of staff time, funding and implementation of the design. The indicators of effectiveness of the technical assistance programs and tools employed by states to provide coastal public access to the shore include:

- The number and quality of sites improved by technical assistance
- The amount and consistency of site maintenance and/or management
- Legal research that identifies potential new sites for access
- Other unique models in which expertise is shared for the purpose of assisting state coastal zone management programs in providing public access to the shore

#### Site Design, Construction and Maintenance

This category addresses the improvement of existing sites. For instance, for access to beaches such as things as assistance in the construction of boardwalks, and dune walkovers are examples. For access from urban shorelines, examples include repair of docks, piers, or boat ramps that may be dilapidated, overgrown, or silted in. Improvements in this category also include the provision of lighting, parking, park benches, picnic tables, and trash receptacles.

#### *Site Design, Construction and Maintenance— Oregon*

*The Oregon Department of Land Conservation and Development (LCDC) administers the federal 306A funding program for low-cost construction and land acquisition projects on the coast. Each year, LCDC makes the funds available to coastal communities, ports, and nonprofit organizations on a competitive basis for small-scale construction and land acquisition projects. Each recipient must contribute a certain percentage of the total cost of the project.*

*As a result, the state completed 46 federal 306A projects. A field guide, “Oregon’s Coastal Resources Management Improvement Sites,” which maps the location of each site, accompanied by photographs and short descriptions of the site and overall project costs was produced in 1995. It includes a wide variety of projects.*

*One project, in Port Oxford, provided a recreational boat hoist enabling the port authority to launch pleasure and recreational boats directly into the ocean. The port authority had a second hoist that is used almost exclusively by the commercial fishing fleet.*

*In Clatsop County in northern Oregon, the students of Seaside High School helped to finance a wooden observation deck with funding from the high school’s Ecology Club. The second phase, funded by 306A, includes an elevated wooden walkway, access stairs to the estuary, and interpretive signs. The project provides physical,*

*visual, and interpretive access to the estuary. The observation deck and the pathways accommodate physically challenged visitors.*

### Legal Research

As the trend in providing new avenues for public access continues to shift toward the provision of rights-of-way across private property, the dependence on legal research becomes greater and greater. Legal research is needed because the determination of ownership, or private vs. public use rights, hinges upon the legal history of ownership, which often traces back a hundred years or more. The research is quite complicated; land evidence records, historic records of property tax payments, and title searches are required to determine public ownership or use.

While legal expertise is critical to this research, the limited budgets of state and local agencies are a constraint. Lawyers command a high fee, normally ranging from \$175 to \$350 per hour. Several coastal states with CZM funding have developed innovative programs to access the legal expertise necessary for a variety of tasks, from completing complicated discovery on rights-of-way to warding off intimidating tactics of developers and their attorneys.

#### *Legal Research– Massachusetts*

*The Massachusetts Coastal Zone Management Office (MCZM) has created a Pro Bono Attorney Clearinghouse for Coastal Access to assist communities in their accessway preservation efforts. The goal of the Clearinghouse is to help coastal communities surmount legal hurdles that might heretofore have thwarted grassroots preservation efforts. Municipalities, citizens groups and other organizations may be able to obtain free (pro bono) legal assistance on issues concerning the preservation of historic rights-of-way to the sea. Attorneys may be sought to perform legal research, locate and interpret legal documents, conduct title research, and assist in negotiations and arbitrations.*

*Use of the Clearinghouse is voluntary and operates on a referral basis only. Upon receiving a request for referral, the MCZM General Counsel will forward the request to all members of the Clearinghouse. Attorneys who are interested in offering their services pro bono on the identified project will independently contact the requesting entity. When an agreement between the community and a pro bono attorney is consummated, it is reported to MCZM.*

*At the completion of the pro bono work, a report is made to MCZM by both the community and the attorney. These reports are used by MCZM to determine both the effectiveness of the Clearinghouse and to identify how, if necessary, to better serve both the communities and the volunteer attorneys.*

#### *Legal Research– Rhode Island*

*The Rhode Island Coastal Resources Management Council's (CRMC) right-of-way (ROW) discovery program determines whether or not a right-of-way in question is legally open to the public based on historic records documenting past use. Over the years, research conducted by CRMC legal counsel has allowed for over 210*

*pathways to become available to the public with funding through CZM monies from OCRM. CRMC is responsible for the continuing discovery and designation of public coastal rights-of-way to the shore.*

### Handicapped Access

Over the past several decades, the rights of the handicapped to gain access to public areas and recreation facilities have gained increased attention and concern. Progress has been made in designing accessways free of barriers for the physically handicapped and the aged. California, New Jersey, Michigan, and Oregon have been designing and constructing innovative systems for providing wheelchair access.

Not only have states been implementing innovative design standards for wheelchair access, but many states have mandated that handicapped access be provided at all newly improved coastal sites. In the Mariana Islands, all new facilities constructed on the shoreline must meet the handicapped accessibility laws required by the islands.

#### Handicapped Access— Michigan

*Michigan's state park system has been identified as one of the best in the country. Of the state's 96 state parks, 43 are located in coastal areas, and these include 138,869 acres of coastal property. Michigan continues to acquire land and improve recreational facilities and programs in the coastal park system.*

*The Michigan Department of Natural Resources (DNR) has a long-standing policy of making recreation opportunities accessible to people with disabilities. The Land and Water Management Division plans to formalize a policy that would require public access facilities and programs funded and operated by the DNR to be handicapped accessible. The DNR has published a guidebook to assist local governments in providing programs and facilities to serve those with disabilities. The guide will help to ensure that DNR and local recreational facilities and programs, comply with all applicable federal and state laws and that standards not only include the construction of new facilities, but also the retrofitting of existing facilities to make them barrier-free. The Land and Water Conservation Fund gives a high priority to proposed projects involving such retrofitting.*

#### Handicapped Access— California

*In 1982, California implemented state regulations entitled "Regulations for the Accommodation of Physically Handicapped Persons in Buildings and Facilities Used by the Public" which stated that coastal access facilities should be designed for use by the disabled whenever this would not result in material damage to the environment or unreasonable hardship to the landowner. If the facilities are constructed with state, county or municipal funds, or the funds of any state political subdivision, California state laws instruct that these facilities (e.g., buildings, curbs, sidewalks, and related structures) be accessible and usable by the physically handicapped.*

*In 1990, the California State Coastal Conservancy prepared a booklet, “A Wheelchair Riders Guide: San Francisco Bay and Nearby Shorelines.” The guide provides fairly detailed information on 20 handicapped-accessible sites around San Francisco Bay. The booklet includes maps of wheelchair routes to the sites, photographs, site descriptions, and a statement on the degree of difficulty for wheelchair accessibility. It also includes information about the availability of facilities at each site, the types of environment and terrain at each site, and the hours of operation and phone numbers for each site. The guide was written by an architect who has used a manual wheelchair since early childhood and explored the accessible sites for the California State Conservancy. The guide is in great demand and has already been reprinted.*

*At Doheny State Beach, Orange County, California, a beach-going wheelchair is now available to the public. The all-plastic Surfchair, provided by the non-profit California Aquatic Safety, Inc., enables people with mobility impairments to travel over the sand along the surf zone and even into the water. This is the second Surfchair in use at California’s beaches; the first is located in Santa Cruz at Cowell’s Beach.*

#### Official Guidelines

Guidelines include documents, pamphlets, and reports that provide information on how to improve the provision of public access. The guidance offered by state and federal agencies is wide-ranging, and includes such topics as designs for accessways, how to research and designate rights-of-way, and how to fund public access improvement projects.

#### Official Guidance– New Jersey

*In 1990, New Jersey published a manual, “Waterfront Public Access: Design Guidelines,” as a reference for local governments, private developers and others who are interested in providing access to New Jersey’s coastal resources. The manual presents background and design information dealing with the public’s right to waterfront access, how it is provided in New Jersey, and design concepts for both ensuring substantial access and minimizing potential conflicts between private landowners and the general public.*

*The manual explains what public access is and why it should be provided and maintained for its citizens. It includes an overview of the legal issues surrounding the right to public access in New Jersey, and ways to secure and acquire public access. Specific design guidelines are also provided for a variety of shorefront types. There are design standards and criteria, illustrated schematic drawings for dune walkovers, handicapped-access ramps, piers, decks, bikeways, boat ramps, docks, and shore protection structures.*

*The booklet also includes information on how to maintain sites once they are put in place. Alternative maintenance agreements are suggested, such as those involving government agencies, homeowners associations, citizens groups, land trusts, and*

others. These agreements address the issue of continued funding for maintenance of waterfront public access.

Official Guidance– Chesapeake Bay Area  
(Pennsylvania, Virginia and Maryland)

*In 1987, the governors of the Chesapeake Bay states (Pennsylvania, Maryland, and Virginia), the mayor of Washington, D.C., the Environmental Protection Agency, and the Chesapeake Bay Commission entered into the Chesapeake Bay Agreement to improve the water quality of the bay and its tidal tributaries. One of the major initiatives of the agreement is the improvement of public access to the tidal waters of the bay. The agreement outlines four general objectives to support the initiatives: to improve and maintain access to the bay, including public beaches, parks and forested land; to improve opportunities for recreational and commercial fishing; to secure shoreline acreage to maintain open space and provide opportunities for passive recreation; and to secure necessary acreage to protect unique habitat and environmentally sensitive areas.*

*A publication, “Chesapeake Bay Area Public Access Technical Assistance Report,” helps to meet these objectives by providing a guide for locating and developing access sites. The report also identifies potential sources of technical assistance to aid localities with acquisition and development. The four types of public access covered in the guide include boat-related access, swimming access, fishing access and natural area access.*

*For each of the types of urban and rural access areas, the technical report offers suggestions and guidance on site selection, including user issues and environmental considerations such as topography, soils and substrate materials, surface water hydrology, vegetation/wildlife habitat areas, water quality, wetland delineation, and cultural resources. Information is provided on site limitations and site characteristics. Design criteria are provided for site plan layout, land requirements, parking, boat ramps, pedestrian requirements, deck construction, trash disposal, signage, traffic, handicapped facilities, sewage facilities, and pumpouts. Long-term site management and maintenance is also addressed.*

Conclusions Regarding Technical Assistance Tools for Providing Public Access

Technical assistance for site development and improvements provides immediate, on-the-ground results. The federal funding from the 306A program provided \$4.5 million for technical assistance for improvement or acquisition of 455 sites nationally. Sites that have been improved or regularly maintained build public awareness and appreciation of a newly enhanced coastal experience.

The trend has been to increase networking opportunities, particularly in light of shrinking federal budgets. Taking advantage of technical assistance not only increases the number and quality of public access, but also serves to protect and improve what currently exists. CZM has played an active role in leveraging multi-agency and private/public partnerships to preserve, provide and enhance public coastal access.



#### *4.2.5 Public Outreach: A Critical Tool for Future Support of Public Access*

Public education and outreach refers to that suite of educational programs and products that serves to raise awareness not only of the importance of public access but also of the challenges that CZM programs face in providing public access to the shore.

Education and outreach provide information about the varied issues associated with public access. These programs also provide an opportunity to promote community and individual stewardship of existing public access. Public policy concerning access is often swayed by dominant public opinion. Therefore, public education and outreach efforts are critical in preserving funding and staff for programs that maintain and improve public access.

All 29 of the state coastal programs employ at least one type of program or tool to provide public education and/or outreach opportunities. The most commonly employed include public access guides (used by 22 states); interpretive displays (used by 24 states); signage programs (used by 25 states); and other creative initiatives, such as workshops, videos, and television programs (Table 3).

##### The Benefits of Public Education and Outreach

In order to build any constituency for the integrated balance of coastal uses, the public must have the means to access, and, more importantly, experience all that the coast has to offer. Public education on the issues of public access and how, when, and where to best experience the coast is crucial to the CZMA.

Access to the coast for swimming, fishing, sailing, or wandering the urban or beach shoreline improves quality of life, provides the opportunity to appreciate the beauty of coastal habitats, offers the chance to observe a working waterfront and port area, and lets one appreciate the need for an equitable balance of uses. Constituencies are needed to support the CZM efforts to manage the coastline nationally, state-by-state, and locally.

The benefits derived from state and local efforts to provide public education and outreach opportunities have been enhanced by the critical nature of the Public Trust Doctrine and the recent legal interpretations of its impact on public lands. Tidal waters, tidelands, bottomlands and their living resources are to be held in trust for the public. For the public to benefit from this “trust,” they must have access to the resources.

Engaging citizens and civic organizations in efforts to protect, preserve and provide public access fosters community stewardship of the coast, which in turn becomes a source of local pride. Also, as federal and state funding diminishes, the community’s role in preserving and maintaining public access becomes ever more critical. Responsibility for maintaining existing access sites and rediscovering new ones is shifting from the government to nonprofit and civic organizations. Community stewardship helps ensure that the quality of these sites is maintained over the long term.

Guides and signs provide a strong tool to stop encroachment, abuse and abandonment of access sites by adjacent landowners or local government. Guides and signs lend legitimacy to the access areas and rights-of-way, and encourage ongoing maintenance and upkeep.

#### Limitations of Public Education and Outreach

Although public access guides and signs and other education and outreach efforts provide many benefits, if they are not maintained and updated, their usefulness is negligible and they can even be counterproductive. Many access guides researched and written in the 1980s are now outdated and often frustrate the public due to their inaccuracy. Recent gains in public access areas should be consistently added to existing guides. This can be difficult, as OCRM funding provisions are restricted to new and/or innovative efforts, rather than to making past efforts current.

Time and effort spent on distribution of informational materials can also be a limiting factor, especially if the distribution of high-quality publications only spreads the word to an extremely small sector of the population.

The indicators of effectiveness of public outreach programs and tools employed by states to provide public access include:

- The number of public access signs
- The number and quality of interpretive displays
- The production of access guides (If produced, how often and how many have been distributed?)
- The existence and activity of citizen advocacy groups (How many have been established? What are their objectives? What have they done?)

#### Public Access Guides

Public access guides provide maps and an inventory of selected public access sites for a given state or within a prescribed region. Information is provided on how to get to the site, what the natural features of the site are, what the available amenities of each site are—such as parking, restrooms and lifeguards—and what the types of uses best suited for each site are. There are two basic forms of public access guides: a coffee table-style book that includes informative articles relating to coastal issues and topics; or a much thinner version—a catalogue or magazine. The book format tends to feature articles on the surrounding habitat, history of the region and its uses, and the myriad issues associated with public access efforts within that area. The magazine style, which deals with similar topics, is better suited to “roll up and take with you.”

Twenty-three coastal states have developed coastal access guides. The first state to do so was California in 1981; a second edition of the guide was published in 1995.

Public Access Guides– Chesapeake Bay Area  
(Pennsylvania, Virginia and Maryland)

*“The Chesapeake Bay and Susquehannah River Guide” is a first of its kind. It is a comprehensive multi-state guide to public access opportunities for the whole Chesapeake Bay region. The guide sparked several other initiatives. In 1994, Pennsylvania created a Public Access Task Force to establish public access priorities and steer the development of Public Access Management Plans (PAMPs). In 1995, PAMPs were established with the objective of addressing public access through a more unified approach by creating better working relationships among all providers, as well as focusing limited available resources on public access priorities in the coastal zone.*

Public Access Guides– South Carolina

*After Senator James Waddell appointed a Blue Ribbon Committee on Beachfront Management to investigate the needs of beach management and public access in October of 1996, South Carolina looked at long-term solutions much more seriously. The committee found that there was a need to preserve existing access and promote increased public access to South Carolina’s beaches. The South Carolina Public Beach & Coastal Access Guide, along with the accompanying database, is the first collection of South Carolina public access information. This guide was the result of a year of hard work and cooperation from over 300 local, state, federal, and commercial agencies and individuals who manage outdoor recreation lands and facilities. The guide incorporates information about 264 local, state, federal, and commercial facilities located in the designated area from the Intracoastal Waterway to the Atlantic Ocean. Public comment has since been solicited and there are plans to update the guide in a future edition.*

Signage

Signs that mark the location of public access often have a standard logo that is easily recognizable. The various types of signs range from posts and large signboards to bronze medallions located in the ground. Effective signage in state CZM programs not only demarcates the access site but also notes the public or private organization that has responsibility for improving or maintaining it. Twenty-five coastal states and territories include signs at public access sites (Table 1).

Signage– California, Rhode Island, and Washington

*In 1979, legislation was enacted directing the California Coastal Commission and State Coastal Conservancy to establish a comprehensive program to maximize coastal access. In cooperation with the California Department of Transportation and the Conservation Corps, coastal access signs are being installed along the coast, indicating where accessways are located. Legislation also mandated that the Commission prepare a guide to all coastal accessways. The Coastal Commission and the State Coastal Conservancy created a logo as the official symbol to appear on all coastal access signs.*

\* \* \*

*Rhode Island's Coastal Resources Management Council (CRMC) and the Department of Environmental Management adopted an official logo to be used on all public access signs. Once CRMC has designated a right-of-way as public, a sign must be placed there. Additionally, the state's Adopt-A-Spot program mandates the placement of a public access sign at the point, which bears the sponsor's name and conditions for using that site.*

\* \* \*

*The Washington Department of Ecology employed an interesting method to select a public access logo that created public awareness by engaging state residents. The Department of Ecology held a statewide contest to design a public access symbol in 1984. A Seattle high school student won the contest, and the design is now the official state public access logo.*

### Conclusions on Public Outreach and Education

Signs marking public coastal access areas, interpretive displays, and access guides are but a few of the techniques states are using to educate the public on the location, number, and relevance of public access sites. Public sentiment about the issue of access is expressed by the existence and activity of citizen advocacy groups, who ensure that issues of public access remain on the forefront of the decision-making agenda for the coast.

As funding for direct coastal land acquisition declines, public education efforts are becoming more critical. Public education on the issues associated with public access creates widespread awareness of the need to preserve existing coastal access and to meet the future demand expected as coastal population increases. Public outreach efforts create opportunities for collaborating and partnering with the private sector in efforts such as site improvement and maintenance, perpendicular access across private property secured by conservation easements, tax rate reductions, and liability waivers, and acquisition of coastal property such as multi-state agency shared funding initiatives.

### Recommendations for Public Outreach and Education

Federal and state funding sources should include public education and outreach efforts. State CZM program budgets rarely include these efforts. However, because national, state, and local funding resources are on the decline, efforts should be made to link with the private sector to provide public education and outreach opportunities such as coastal access signs, public access guides, public workshops on access issues, and newsletters. Public access initiatives will continue to advance as long as the issues associated with access remain a priority of an aware and concerned public.

### 4.3 Adequate Funding of the CZM Programs to Provide Public Access is Essential

In 1980, Congress amended the CZMA with a special Section 306A to specifically provide for public access, as CZM effectiveness, with respect to the core goal of public access, was being “hindered by increasing coastal population, soaring coastal property values, lack of state regulations to negotiate public access from development projects, and insufficient funds to acquire and improve coastal lands for public recreational opportunities.”<sup>11</sup>

In this instance, there are quantitative measures which are summarized in Tables 4 and 5. The quantitative indicators are:

- The number of access improvement projects funded by each state using 306A monies is an outcome indicator (Table 4)
- The numbers of dollars spent for a variety of projects in each state from FY 85 – FY 88, the first four years of the federal/state program indicates the level of effort each state put towards providing public access (Table 5)

The amount of CZM money and the state share dollars were clearly documented, so it is possible to assess the relative impact of the CZM program compared to the state contribution to acquire and improve coastal public access sites. It is important to note, however, that the state contribution might not have occurred at all without the leveraging power of the CZM funding.

The 306A program offered the flexibility needed to address different local access needs—a hallmark of the effectiveness of CZM. The different kinds of access activities that various states initiated are summarized in Table 6. Section 306A was added in 1980 to the CZMA to allow states to acquire land and fund low-cost construction projects to provide and improve public access to coastal waters. Existing public access sites were enhanced by the construction of paths, piers, walkways, recreational trails, parking lots, boating ramps, interpretive signs, and other site improvements. Additionally, 306A funds have been used by states to acquire small properties for public access. In many cases, 306A funding for public access has served as “seed” money to leverage additional public and private investment. Between 1985 and 1989, the first four years of acquisition and low-cost construction funds were allocated; states were awarded approximately \$17.5 million, which was matched with \$18.2 million in state and local funds. (NOAA, 1990)

Construction projects comprised 80 percent of all 306A project types and 64 percent of the federal 306A expenditures (\$10,588,239), and provided on-the-ground outcomes of relatively inexpensive access to coastal areas. Urban waterfront projects accounted for six percent of the 306A projects and only five percent of the 306A expenditures. Eligible activities included rehabilitation of piers for compatible public and commercial activity, urban shoreline stabilization, and the removal or replacement of pilings to increase recreational use (Table 5).

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<sup>11</sup>OCRM/NOAA, 1998.

**Table 4. CZMA 306A Expenditures By State, FY 1985 – 1988 (Unadjusted Dollars)**

State	306A Projects	Federal 306A \$	State 306A \$	Federal CZMA \$	% of Award
Michigan	111	\$2,294,528	\$2,358,767	\$7,797,000	29
Maine	48	\$1,312,652	\$3,732,693	\$6,376,000	21
North Carolina	38	\$3,115,736	\$2,293,961	\$7,058,000	44
Wisconsin	30	\$1,431,954	\$1,647,006	\$3,421,000	42
Mississippi	29	\$1,011,643	\$584,099	\$2,141,000	47
Maryland	26	\$939,220	\$592,043	\$7,797,000	12
New Jersey	25	\$1,090,228	\$261,063	\$9,797,000	11
Oregon	22	\$437,090	\$311,083	\$3,584,000	12
Pennsylvania	22	\$1,021,920	\$903,889	\$2,989,000	34
New Hampshire	17	\$578,840	\$1,383,077	\$1,366,000	24
South Carolina	17	\$400,000	\$384,019	\$6,116,000	7
Washington	15	\$714,912	\$194,664	\$7,786,000	9
New York	12	\$364,154	\$401,537	\$7,914,000	5
Rhode Island	10	\$155,600	\$251,346	\$2,434,000	6
Puerto Rico	9	\$196,955	\$87,780	\$4,645,000	4
Alabama	5	\$111,480	\$121,000	\$2,296,000	5
California	5	\$1,091,500	\$1,083,800	\$7,415,000	15
Louisiana	5	\$90,000	\$160,000	\$7,797,000	1
American Samoa	2	\$40,000	\$0	\$1,864,000	2
Delaware	2	\$15,800	\$0	\$2,281,000	1
Virginia	2	\$76,000	\$76,000	\$4,704,000	2
Connecticut	1	\$16,430	\$1,230	\$3,003,000	1
Guam	1	\$45,000	\$0	\$1,881,000	2
Northern Marianas	1	\$39,780	\$0	\$1,910,000	2
Alaska	0	0	\$0	\$7,797,000	0
Florida	0	0	\$0	\$7,797,000	0
Hawaii	0	0	\$0	\$2,923,000	0
Massachusetts	0	0	\$0	\$5,700,000	0
Virgin Islands	0	0	\$0	\$1,940,000	0
<b>TOTAL</b>	<b>455</b>	<b>\$16,591,422</b>	<b>\$17,576,057</b>	<b>\$141,529,000</b>	<b>12</b>

**Table 5. CZMA 306A Expenditures By Project Type (Unadjusted Dollars) FY 1985-1988.**

Project Type	#	Federal \$	State \$	Total \$
Coastal Parks	73	\$1,856,350	\$1,508,014	\$3,364,364
Boat/Fishing Piers	72	\$2,104,172	\$2,257,741	\$4,361,913
Walkways/Overlook/Blinds	62	\$1,847,324	\$1,959,731	\$3,807,055
Boat Ramps/Launches	36	\$1,115,353	\$827,737	\$1,943,090
Dune/Beach Walkovers	34	\$720,214	\$553,179	\$1,273,393
Acquisition	33	\$4,442,531	\$7,632,765	\$12,075,296
Foot Trails	23	\$572,513	\$736,879	\$1,309,392
Dune Restoration	22	\$919,356	\$80,290	\$999,646
Parking Lots/Access Roads	20	\$640,664	\$497,197	\$1,137,861
Displays/Signs	14	\$237,830	\$104,300	\$342,130
Shoreline Stabilization	8	\$252,540	\$205,030	\$457,570
Lighthouse Restoration	7	\$102,500	\$103,100	\$205,600
Restrooms/Bathhouses	7	\$284,344	\$61,392	\$345,736
Vegetative Restoration	6	\$88,630	\$26,330	\$114,960
Buildings	6	\$191,425	\$278,580	\$470,005
Project Designs	6	\$190,810	\$48,100	\$238,910
Historic Structure Restoration	5	\$161,800	\$180,450	\$342,250
Museums	4	\$36,050	\$36,810	\$72,860
Stormwater Management	4	\$102,614	\$81,794	\$184,408
Marinas	4	\$260,000	\$301,138	\$561,138
Living Resource Restoration	3	\$211,000	\$18,000	\$229,000
Bridge Work	2	\$125,902	\$50,000	\$175,902
Bike Trails	2	\$72,500	\$7,500	\$80,000
Buoys	1	\$10,000	\$20,000	\$30,000
Beach Clean-Ups	1	\$45,000	\$0	\$45,000
<b>TOTAL</b>	<b>455</b>	<b>\$16,591,422</b>	<b>\$17,576,057</b>	<b>\$141,529,000</b>

**Table 6. CZMA Section 306A Public Access Projects, FY 1985-1989.**

PROJECT TYPE	AK	AL	AS	CA	CT	CNMI	DE	FL	GU	HI	LA	MA	MD	ME	MI	MS	NC	NH	NJ	NM	NY	OR	PA	PR	RI	SC	VA	USVI	WA	WI	TOTAL	
Coastal Parks			1										2	9	28	1	1	3	1		4	7	5	3	1	2			1	4	73	
Boat/Fishing Piers		1											2	17	15	11	1	1	1		2	5	3		4	3			3	3	72	
Walkways/Overlook/Blinds, Etc.													8	8	26	1	6					1	2			3			1	6	62	
Boast Ramps/Launches											4		1	3		10		1			1	2	5		1					8	36	
Dune/Beach Walkovers		1												1	4		20									7			1		34	
Acquisition				5									1	4		1	7	3			1	3	1	1	1				5		33	
Foot Trails													1	2	13			1			1	1							4		23	
Dune Restoration															2			1	19												22	
Parking Lots/Access Roads													2	4	4	1	1	1			2	1	2	1		1					20	
Display Signs		3					1								4		1		1	1									1	2	14	
Shoreline Stabilization			1												4			2								1					8	
Lighthouse Restoration															3	1					1				1				1		7	
Restrooms/Bathhouses									1				1						2			1			2						7	
Vegetative Restoration						1							3			1										1					6	
Buildings																						1	4						1		6	
Project Designs													3		2							1									6	
Historic Structure Restoration																		2					3								5	
Museums															4																4	
Stormwater Management							1						1				1												1		4	
Marinas															1			1												2	4	
Living Resource Restoration																2		1													3	
Bridge Work													1		1																2	
Bike Trails																										1			1		2	
Buoys											1																				1	
Beach Clean-ups																			1												1	
<b>TOTAL</b>	<b>0</b>	<b>5</b>	<b>2</b>	<b>5</b>			<b>1</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>26</b>	<b>48</b>	<b>##</b>	<b>29</b>	<b>38</b>	<b>17</b>	<b>25</b>	<b>1</b>	<b>12</b>	<b>22</b>	<b>22</b>	<b>9</b>	<b>10</b>	<b>17</b>	<b>2</b>	<b>0</b>	<b>15</b>	<b>30</b>	<b>458</b>



Design, educational, and interpretive projects accounted for seven percent of 306A projects and four percent of federal 306 expenditures. These projects included large engineering designs, public access educational materials, pamphlets, newsletters, and interpretive signs and materials for public recreational areas (Table 5).

The states that used a significant amount (20 percent or more) of their 306 implementation awards on 306A projects during the first four years of program implementation include Mississippi, North Carolina, Wisconsin, Pennsylvania, Michigan, New Hampshire, and Maine.

Overall, most state and territory coastal programs have made some progress toward improving public access; however, it also appears reduced funding is a problem. The 306A program is no longer funded, core 306 funding has not kept up with inflation and the §309 Program is not the ideal solution for achieving these improvements due to sporadic funding sources and insufficient time to effect program change. The most effective means of providing public access to the shore is through acquisition of coastal property, then using the limited funds available in §309 program for acquisition of private property is not sufficient.

Another shortcoming of the §309 program is the restrictive timeframe. Funding justification for this program is that the outcome of the project should result in a sufficient improvement in the way the program is operated, or a program change. Preserving or improving public access through comprehensive planning, or new legislation or local ordinances typically requires political and/or public involvement or approval. This alone becomes a burdensome standard as the political process requires an enormous investment of time. Developing an acquisition strategy or innovative statewide funding source, such as the use of impact and user fees to provide public access, typically requires more time from program inception to program implementation than that of a 1- to 2- year grant cycle.

## **5.0 CONCLUSIONS**

### **5.1 Coastal States and Territories Are Actively Working to Provide Public Access to the Shore**

Over the past 20 years, all states have made some progress in providing and preserving coastal public access; even though declining financial resources and staff support have limited many state efforts. There is considerable variability in state efforts in terms of the emphasis placed on acquiring access sites, developing planning tools for future access, and research and dissemination of public education materials. The key tools used in providing public access to the shore are: purchase of access sites; incorporation of access sites and facilities in state and local plans and/or coastal development; preserving access through regulatory review; technical assistance to expand the capacity of existing access sites; and fostering public education and awareness of the importance of monitoring coastal access for the public. Virtually all of the states and territories have specific policies to promote and protect public access and work cooperatively with other agencies and NOAA to achieve this core objective.

## **5.2 The CZMA Creates a Unique Niche for Public Access**

The CZMA encourages each coastal state and territory to fulfill the act's mandate by whatever means are best given the economic social, legal context of the state. Coastal states have been very inventive about the variety of tools and approaches they have used and adapted to their own political and institutional setting, in ways that a central federal approach might not have achieved. There are many examples where the CZMA has been the prime catalyst in leveraging public access initiatives among state and federal agencies, public organizations, and the private sector.

The role of the state coastal programs in providing public access to the coast varies state to state. In many ways, this is largely dependent upon the institutional framework of each state. In networked states, there is often involvement by many agencies; in these cases CZM has played a role in coordinating joint agency involvement. In other states where coastal zone management is mandated by comprehensive coastal legislation, state coastal program involvement may be dictated by the parameters of the legislation. In states with a combination of multi-agency involvement and legislation addressing public access, the coastal program may play a less visible, but nonetheless critical role. In one state, the coastal program worked out an arrangement in which public access is addressed directly by the State Department of Parks and Recreation; however, funding of a full-time staff person within the Parks Department who addresses public access issues is provided by the state coastal program.

## **5.3 Technical Assistance and Public Outreach Are Key Activities**

The trend for providing public access is shifting to the provision of technical assistance and public outreach. Traditionally, acquisition and regulatory tools and programs have provided the greatest amount and most effective means of public coastal access. These types of tools and programs are used less frequently, however, as funding to purchase coastal sites has dramatically decreased. Regulations that mandate some form of public access also encounter political resistance and are costly to implement and enforce.

Opportunities for partnering, and for sharing resources and varying types of expertise, are greatest in the areas of technical assistance and public outreach. For example, legal expertise is a newer form of technical assistance that many states are eagerly pursuing. Legal assistance helps in securing rights-of-way, in fostering implementation of the Public Trust Doctrine for tidelands and in developing local legal defense efforts inappropriate development. Coastal engineering assistance is used to provide site designs at a minimal expense—and such site improvements are important because they often provide a low-cost method of enhancing public access to existing sites.

Public outreach efforts, such as public education and awareness, are becoming more critical. Public education on the issues associated with public access creates widespread awareness of the need to preserve existing coastal access and to meet the future demand expected by increasing numbers of coastal population. This awareness often creates opportunities for collaborating and partnering with the private sector in efforts such as site improvement and maintenance (e.g., Adopt-

A-Spot), perpendicular access across private property (e.g., conservation easements, tax rate reductions and liability waivers) and acquisition of coastal property (e.g., multi-state agency shared funding initiatives).

#### **5.4 Accurate Monitoring Data Are Needed**

A quantitative assessment of whether coastal states and territories have effectively provided public access to the shore through their CZM programs is extremely difficult. The data are not adequate and are generally unavailable for a number of reasons. Often the data do not exist, were never reported or recorded, or were not made available to the CZMA Assessment Team. A few states—North Carolina, New Jersey, New York—and one territory—Puerto Rico—never responded to the public access surveys.

Even in the many instances where public access was identified as a priority and the states provided adequate information on the processes used to facilitate public access (i.e., tools and/or programs), there was very limited quantifiable outcome data resulting from the implementation of CZM tools and/or programs. The scant outcome data that a few states recorded was not comparable to that collected from other states. This made cross-state analysis impossible; even when coastal access guides, maps and inventories were available, these documents were seldom updated and usually contained only a selected number of sites. Every two years, each coastal program undergoes a national review (Section 312 of the CZMA). However, quantitative information on number of access sites or qualitative descriptions of types of sites is not documented as part of this review.

If the process indicators cannot be linked to outcomes, a strong assessment of effectiveness cannot be done. Even the most basic measurement of outcomes—the number of public access sites acquired as a result of CZM efforts—would move closer to determining the effectiveness of CZM in meeting the national public access objective. But the data does not exist and without it as a first step, a more subtle determination of the quality of access sites cannot be accomplished.

#### **5.5 Resource Protection Is Balanced with Public Access**

Coastal states are extremely inventive and resourceful in providing coastal access opportunities that balance natural resource protection with getting the public to the shore. For instance, dunes are being preserved by dune walkovers, wetlands are protected by catwalks, and sensitive habitats and wildlife are spared the injury of active public recreation by regulations that limit public access. For a more complete description of habitat protection issues, please refer to the comparison reports of this national assessment by Good and by Berndt-Cohen.

## **5.6 Networking Is Critical**

Creating partnership opportunities and leveraging funding is much more prevalent in networked CZM states. Therefore, networked CZM states appear to be achieving dual core objectives of the national CZMA—providing public access to the shore, and maximizing state, local, and federal agency coordination and collaboration. However, as a result of being efficiently networked, it becomes almost impossible to accurately measure and account for the impact and effectiveness of CZM involvement in providing public access compared to the impact of any other federal, state, or private partners.

## **5.7 The Public Trust Doctrine Plays an Important Role**

The Public Trust Doctrine (which says that title to tidal and navigational freshwaters, the lands beneath, as well as the living resources inhabiting these waters is held in trust by the State for the public benefit and use) has varying judicial success rates throughout the state coastal programs; however, it remains an important tool for providing public access.

## **6.0 RECOMMENDATIONS**

### **6.1 Develop Accurate Databases and Conduct Needs Assessments**

In order to accurately determine the effectiveness of the CZMA and each of the federally approved state coastal management programs, accurate data must be collected, reported, and recorded. Regular reporting of the number, size, and location of public access sites that have been acquired as the result of CZM efforts is essential to a national assessment. The quality of access sites, based on a set of established criteria, should also be assessed regularly in order to determine how access has improved as a result of CZM efforts.

The database should not only be accurate in terms of the number of existing public access sites, but the types of tools and programs used to acquire public access should also be documented. This is important for determining the effectiveness of state CZM efforts and for sharing the results of specific tools and programs with other state CZM programs. The data should be collected in a consistent manner, at regular intervals, as part of the biannual 312 review of each coastal program.

OCRM should revise, simplify, and combine the coastal states reporting requirements under Sections 306, 309, and 312. Uniform reporting would simplify the process, provide meaningful information, and enable coastal states to more easily share valuable outcome data. OCRM should develop a computerized coding system by state coastal program, type of issue (e.g., public access), tool and subtool categories (e.g., regulatory-permit conditions), project results, and outcome data (indicating the impact of implementing the CZM tool/program to address the issue).

Because accurate and precise data collection methods are essential to ensuring trend data for future studies, it is important that this database be regularly maintained. At a minimum the types of information to be collected on a national basis should include:

- Summarized state CZM program changes, improvements and amendments to their coastal program
- Annual program activities in relation to the coastal issue (e.g., public access)
- A comprehensive inventory and summary of projects by issue categories, preferably GIS based
- A list of reports produced by state CZM programs

Those states and territories with computerized permit tracking systems should be encouraged to revise the individual permit entries to include data on the type of project, area and resources affected, length of shoreline affected, size of project, permit restrictions/conditions, and other data that could be summarized relatively easily every year or two.

Once coastal public access databases have been developed and an accurate baseline has been established, coastal public access needs assessments should be conducted. Changing trends in coastal population have been forecasted. Several national studies have predicted a dramatic increase in coastal population. Needs assessments are required to best determine how to meet the growing future demand for public access.

What might also contribute to the adaptive learning process through information sharing would be a literature review. Conducting a complete literature review and then making those results widely available would provide not only useful long-term benefits, but also a solid foundation upon which to disseminate the innovative tools and techniques coastal states have developed to address particular challenges and issues within this field.

In order to surmise whether CZM programs are effectively meeting this core goal, it is important to document not only the number of access sites but also whether or not they are being used. A site or right-of-way may exist, but is it truly accessible? Are sites sufficiently safe, accessible and enjoyable enough so people use them? Do states with the highest coastal population have the greatest number of access sites? (Does this serve as a proxy indication of need?) Some information of this type (such as park attendance) exists for some, but not most, access sites. For each of these levels of assessment, the management process or tools should be linked to actual outcomes in order to achieve a fair measure of effectiveness.

## **6.2 Establish a Clearinghouse of Innovative Tools and Programs**

It would be useful to have one central location where states can readily obtain up-to-date information about successful tools and innovations used by other coastal programs around the country. Information about the effective public access tools and programs contained in the state profiles that were prepared as part of this report can be a useful starting point. It is important to

constantly share information with other state coastal programs to contribute to the adaptive learning of individual states and the OCRM.

Taking the results of a literature review and comparing of the varying degrees of success in providing coastal public access throughout the coastal state programs, and hosting both national and regional workshops would provide a great opportunity to share information on the success and failures of the myriad of tools and techniques available.

In particular, if a clearinghouse were in place, many of the nonregulatory approaches, such as the use of technical expertise, public outreach, and/or planning, could be more readily adapted for use by other coastal states. Even in cases where institutional context must be similar for successful adoption of regulatory or partnering approaches, a searchable database of case examples would be useful. Sharing CZM tools and programs that successfully provide and preserve public access is cost-effective.

### **6.3 Document CZM Public Access Successes**

NOAA needs to make stronger efforts at communicating the specific successes of state CZM programs in preserving and providing public access to the shore. Communication efforts should be targeted beyond Washington, D.C. and beyond the CZM community. There has been a tremendous amount accomplished at the national, state, and local levels. Documenting and communicating these successes should include the myriad ways in which CZM has provided public coastal access in creative, cost-effective, and opportunistic ways. The audience for this communication should include potential partners for future collaborations, such as private foundations, local governments, non-CZM states, academia, and tourism related business and redevelopment agencies. Multiple media methods include use of the World Wide Web, interactive CD-ROM programs, state and federal annual reports to Congress, progress reports, and summaries published in marine trades journals and reports. Public access inventories and assessments could be incorporated annually into the National Coastweeks celebration each year to report states' progress toward meeting this core objective.

### **6.4 Funding of State CZM Programs**

Competition from other resource protection efforts or economic revitalization projects for dwindling public funds is increasing. The funding gap is further widened by the fact that coastal property is exceedingly costly, for more than inland properties. Fewer and fewer sites are available for purchase as coastal development continues. As coastal population and development increases, increased funding for CZM is essential to acquire additional access opportunities as well as to expand capacity and monitor existing coastal access for the public.

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## 8.0 APPENDICES

### Appendix A—Rhode Island Public Access Profile

#### BACKGROUND & CONTEXT

Rhode Island's coastal zone includes all tidal waters from mean high water seaward. It extends landward to include non-tidal ponds associated with barrier beaches and coastal physiographic features including coastal beaches; barrier islands and spits; coastal wetlands; coastal headlands, bluffs and cliffs; rocky shores; manmade shorelines; and dunes. The coastal zone also includes land and water areas extending 200 feet landward from these coastal features. For those areas designated by Rhode Island's special area management plans, the boundary includes the entire coastal watershed.

#### Public Access In Rhode Island

##### Coastal Population Growth and Development Pressures

Rhode Island's coastal area is densely populated. With 950 people per square mile, Rhode Island has the 5th most densely populated coastal zone in the nation (NOAA, 1990. 50 Years of Population Change Along the Nation's Coasts: 1960-2010). The findings from Rhode Island's Final Environmental Impact Statement (1978) showed that residential development in the coastal area was increasing more rapidly than in any other region of the state. The study reports that from 1970 to 1990, Rhode Island's coastal population increased 6 percent (see Table 1). There is an intense demand for access to Rhode Island's 420-mile-long shore by residents of the state and by residents of the southern New England region who visit Rhode Island.

Rhode Islanders have enjoyed a long-standing tradition of protected public access to the coast for fishing, swimming, birding, boating and gathering seaweed for agricultural purposes, as guaranteed by the state constitution (RI Constitution, Article I, §17). During the economic boom of the 1980s, undeveloped coastal lots all but disappeared, and coastal real estate prices sky-rocketed. As private ownership of coastal property increased, public access opportunities diminished.

To help meet the increasing demand for public access to the shore, many Rhode Island state and local government agencies have embarked on several ambitious programs to purchase land along the coast. One of these, involving the expenditures of open space bonds approved by the voters has resulted in at least 500 acres of coastal lands in public ownership. Federal government agencies have expanded public coastal land holdings at various national wildlife refuges and in the Narragansett Bay Estuarine Research Reserve. Even private organizations and local land trusts are seeking to protect coastal lands from development by purchasing easements, development rights and small parcels.

## Importance Of Providing Public Access In The State

Issue Importance at the Time of Coastal Zone Management Program Approval (1978). During the early 1970s, Rhode Island had many coastal management issues to battle. Rhode Island was besieged by large-scale development proposals which included the development of four nuclear power plants; at least two oil refineries; and several storage facilities for Liquid Natural Gas; sand and gravel extraction projects; desalination plants; and several major large scale dredging projects for proposed “super port” development. At that time there was no legislation in Rhode Island that addressed the concerns of coastal development. Coastal management activity was individually handled by local government.

<b>PUBLIC ACCESS DATA SUMMARY</b>				
<b>Context Data Public Access in Rhode Island</b>		<b>Pre- CZMP  (FEIS)</b>	<b>Post CZMP</b>	<b>COMMENT</b>
<b>Year Coastal Management Program Received Federal Approval</b>	1978	---	---	
<b>State Public Access Jurisdiction</b>	MHWL	---	---	RI Constitution Art. I, §17
<b>Amount of Coastline Miles</b>	420	---	----	
<b>Coastal Population (k)</b>		859 (1960)	1,002 (1990)	
<b>Population Density (per linear mile)</b>		2,238 (1960)	2,585 (1990)	
<b>% Public Land</b>		12 miles	14.4 miles	Source: State Comprehensive Outdoor Recreation Plan 1967, 1992
<b>% Private Land</b>				
<b>Number of Sites</b>		148	410	Estimated guess based on Public access guide, 1992 SCORP, and ROW Discovery Program Reports
<b>Issue Importance</b>		moderate	medium	
<b>Type of Coastal Program</b>	CCL	1956 RIGL§.46-23-1	RIGL§.46-23-1, Amended 1971	RIGL§46-23-1, Amended 1971

MHWL - Area of state (public) jurisdiction is from the mean high water line seaward

Comprehensive Coastal Legislation (CCL) - Indicates a program that is based primarily on a single comprehensive coastal law.

In 1958, the Rhode Island General Assembly created the Commission on Discovery and Utilization of Public Rights-of-Way. The purpose of this commission was:

- to define what public coastal access means ;
- inventory all known public access rows along RI's shoreline;
- map the public rows on aerial maps; and
- make recommendations regarding future development of public row sites for active recreational use.

Upon completion of the report the General Assembly established a permanent commission designating it the Rhode Island Commission on the Discovery and Utilization of Public Rights-of-way (ROW Commission). The report had three major findings:

- there is no legislation dealing with the management of shoreline property ;
- the intent of the RI courts with respect to private ownership of shoreline property is unclear; and
- there are no RI statutes governing coastal development.

The Commission made two recommendations based on the findings of their 1958 report:

- the ROW Commission should work closely with the Department of Natural Resources to establish a continuing program for the investigation and evaluation of sites for future site development;
- establishment of legislation concerning shoreline development, specifically the protection of scenic and environmentally sensitive areas and recreational areas of use.

In 1974, the ROW Commission published and distributed a map showing the location of the 148 public coastal ROWs documented in their 1970 report. These maps represented the first systematic attempt to document and expand public coastal access through the discovery of legal ROWs in Rhode Island. In 1977, the commission was abolished, its duties and responsibilities reassigned to the newly created Coastal Resources Management Council (CRMC). CRMC elected to set up a standing subcommittee to address coastal access ROWs.

### Evolution of Issue Importance

At time of program approval, the issue of public access was ranked as a moderate priority. Although tourism and commercial and recreational fishing have long traditions of importance to the state, the perception in regard to the adequate supply of public access prior to coastal program approval was that Rhode Island did not have anything to worry about. Rhode Island's western neighbor, Connecticut had lost nearly all of its limited public access to coastal development. To the north, Massachusetts did not have nearly as many beach miles as Rhode Island, particularly since the public jurisdiction to the shoreline was from the low-water mark to the water. Therefore, the view at that time was that Rhode Island was in good shape, and the public access effort should be directed at simply documenting what was available.

This perception changed somewhat after the coastal development boom of the 1980s. As military coastal property was being vacated, and in the aftermath of several hotly contested court battles over the development of several coastal properties with a long tradition of public use, public complacency about the availability of public access in RI changed. Securing coastal public access

became a very important issue. Public interest and awareness increased, citizen advocacy groups formed, and inventories of what sites were in the public domain and the potential for additional property were aggressively pursued. Additional public support was evidenced by the passage of multi-million dollar public bond referendums and hotly contested battles over many CRMC ROWs. Court rooms and CRMC conference and hearing rooms were jam-packed as public access issues were argued.

During the harbor management planning process in the late 1980s, in Rhode Island's 21 municipalities, which directly fronted the shore, civic groups formed with the objective of identifying potential public accessways for improvement, development, maintenance and acquisition. Once the community completed their Harbor Management Plan (HMP) and it was adopted by the CRMC, a listing of potential ROWs was sent to the ROW subcommittee for further legal research and subsequent hearings upon public designation. In many cases, municipalities had never gone through the ROW designation process and therefore had few (or in some cases no) ROWs. In four different communities that had adopted their HMP and completed the CRMC designation process there was a 30 to 200 percent increase in the number of public ROWs designated.

In 1990, during the Section 309 Coastal Grants Enhancement program of the federal Coastal Zone Management Act (CZMA), the CRMC held a few public hearings for the public to prioritize eight coastal issues. As a result of these public hearings and correspondence, the issue of the need to improve public access efforts was ranked in the top three of most important issues by Rhode Islanders.

## **KEY MANAGEMENT AUTHORITIES AND POLICIES**

### **State Agencies and Organizations**

Coastal Resources Management Council. Rhode Island's Coastal Management Program is based on the Coastal Resources Management Act of 1971, which created the CRMC. The CRMC is a state council, established by the state legislature, with an executive director and staff which administers Rhode Island's coastal zone program through direct permitting. The state recently enacted its Comprehensive Planning Act, which now requires that all planning and zoning at the municipal level be consistent with the Rhode Island Coastal Management Program.

The CRMC has attempted to improve shoreline access opportunities for more than 20 years. Its role has been twofold. First, by its continuous effort to uncover and identify all public ROWs over private land to tidal water, the CRMC provides a clear and legal designation of available public pathways to the shore. Second, the CRMC requires anyone who applies for coastal permits to demonstrate that the proposed project will neither unreasonably interfere with, impair, nor impact existing public access.

Department of Environmental Management. The Rhode Island Department of Environmental Management (DEM) oversees the management, maintenance and acquisition of state parks and beaches. DEM also oversees the management of open space bond money for state or municipal

acquisition and/or development of various coastal open space areas. Site selection is determined by a statewide committee, the Recreation Resource Review Committee. A member from the CRMC sits on that committee and advises the members on the purchase or acquisition of coastal properties. Regarding boating and fishing access, DEM oversees the Dingle/Johnson Act funds, which are used to acquire and maintains boat ramps for fishing and/or boating access to saltwater and freshwater statewide.

Division of Statewide Planning. The Division of Statewide Planning oversees the development of Local Comprehensive Community Plans, integration of those management plans and other state and local management plans (e.g. HMPs, fisheries management plans, special area management plans) into a state guide plan. Statewide Planning also completes the inventories required by the State Comprehensive Outdoor Recreational Plans (SCORP) process and completes demand analyses for recreational needs and facilities. Statewide recreational uses, facilities and needs are researched, surveyed, inventoried and documented through the SCORP. The first SCORP (and saltwater beach inventory) was completed in 1967; the most recent inventory and recreational demand analysis was in 1992.

### **Policies Prior To CZM Approval**

A number of laws and policies that were important for the provision and protection of coastal public access were in place prior to Rhode Island developing its coastal management program. Listed below, is a brief description and their role in furthering the goals of providing public access to the shore.

#### RI Constitution Article 17, Right-of-Way Discovery Program RI General Laws Ch. 23 §46-23-6(E).

The state constitution guaranteed free access along the shore for the specific uses of fishing, navigation and gathering seaweed.” The area of free public accessibility was also established as the shoreline from the water line up to the high tide line. The ROW Discovery Program pursued the designation of pathways as publicly owned, based on the documentation and testimonials of historic public use.

1958 - Rights-of-Way Discovery and Designation Process. Under Rhode Island General Law, the CRMC is responsible for the continuing discovery and designation of public coastal rights-of-way to the shore. The law spells out in detail the documentation needed for citizens and/or local municipalities to commence a ROW discovery process. The CRMC may only determine whether or not the ROW in question is legally open to the public based on historic records documenting past use. They do not have the authority to mandate a ROW be open for public use.

### **Policies After CZM Program Approval**

The Rhode Island Coastal Management Program is based primarily on a single piece of comprehensive coastal legislation (R.I.G.L. Sec. 46-23-1).

1988 - Harbor Management Planning Program. The CRMC requires municipalities to develop and formally adopt municipal harbor management plans. One of the requirements of these plans is for

the municipality to complete an inventory of existing public coastal access sites, and, additionally, to furnish a list of sites needed for improvement. As a result of this program over 400 sites have been identified for further investigation by CRMC to determine whether the site is open and available for public use. One of the greatest benefits thus far has been the identification of the dire need to repair boat ramps to Narragansett Bay. As a result of this process, the need has been formally recognized, and in several instances, grant money was made available and boat ramps repaired for public use.

1993 - Recreational Boating Facilities. The Rhode Island Coastal Resources Management Program's policy states that "All recreational boating facilities shall be designed and constructed in a manner which does not impede or detract from and whenever practicable, promotes public access along the shore."

1994 - Dock Registration Program. As part of the Submerged Tidal Lands Leasing Program (developed under the CZMA's Section 309 Enhancement Grants Program) the CRMC adopted regulations for what they have termed the Dock Registration Program. Before instituting a Submerged Lands Leasing Program, CRMC needed to develop an accurate inventory of existing docks and in-water structures. The Dock Registration Program establishes a system for registering all docks, and brings them into the submerged lands lease system. Funding from the registration fees is intended for improving public access.

1995 - Adopt-A-Spot Access Program. Upon mutual agreement between CRMC and the local government in regard to access site maintenance and improvement, CRMC will provide municipalities public coastal access signs free of charge. This program addresses the issue of maintenance, development and management of coastal public rights-of-way. Eligible sponsors of these sites include private citizens, businesses, nonprofit organizations, educational institutions and local government agencies. Upon adoption, the sponsor is required, by a legally binding contract, to maintain and improve the site. In return, a sign is provided at the site (through the DEM) with a recognizable statewide access logo indicating that the site is open to the public and identifying the site sponsor.

## **MANAGEMENT PROCESSES AND TOOLS**

State Coastal Zone Management authority and policies are implemented through a variety of tools. For the provision of public access to the shore these tools are categorized as follows:

- Acquisition Programs;
- Regulatory Tools;
- Planning Tools;
- Technical Assistance;
- Public Education and Outreach; and
- Agency Coordination.

## **Acquisition Programs**

Acquisition, for the purposes of this study, is defined as the purchase of all legal rights to a property. A public entity may acquire ownership in fee simple by purchasing the land or through the exercise of eminent domain. Ownership of waterfront land in fee simple by a public entity is the most effective way to secure public access along the coast.

### Publicly Funded Acquisition

Public funding refers to the provision of federal, state and/or local funding for the purpose of acquiring coastal property for public access to the shore. These include federal initiatives such as the CZMA Section 306A program, Section 309 Coastal Enhancement Grants program and other non-CZMA initiatives such as the Land and Water Conservation Fund (SCORP), the Department of Interior's Wallop/Breaux Act funding and U.S. Fish and Wildlife Service's Dingle/Johnson Act funds. Each of these federal programs requires a match of non-federal dollars. CZM programs have partnered with other state and local agencies to provide additional coastal access to the shore. Therefore, federal funding by the CZMA leverages other federal dollars and local private dollars for acquiring and improving public access.

An example of a public acquisition program for the state of Rhode Island includes the CRMC's ROW Discovery Program. Although the CRMC does not actually acquire the property, as a result of a very thorough historical legal research process and many public hearings, the use of coastal rights-of-way are designated as either "public" or "not public." Once a public designation has been given, the CRMC will implement its decision by undertaking any enforcement action necessary if the ROW is ever blocked from public use.

Other examples of acquisition programs includes the provision of open space bond money available through the DEM. Although this program is not administered by the CRMC, the Council is a member of the Recreation Review Committee, which selects the sites to acquire with open space bond money. CRMC provides direction for the selection of coastal sites and any site development and or improvements are completed under the aegis of the state Coastal Resources Management Program. An example of a major coastal acquisition using the open space bond money occurred in 1990 when Black Point, a prime piece of oceanfront property, was acquired, saving it from being developed into 250 condominium units. Town beaches, parks and other local access opportunities are also a very important example for communities. On occasion, local governments will put referendums on public ballots to raise money to buy local parcels.

### Privately Funded Acquisition

The purchase of coastal land by private entities such as The Nature Conservancy, Audubon Society, local land trusts or other nongovernmental organizations (NGOs) is another important means of providing public access. Private funding is often provided as match for state and federal grants. Public access to a privately owned parcel is usually restricted for those which contain environmentally fragile habitats; and therefore, the type of public use and amount of public access can be restricted by these organizations.

### Conservation Easements

Property easements, such as conservation easements, secure a limited legal right to utilize some aspect(s) of a piece of land. Easements may be acquired through the same means as those used in fee simple acquisition. An easement may be obtained through eminent domain, agreed purchase or dedication.

A property owner may offer a conservation easement on their land to a public or nonprofit entity in exchange for the assurance that the land will only be utilized in a specific manner, such as for farming or grazing livestock. The conservation easement may be for the entire parcel of land or for a portion of it. If it is specified that the land is to be utilized for public access or public recreation, this type of easement could be as valuable as fee simple ownership.

Conservation easements have become a more common means of preserving public access and limiting coastal development. Since the Rhode Island legislature enacted the “Landowner Liability Act” for private owners of shorefront property, donating an easement to a coastal area for either public access or restricted development has become increasingly popular. (See “Regulatory Programs” below.)

### **Regulatory Programs**

Public access to the coast can be provided by regulatory means including statutes enacted by state legislation; executive orders, regulations, and county and municipal ordinances; and the application and implementation of the Public Trust Doctrine, which is interpreted and implemented state-by-state.

### Permit Condition

Public access to the shore may be required as a condition for permit approval. Examples of permit conditions include the mandatory provision of parking facilities, handicapped facilities, the construction of boardwalks and small parks, limitations and building size. Limiting building size and height is a means to preserve visual access to the coast. One of the most commonly used regulations—the provision of a public easement across the property to the shore—can solve the age-old dilemma of how to get to the public portion of the shore.

In Rhode Island, permit conditions are not mandated by any state or local agency, but instead addressed on a case-by-case basis. The CRMC will typically meet the developer and come to agreement on a viable project that provides ample public access. Through recent large-scale commercial waterfront developments, the CRMC has secured public waterfront parks in upper Narragansett Bay. Public access had previously not existed in this area of the Bay.

The CRMC also implements policies that preserve and protect the scenic value of the coastal region through Section 330 of the Rhode Island Coastal Management Resources Plan. Guidelines mandate that every effort should be made to safeguard significant views to and across the water from highways, scenic overlooks, public parks and other vantage points. Further requirements are that structures along the water’s edge should be screened by native vegetation with minimal disruption to landforms. The CRMC provides literature guidance for preserving the visual



character and quality of coastal landscapes in Rhode Island in its publication, *Building at the Shore: A Handbook for Residential Development on the Rhode Island Coast*.

### Liability Waivers

State laws which give incentives to landowners to provide easements across their property in the form of tax deferrals and liability waivers provide excellent opportunities for creating public access. Liability waivers provide a strong incentive for a litigation-wary landowner to provide public access by waiving their legal liability for any accident or injury occurring on that portion of the property deeded as an easement for public use. Once the easement has been accepted by the proper state authorities and then authorized for public use, legal and insurance liabilities are released from landowner.

Liability waivers are typically issued by state statute and granted in the case of donated easements. Because of the potential legal issues and expenses which could be incurred as a result of an injury on the property, the release from that responsibility has resulted in landowner liability waivers becoming one of the most popular incentives for providing a public easement across private property to reach the shore.

In Rhode Island, liability waivers offer an incentive for private property owners to help provide public access to the shore. Under Rhode Island's legislation, private landowners' liability is limited if public use is permitted of their land. When the CRMC designates ROWs and/or stipulates public access as a condition of granting a permit, the landowner will automatically be granted liability limits.

### Zoning Regulations

Zoning regulations that provide for, preserve and/or enhance public access include county/municipal land use laws which dictate how land is to be used. The various types of zoning regulations which can be of benefit are: restrictions on building heights within the waterfront area to preserve coastal vistas; zoning overlay districts which can protect and preserve water-dependent use and coastal habitats; and construction setbacks for residential, commercial and industrial development. Rhode Island is among ten states that implement zoning as a means to protect, preserve or enhance public coastal access.

In Rhode Island, land use is implemented at the local level. Because of this, zoning varies greatly from town-to-town. Very few communities have any zoning ordinances or overlays that mandate public access. Some communities have enforced waterfront overlay districts in which all coastal development must be water-dependent, and not prohibit the public from accessing the shore. These variances have also enforced height restrictions for those buildings located directly on the water so that visual access will not be impaired.

### Public Trust Doctrine

In the United States, shorelands, bottomlands, tidelands, tidewaters, navigable freshwater, and the land and animal life living in these waters are accorded special treatment under state and federal law. For the most part, these lands, waters and wildlife are owned by the public, but are held in

trust by the state for the benefit of the public. The body of law pertaining to these lands, waters and living resources is called the Public Trust Doctrine.

The Public Trust Doctrine establishes the right of the public to use and enjoy trust waters, lands and living resources for a wide variety of recognized uses. In the United States, each state has the authority and responsibility for applying the Public Trust Doctrine to public trust lands within its jurisdiction. However, there are significant differences in how coastal states handle public trust issues, and the extent to which their legislatures, judiciaries and administrative agencies have applied the Public Trust Doctrine and its underlying principles. [Slade, 1990]

In order for a state, especially the coastal zone management program, to take full advantage of the Public Trust Doctrine, the doctrine must not only be recognized by state courts, but also by state statutory and regulatory laws. Before an agency can adopt and implement regulations based upon the Public Trust Doctrine, it must be lawfully authorized to do so. To that end, many of the state coastal zone management programs have been unable to successfully implement statutory and regulatory laws based on the Public Trust Doctrine with the primary purpose of securing public access to the shore.

The Dock Registration Program (Submerged Lands Leasing Program) includes the recent implementation by the CRMC of mandating that all commercial and residential docks be registered and have taxes levied on them. The revenues are then used for public access initiatives. The CRMC has recently implemented a Dock Registration Program. As of November 1996, 1,535 docks have been registered through the program. (Pers. Comm. Jeff Willis, CRMC, November 12, 1996)

## **Planning Tools**

Planning programs, when combined with implementation through local land use regulations, zoning and subdivision ordinances, and other actions can provide on-the-ground protection of existing public access, and even accommodate future demands for public access. The level of impact that planning can provide depends upon the integration and sharing of resources, the aggressiveness of the policies, the standards of implementation, and the amount of exemptions, special exceptions and variances granted by local government.

### Inventories and Mapping

Inventories provide detailed information on the number, size, location, and type of facilities and shoreline characteristics of public coastal access sites statewide. Inventories document the available supply of public access in order to plan for future needs. The regular completion of inventories to identify past, present and future trends of public access site use and demand is all important in the planning process. One of the most difficult aspects of determining the effectiveness of coastal states in providing public access to the shore is locating accurate inventories of public access.

Maps and inventories can offer an integrated view of all of the uses occurring at public access areas, as well as the types of habitat located at the site and the type of habitat or area to be

impacted. This will better prepare site designers to accommodate these variables into a site or park design that provides the greatest benefit for the uses while mitigating negative impacts on the resource.

An inventory of public access sites by type, location and use has been collected by the Rhode Island Department of Planning since the late 1960s for the SCORP. However, no distinctions are made to determine if the site is coastal, and in many cases the data is inaccurate or difficult to interpret. These inventories were used extensively for the completion of the state's first comprehensive access guide.

Mapping of public access sites in Rhode Island first occurred in the 1970s under the directive of the CRMC's subcommittee on ROWs. Recent efforts include the Rhode Island Geographic Information System (GIS) Inventory coordinated by the Department of Planning, a public access guide published by RI Sea Grant and an updated version of the CRMC map of ROWs and also, CRMC's annual report to the legislature, "Designation of Public ROWs to the Tidal Areas of the State".

### Management Planning

Some coastal states are addressing public access needs and demands through other planning efforts not specifically focused on the issue of public access. Even though public access is not the direct target, addressing the issue of public access in relation to the specific project is critical to achieving a successful outcome. Examples of these types of planning efforts include harbor management plans, urban waterfront development plans and special area management plans.

In 1988, the CRMC developed guidelines for communities to use in developing harbor management plans. Harbor management plans identify user conflicts and issues of environmental and habitat degradation and poor water quality affecting municipalities' small harbor areas. One of the elements of a municipal harbor plan is the required completion of an inventory of all of the communities' public access sites. The purpose of this inventory is to prioritize those areas in need of further site development and maintenance. One of the benefits of harbor management planning is that particular attention is paid to the needs of boaters and fishermen. Identifying the supply and demand for boat ramps, fishing piers and public docks is the focus for these types of plans.

As a result of this planning process, the Town of North Kingstown, which had previously listed only three public access sites, established a small working subcommittee to research all of the land evidence records and historic maps. The result of their efforts was to identify over 90 existing and potential public access sites. The harbor management plan supported these findings. The plan was adopted by the town, which is now working together with the CRMC to formally designate those access areas as publicly usable.

### **Technical Assistance Tools/Programs**

Technical assistance means providing expertise of all sorts to foster research, and planning and site design which will result in the preservation and enhancement of public access. Technical assistance can range from legal assessments of the status of rights-of-way to financial assistance in

improving existing access sites to engineering expertise for providing access in urban waterfront revitalization, fishing piers or bridge abutments to walkways over dunes or wetlands.

In Rhode Island, examples of site design include the provision of assistance by an engineer from either the Parks and Recreation Department or the CRMC technical engineering staff to assist in the specific design of an access site. These efforts have resulted in the design of several boat ramps and stairs leading to the coast over rough, rocky or steep terrain.

Site development has occurred through open space money, local and private funding efforts. The Adopt-a-Spot program enabled a private fishing club to rebuild two silted in boat ramps that had been out of use for over 10 years. The location of these ramps provide access for the state's large boating population.

Site maintenance and management is successfully employed through the state ROW marking program. Private nonprofits, businesses or any group or individual can "adopt" an access site (typically pathways) by signing a yearly contract which requires weekly pickup of garbage and encourages development and improvement or the addition of picnic tables, park benches and, in some instances, lighting.

The dependence upon legal research assistance becomes greater and greater as the trend in providing new avenues for public access continues to shift toward the provision of ROWs across private property. Legal research is needed because the determination of ownership or private vs. public use rights, hinges upon the legal history of ownership which often traces back a hundred years or more. The research is quite complicated; land evidence records, historic records of property tax payments and title searches are required to determine public ownership or use. Legal expertise is critical.

However, the limited budgets of state and local agencies are a constraint to pursuing legal expertise is the limited budget of state and local agencies. Lawyers command a high fee, normally ranging from \$175 to \$350 per hour. Several coastal states, with CZM funding, have developed innovative programs to receive the legal expertise needed to perform a variety of tasks, from completing complicated discovery on rights-of-way to warding off intimidating tactics of developers and their attorneys.

The Rhode Island CRMC's ROW Discovery Program determines whether or not a ROW in question is legally open to the public based on historic records documenting past use. Over the years, research coordinated by CRMC's legal counsel supported by funding by the Office of Oceans and Coastal Resource Management at the National Oceanic and Atmospheric Administration has allowed for over 210 pathways to become available to the public.

### **Public Education And Outreach Tools**

Public education and outreach refers to that suite of educational programs and products which serve to raise awareness on the importance of public access and on the challenge of providing public access to the shore.

Education and outreach not only provide information about the varied issues associated with public access, but also provide an opportunity to promote community involvement and individual stewardship of existing public access. Public policy concerning access is often swayed by dominant public opinion. Therefore, public education and outreach efforts are critical to preserve funding and staff for programs that support of the provision of public access.

Signs which mark the location of public access often have a standard logo which is easily identifiable throughout the state. The various types of signs include posts, large sign boards or bronze medallions located in the ground. Effective use of signage in state CZM programs not only marks the access site, but also notes the public or private organization that has the responsibility to improve or maintain it.

Rhode Island's Adopt-a-Spot program (see above description) uses signage that displays a statewide public access logo that is easily recognizable. The signs also provide information that encourages proper use of the site.

An interpretive display of signs erected by the Narragansett Electric Company at its Manchester Street power station in Providence has enhanced the recent redevelopment of an industrial waterfront site in the state's capital.

Public access guides provide maps and an inventory of selected public access sites within a prescribed region. Information is provided on how to get to the site, what the natural features of the site are, the available amenities of each site such as parking, restrooms and lifeguards, and the types of uses best suited for each site.

*"Public Access to the Rhode Island Coast,"* was published in 1993 as a cooperative effort among Rhode Island Sea Grant, the University of Rhode Island Coastal Resources Center and the CRMC. Since then, many more ROWs have been designated as publicly accessible. An updated edition of the guide is planned for the future.

CRMC's *"A Citizens Guide to Assisting in the Rights-of-Way Designation Process"* is a booklet providing information on what an average citizen can do and how to go about doing it with respect to the ROW designation process.

Fact sheets on the state ROW determination process and the history of the Public Trust Doctrine in Rhode Island have been published and widely distributed to the public. Also, URI School of Oceanography provides a public education program, the "Narragansett Bay Classroom" and classes focusing on public access issues have been standing room only since their inception.

### **Agency Coordination**

CRMC and DEM - Under the administration of the Recreation Resources Review Committee, the CRMC sits as a member to offer guidance and advocacy during the decision making process for the expenditure of open space bond money. This committee serves as a coordination mechanism

to ensure that coastal ROWs are included in site development and funding requests and that projects proposed for funding are consistent with the goals of the state's coastal management plan.

The CRMC and the Department of Administration/ Division of Statewide Planning - The primary areas of coordination between these two agencies involve data tracking and planning consistency. The Division of Statewide Planning oversees the SCORP inventories and the State Guide Plan. All local/regional plans must be consistent with the State Guide Plan, which incorporates harbor management plans and special area management plans.

The CRMC - Under its ROW Discovery Program, the CRMC works to mark public access areas. CRMC provides the "Adopt-A-Spot" signs to groups who volunteer to sponsor and maintain ROWs.

## **ON-THE-GROUND' OUTCOMES OF POLICY IMPLEMENTATION**

Rhode Island's coastal management program implementation can, in some cases, be tracked "on-the-ground" by monitoring selected "outcome indicators." Outcome indicators are defined as the practiced results of implementation decisions that emerge geographically and are the subject to some degree of measurement (e.g. linear miles, acreage, number of access sites) where data is available. An example of an outcome indicator might be the amount of access gained as a result of a regulatory program that mandates public access as a condition of permit approval. Other examples could be the number of scenic vistas protected as a result of a local zoning ordinance that prohibits waterfront development above one story or the number of public access sites that have improved, maintained and been designated by signs as a result of a community's involvement in a nonregulatory program, such as the "Adopt-A-Spot" program. Outcomes are described for the six categories of processes and tools described in Part C: acquisition, planning, regulatory, technical assistance, public outreach and agency coordination. These outcomes are preceded by an examination of data availability in the state.

### **Outcome Monitoring And Record Keeping**

Much of the information reviewed to determine the outcomes for providing public access is derived from databases, inventories, maps, published data reports and public access guides. The Rhode Island Department of Administration, Division of Statewide Planning maintains all of the SCORP inventory data. The SCORP information has been very helpful in terms of tracking the trends and status of public coastal sites in Rhode Island since 1967. However, the SCORP inventory only reports beach frontage (not ROWs) and there is no breakout of categories such as coastal open space, coastal parks, docks or wild life refuges. If one were not familiar with Rhode Island, one would have no idea whether a park, open space or other accessway is coastal or inland.

ROWs have been updated, mapped and inventoried by the CRMC since 1958. Every year the CRMC provides an annual report on the status of the ROW Discovery Program. This provides an extremely useful source of accurate information for the public and other agencies.

Unfortunately, Rhode Island does not have an inventory of statewide federal, state or locally owned coastal properties. This would provide an extremely useful source of information. Similarly, Rhode Island maintains a state Geographic Information System in which data layers such as wetlands, soils and historic sites are recorded. It would be helpful to add ROWs and federal, state and locally owned property to the central database.

As of the beginning of 1997, the only document in which there is an inventory of public coastal access sites in Rhode Island is the state guide, “*Public Access to the Rhode Island Coast.*” published by CRMC in 1992. Although this was a first attempt to comprehensively list all of the different types of access throughout the state, sites currently involved in litigation and those that are deemed to be dangerous or in poor condition are left out. It would be useful to have a complete listing of all public access sites, regardless of status, for future planning. Sites in poor condition could be prioritized for future funding or other development programs. Documenting the location of all of these sites would be valuable for future open space acquisitions—purchasing property adjacent to public property with parking and other amenities, even if it is a smaller parcel, would be more valuable than purchasing a tract of isolated land with promising potential only if heavy additional investments were made.

## **Categorical Outcomes**

### **Acquisition Program Outcomes**

Assumption: Acquisition programs place private lands into public holdings. Along the coast, these acquisitions tend to serve both recreational use demands, and resource protection goals. Acquisition of large resource systems or acquisition of lands adjacent to existing holdings provide excellent access opportunities to the public and also create a central location for the public to use the shore. Larger regional parks are typically equipped with the facilities the public seeks such as parking, bathrooms and lifeguards. In areas where the coastal habitat is fragile, the preference would be to access one specific area for public use, thereby decreasing—or possibly eliminating—public use in other areas along the coast, coastal erosion or nesting grounds for endemic species make the area extremely environmentally sensitive.

Effectiveness: The outcome indicators to measure the effectiveness of state land acquisition tools used to secure coastal land within the public domain are:

- the amount of coastline acquired, acreage, shoreline miles;
- the acquisition tools/programs; and
- the increase in the amount, percentage, number and acreage of coastline state ownership.

PUBLIC ACCESS ACQUISITION OUTCOMES				
ACQUISITION OUTCOME	# OF SITES 1970	# of SITES 1990	ACCESS TYPE	COMMENTS
CRMC ROW Discovery Program	148	210	ROWs	Beginning in 1978, the CRMC has been tasked by the Legislature to carry out the continued discovery and designation of all public ROWs to the shore. Of the 306 reviewed by the CRMC, 210 have been designated as public.
Dock Registration Program	0	1,535 docks	Dock	Funds from these docks will be used to improve public access

KEY:

P - STATE/COUNTY/LOCAL PARK  
 ROW - RIGHT OF WAY  
 BR - BOAT RAMP  
 DA - DISABLED ACCESS

FP - FISHING PIERS  
 WR - WILDLIFE REFUGE  
 SV - SCENIC VISTAS

The principal state acquisition tools for providing public access to the shore is Rhode Island's ROW Discovery Program. This program is administered by the CRMC and has resulted in at least one right-of-way for every two miles of shoreline. It should be noted that although this designation process does not actually acquire the land, it does designate, by law, the public use of the land.

Since the adoption of Rhode Island's coastal resources management program, CRMC has designated 210 ROWs. This has resulted in the public being able to gain access to areas of the shore unreachable prior to 1978. Because the CRMC has been so actively involved in securing these often contended ROWs, public awareness has increased and now plays an integral role in the designation process. There has been a great deal of public support for coastal access from citizens in the community at numerous public hearings. The media coverage, regardless of the outcome, has resulted in the public learning more about ROWs, where they are, what constitutes a ROW and issues involving adjacent private landowners. As a result, the previous sentiments of complacency toward public access are long gone. Rhode Islanders are now much more educated about the issues associated with provision of public access to the shore.

### Regulatory Program Outcomes

Assumption: Regulatory programs, depending on their purpose and design, can provide front-line protection of existing public access and, in some instances, provide for additional public access to the shore. The level of success they provide varies depending on the jurisdictional area covered, the types of prohibitions and limitations placed on activities within the area, exceptions and or variances allowed and the level of enforcement and penalties for violations.

State laws which require public access as a condition of permit approval offer significant opportunities for public access. The laws which offer incentives to private land owners in the form



of tax deferrals and liability limitations open the door to public access in areas where much of the waterfront is privately held—particularly when coastal property is prohibitively expensive. State laws which zone for public access by requiring sufficient public parking or limiting building heights to promote and preserve visual access to the shore also serve to protect public access.

**Effectiveness:** The “outcome indicators of effectiveness” for state regulatory program tools employed to provide public access are:

- the coastal development permit conditions mandating coastal access, improvements and or parks
- the number/amount of easements granted for public access to the shore based on tax incentives and liability restrictions
- the number of permits where development restrictions apply, such as those on building size (height) and location
- the number of permits requiring public parking and/or other means of public accessibility to a coastal site
- the number of areas, acres and shoreline miles mandating public use of property as part of a permit or plan approval

PUBLIC ACCESS REGULATORY PROGRAM OUTCOMES				
REGULATORY OUTCOME	# OF SITES	SIZE	ACCESS TYPE	COMMENTS
CRMC Permit Conditions	3		P, ROW, FP, SV, P	Not mandated by law, but consistently practiced by the CRMC in large scale waterfront development projects, such as Manchester Street Station (Providence), Riverbend Marina (Westerly) and Wharf Tavern (Warren).
Public Use of Private Lands (RIGL 32-6-5)			E, P	Limits landowner liability.
Town of Narragansett Waterfront Overlay District			SV, P	Local zoning ordinance limits waterfront building height, identifies water-dependent use as priority use for waterfront area.

KEY:

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The principal state regulatory tools available in Rhode Island are the Land Owner Liability Act and permit conditions negotiated by the CRMC on a case-by-case basis (typically for large scale waterfront development).

## Planning Program Outcomes

Assumption: Planning programs, when combined with implementation through local land use regulations, zoning and subdivision ordinances, and other actions, can provide on-the-ground protection of existing public access and accommodate future demands for public access. The level of impact that planning can provide depends upon the integration and sharing of resources, the aggressiveness of the policies, standards and implementation, and amount of exemptions, special exceptions and variances granted by local government.

Effectiveness: The “outcome indicators of effectiveness” for planning tools/programs employed to meet the demand for public access are:

- The regular completion of statewide inventories of publicly held land;
- The regularly updated statewide mapping of the amount and location of public access;
- The number of approved plans in which public access needs, improvements and acquisition are explicitly discussed such as harbor management plans, comprehensive community plans, shoreline access plans and special area management plans; and
- The number of acres areas and shoreline miles designated for public use by enforceable state or local plans, or other means which are enforced through zoning or other ordinances and regulations.

PUBLIC ACCESS PLANNING PROGRAM OUTCOMES				
PLANNING OUTCOME	# OF SITES	SIZE	ACCESS TYPE	COMMENTS
Comprehensive Planning and Land Use Regulation Act (RIGL §45-23-25)	39		SV, P, WR, OS, BR	All local plans must be consistent with the State Guide Plan. The state may not undertake any action, which would be inconsistent with the objectives of the local plans.
Special Area Management Plans	5		WR, FP, SV, BR	Special Area Management Plans have been written for: Providence Harbor; the Salt Pond Region; Narrow River; Pawcatuck Estuary and Little Narragansett Bay; and Newport Harbor (not yet adopted).
Harbor Management Plans (RI CRMP Sec. 300.15)	18		D, BR, ROW, P, WR	Requires inventory of access sites and identification of need for improvement to sites.
Mapping	329 sites		P, ROW, WR, BR, SV	CRMC ROW updates; SCORP, Harbor Management Plans; Comprehensive Community Management Plans; Rhode Island public access guide.
Inventory	410 sites		P, ROW, WR, BR, SV	Annual CRMC ROW Updates, SCORP, Harbor Management Plans, Comprehensive Community Management Plans, Rhode Island public access guide.

KEY: See Technical Assistance Outcomes Key for an Explanation of Access Types

## Technical Assistance Outcomes

Assumption: Technical assistance, depending on the purpose and design, can provide positive results for the provision of public access. The level of success depends upon the availability of staff time, funding and implementation of the design. In the case of legal research, the CRMC’s technical assistance has had tremendous benefit to local municipalities. Legal research is expensive, yet the availability of legal expertise to discover rights-of-way and then designate them as public has allowed for over 210 pathways to become available to the public. Other technical assistance available includes the access inventories and determination of access need in harbor management plans. As a result of CRMC’s efforts, access demand has been determined, and long-range plans have been made to accommodate public need.

Effectiveness: The “outcome indicators of effectiveness” for technical assistance programs and tools employed to provide public access are:

- Site development;
- Site maintenance/management;
- Legal research;
- Miscellaneous.

PUBLIC ACCESS TECHNICAL ASSISTANCE OUTCOMES				
TECHNICAL ASSISTANCE	# OF SITES	SIZE	ACCESS TYPE	COMMENTS
CRMC ROW Discovery Program R.I.G.L. (46-23-17)	210		ROW	The CRMC’s legal counsel researches titles and all relevant legal/historical documentation to determine public vs. private use of ROWs.
Adopt-a-Spot Program	unknown		ROW, FP, BR, VA	Private organizations and civic groups “adopt” a site and contractually pledge to maintain and improve the site.

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## Public Education And Outreach

Assumption: Public education and outreach, can provide not only information and learning to the public about the many issues associated with coastal access, but is also an opportunity for community involvement and individual stewardship of existing public access. Public policy concerning access is often swayed by dominant public opinion, therefore public outreach efforts become critical when attempting to preserve funding, staff or policies in support of the provision of public access.

Effectiveness: The “outcome indicators of effectiveness” for public outreach programs and tools to provide public access are:

- The number of public access signs erected at sites
- The number of interpretive displays
- A public access guide - Has one been done? How often? How many have been distributed?
- The number of citizen advocacy groups - How many have been established? What have they done?

The most recent accomplishments are improved public education and awareness about the location of public access sites in Rhode Island, and the 1992 publication of the first state guide to coastal access, *Public Access to the Rhode Island Coast: A Selective guide to parks, wildlife refuges, beaches, fishing sites, boat ramps, pathways, and views along Rhode Island’s Coast*. ROWs, fishing piers, view sites, local, state and federal parks, and bike paths are included in the guide.

Concerning the issues of site maintenance, development and management, in 1995 CRMC inherited all authority and responsibility over public access site maintenance and management from the state DEM. Through the revamped “Adopt-A-Spot” Program, the CRMC can now designate public access ROWs and establish maintenance, signage and management programs for the sites.

PUBLIC ACCESS PUBLIC EDUCATION OUTCOMES				
PUBLIC EDUCATION OUTCOMES	# OF SITES	SIZE	ACCESS TYPE	COMMENTS
Adopt-a-Spot Program	60		ROW	Once a site is adopted, a sign is erected with the sponsors’ name. All signs have the same easily recognizable logo.
<i>Public Access to the Rhode Island Coast: A Selective guide to parks, wildlife refuges, beaches, fishing sites, boat ramps, pathways, and views along Rhode Island’s Coast</i> , published 1992	390 sites		ROW, FP, WR, P, VA, DA, BR	Jointly funded by the CRMC, RI Sea Grant and URI Coastal Resources Center, 20,000 guides have been sold.
Citizen advocacy groups: Friends of the Waterfront, Save the Bay, RI Audubon, etc.			Newsletters, walks, interpretive public access work shops	
Newsletters, publication: ROW Designation Fact Sheet, Citizen’s Guide to Assisting in the Right-of-Way Designation Process, Annual ROW Report Updates				Explains the CRMC’s role in the designation process, and also explains the process by which a ROW can be researched and designated.

KEY:

P - STATE/COUNTY/LOCAL PARK  
WR - WILDLIFE REFUGE  
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## **CASE EXAMPLES OF SUCCESSFUL PROCESSES AND TOOLS**

### **Narragansett Electric Company/Manchester Street Station - Providence**

Problem: Major redevelopment of an electric power substation along the Providence River in a highly industrialized area which offered no public access opportunities to the shoreline.

Program: The CRMC permit review (based on the Rhode Island coastal management program's goals, policies and standards).

Results: As a condition of assent, the CRMC required the development and implementation of a public access component to the permit request. The newly redeveloped site, "Collier Park," was opened to the public during the summer of 1996. It provides a boat launching facility with docks, numerous interpretive displays, and signs, docking piers, grassy areas for picnics, numerous benches and tables, and ample public parking.

### **Marker Posts and Signage at CRMC-designated ROWs**

Problem: The CRMC would designate public ROWs, yet no marker posts identifying the site as public would be erected to promote the use of those sites.

Program: The ROW Discovery Program. This CRMC program has been expanded to include free posts and signs when CRMC designates a ROW, with provisions that the site will be maintained appropriately.

Results: Since fall of 1993, CRMC has provided 83 signposts to seven municipalities. The posts are constructed to be nearly indestructible and are made of processed, recycled wood and plastic materials and support fiberglass signs. City officials have embraced the program, and due to their implementation efforts, have made it a huge success in addressing the public's inability to locate coastal access areas.

### **Riverbend Marina**

Problem: Significant expansion of an existing marina near downtown Westerly at the head of the Pawcatuck River. Restricted availability of public access.

Program: The CRMC permit review (based on the Rhode Island coastal management program's goals, policies and standards).

Results: As a condition of the permit, public parking spaces and a public dock have been provided.

## STATE PROGRAM CONTACTS

Rhode Island Coastal Resources Management Council  
Oliver Stedman Government Center  
4808 Tower Hill Road  
Wakefield, RI 02879-1900

### Staff Contacts:

Grover Fugate, Executive Director	Phone 401-277-2476	Fax 401-277-3922
Jeffrey Willis, Policy & Planning Staff	Phone 401-277-2476	Fax 401-277-3922

### CRMC Legal Counsel:

Jeanne Shepard, Esq. Goldman & Biafore 101 Dyer Street Providence, RI 02903	Phone 401-274-1300	Fax 401-274-1343
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George Johnson Rhode Island Greenways Council Department of Statewide Planning One Capitol Hill Providence, Rhode Island 02903	Phone 401-277-6479	Fax 401-277-6436
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Greg Cassidy Department of Environmental Management Office of Planning and Coordination 235 Promenade Street Providence, RI 02903	Phone 401-277-3434	Fax 401-277-2591
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Pamela Pogue Coastal Resources Center URI Graduate School of Oceanography Narragansett Bay Campus Narragansett, RI 02882 e-mail: <a href="mailto:pogue@gsosun1.gso.uri.edu">pogue@gsosun1.gso.uri.edu</a>	Phone 401-874-6616	Fax 401-789-6490
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## **Appendix B—State Profile Survey**

### **Contributions of the STATE Coastal Management Program in Providing Public Access to the Shore**

*This part of the CZM effectiveness study focuses on the contributions of state CZM programs in providing public access to the shore. Our general approach is to identify a state's CZM institutions and implementation activities that help to provide public access to the coast and describe these activities in a consistent format so as to allow aggregation of data for a national perspective and, to the extent possible, quantify them in terms of impacts or outcomes.*

#### **FORMAT FOR THIS SURVEY**

This survey consists of specific questions designed to assess the contributions of your state's CZM program in providing public coastal access to the shore. The questions focus on both the management processes of CZM (program elements, tools, and procedures) and the outcomes or impacts of these processes. There are programs other than CZM that use the same or similar management measures and tools, however, we are concerned only with trying to understand the impacts of CZM programs, including networked elements.

Using information available from OCRM files, national data sources, and information from your state, the study team has made an initial attempt at filling in the survey. While this has helped educate us about your program, there are undoubtedly misperceptions and errors in our preliminary assessment, as well as significant gaps. Also, we have most likely missed things. Please add them. We look forward to working with you to develop an accurate assessment of the contribution of your CZM program in providing public access to the shore.

#### **PART A - Important Public Access Definitions**

*Please list below all public access related terms within your state coastal program in addition to the coastal program areas of jurisdiction. If there are networked agencies, please describe.*

A-1. COASTAL PROGRAM JURISDICTION. What are the boundaries of coastal zone jurisdiction within your state?

A-2. KEY PUBLIC ACCESS DEFINITIONS. What are the key definitions associated with public access?

**PART B - Issue Importance**

*In this section, it will be important to convey not only the importance of the issue within your state, but also the context within which the issue plays a role. In some cases, the issue of public access had been addressed long before program approval; in others, the issue has become a focus of much activity. In either case it will be important to accurately convey the context for each state's involvement with the issue.*

**B-1. ISSUE IMPORTANCE AT CZM APPROVAL.** How important was the issue of coastal public access in your state when the CZM program was adopted? (Check a box and explain below)

- Very important or critical (CRI)
- Moderately important (MOD)
- Minor or not important at all (MIN)

**B-2. ISSUE IMPORTANCE LATER.** Did public access become a priority issue in your state later or, if already important, did the issue become less important or change? If so, when and how did these changes manifest themselves? (Check box and explain below)

- Became very important or critical later (CRI)
- Became moderately important later (MOD)
- Stayed minor or not important; or became less important (MIN)

**B-3. MAJOR ACCOMPLISHMENTS.** Given the priority accorded to public access in your state, what would you judge to be the major contributions of your state CZM program in providing public access to the shore? (attach sheet if needed)

**B-4. KEY REFERENCES AND DATA.** Are there specific reports, studies, databases, GIS outputs, or other hard data that we can retrieve from you to help document these contributions? (Please list the most important examples. If you list a source here and refer to it later, just use a reference number)

**PART C - Status and Trends of Public Access**

*This information is based on national level data or state data, if available. It is intended to be used as the baseline to estimate the amount of public access provided by CZM processes and tools.*

C-1. HISTORIC TRENDS OF PUBLIC ACCESS. What was available prior to program approval? What was the amount of public access to the shore (linear mileage/acreage)?

C-1.2 REGULATORY PERMITS. Were there any regulatory permits requiring access and actual implementation prior to CZM program approval?  
Please Describe.

C-1.3. DISABLED ACCESS. What was the amount of public access available for disabled persons prior to CZM program approval?  
Please Describe.

C-1.4 TYPE OF PUBLIC ACCESS. What types of public access were available in your state prior to program approval? (boat ramps, scenic vistas, state/county parks, rights-of-way, fishing piers) Is there a document or report available which would give an accurate inventory of what was currently available within your state? Please attach or list reference information.

C-2. AMOUNT OF PUBLIC ACCESS TODAY. Please list the number of public access sites and amount of acreage within your state. Attach databases, reports or maps, if available.

C-2.2 REGULATORY PERMITS. Does your state CZM program grant regulatory permits which require public coastal access?  
Please Describe.

**PART D - Programs, Policies, Regulations and Management Tools Used to Provide Public Access to the Shore**

*Please describe whether or not you have any of the following programs, policies or processes within the STATE Coastal Management Program. Please include dates, status and significant results.*

D-1. ACQUISITION PROGRAM. Does your state coastal program have an acquisition program which includes any of the following:

- public investment for land acquisition
- access development/design/maintenance
- conservation easements
- transfer of development rights

Please describe:

D-1b. FUNDING. How much has been spent since program approval by:

- federal government
- state coastal program
- local governments
- private resources

D-2. PERMIT REQUIREMENTS. Does your state coastal program mandate permit requirements dedicating access as part of a development. Yes:      No:

Please describe:

D-3. ZONING REQUIREMENTS. Acquisition through state and/or local zoning. Yes:

No:

Please describe:

D-4. INCENTIVE PROGRAMS. Are there any state/local sponsored incentive programs which offer tax/liability breaks? Yes:      No:

Please describe:

D-5. TECHNICAL ASSISTANCE. Does the State offer any technical assistance programs relating to the improvement, maintenance or provision of public access? Yes:

No:

Please describe:

D-6. PUBLIC OUTREACH. In terms of public outreach and involvement, does the STATE Coastal Program provide any of the following:

signing program

interpretive display program

access guides

other public education initiatives focusing on the awareness of the issue, stewardship of the resource, etc.

have any citizen advocacy groups resulted from state involvement in the issue of public access?

Please describe:

### **PART E. Case Study Examples**

*Are there any outstanding models of success that resulted from the application of a particular coastal zone management tool or program within your state in dealing specifically with the CZMA core objective of public access? In selecting this example, please review the criteria listed below.*

#### **E-1. CRITERIA FOR SELECTION OF CASE STUDIES**

Potential models may be transferable to other states

CZM played an influential role in the success of the case study

Examples of management tools that worked successfully

Provides an indicator of improved governmental

#### **Examples of STATE Case Studies:**

Please describe below.

## Appendix C—State Profiles