APPENDIX Q

REGIONAL AND NATIONAL CONSIDERATION

Land and Water Uses of Regional Benefit

Subsection 306(e)(2) of the Coastal Zone Management Act requires a finding by the Secretary of Commerce that the OCMP provides for a method of assuring that local land and water use regulations within the coastal area do not unreasonably restrict or exclude land and water uses of regional benefit. In accordance with requirements of 15 C.F.R. § 930.12, the Ohio Coastal Management Program:

1. Identifies what constitute uses of regional benefit; and

2. Identifies methods to assure that local land and water use regulations do not unreasonably restrict or exclude land and water uses of regional benefit.

Uses of regional benefit are those land or water uses that serve or affect more than a single unit of local government. Potential uses of regional benefit were identified by OCMP guidelines, Section 208 water quality management studies, federal agencies, and coastal regional planning and development organization studies. The following criteria were used to determine which of the potential uses would be subject to the regional benefit requirements:

1. Does the use affect or serve people in more than one unit of government?

2. Does this use provide a recognized regional or national need or value?

3. Does the use have a direct and significant impact on the land or waters in Ohio's identified coastal area?

A use must satisfy all three criteria to be considered a use of regional benefit.

By definition, the designated uses of regional benefit are essential or of importance to all Ohioans. Their siting, location and associated impacts sometimes result in conflicts between use or project proponents and local and state governments.

To assure adequate governmental consideration of regional uses, ODNR coordinates a review of proposed projects included as uses of regional benefit with coastal area planning and development agencies. The review process helps assure governmental consideration of regional uses in planning.

Uses of regional benefit identified in the OCMP also represent uses of statewide concern. Each use is administered by a state agency under existing statutory authority. The existence of these statutory authorities at the state level can preclude the unreasonable restriction or exclusion of the use of regional benefit by local regulation. This does not mean, however, that local concerns are not sought and

addressed. Each state agency administers a review process or other mechanism to assure consideration of all interests in the exercise of its authorities related to the regional use.

Energy Production, Generation and Transmission - Siting of electrical generating and transmission facilities is regulated by the Ohio Power Siting Board (O.R.C. Chapter 4906). Although its detailed review process provides for substantial local input, siting decisions ultimately rest with the board. A certificate issued pursuant to O.R.C. Chapter 4906 preempts any approval, consent, permit, certificate or other condition by other political subdivisions of the state. Board analyses of demand for electricity require consideration of regional, state and national benefits.

ODNR's Division of Geological Survey has authority to issue permits and leases for oil and gas production from the bed of Lake Erie (O.R.C. § 1505.07). The Division of Oil and Gas regulates offshore oil and gas drilling operations (O.R.C. § 1509.05-06). The Department of Development, Division of Energy formulates state energy policy that considers needs of more than local concern (O.R.C. Chapter 1551).

Recreation - ODNR is charged with providing outdoor recreation facilities for all Ohioans. State park development and public recreation projects using federal Land and Water Conservation Fund money are guided by Ohio's Statewide Comprehensive Outdoor Recreation Plan. The siting of state facilities is coordinated with local governments, but is not subject to local regulations. Purchase of recreation land is accomplished by negotiation and agreement with landowners; if these efforts fail, ODNR may exercise its power of eminent domain. The Ohio Parks and Recreation Council and the Recreation and Resources Commission review and advise ODNR on park acquisition and management policies (O.R.C. Chapters 1541, 1547, 1571).

Transportation - The Ohio Department of Transportation (ODOT) is responsible for the development of a balanced system of transportation throughout Ohio (O.R.C. Chapter 5501). The Division of Highways is responsible for planning, constructing, and maintaining state and federal roads. Although planning of state and federal roads is accompanied by substantial local coordination and review, final siting decisions are under the authority of ODOT. ODOT also may exercise its power of eminent domain when necessary to acquire lands for highway purposes (O.R.C. Chapter 163 and O.R.C. § 5511.01).

Unique Historic and Cultural Areas - Designated historic and archaeological sites in Ohio are studied and protected by the legislatively created Ohio Historical Society. Sites on the State Registry of Historic Landmarks or the State Registry of Archaeological Landmarks cannot be demolished or altered by any person or governmental agency without notifying the Director of OHS and allowing a survey of the property. Sites can also be protected by the power of eminent domain of the Ohio General Assembly through the request of OHS. The Ohio Historic Site Preservation Board guides OHS efforts, which may include the purchase, lease and excavation of significant sites (O.R.C. Chapter 149).

Unique Environmental Areas - The Division of Natural Areas and Preserves is authorized to establish state nature preserves to protect Ohio's unique natural areas, rare plants and animals, and valuable scenic resources. These preservation efforts are guided by the Natural Areas Council. The

Division of Wildlife manages and acquires lands to protect wildlife habitat. The Wildlife Council advises the Division in these efforts (O.R.C. Chapter 1571).

Wastewater Treatment and Public Water Supply - The Ohio Environmental Protection Agency administers several programs to ensure that regional wastewater and public water supply facilities are not arbitrarily excluded. These programs include effluent discharge permits for public and private dischargers, stream use designations and water quality standards, and Section 208 water quality management planning. Planning, design and construction of wastewater treatment facilities in Ohio, under Section 201 of the Clean Water Act, satisfies regional treatment needs. Federal funds are matched with state and local money for treatment facilities construction (O.R.C. Chapters 3701, 6111).

The Ohio Water Development Authority (OWDA) also finances construction of wastewater facilities and water management facilities cooperatively with public and private interests. OWDA's eight-member board is empowered to make loans or grants to governmental agencies, construct water development projects, issue water development revenue bonds, and acquire public or private lands through negotiated purchase or condemnation (O.R.C. Chapter 6121).

Responsibility for statewide water supply planning rests in the Ohio Department of Natural Resources (O.R.C. § 1521.03). A long-term Lake Erie Basin water resources plan is to be developed by the Division of Water by 1994 (O.R.C. § 1521.15).

Solid Waste Disposal - The Ohio EPA Division of Solid and Hazardous Waste Management administers Ohio's solid waste law, which, among other provisions, requires the formation of single or multi-county solid waste districts to help assure a more comprehensive approach to solid waste management, including the siting and management of landfills, recycling facilities and incinerators (O.R.C. Chapter 3734).

Hazardous Waste Regulation and Disposal - The Ohio EPA, Division of Solid and Hazardous Waste administers the state's hazardous waste law. In 1989, Ohio received federal approval to manage the Resource Conservation and Recovery Act. Siting of hazardous waste treatment, storage and disposal facilities is regulated by the Hazardous Waste Facility Board, which is the permitting body for hazardous waste facilities (O.R.C. § 3734.05).

Air Quality - The Ohio EPA Division of Air Pollution Control administers the state's air pollution laws, implements the federal Clean Air Act in Ohio, and regulates existing and new sources of air pollution (O.R.C. Chapter 3745). The Ohio Air Quality Development Authority provides reduced-cost financing of air pollution control facilities (O.R.C. Chapter 5703).

The following is a list of uses of regional benefit and the agencies responsible for assuring that they are not excluded or unreasonably restricted within Ohio's coastal area.

USES OF REGIONAL BENEFIT

Categories	Agencies Preventing Arbitrary Exclusion
Energy Production	Power Siting Board, Department of Natural Resources
Recreation	Department of Natural Resources
Transportation	Department of Transportation
Unique Historic and Cultural Areas	Ohio Historical Society
Unique Environmental Areas	Department of Natural Resources
Wastewater Treatment and Public Water Supply	Water Development Authority, Environmental Protection Agency, Department of Natural Resources
Solid Waste Management	Environmental Protection Agency
Hazardous Waste Management	Environmental Protection Agency, Hazardous Waste Facility Board
Air Quality Management	Environmental Protection Agency, Air Quality Development Authority

Coordination with Federal Agencies

During Program Development

Many federal and state agencies have cooperated in the past to manage resources and construct facilities in Ohio's coastal area. Direct contact with federal agencies provided information on the national interest and federally owned or managed lands in Ohio's coastal area. Ongoing cooperation will strengthen such arrangements during implementation of the OCMP.

The OCMP has incorporated federal agency concerns into this document to the extent that they do not conflict with state and local concerns.

During Program Implementation

Coordination of federal agency activities in the coastal area during program implementation will be provided through the following existing mechanisms as well as direct contact among local, state and federal agencies as appropriate:

Joint State-Federal Programs - Currently, many state agencies administer programs encouraged or mandated by the federal government, often with accompanying financial assistance. Generally, such state-administered programs are reviewed and approved by the sponsoring federal agency. These programs provide for substantial coordination as well as for meeting the goals of both state and federal agencies. Some of these programs serve as important means of OCMP implementation.

Review of Environmental Impact Statements - The National Environmental Policy Act of 1969 requires development of an Environmental Impact Statement (EIS) for any "major federal action significantly affecting the quality of the human environment." EIS's describing coastal impacts will be closely reviewed to determine if program objectives and policies have been adequately considered.

Intergovernmental Review - This process was established by the Intergovernmental Cooperation Act of 1968, Demonstration Cities and Metropolitan Development Act of 1966, and the National Environmental Policy Act of 1969 [Section 102(2)(C)]. Procedures have been established by the State of Ohio, Office of Budget and Management, State Clearinghouse, consistent with Presidential Executive Order 12372 of July 14, 1982. This OMB executive order revoked former Circular A-95, and each federal agency has promulgated rules consistent with new federal Office of Management and Budget Guidelines.

The "single point of contact" for transmitting the results of intergovernmental reviews is the State Clearinghouse. The process is designed to include state and local governments' elected officials in the review of federal and federally assisted programs and projects. Basically, applicants for federal assistance and agencies sponsoring federal development projects must notify the State Clearinghouse and areawide clearinghouses of their intent to apply for federal assistance. The Toledo Metropolitan Area Council of Governments (TMACOG), and the Northeast Ohio Areawide Coordinating Agency (NOACA) serve as areawide clearinghouses in the coastal area.

Consideration of the National Interest

Many facilities and resources in which there is a national interest are found in Ohio's coastal area. Section 306 of the Coastal Zone Management Act requires consideration of the national interest, defined as the planning for and siting of facilities, activities, or resources that are necessary to meet other than local needs. Coordination with federal agencies has helped assure the incorporation of adequate consideration of the national interest in the OCMP. Sources of information used during both program development and implementation include:

- Federal laws and regulations;
- Policy statements and executive orders from the President of the United States;
- Reports and studies from federal and state agencies and commissions; and
- Statements of national interest issued by federal agencies.

Input from these sources led to the development of a list of facilities and resources in which there is a current or potential national interest in Ohio's coastal area.

National interests in the listed facilities and resources may conflict with each other. Because the OCMP does not create a site-specific land use plan, it is impossible to prevent all such potential conflicts. The OCMP policies listed, and the authorities upon which they are based, regulate impacts of many land-use activities and thereby prevent potential conflicts. These policies also use or establish review procedures within which the national interest is considered.

ODNR, as designated lead agency for the OCMP, will help assure adequate consideration of the national interest through its coordinating role and through its role in monitoring policy implementation.

The points at which the national interest are considered are briefly described below and are more specifically described in the policies.

Energy

Ohio's coastal area provides many sites for electric generating and transmission facilities due to availability of large quantities of cooling water, proximity to coal reserves and presence of a large market. The electricity generated serves a large regional area. Transshipment and processing of basic energy resources, mainly coal and oil, is an important activity in Lake Erie ports. Existing statutory authority and OCMP policies ensure that adequate consideration of the national interest in these energy facilities will occur.

Specifically, Ohio's Power Siting Board regulates siting of electric generating facilities. The Board's review procedures prior to licensing, including public hearings and local, state and federal review, provide extensive opportunities for consideration of the national interest.

Exploration and recovery of offshore oil and gas is regulated by ODNR; prior approval of these activities is required by ODNR, Ohio EPA, the Attorney General and the Governor. Formulation of state energy policy, consideration of bills in the legislature, and processing of drilling permits and mineral extraction permits are points at which the national interest in these resources is considered.

In most cases, transshipment, storage and processing of energy resources is not regulated at the state level except when impacts on air and water quality occur. The OCMP recognizes the importance of these activities and encourages planning for them in port and electric generating sites. The State of Ohio has a legislative mandate to protect air and water quality. Through adherence to adopted air and water quality standards, the mandated protection of air and water will take precedence over the siting of transshipment facilities, and the storage and processing of energy resources.

To determine the national interest in activities related to energy production and transmission, the following were consulted: National Energy Plan, Federal Energy Policy and Conservation Act, U.S. Department of Energy, U.S. Geological Survey, Federal Power Act, Natural Gas Act, East Central Area Reliability Commission.

Historic and Archaeological Sites

The coastal area is rich in history. The programs and regulations of the Ohio Historical Society preserve and interpret this record, which is of value to all Americans (O.R.C. Chapter 149). OHS assists in implementing the National Historic Preservation Act of 1974. Specifically, its Historic Site Preservation Advisory Board receives nominations for historic and archaeological sites, solicits local comments and may recommend national designation to the Department of the Interior. The Department publishes proposed designations in the Federal Register, soliciting comments from agencies and citizens. After 30 days, they may add the site to the National Register of Historic Places. The OCMP supports preservation and restoration of historic and archaeological sites in the coastal area by local and state agencies through their designation as Areas of Particular Concern.

To determine the national interest in historic and archaeological sites, sources consulted include: The Antiquities Act of 1906, Historic Site Act of 1935, National Historic Preservation Act of 1966, Archaeological and Historic Preservation Act of 1974, National Historic Preservation Act of 1974, National Environmental Policy Act of 1969, and Executive Order 11593.

Hazard Areas

Erosion and flooding in the coastal area are serious problems, leading to loss of life and property. Average annual dollar losses reach far into the millions. Sediments degrade water quality in Lake Erie as well as the other Great Lakes. Management of these hazards is therefore in the national interest and requires the use of several means to effectively accomplish this management.

The OCMP will encourage property owners to establish Conservancy Districts and other special purpose districts to develop joint projects to control erosion. Judicial hearings prior to district establishment may consider the national interest in the proposed district. ODNR will continue to provide financial assistance where possible to local governments and citizens for erosion control.

All flood and erosion hazard areas are designated as Special Management Areas. Coordination of programs will continue with the Flood Insurance Administration and the U.S. Army Corps of Engineers, both in proposed Corps projects and in Section 10 and Section 404 permit reviews.

To determine the national interest in such hazard areas, the following sources were consulted: Flood Disaster Protection Act, National Flood Insurance Act of 1968, Water Resources Development Planning Act of 1974, and Executive Order 11988 on Flood Plain Management.

Wetlands

The extensive but diminishing wetlands in Ohio along Lake Erie provide important habitat for many kinds of animals and plants, support migratory waterfowl populations, and help protect lake water quality. Protection of remaining wetlands, therefore, is in the national interest. ODNR will review implementation of Section 404 of the federal Clean Water Act, which regulates the filling of wetlands, and the Presidential Executive Order 11990, which directs federal agency activities to avoid impacts on wetlands. Ohio EPA issues or denies Section 401 Water Quality Certification for projects involving disposal of dredged material or placement of fill material into waters of the state, including wetlands. ODNR staff will work with the Corps of Engineers to adopt comprehensive but streamlined permit review criteria. Adoption of these criteria (with public review) and hearings held on permit applications are points at which the national interest in wetlands is considered. ODNR staff will assist local governments in preserving environmentally sensitive areas of all kinds, including wetlands.

To determine the national interest in wetlands, the following sources were consulted: Fish and Wildlife Service, U.S. Army Corps of Engineers, Fish and Wildlife Coordination Act, Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, Executive Order No. 11990 (protection of wetlands), Executive Order No. 11988 (floodplain management), Fishery Conservation and Management Act of 1976, Food Security Act of 1985, Water Resources Development Act of 1986, North American Wetlands Conservation Act of 1989 and the National Wetlands Priority Conservation Plan.

Transportation

The Ohio Department of Transportation works with local governments and federal agencies to develop a safe, efficient, multi-modal transportation system to meet local, regional and national needs. For many projects, hearings are held at various preconstruction phases to assure that plans meet citizen needs and that environmental and social impacts are addressed. Such projects are subject to federal Department of Transportation approval and also the intergovernmental review process. The OCMP will encourage consideration of coastal concerns and resource protection in transportation planning.

Lake Erie's ports are a major link in the region's freight and cargo transportation network. State law authorizes creation of port authorities to plan and develop port facilities. The ports are also designated as Special Management Areas. Review procedures for the various permits required for typical port

projects (Section 10 and Section 404) are the major points at which national interest in ports is considered.

To determine the national interest in transportation, the following sources were consulted: Railway Safety Act of 1970, Environmental Impact Statements on the extended commercial navigation season and state participation on the Winter Navigation Board, Activities and development projects conducted by the Department of Commerce's Maritime Administration, Department of Transportation Act, Coast Guard, Primary Duties, technical studies sponsored by the U.S. Army Corps of Engineers, and the National Transportation Plan.

Recreation

Lake Erie provides extensive recreational opportunities for residents of Ohio and surrounding states. ODNR has established many recreation facilities along the shoreline and plans to expand them to meet the increasing demand for recreation areas. Every five years, ODNR develops and implements a Statewide Comprehensive Outdoor Recreation Plan (SCORP). The SCORP must be approved by the U.S. Department of the Interior's National Park Service (NPS) to receive continued funding from the Land and Water Conservation Fund. SCORPs are submitted to other federal agencies for review prior to NPS approval (principally the Fish and Wildlife Service, Bureau of Land Management, and the Forest Service). The proposed SCORP also undergoes State Clearinghouse review. Projects using LWCF money must have NPS approval and also undergo State Clearinghouse review. These procedures identify principal points at which the national interest in recreation is considered.

All state and local parks in the coastal area are designated as Special Management Areas. Also, the ODNR Division of Real Estate and Land Management administers the local community grants for the Lake Erie Access Program and encourages recreational use of urban rivers and lakefronts through other means as well.

To determine the national interest in recreation, the following sources were consulted: Statewide Comprehensive Outdoor Recreation Plan, National Park Service, Fish and Wildlife Service, Historic Preservation Act, Land and Water Conservation Fund Act, and the President's Commission on Americans Outdoors.

National Defense

Ohio cannot prevent siting of facilities related to national defense in the coastal area. The program recognizes the importance of such facilities to Ohio and the nation. Also, federally controlled lands are exempt from the authority of state programs. Through coordination with federal agencies, especially the Department of Defense, OCMP will ensure that any proposed facilities are developed with minimal environmental impact and that those with proposed locations on the immediate shoreline do, in fact, require lake frontage.

To determine the national interest in defense, the Department of Defense , and the Army, Navy, Air Force, U.S. Coast Guard, and the U.S. Army Corps of Engineers were consulted.

Air and Water Quality

Sources of pollution generated in one location may damage air and water many miles away. These resources that are vital to all Americans, and their management is therefore in the national interest. By incorporating Ohio EPA's federally approved air and water quality standards, criteria, rules, and regulations into the OCMP as well as its planning processes, the OCMP will actively work to protect coastal air and water resources. Review of Ohio EPA proposed programs, regulations, and projects by U.S. EPA and other federal agencies is the principal point for consideration of the national interest. These activities also undergo State Clearinghouse review. Additionally, hearings are conducted prior to adoption of new air and water quality regulations. The Environmental Board of Review considers appeals from citizens and agencies when their concerns are felt to have been inadequately or improperly addressed by Ohio EPA.

To determine the national interest in air and water quality, the following sources were consulted: Federal Water Pollution Control Act, Federal Clean Air Act and U.S. Environmental Protection Agency.

Endangered Species

A variety of rare or endangered plant and animal species is found in the coastal area. Several state and federal laws have been enacted to protect such species. ODNR's Division of Natural Areas and Preserves maintains the Natural Heritage Database. Resource planners may refer to this database information to determine whether a proposed project might impact rare species. All species native to Ohio that are listed on the federal list of endangered and threatened wildlife and plants, pursuant to the Endangered Species Act of 1973, as amended, are included on the state lists of endangered species of native plants and wild animals.

To determine the national interest in endangered species, the Endangered Species Act of 1973 and the U.S. Department of the Interior were consulted. As a result of ongoing coordination with the U.S. Department of the Interior, Fish and Wildlife Service, and in response to that Department's comments on the DEIS, ODNR and U.S.F.W.S. have entered into a Memorandum of Understanding (MOU). That MOU, signed by the Director of ODNR and the U.S.F.W.S. Reynoldsburg Field Office Supervisor, is included at the end of this appendix.

FEDERAL AGENCIES CONSULTED DURING PROGRAM DEVELOPMENT

- Department of Agriculture
  - Agricultural Stabilization and Conservation Service
  - Farmers Home Administration
  - Forest Service
  - Soil Conservation Service
- Department of Commerce
  - Economic Development Administration
  - National Marine Fisheries Service
  - Office of Ocean and Coastal Resource Management
- Department of Defense
  - Department of the Air Force, Central Region
  - Department of the Army
  - Department of the Army, Corps of Engineers, Buffalo District
  - Department of the Navy
- Department of Energy
- Department of Health and Human Services
- Department of Housing and Urban Development
- Department of the Interior
  - Bureau of Land Management
  - Fish and Wildlife Service
  - Geological Survey
  - National Park Service
  - Office of Surface Mining
- Department of Justice
- Department of Transportation
  - Coast Guard
  - Federal Railroad Administration
  - Maritime Administration
- Environmental Protection Agency
- Federal Aviation Administration
- Federal Emergency Management Agency
- Federal Energy Regulatory Commission
- Federal Highway Administration
- Federal Maritime Commission
- General Services Administration
- Interstate Commerce Commission
- National Aeronautics and Space Administration
- Nuclear Regulatory Commission

THIS PAGE

LEFT INTENTIONALLY BLANK

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OHIO DEPARTMENT OF NATURAL RESOURCES
AND
THE U.S. FISH AND WILDLIFE SERVICE

This Memorandum of Understanding (MOU) is made and entered into on this _____ day of _____, 1997, by and between the Ohio Department of Natural Resources (ODNR), and the U.S. Fish and Wildlife Service (FWS).

PURPOSE

This MOU establishes project/program review responsibilities related to Federally listed threatened and endangered species that pertain to Ohio's Coastal Management Program. The general responsibilities and species-oriented roles of ODNR and the FWS are described below. The roles and responsibilities identified in this MOU represent necessary coordination of project/activity reviews under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1533), and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). The roles and responsibilities identified in this MOU also represent integral coordination for consistency determinations on projects and activities subject to consistency requirements of the Coastal Zone Management Act (CZMA; 16 USC 1456) with implementing Federal regulations (30 CFR 930) and the Ohio Coastal Management Law (O.R.C. Section 1506.03) as further defined in the Ohio Coastal Management Program Document.

PERTINENT GENERAL RESPONSIBILITIES

The FWS is a primary Federal agency responsible for administration of the Endangered Species Act (ESA). The Reynoldsburg, Ohio, FWS Field Office implements the ESA for Federally listed threatened and endangered species in Ohio. The National Oceanic and Atmospheric Administration (NOAA) administers the Coastal Zone Management Act (CZMA) and, under the ESA, retains certain responsibilities for the conservation of Federally listed species which include ensuring ESA compliance of section 306A low cost construction projects, authorized by 16 U.S.C. 1455a.

The ODNR is the primary State agency in Ohio responsible for both State and Federally listed species. The ODNR contains three divisions involved in project/activity reviews that evaluate the impacts of projects/activities on State and Federally listed species. These are the Divisions of Wildlife (ODNR-DOW), Natural Areas and Preserves (ODNR-DNAP) and Real Estate and Land Management (ODNR-REALM). The ODNR-DOW is responsible for enforcing the laws of the state for the protection, preservation, propagation, and management of wild animals including restricting the take or possession of species that are Federally listed under the ESA. The ODNR-DNAP is

responsible for managing and regulating take of plant species that are Federally listed under the ESA. Within ODNR-DNAP, the Data Services Section maintains the Natural Heritage database containing records with specific plant and animal species locations and other pertinent data. Lead implementation of Ohio's Coastal Management Program is performed by ODNR-REALM.

ROLES IN SPECIES REVIEW

Projects and activities that are reviewed by ODNR for consistency with the policies of the Ohio Coastal Management Program shall undergo review for impacts to State and Federally listed species. As mutually agreed upon between FWS and ODNR, applicants shall be instructed by ODNR-REALM, or by any other state agency networked in the Ohio Coastal Management Program, to contact the FWS, the ODNR-DOW Environmental Section, and the ODNR-DNAP Data Services Section for lists of State and Federally listed species that may be affected by the applicant's action. The State shall also ask the applicant to provide any other available information regarding State and Federally listed species on or near a proposed project site or otherwise affected by a proposed activity.

A. **Projects Subject to Federal Consistency**

Potential impacts to State and Federally listed species shall be assessed by the applicant and such assessment shall be reviewed for accuracy and concurrence by ODNR. If an adverse impact may occur to Federally listed species as the result of a Federal project or a project receiving Federal funding or a Federal license or permit, ODNR-REALM will contact the FWS to advise them of the need to initiate ESA Section 7 consultation with the Federal agency undertaking, funding or permitting the project or activity. The ODNR will also use any other available information to evaluate potential impacts of the project/activity on Federally listed species.

If a Federal agency, or a permit applicant or a Federal funds applicant seeking consistency approval has not adequately protected Federally listed species, ODNR will, to the extent permitted by law, determine that the applicant’s project or activity is not consistent with coastal management policies. In this event, ODNR will clearly identify the rule, regulation or policy that the action does not meet and will describe alternative measures (if they exist) which would permit the proposed project/activity to be conducted in a manner consistent with coastal management policies and in compliance with the ESA.

B. **Projects Subject to State Consistency**

It is hereby recognized that Section 9 of the ESA prohibits the take of federally listed animal species. It is also recognized that ESA Section 9 prohibits the take of federally listed plant

species in cases that violate State law, or in cases where the plants occur in areas under Federal jurisdiction. In certain cases, take of federally listed species may be authorized under ESA Section 10 (incidental take permits), ESA Section 6 (cooperative agreements with States), and ESA Section 7 (consultation on incidental take).

In the case of non-Federal projects, including projects that do not use CZMA Section 306A funds or other Federal funds, compliance with ESA Section 9 is required, even though consultation under Section 7 is not required. For non-federal projects, ODNR or the applicant may voluntarily choose to consult with FWS about possible impacts to federally listed species. Such consultation would assure compliance with ESA Section 9 on the part of ODNR or the applicant in the event of a non-jeopardy biological opinion. ODNR will voluntarily ensure that non-Federal and non-Section 306A CZMA projects subject to state consistency will not take or otherwise adversely impact Federally listed species, unless authorized under State law and Sections 6, 7 or 10 of the ESA. Should biological opinion indicate possible jeopardy or adverse modification of designated critical habitat, agreement by ODNR or applicant to adopt all reasonable and prudent alternatives identified in the biological opinion would similarly ensure that the project or activity subject to State consistency, will not take or otherwise adversely impact federally listed species unless authorized under State law and Sections 6, 7 or 10 of the ESA.

C. **Projects/Activities Receiving Federal Section 306A CZMA Assistance**

The majority of Ohio's coastal projects/activities that will receive Federal funds from NOAA are low cost construction projects under Section 306A of the CZMA. The Office of Ocean and Coastal Resource Management (NOAA-OCRM) reviews specific Section 306A project proposals. As part of its annual application to NOAA-OCRM, the ODNR-REALM will submit a categorical checklist for each proposed Section 306A project. As part of the checklist, ODNR-REALM must certify that the proposed Section 306A project(s) will not result in adverse environmental impacts, including impacts to Federally listed species or their critical habitat.

For projects receiving Section 306A funds from NOAA, ODNR will ensure that the project will not result in adverse impacts on Federally listed species or Federally designated critical habitat. If ODNR-REALM indicates through completion of a categorical checklist, or other means, that there may be impacts on Federally listed species or critical habitat, ODNR-REALM will either prepare a detailed environmental assessment or environmental impact statement or will withdraw the proposed project from the application to NOAA-OCRM. It is understood that NOAA-OCRM may also opt to not fund the project. If a Section 306A project "may affect" a Federally listed species of plant or animal, and ODNR-REALM intends to proceed with the

project, early consultation with FWS and NOAA-OCRM will be undertaken to ensure responsibilities are met under Section 7 and 9 of the ESA.

To reduce workload, the ODNR-REALM and the FWS will mutually develop a list of types of projects or other activities, submitted by applicants for Coastal Zone Management Act Section 306A funding, that will not normally require FWS consultation under Section 7 of the ESA. The project/activity list will be attached to this MOU as an Appendix and mutually modified as needed.

COOPERATION, CONFLICT AVOIDANCE AND MEDIATION

The protection and preservation of threatened and endangered species is one of ODNR's highest priorities. Protection, enhancement and restoration of threatened and endangered species and their habitat are some important goals of the Ohio Coastal Management Program. The ODNR will work in close accord with the FWS to achieve these goals. This relationship will promote positive and unified initiatives for the conservation of threatened and endangered species and the maintenance of biodiversity important to a sustainable coastal ecosystem. If, for some reason, the FWS and ODNR disagree over determination of how impacts of a coastal area project/activity may affect Federally listed species, it is acknowledged and understood that the FWS may invoke the authority of the U.S. Endangered Species Act.

Donald C. Anderson, Director
Ohio Department of Natural Resources

Kent Kroonemeyer, Supervisor
U.S. Fish and Wildlife Service,
Reynoldsburg, OH

Wayne R. Warren, Chief
Division of Real Estate and Land Management

The above is mutually agreed between ODNR and the FWS from this date on, or until modified or discontinued by mutual consent, or discontinued unilaterally with a minimum of ninety (90) days advance notice by either party. Obligations of the State are subject to O.R.C. § 126.07. If this MOU is

discontinued, reinitiation of consultation with the FWS by NOAA for Ohio's Coastal Management under the CZMA may be necessary under the Endangered Species Act.