

THE WEST COAST OF NEW ENGLAND:¹ A CASE FOR THE INCLUSION OF LAKE CHAMPLAIN IN THE FEDERAL COASTAL ZONE MANAGEMENT PROGRAM

INTRODUCTION

There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone.²

Congress enacted the Coastal Zone Management Act of 1972³ in response generally to growing public environmental awareness, and specifically to the report of the Commission on Marine Science, Engineering, and Resources (the Stratton Commission).⁴ Growing population and expanding development were placing tremendous stress on coastal resources.⁵ Congress created the Stratton Commission to study this problem and to recommend a plan for meeting the current and future oceanographic needs of the nation.⁶ The Stratton Commission reported that coastal pollution was a national problem arising from the piecemeal development of coastal ecosystems⁷ without an overall strategy for comprehensive coastal management.⁸

The Coastal Zone Management Act (CZMA) follows the Stratton Commission's recommendation encouraging states to develop

1. The Vermont shoreline along Lake Champlain forms what is affectionately known to Vermonters as the "West Coast of New England." Interview with Christopher Halpin, Vermont resident, in Pittsfield, Vt. (Jan. 3, 1991).

2. Coastal Zone Management Act of 1972, § 302(a), 16 U.S.C. § 1451(a) (1988) [hereinafter CZMA].

3. 16 U.S.C. §§ 1451-1463 (1988) (corresponds to Pub. L. No. 92-583, 86 Stat. 1280 (1972), amended by Pub. L. No. 94-370, 90 Stat. 1013 (1976); Pub. L. No. 96-464, 94 Stat. 2060 (1980); Pub. L. No. 101-508, §§ 6201-6217, 104 Stat. 1388 (1990)).

4. 118 CONG. REC. S14170-71 (1972) (statement of Sen. Hollings); COMMISSION ON MARINE SCIENCE, ENG'G AND RESOURCES, OUR NATION AND THE SEA: A PLAN FOR NATIONAL ACTION (1969) [hereinafter STRATTON REPORT].

5. JOSEPH J. KALO, COASTAL AND OCEAN LAW 327 (1990).

6. Marine Resources and Engineering Development Act of 1966, § 5(b), Pub. L. No. 89-454, 80 Stat. 203, 206 (1966).

7. An ecosystem is an "ecological system," OXFORD DICTIONARY OF NATURAL HISTORY 217-18 (Michael Allaby ed., 1985), which is "[a] community of interdependent organisms together with the environment which they inhabit and with which they interact (e.g., a pond, an oakwood)," MICHAEL ALLABY, A DICTIONARY OF THE ENVIRONMENT 174 (2d ed. 1983).

8. STRATTON REPORT, *supra* note 4, at 49.

coastal management programs.⁹ CZMA provides funding to coastal states to develop and implement management plans consistent with the policy objectives of the Act and regulations promulgated thereunder.¹⁰ A state eligible for aid under CZMA is a "coastal state," defined to include the territories and states bordering the Atlantic Ocean, the Pacific Ocean, and the five Great Lakes.¹¹ Although the areas covered by CZMA are appropriately included, the Act omitted the sixth largest international lake¹² partly under United States jurisdiction: Lake Champlain.¹³

CZMA provides no justification for including the Great Lakes along with the oceans as water bodies requiring careful coastal management.¹⁴ However, an analysis of legislation enacted during the 1960's, which laid the groundwork for CZMA, indicates that Congress considered the recreational and economic importance of the Great Lakes a sufficient reason.¹⁵ Lake Champlain shares many of the qualities that caused Congress to include the Great Lakes under CZMA.¹⁶

Pollution levels in Lake Champlain are rising as a result of increasing recreational activity on the Lake and development on nearby land.¹⁷ Lake Champlain is an important recreational resource.¹⁸ One need only visit the region to see the large number of marinas, hotels, and other amenities provided for tourists to recognize that many people depend on the Lake for rest and relaxation. Six million people visited the region in 1988.¹⁹ The region's economy has come to depend on this popularity. In fact, "[t]ourists and summer residents are central to the economies of nearly all 50 villages, towns, and cities along the shore."²⁰ Just as the Great Lakes are the economic backbone of the states along their shores, so Lake

9. *Id.* at 56.

10. 16 U.S.C. §§ 1454-1455 (1988).

11. *Id.* § 1453(4).

12. 136 CONG. REC. S890 (1990) (remarks of Sen. Leahy).

13. 16 U.S.C. § 1453(4) (1988).

14. *Id.* §§ 1451-1464.

15. See, e.g., Zigurds L. Zile, *A Legislative-Political History of the Coastal Zone Management Act of 1972*, 1 COASTAL ZONE MGMT. J. 235, 238 (1974).

16. See *infra* notes 127-37 and accompanying text.

17. FRANK LOWENSTEIN & SHERYL LECHNER, *STATE OF THE LAKE: A LAKE CHAMPLAIN ADVISORY 2* (Lake Champlain Comm. ed., 1990).

18. *Id.*

19. *Id.* Only the Great Smokey Mountains attracted more tourists in 1988. *Id.*

20. *Id.*

Champlain is of vital importance to Vermont and New York.²¹

There is no comprehensive management program for Lake Champlain's coast. Vermont and New York, Lake Champlain's coastal states, established a joint commission to study the Lake's problems,²² but did not produce a plan to deal with shoreline conservation and development efforts.²³ Congress recently enacted programs under the Lake Champlain Special Designation Act of 1990 to study and improve the water quality of Lake Champlain, and provided funding for these efforts.²⁴ It has not, however, provided funding for planning the future growth of the region. To supplement the programs under the Special Designation Act, Congress should amend CZMA to include those states bordering Lake Champlain within the definition of "coastal states."

This note will examine the purposes and operation of CZMA.²⁵ It will then explore the process which resulted in the inclusion of the Great Lakes under the Act, and the progression of theories underlying the development of coastal protection legislation on the federal level.²⁶ The current state of coastal planning for Lake Champlain on the state and federal levels will be analyzed and its effectiveness critiqued.²⁷ Finally, the similarities between the Great Lakes and Lake Champlain which necessitate the inclusion of Lake Champlain under CZMA will be explored.²⁸

I. THE PURPOSES AND OPERATION OF THE COASTAL ZONE MANAGEMENT ACT

The Stratton Commission urged Congress to develop a coastal management system to address the increasing and often competing uses of coastal resources.²⁹ The Commission noted that the coast is, "in many respects, the Nation's most valuable geographic fea-

21. *Id.*

22. New York and Vermont entered into the Lake Champlain Basin Compact in 1966 and codified the agreement at N.Y. ENVTL. CONSERV. LAW § 21-1101 (McKinney 1984 & Supp. 1991), and VT. STAT. ANN. tit. 10, § 181 (1984), *repealed* by 1990 Vt. Laws 265, § 8.

23. Vermont subsequently repealed its version of the compact with New York. 1990 Vt. Laws 265, § 8 (effective June 21, 1990).

24. Lake Champlain Special Designation Act of 1990, Pub. L. No. 101-596, 104 Stat. 3000, 3006-10 (1990).

25. *See infra* notes 29-67 and accompanying text.

26. *See infra* notes 68-106 and accompanying text.

27. *See infra* notes 107-26 and accompanying text.

28. *See infra* notes 127-43 and accompanying text.

29. STRATTON REPORT, *supra* note 4, at 56-57.

ture."³⁰ Therefore, issues of coastal management are critically important to all levels of government and to a diverse array of private users.³¹ The Stratton Commission recommended that Congress create a management system to plan for informed and deliberate coastal resource development, rather than permit haphazard growth.³²

The proposed system of coastal management vested authority in the states bordering the aquatic resources.³³ The Stratton Commission stated:

[T]he States must be the focus for responsibility and action in the coastal zone. The State is the central link joining the many participants, but in most cases, the States now lack adequate machinery for [the] task. An agency of the State is needed with sufficient planning and regulatory authority to manage coastal areas effectively and to resolve problems of competing uses. Such agencies should be strong enough to deal with the host of overlapping and often competing jurisdictions of the various Federal agencies. Finally, strong State organization is essential to surmount special local interests, to assist local agencies in solving common problems, and to effect strong interstate cooperation.³⁴

According to the Stratton Commission, a state's coastal management authority need not take any particular form, but must be adequate to achieve the state's goals and the policy objectives of the federal program.³⁵ The Stratton Commission recommended that state authorities "have [the] powers of (1) planning, (2) regulation

30. *Id.* at 49. The Stratton Report did not precisely define coastal zone but indicated that it viewed the zone as

including (1) seaward, the territorial sea of the United States and (2) landward, the tidal waters on the landward side of the low water mark along the coast, the Great Lakes, port and harbor facilities, marine recreational areas, and industrial and commercial sites dependent upon the seas or the Great Lakes.

Id. at 51. Each coastal state, it was recommended, should be free to determine the landward reach of its coastal zone. *Id.* The CZMA uses substantially the same definition, with the clarification that in the Great Lakes the coastal zone extends to the Canadian border. 16 U.S.C. § 1453(1)-(3) (1988).

31. STRATTON REPORT, *supra* note 4, at 49.

32. *Id.*

33. H. Gary Knight, *Proposed Systems of Coastal Zone Management: An Interim Analysis*, 3 NAT. RESOURCES LAW. 599, 602-03 (1970).

34. STRATTON REPORT, *supra* note 4, at 56-57.

35. *Id.* at 57-59. CZMA implemented this Stratton Commission recommendation by providing for Department of Commerce review of all proposed state CZMPs. *See infra* notes 50, 56-59 and accompanying text.

(including zoning and the granting of easements, licenses or permits), (3) acquisition and eminent domain, and (4) development."³⁶

The coastal zone management programs would not result in banning coastal development. The Stratton Commission did not focus on preservation of coastal resources but rather emphasized "fostering the widest possible variety of beneficial uses so as to maximize net social return."³⁷ This goal reflects the congressional objectives for creating the Commission in a *development* act.³⁸ Nevertheless, the Stratton Commission viewed conservation of the coastal ecosystem as necessary to reap the maximum societal benefit from such areas.³⁹

The Stratton Commission report prompted a number of bills,⁴⁰ which were debated and amended until the pieces resulted in CZMA.⁴¹ The report's recommendations are reflected in CZMA's policy statements.⁴² CZMA was enacted "to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations."⁴³ CZMA is not a purely conservational measure that interferes with development of the coast.⁴⁴ Rather, it is aimed at preserving the qualities that make the coast attractive so that the coast may remain a viable resource.⁴⁵ Toward this end, Congress provided two incentives for states to develop comprehensive coastal zone management programs (CZMPs): grants for the development and administration of coastal plans and reverse preemption whereby federal activities within a state's coastal zone must meet the requirements of that state's management program.⁴⁶

Under CZMA, the Department of Commerce provides funding to coastal states to develop coastal management plans.⁴⁷ The Secretary of Commerce (Secretary) may make grants to states for up

36. Knight, *supra* note 33, at 601.

37. STRATTON REPORT, *supra* note 4, at 57.

38. Marine Resources and Engineering Development Act of 1966, § 2(a), Pub. L. No. 89-454, 80 Stat. 203, 203 (1966).

39. STRATTON REPORT, *supra* note 4, at 49.

40. Knight, *supra* note 33, at 600.

41. S. REP. No. 753, 92d Cong., 2d Sess. 1 (1972).

42. 16 U.S.C. § 1452(1) (1988).

43. *Id.*

44. *Id.* §§ 1451-1452.

45. *Id.*

46. KALO, *supra* note 5, at 327.

47. 16 U.S.C. § 1454(a), (e) (1988).

to eighty percent of management program development costs.⁴⁸ A coastal state may receive four annual grants to develop its program.⁴⁹ A state need only apply for an initial development grant; to receive more than the initial grant, however, the Secretary must find that the state is "satisfactorily developing" the program.⁵⁰ In addition to four development grants, each state is eligible to receive grants for up to eighty percent of completion and initial implementation costs before it receives the Secretary's approval of its plan.⁵¹ A state is free to allocate the grant to itself, its subdivisions and agencies, or other regional organizations.⁵²

Coastal states also may receive administrative grants.⁵³ The amount of these grants has decreased from sixty-six and two-thirds percent of a state's administrative costs when the bill was first enacted,⁵⁴ to a current figure of fifty percent provided the state matches the federal contribution on a one-to-one basis.⁵⁵

If a state chooses to participate in the federal program under CZMA, it must develop a CZMP that meets certain minimum criteria in order to receive grants for development, implementation, and administration.⁵⁶ A state's management program must include each of the following: (1) an identification of the state's coastal zone, (2) a definition of permissible uses within the zone which have significant impacts upon the zone, (3) a list of areas of special concern within the zone, (4) a list of the source (i.e., constitutional, statutory, common law) from which the state intends to derive its authority, (5) a prioritization of uses of the zone, (6) a description of how the management structure will be organized, (7) plans for public beach access, (8) a planning process for energy facilities likely to be located within the zone, and (9) a plan to study and

48. *Id.* § 1454(c).

49. *Id.*

50. *Id.*

51. *Id.* § 1454(d)(1)-(2).

52. *Id.* § 1454(g).

53. *Id.* § 1455.

54. Coastal Zone Management Act of 1972, Pub. L. No. 92-583, § 306, 86 Stat. 1283-84.

55. 16 U.S.C. § 1455(a) (1988). Funds are also available on a matching basis of one-to-one, federal-to-state, for the restoration or preservation of areas of special value that the state has identified in its CZMP. *Id.* Funding for the purchase of significant estuarine resources is available for up to 50% of the purchase price or four million dollars, whichever is less. *Id.* § 1461(e)(3)(A). The federal government is also required to administer a coastal energy impact program that provides financial assistance to state and local governments for needs arising from specified activities involving energy development. *Id.* § 1456(a).

56. *Id.* §§ 1454-1455.

address problems of coastal erosion.⁵⁷

To receive administrative grants a state must develop a CZMP through a process that provides adequate opportunity for public input and participation by all relevant federal, state, and local agencies.⁵⁸ The Secretary must make certain findings before authorizing a state plan, including whether the state adequately coordinated its program with local, area wide, and interstate plans affecting the state's coastal zone; addressed local concerns; considered the national interest involved in siting of energy projects in the coastal zone; and provided procedures to preserve areas of special conservational, recreational, ecological, or aesthetic value.⁵⁹

Beyond funding, CZMA provides an additional incentive for coastal states to develop CZMPs: the "federal consistency" or "reverse preemption" provision. This CZMA provision requires any federally supported activity or project "directly affecting the coastal zone" of a state to be consistent with that state's CZMP to the "maximum extent practicable."⁶⁰ Also, the federal government may not issue permits for activities that would have an impact inconsistent with that state's CZMP.⁶¹ This CZMA provision is unique insofar as it allows states to affect federal actions significantly.⁶² The reverse preemption and funding provisions of CZMA provide coastal states with incentives not otherwise available to develop CZMPs.

CZMA prompted the coastal states to develop a nearly complete network of coastal zone management programs.⁶³ Twenty-nine of the thirty-five eligible coastal states have approved pro-

57. *Id.* § 1454(b)(1)-(9).

58. *Id.* § 1455(c)(1)-(7).

59. *Id.* § 1455(c)(2)(B), (c)(8)-(9).

60. *Id.* § 1456.

61. *Id.* § 1456(c)(3).

62. Jack H. Archer & Robert W. Knecht, *The U.S. National Coastal Zone Management Program—Problems and Opportunities in the Next Phase*, 15 COASTAL MGMT. 103, 106 (1987). The Department of Commerce has promulgated regulations that implement this section of the CZMA. 15 C.F.R. §§ 930.34, 930.39 (1991). The statutory and regulatory provisions for federal consistency with state CZMPs have been the subject of some litigation as to which activities on the outer continental shelf of the ocean "directly affect" a state's coastal zone. See, e.g., *Secretary of the Interior v. California*, 464 U.S. 312 (1984) (holding that the sale by the Department of the Interior of offshore oil leases is not an activity directly affecting a state's coastal zone).

63. Archer & Knecht, *supra* note 62, at 107.

grams.⁶⁴ The six states which do not have CZMPs have all considered legislation which would lead to their development but have not enacted any such measure because of local opposition to the bills.⁶⁵ Although it has been noted that the coastal zone management program became increasingly ineffective during the Reagan administration,⁶⁶ Congress reauthorized CZMA funding in 1990 and reaffirmed its commitment to the protection of the national interest in the coast.⁶⁷

II. WHY THE GREAT LAKES ARE INCLUDED UNDER THE COASTAL ZONE MANAGEMENT ACT

All CZMA funding thus far described is available only to coastal states.⁶⁸ The states bordering the Great Lakes⁶⁹ are included in the CZMA definition of coastal states. Although neither the statute⁷⁰ nor its legislative history reveals why Congress included the Great Lakes in CZMA, it has been suggested that the Lakes' significant national economic and recreational value

64. COASTAL ZONE INFO. CTR., OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT, NAT'L OCEANIC AND ATMOSPHERIC ADMIN., U.S. DEP'T OF COMMERCE, COASTAL ZONE MANAGEMENT: A FEDERAL-STATE PARTNERSHIP IN THE MANAGEMENT OF COASTAL AND MARINE RESOURCES 1 (1989) [hereinafter COASTAL ZONE INFO. CTR.]. The 29 approved "states" also include Puerto Rico, the American Virgin Islands, Guam, the Northern Marianas, and American Samoa. *Id.*

65. See *id.* Texas, Georgia, Minnesota, Illinois, Ohio, and Indiana have not established approved coastal management plans. Archer & Knecht, *supra* note 62, at 119 n.32.

Some examples of these states' experiences are illustrative:

Indiana attempted to develop a CZMP but could not establish the necessary organizational structure to administer the program. COASTAL ZONE INFO. CTR., *supra* note 64, at 53.

The Illinois legislature failed to pass coastal zone management legislation because of opposition to the proposed setbacks in erosion hazard areas that would have limited activities within these areas, thereby increasing public access to lake shores in private residential areas. *Id.* at 55. In 1987 legislation proposed to establish a CZMP floundered after the death of its proponent. *Id.* Concurrent with that legislation, however, public workshops were held to discuss coastal zone management, indicating an increased interest in developing a CZMP. *Id.*

Ohio had passed legislation to develop a CZMP. *Id.* at 54. Because of opposition from private landowners and commercial developers over land use controls and erosion control setbacks, a plan was not adopted before the 1980 federal development grant deadline expired. The state is currently working toward developing an approved plan. *Id.*

66. COASTAL ZONE INFO. CTR., *supra* note 64, at 104, 107-08.

67. Coastal Zone Act Reauthorization Amendments of 1990, Pub. L. No. 101-508, §§ 6201-6217, 1990 U.S.C.C.A.N. (104 Stat. 1388) 299.

68. 16 U.S.C. § 1453(4) (1988).

69. The Great Lakes are: Superior, Michigan, Huron, Ontario, and Erie. THE WORLD ALMANAC AND BOOK OF FACTS M6-7 (1991). The Great Lakes states are: Minnesota, Wisconsin, Michigan, Illinois, Indiana, Ohio, Pennsylvania, and New York. *Id.*

70. 16 U.S.C. §§ 1451-1464 (1988).

prompted Congress to make efforts to conserve them.⁷¹ CZMA emerged as the end product of four phases of concern for the nation's coasts: the "recreation phase, estuary protection phase, ocean development phase, and land use policy phase," each named "to indicate the central coastal concern at each of the four periods."⁷² Although each phase initially focused on oceans, each eventually included the Great Lakes within its scope of concern.⁷³

As early as 1934, the beginning of the recreation phase, the National Park Service inventoried the as yet undeveloped ocean coastline and recommended state or federal acquisition of areas of highest recreational value.⁷⁴ Recognizing that the Great Lakes were as valuable a recreational resource as the oceans, the federal government acquired Isle Royale in Lake Superior.⁷⁵ During the 1950's, the Park Service again inventoried undeveloped coastline, this time including the Great Lakes in its survey.⁷⁶

The estuary phase had at its roots a growing awareness of the ecological value of the nation's "most critically endangered coastal habitats."⁷⁷ In 1965, Representative Tenzer of New York introduced legislation to protect certain Long Island wetlands by establishing a recreation area that encompassed a portion of his district.⁷⁸ This bill was immediately attacked because it provided for federal acquisition of state and local public lands.⁷⁹ Before Tenzer's bill was defeated, Representative Dingell of Michigan introduced a second bill that "enlarged on aspects of Tenzer's concept to propose not a single section of the coastal wetlands, but 'a national system of estuarine areas' that were still either relatively unspoiled or capable of restoration."⁸⁰ However, Dingell's bill did not cover Great Lakes estuaries even though he was a representative from a bordering state.⁸¹ In fact, the general terms of the bill defined estuary in the traditional sense as having a mixture of

71. See generally Zile, *supra* note 15.

72. *Id.* at 236 (emphasis omitted).

73. See generally Zile, *supra* note 15.

74. *Id.* at 237-38.

75. *Id.* at 238.

76. *Id.*

77. *Id.* at 241.

78. *Id.*

79. *Id.* at 241-42.

80. *Id.* at 245 (quoting H.R. 13447, 89th Cong., 2d Sess. (1966)).

81. *Id.*

fresh and salt water.⁸² Dingell's bill failed along with Tenzer's because of similar concerns over federal acquisition of property.⁸³

In 1967, Dingell introduced more successful legislation to protect the estuaries of the Great Lakes.⁸⁴ This bill proposed funding for the study of estuarine systems and for limited federal acquisition of coastal land.⁸⁵ A provision of this bill, also present in the earlier bills, curbed the Army Corps of Engineers' authority to dredge and fill, and conduct projects for shore erosion control and beach protection.⁸⁶ This provision ultimately enabled Dingell to include the Great Lakes in this "National Estuarine Area" bill.⁸⁷

Although the bill retained traditional estuarine definitions, the Army Corps would still have to consult with the Secretary of the Interior, the program's designated administrator, for approval of dredge and fill activities in "the Great Lakes and connecting waterways."⁸⁸ During House hearings, witnesses argued that the bill should not include the Great Lakes because its original purpose was to address the problems of traditional, brackish⁸⁹ estuaries.⁹⁰ Those witnesses who wished to see Army Corps power curtailed did not object to including the Great Lakes because then the Corps' activities in this area would have to be consistent with the overall estuarine program.⁹¹ Dingell's bill, however, was gutted before it passed as the Estuary Protection Act.⁹² "Only by piling inference upon inference could one possibly conclude that a Model Estuarine Act outlining a national program and specifying methods of funding and management might naturally follow the completion of the proposed studies."⁹³

Nonetheless, the Great Lakes became inextricably linked with the concept of coastal protection. The National Estuary Study,

82. *Id.*

83. *Id.* at 247.

84. *Id.*

85. *Id.*

86. *Id.* at 243, 246-47.

87. *Id.* at 247-48.

88. *Id.* (quoting *Hearings on H.R. 25 . . . Before the Subcomm. on Fisheries and Wildlife of the House Comm. on Merchant Marine and Fisheries*, 90th Cong., 1st Sess. (1967) [hereinafter *Hearings on H.R. 25*]).

89. Brackish is a "term used to describe water which contains some salt . . . but less than is contained in sea water." ALLABY, *supra* note 7, at 74.

90. Zile, *supra* note 15, at 248 (citing *Hearings on H.R. 25*, *supra* note 88).

91. Zile, *supra* note 15, at 247-48.

92. *Id.* at 252-53.

93. *Id.* at 252.

prepared by the Fish and Wildlife Service pursuant to the Estuary Protection Act, recommended that an estuarine system be developed based not on federal ownership but rather on state control because "the Coastal and Great Lakes States are the keys to successful estuary preservation and restoration."⁹⁴ Thus, Dingell succeeded at including the Great Lakes in an ocean estuary bill.

The beginning of the ocean development stage was marked by legislation creating the Stratton Commission. The Marine Resources and Engineering Development Act of 1966 (Marine Development Act) stated:

It is hereby declared to be the policy of the United States to develop, encourage, and maintain a coordinated, comprehensive, and long-range national program in marine science for the benefit of mankind to assist in the protection of health and property, enhancement of commerce, transportation, and national security, rehabilitation of our commercial fisheries, and increased utilization of these and other resources.⁹⁵

The Marine Development Act also enumerated national marine science objectives focused on "accelerat[ing] development of the resources of the marine environment."⁹⁶ The Act created the Stratton Commission to investigate "all aspects of marine science" and to recommend a program to meet future national demands on marine resources.⁹⁷ The term "marine environment" was defined to include the oceans and Great Lakes.⁹⁸ Neither the statute nor its legislative history reveals a reason for including the Great Lakes.

The Stratton Commission reported that the national interest in coastal resources could best be served through "the introduction of a management system permitting conscious and informed choices among development alternatives, providing for proper planning, and encouraging recognition of the long-term importance of maintaining the quality of this productive region in order to ensure both its enjoyment and the sound utilization of its resources."⁹⁹ Consistent with its instructions, the Stratton Commis-

94. U.S. DEP'T OF THE INTERIOR, FISH AND WILDLIFE SERV., 1 NATIONAL ESTUARY STUDY 76 (1970).

95. Marine Resources and Engineering Development Act of 1966, § 2(a), Pub. L. No. 89-454, 80 Stat. 203, 203.

96. *Id.* § 2(b)(1).

97. *Id.* § 2(b)(1)-(6).

98. *Id.* § 8(a), (c).

99. STRATTON REPORT, *supra* note 4, at 49.

sion included the Great Lakes within its definition of the coastal zone.¹⁰⁰ Thus, the arbitrary line between related but distinct parts of the environment—lakes and oceans—shifted.¹⁰¹ The legislation first proposed to fulfill the Stratton Commission's recommendations included the Great Lakes in a federal program to encourage states to develop comprehensive management programs for their coastlines.¹⁰² These bills eventually emerged as the Coastal Zone Management Act of 1972.

The land use phase nearly resulted in failure to pass any national coastal management program.¹⁰³ Congress became aware that any plan to address concerns of the strip of land along the water's edge would be meaningless without a land use policy that reached further inland.¹⁰⁴ The Nixon administration pushed for a federally controlled, nationwide land use plan that would subsume the coastal management program under consideration.¹⁰⁵ Nevertheless, Congress proceeded with the localized legislation because it could not yet face the opposition to federal land use regulations.¹⁰⁶

III. WHY LAKE CHAMPLAIN SHOULD BE INCLUDED UNDER THE COASTAL ZONE MANAGEMENT ACT

A. *The Need for a Lake Champlain Management Program*

Currently, no comprehensive management program exists for Lake Champlain's coastal zone, nor is such a plan being developed. Several attempts at addressing the issue fall short of the potential for protection under CZMA. The Lake Champlain Advisory Committee, a citizens advocacy organization composed of members from Vermont, New York, and Quebec, intends to draft and promote a shoreland management act in the legislatures of both states.¹⁰⁷ However, if this legislation were to pass, it could not provide access to federal funding or reverse preemption. The only other legislation affecting Lake Champlain seeks to clean up pollu-

100. *Id.*

101. Zile, *supra* note 15, at 258.

102. *Id.*

103. *Id.* at 266-74.

104. *Id.* at 268.

105. *Id.*

106. *Id.*

107. LOWENSTEIN & LECHNER, *supra* note 17, at 16.

tion, further study various aspects of the aquatic environment, and implement limited land use planning that would not address all of the coast's special use problems.¹⁰⁸ There is no legislation mandating the development of a coastal management program.

In 1988, New York, Vermont, and Quebec entered into a Cooperative Agreement to coordinate basin wide research, education, and environmental management of Lake Champlain.¹⁰⁹ A lack of adequate funding and staffing, however, has rendered it totally ineffective.¹¹⁰

In 1966, New York and Vermont entered into the Champlain Basin Compact (Compact)¹¹¹ to study the need for, and to develop a comprehensive management program for, the Lake Champlain basin.¹¹² The Compact created the Interstate Commission on the Lake Champlain Basin (Interstate Commission) to carry out its directives.¹¹³ New York and Vermont reasoned that the Compact was necessary to "encourage and coordinate local, regional, interstate and international planning and zoning in the Champlain Valley in order to safeguard its beauty and amenities and assure its orderly development as population pressures inevitably grow."¹¹⁴ The Interstate Commission did not issue any recommendations on how to plan for the area's future, and Vermont subsequently repealed its version of the Compact.¹¹⁵

Vermont has made attempts to address issues of land use policy, but they are not as broad in scope as a full CZMP. The state land use planning act, Act 250,¹¹⁶ requires an environmental review by the state Environmental Board of all "'major' developments and subdivisions proposed anywhere in the state."¹¹⁷ Another Vermont act, Act 200,¹¹⁸ encourages towns and regional associa-

108. *Id.* at 15, 16.

109. *Id.* at 4.

110. *Id.*

111. N.Y. ENVTL. CONSERV. LAW §§ 21-1101 to 1113 (McKinney 1984 & Supp. 1991), and VT. STAT. ANN. tit. 10, §§ 181-205 (1984), *repealed by* 1990 Vt. Laws 265 § 8 [hereinafter COMPACT].

112. COMPACT, *supra* note 111, art. 1.

113. *Id.* art. 3.3-3.4(a).

114. *Id.* art. 7.1.

115. 1990 Vt. Laws 265 § 8 (effective June 21, 1990).

116. State Land Use and Development Plans Act, VT. STAT. ANN. tit. 10, §§ 6001-6092 (1984 & Supp. 1990) [hereinafter Act 250].

117. Reis, *Vermont's Act 250*, in PUBLICATION SERIES OF THE ENVIRONMENTAL LAW CENTER OF VERMONT LAW SCHOOL 27 n.1 (1980) (quoting Act 250, *supra* note 116).

118. An Act Relating to Encourage [sic] Consistent Local, Regional & State Agency

tions to develop land use plans that conform with statewide growth policies.¹¹⁹ These state level programs have not addressed some key problems associated with unplanned growth, such as single home construction, public beach access, and conservation of especially sensitive coastal areas.¹²⁰ A CZMP would address these facets of the coastal development problem on Lake Champlain.

In 1990, Congress passed legislation that accorded Lake Champlain a special designation and provided funding for special programs aimed at pollution cleanup and research.¹²¹ Second only to the Great Lakes, Lake Champlain is the largest freshwater lake in the United States.¹²² Nevertheless, until its special designation, it competed with thousands of smaller lakes for funding.¹²³ Senators Leahy and Jeffords of Vermont, and Moynihan and D'Amato of New York, and Representatives Smith of Vermont and Martin of New York¹²⁴ introduced the Lake Champlain Special Designation Act to provide funding for a study, coordinated by the United States Environmental Protection Agency (EPA), to develop a "comprehensive pollution prevention, control, and restoration plan for [the Lake]."¹²⁵

Like state efforts at protecting Lake Champlain, the federal legislation did not call for a comprehensive management program. The Stratton Commission suggested such a plan is necessary for effective conservation of coastal resources. The Champlain Basin Compact also recognized that a management plan was necessary to protect Lake Champlain. But no legislation so far has succeeded in prompting the development of a Lake Champlain Management plan. Additionally, state and federal programs that affect Lake Champlain do not provide CZMA-type preemption, a key tool that requires federal consistency with state coastal management plans.¹²⁶

Planning, 1988 Vt. Laws 200 [hereinafter Act 200].

119. LOWENSTEIN & LECHNER, *supra* note 17, at 16.

120. *Id.*

121. Lake Champlain Special Designation Act of 1990, Pub. L. No. 101-596, 104 Stat. 3000, 3006-10 (1990).

122. LOWENSTEIN & LECHNER, *supra* note 17, at 4.

123. *Id.*

124. *Id.*

125. Pub. L. No. 101-596, 104 Stat. 3000, 3006 (1990).

126. See *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572 (1987) (holding that although federal law could preempt state land use regulation within national forest lands, state environmental regulations would not necessarily be preempted so some state regulation of activities on federal land would be permissible).

B. *The Similarities between Lake Champlain and the Great Lakes*

Current pollution and development pressures on Lake Champlain have increased to a level that warrants attention on the state, federal, and international level. Some forms of pollution associated with increased population pressures in the Champlain region have risen to levels comparable to those in the Great Lakes.¹²⁷ Indeed, pollution levels in the worst stretches of Lake Champlain equal levels found in the Great Lakes at their worst condition in the mid-1970's.¹²⁸

These six lakes share qualities that have caused Congress and state legislatures to treat them equally in legislation other than CZMA.¹²⁹ Just as the Great Lakes are a valuable transportation corridor, Lake Champlain is a vital link in an international trade route. Lake Champlain is part of the watercourse between the New York City harbor and the Great Lakes, with the connection made via the St. Lawrence River.¹³⁰

Congress has treated the six lakes equally in legislation addressing pollutant effects on fishery resources. Congress authorized the Secretary of the Interior to enter into agreements that develop, conserve, and enhance anadromous¹³¹ fishery resources and fish populations in the Great Lakes and Lake Champlain.¹³² Thus, Congress recognized that the health of the fishery resource depended upon protecting the entire ecosystem through which the fish migrate.¹³³

Congress has also treated the Great Lakes and Lake Cham-

127. LOWENSTEIN & LECHNER, *supra* note 17, at 7 (citing comments of Eric Smeltzer, Vermont State Environmental Engineer, at Lake Champlain Symposium (1989)). Phosphorous pollution is caused by discharges of improperly treated sewage and manure runoff from farm lands. New tertiary facilities installed by sewage treatment plants, and improved farming practices promoted by the U.S. Department of Agriculture, have failed to reduce phosphorous levels in Lake Champlain. It is suggested that increased levels of pollution caused by rising population and development in the region have offset the improved practices. *Id.*

128. *Id.*

129. See *infra* notes 131-40 and accompanying text.

130. 3 ENCYCLOPEDIA BRITANNICA 74 (15th ed. 1987).

131. Anadromous describes "the migratory behaviour of fish that spend most of their lives in sea, but that then migrate to fresh water to spawn (e.g., salmon and lamprey)." OXFORD DICTIONARY OF NATURAL HISTORY 29 (1985).

132. 16 U.S.C. § 757(a) (1988).

133. S. REP. No. 860, 89th Cong., 1st Sess. (1965), reprinted in 1965 U.S.C.C.A.N 3837-38.

plain similarly by including them together in a class with the oceans. In 1945, Congress authorized the Army Corps of Engineers to study coastal erosion patterns of these lakes, the Atlantic and Pacific Oceans, and the Gulf of Mexico to determine beach protection methods.¹³⁴ Thus, Congress saw a comparable national interest in the coasts of the Great Lakes and Lake Champlain for recreational purposes.

More recently, Congress passed the Lake Champlain Special Designation Act (Champlain Act) which promotes a basin wide approach to the study and prevention of lake pollution.¹³⁵ In essence, the Champlain Act includes Lake Champlain in the Great Lakes Critical Programs established pursuant to the Great Lakes Water Quality agreement between the United States and Canada.¹³⁶ By passing the measure, Congress recognized that Lake Champlain needed pollution cleanup as much as the Great Lakes.¹³⁷

New York State also has legislation affecting the Great Lakes basin. The Great Lakes Basin Compact was established by New York and the other state and provincial governments bordering the Great Lakes.¹³⁸ This agreement established councils within each state and provincial government to advise the respective party's environmental commissioner and governor or prime minister on modifications to each party's comprehensive coastal management program.¹³⁹ The geographic scope of this compact is significant in that it covers the watershed of the Great Lakes and part of the St. Lawrence River, including the "Lake Champlain drainage

134. 33 U.S.C. § 426a (1988).

135. Lake Champlain Special Designation Act, Pub. L. No. 101-596, § 303, 104 Stat. 3000, 3006-10 (1990).

136. *Id.*; Great Lakes Critical Programs Act of 1990, §§ 101, 301-304, 33 U.S.C. §§ 1268, 1270.

137. While introducing the Lake Champlain Special Designation Act, Senator Patrick Leahy said, "Lake Champlain, like the Great Lakes, is threatened from various types of pollution." 136 CONG. REC. S890 (1990) (statement of Sen. Leahy). The Management Conference which is created by the Champlain Act is directed to study pollution sources in the entire Champlain basin, that area which drains into the Lake. Lake Champlain Special Designation Act, Pub. L. No. 101-596, sec. 303 at § 120(e), 104 Stat. 3000, 3006 (1990). The Champlain Act defines the Champlain basin as the area comprised of those parts of New York and Vermont counties containing bodies of water that drain into Lake Champlain. *Id.* sec. 303 at § 120(g).

138. N.Y. ENVTL. CONSERV. LAW § 21-901 to 917 (McKinney's 1984 & Supp. 1991). The other parties to the Great Lakes Basin Compact are the states of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin, and the provinces of Ontario and Quebec, Canada. *Id.* § 21-917(1)(b).

139. *Id.* § 21-917(2).

basins."¹⁴⁰

IV. A PROPOSAL TO INCLUDE LAKE CHAMPLAIN UNDER THE COASTAL ZONE MANAGEMENT ACT

Protecting individual pieces of an ecosystem is not adequate to protect the entire system.¹⁴¹ Because Lake Champlain is part of the Great Lakes system, it would be sound practice, as well as a logical extension of Congress' policy of protecting coastal environments, to include Lake Champlain in CZMA. Given the substantial national interest in conserving coastal regions so they may be developed to yield the maximum societal benefit,¹⁴² Congress should acknowledge the need for federal direction and assistance in the development of a Lake Champlain plan.

The first comprehensive management programs under CZMA were established over fifteen years ago.¹⁴³ While New York and Vermont, through the Champlain Basin Compact, have expressed interest in the development of such a plan, these states have not yet begun to draft one. Federal funding and assistance are necessary to ensure that the attributes of the sixth Great Lake, which make it a desirable location for development, do not get lost due to a lack of future planning.

CONCLUSION

The Coastal Zone Management Act of 1972 should be amended to include the states bordering Lake Champlain in its definition of "coastal states." Pollution levels on Lake Champlain are rising because of increasing usage of the Lake and increasing usage of lands that drain into it. While some legislation has been passed to protect the Lake's environment, none has sufficiently reversed the trend of increasing pollution. Efforts by Vermont and New York have failed thus far because of insufficient funding. Recent federal efforts may more successfully address pollution levels

140. *Id.* § 21-917(1)(a).

141. Because an ecosystem exists through the interrelationship of all its parts, a change in any one part affects all the others and, therefore, the system as a whole. See R. H. WHITTAKER, *COMMUNITIES AND ECOSYSTEMS* 144 (1970).

142. STRATTON REPORT, *supra* note 4, at 49.

143. COASTAL ZONE INFO. CTR., *supra* note 64, at 1. Washington received approval for its program in 1976. Twenty-eight other states and territories received approval by the end of 1982. The last two states to receive approval did so in 1986 and 1988. *Id.*

in Lake Champlain, but these laws address only pollution concerns and do not provide for comprehensive coastal zone management. A system of coastal zone management would allow New York and Vermont to plan the future growth of the region to ensure that haphazard concentrated growth will not destroy the viability of the Lake as a bioregion and as an economic and recreational resource. The states need the support of the federal government in this effort.

CZMA provides federal funding for the development of coastal zone management plans for states bordering the oceans and the Great Lakes. While at first glance oceans and lakes might appear dissimilar, the problems caused by unplanned growth along their shores are identical. Lake Champlain shares many qualities with the Great Lakes, including shoreline population growth and high pollution levels. The same factors which prompted Congress to include the Great Lakes in CZMA, such as the Lakes' economic and recreational value to the region and the nation, should prompt Congress to include the states that border Lake Champlain in CZMA's definition of coastal states. Vermont and New York should be eligible to receive funds to plan for and protect the future of Lake Champlain.

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