

Proposed Process, Criteria, and Examples of Potential Interjurisdictional Coordination Actions

Introduction

A key objective of the ocean planning process in the Mid-Atlantic region is to help member entities work better together to achieve the Healthy Ocean Ecosystem and Sustainable Ocean Uses goals and objectives identified in the [Mid-Atlantic Regional Ocean Planning Framework](#) (Framework). Interjurisdictional coordination (IJC) addresses specific processes and mechanisms that will allow member institutions of the Mid-Atlantic Regional Planning Body (MidA RPB or RPB) to better coordinate, leverage resources, and make better decisions that benefit ocean users and ecosystem health through the implementation of their existing mandates and authorities.

Simply put, IJC is a tool that helps agencies share information and coordinate efforts to accomplish common interests. This document describes:

- A proposed IJC process and timeline
- Potential criteria for the selection of IJC actions
- Region-wide IJC examples
- Geographically specific IJC examples

The content of this document is intended to be consistent with and responsive to the [Proposed Approach to the Mid-Atlantic Regional Ocean Action Plan](#) (OAP), which establishes a direction for the RPB's development of the OAP. As described in more detail below, the RPB plans to identify a number of opportunities around which the relevant entities will collaborate to facilitate enhanced information sharing and improved decision-making. Depending on the topic, collaboration may focus on the entire region and/or on specific geographic areas.

Figure 1 below provides an overview of the primary components of the IJC process and the mechanisms through which IJC will result in increased collaboration and improved business practices among RPB member entities.

Figure 1: MidA RPB IJC Process

RPB identifies potential IJC opportunities and IJC actions that advance:

Goal 1: Healthy Ocean Ecosystem

- Improved understanding of the regional ecosystem
- Improved understanding of changes occurring in the regional ecosystem
- Incorporated traditional knowledge
- Preservation, protection, enhancement, and restoration of the regional ecosystem

Goal 2: Sustainable Ocean Uses

- Improved management effectiveness
- Minimized conflicts
- Support for regional economic growth

(In the context of the 9 sectors identified as the Framework objectives)



- Decision criteria guide RPB decisions about which IJC opportunities and actions to address in the OAP
- IJC opportunities and actions are identified region-wide and for limited number of specific geographic areas



Agencies collaborate through existing authorities to support more efficient and effective:

- Acquisition of knowledge through research and science
- Program management
- Environmental and regulatory review
- Use of existing resources

Proposed IJC process and timeline

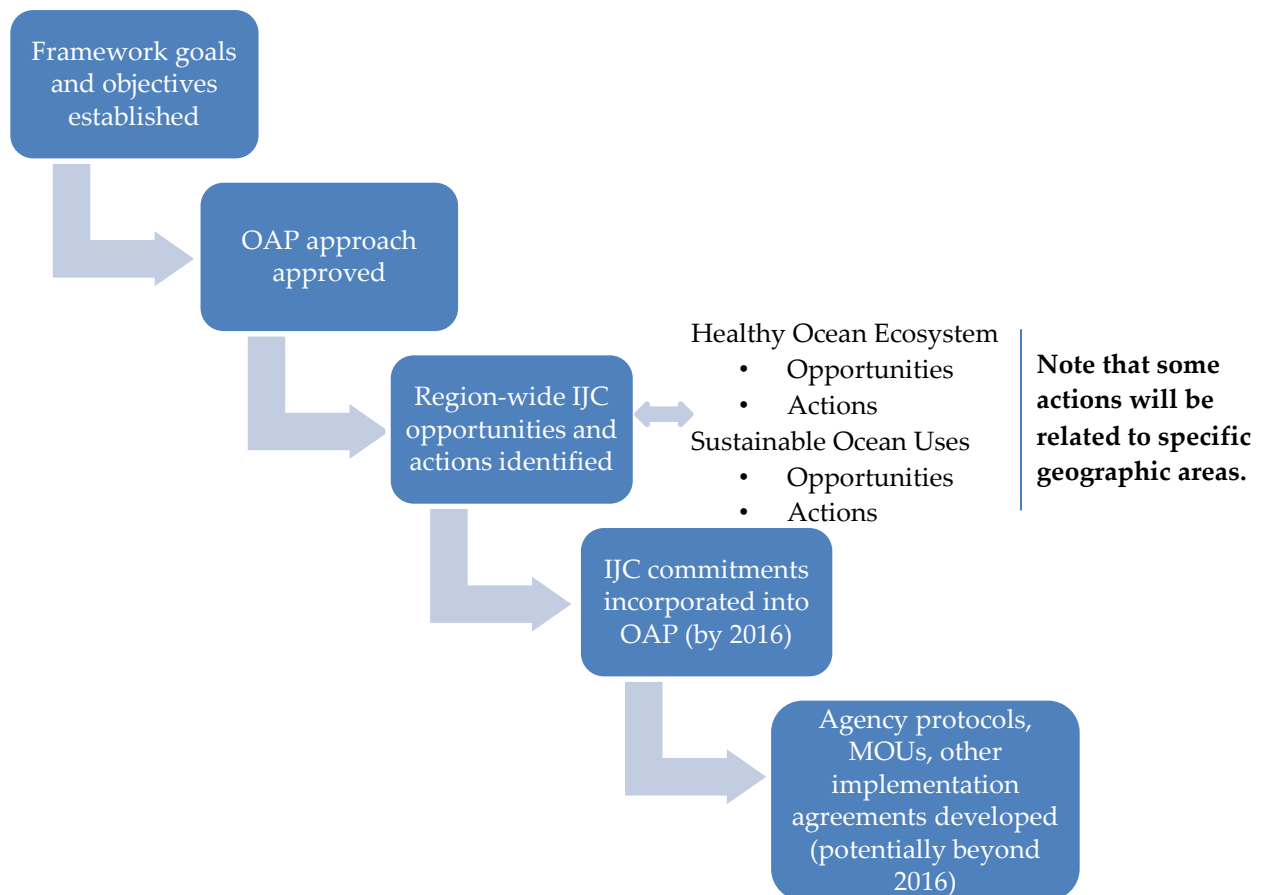
As the planning process continues to progress, the RPB, with stakeholder input, would identify topics to address on a region-wide or geographically specific basis. Those topics will (and are already beginning to) emerge from the Regional Ocean Assessment (ROA), on-going work to build-out the Mid-Atlantic Ocean Data Portal (Data Portal) and develop new data products, stakeholder interests, and public discussion at RPB meetings. The RPB, with stakeholder input, would then identify specific opportunities and associated actions to achieve the goals and objectives in the Framework. Potential outcomes of IJC related to those goals and objectives include:

- Healthy Ocean Ecosystem Goal: improving understanding of the regional ecosystem and changes occurring within it; incorporating traditional knowledge; and preserving, protecting, enhancing, and restoring the ecosystem
- Sustainable Ocean Uses Goal: improving management effectiveness, minimizing conflicts, and supporting economic growth

As specific opportunities are identified, the RPB, with stakeholder input, would also begin to develop IJC actions that describe specifically how RPB entities would share information and coordinate efforts to address the opportunities. Potential IJC actions would be identified, refined, and presented for public comment and RPB consideration in 2015-2016. Those IJC actions eventually committed to by the RPB would then be articulated in the OAP. Agreements among member entities to implement specific IJC actions could be supported by Memorandums of Agreement or similar materials, which could be developed concurrently with or after the OAP is finalized. All changes in business practices, protocols, agreements, etc., that result from the process would be clearly communicated to interested stakeholder groups and the public.

Figure 2 depicts the sequence of process steps to advance the identification of IJC opportunities and actions and associated RPB member entity commitments throughout 2015 and 2016. Timing and specific administration of IJC processes will be discussed further in other RPB materials.

Figure 2: Proposed process steps to develop IJC actions



Potential criteria for the selection of IJC actions

The RPB has expressed an interest in establishing criteria for identifying the region-wide IJC opportunities, specific geographic areas, and specific IJC actions (as described in the [Proposed Approach to the Mid-Atlantic Regional Ocean Action Plan](#)). Potential criteria are offered here for RPB discussion.

Potential criteria for choosing *region-wide IJC opportunities*:

- Foundational (e.g., related to core authorities or practices regarding management, regulation, education, etc.)
- Interdisciplinary and/or interjurisdictional (e.g., meaningful to multiple RPB member missions in the context of the OAP)
- Regional in nature and/or policy priorities for a number of RPB member entities and/or stakeholders
- Consistent with and/or advance the Framework principles, goals, and objectives

Potential criteria to inform the selection of *specific geographic areas*:

- Potential to demonstrate progress on the region-wide IJC opportunities identified above; and/or
- Significant ecological value; and/or
- Socio-economic value; and/or
- High current or potential user conflict

Potential criteria for choosing *specific IJC actions*:

- Are consistent with and serve to achieve the Framework principles, goals, and objectives
- Are achievable within the capacity limitations of the RPB and/or any collaborating entity to accomplish within the planning horizon
- Lead to an improvement in process and/or outcome over current practice
- Advance member entity missions and/or stakeholder interests under existing authorities
- Leverage existing programs, processes, and/or resources

Region-wide IJC example opportunities

This section provides examples of IJC opportunities and actions. *The examples are intended to illustrate representative components of potential IJC opportunities and actions, not a comprehensive, fully organized outline. They are presented only to illustrate the form and*

content that IJC opportunities and actions could take, and are offered solely to support RPB and public discussion at the January 21-22, 2015 RPB in-person meeting.

As described by the *Proposed Approach to the Mid-Atlantic Regional Ocean Action Plan*, a set of interjurisdictional coordination commitments articulated in the OAP would aim to improve governmental business practices and inform management actions under existing authorities. Region-wide IJC opportunities and actions would be identified in coordination with neighboring regions in recognition of the fact that human activities, marine life, and other key components of the marine system cross regional boundaries.

Region-wide IJC opportunities and actions could be organized by four basic categories: (1) identifying research needs, (2) informing and improving management decisions, (3) improving information for environmental and regulatory review, and (4) leveraging resources. Examples are provided under each of these categories:

Category 1: Identifying research needs

- *Example opportunity:* Focus collaborative efforts of RPB agencies to address key/priority region-wide data/research needs identified by the Regional Ocean Assessment (ROA).
 - *Example IJC action:* Integrate assessments of climate change impacts to commercially and recreationally important species and incorporate in OAP/ROA updates or revisions.

Relationship to Framework: This could help address the Healthy Ocean Ecosystem and Sustainable Uses goals and all objectives in the Framework, and is consistent with Framework principles related to Intrinsic Value, Economic Value, Best Available Science, and Coordination and Government Efficiency.

Category 2: Informing and improving management decisions

- *Example opportunity:* Develop approach to support agencies' identification, analysis, and use of best available data/information.
 - *Example IJC action:* Agencies with primary responsibility for ecosystem components and human activities (e.g., NOAA for marine mammals; USCG for navigation) could identify data products, based on the Data Portal, that best represent the subject matter for management or regulatory purposes. These materials would not be used exclusively in decision-making, but would provide a consistent, transparent, and efficient starting point on a case-by-case basis.

Relationship to Framework: This could help address the Healthy Ocean Ecosystem goal through the Accounting for ocean ecosystem changes and increased risks objective (#2) and the Sustainable Ocean Uses goal through data products that benefit all related objectives. This is consistent with Framework principles related to Best Available Science,

Compatibility of Multiple Interests, Consistency with Existing Laws, and Coordination and Government Efficiency.

- *Example opportunity:* Support state and federal management objectives under the Coastal Zone Management Act.
 - *Example IJC action:* Develop regionally or sub-regionally consistent categories of federal agency actions, consistent with state interests, which can be addressed by general consistency or comparable provisions under the CZMA.
 - *Example IJC action:* Evaluate the opportunity to support regionally or sub-regionally consistent geographic location descriptions (GLDs) for specific activities. This could be done as a stand-alone exercise or be associated with discrete geographic areas.

Relationship to Framework: This is consistent with Framework principles related to Best Available Science, Compatibility of Multiple Interests, and Coordination and Government Efficiency, and could help address the Sustainable Ocean Uses goal through almost all of the objectives.

- *Example opportunity:* Enhance application of principles and practices of ecosystem-based management (EBM) under existing authorities.
 - *Example IJC action:* Provide region-specific context and information to inform existing agency actions and milestones related to EBM in the National Ocean Policy Implementation Plan (NOP IP).
 - *Example IJC action:* Identify opportunities to pilot implementation of new and emerging EBM practices.

Relationship to Framework: As a foundational concept, EBM can be related to both goals and all objectives in the Framework. More narrowly, it could help address the Healthy Ocean Ecosystem goal through the Discovering, understanding, protecting, and restoring the ocean ecosystem objective (#1) and the Sustainable Ocean Uses goal through consideration of any of the specific sectors. The IJC actions above are consistent with Framework principles related to Intrinsic Value, Recognize Interconnections, Best Available Science, and Compatibility of Multiple Interests.

Category 3: Improving information for environmental and regulatory review

- *Example opportunity:* National Environmental Policy Act (NEPA) review and U.S. Army Corps of Engineers (USACE) permitting
 - *Example IJC action:* Develop protocols that describe how agencies will use data and coordination measures to implement the OAP through NEPA and regulatory processes.
 - *Example IJC action:* Develop communications for the public (as referenced above) that describe how agencies will engage with the OAP in the implementation of their existing authorities.

- *Example IJC action:* Develop NEPA and regulatory pre-application protocols for lead federal agencies.
- *Example IJC action:* Coordinate state and federal participation in NEPA reviews, including use of the Data Portal.

Relationship to Framework: This could help address the Healthy Ocean Ecosystem goal through the Discovering, understanding, protecting, and restoring the ocean ecosystem objective and the Sustainable Ocean Uses goal for all objectives. This is consistent with the Framework principles related to Best Available Science, Compatibility of Multiple Interests, and Coordination and Government Efficiency.

Category 4: Leveraging resources

- *Example opportunity:* Identify funding/resource needs associated with existing or new approaches to management, environmental or regulatory review, or research actions developed by the RPB and develop collaborative approaches to support funding/resource needs.
 - *Example IJC Action:* Identify opportunities to coordinate funding to continue to support on-going research in deep-water canyons.

Relationship to Framework: This could help address the Healthy Ocean Ecosystem and Sustainable Ocean Uses goal and all objectives. This is consistent with Framework principles related to Intrinsic Value, Economic Value, Best Available Science, Recognize Interconnections, and Coordination and Government Efficiency.

Geographically specific IJC examples

This section provides examples of IJC actions that advance goals and objectives associated with specific geographic areas. *As with those above, the examples are intended to illustrate representative components of potential actions, not a comprehensive, fully organized outline.*

As described in the *Proposed Approach to the Mid-Atlantic Regional Ocean Action Plan*, specific geographic areas may be selected because they are characterized by potential to demonstrate progress on the region-wide IJC opportunities, significant ecological value, and/or areas of high current or potential user conflict, and/or socio-economic value. Specific potential IJC actions would then be identified for those areas. These specific actions would be identified based on the needs and characteristics of each area and input from stakeholders.

For each of the specific geographic areas identified through the planning process, the RPB could develop information that:

- characterizes components and dynamics of the area

- identifies key issues and interactions within the area that can be enhanced to achieve Framework objectives
- identifies management, environmental and regulatory review, research, stakeholder engagement needs/opportunities, funding actions, and other actions

Specific geographic areas example 1: Mouth of Chesapeake Bay, Delaware Bay, and/or similar areas

- *Example of IJC actions that would be specific to the mouth of the Chesapeake:*
 - The Bureau of Ocean Energy Management (BOEM), U.S. Navy, U.S. Coast Guard, and National Oceanographic and Atmospheric Administration (NOAA) collaborate to determine migration rate of the encroaching shoals at Northeastern and Southeastern navigation channels.
 - Integrate Data Portal and BOEM/state sand management task force data and information to support state/federal management and regulatory interests.
 - Develop CZMA general concurrence provisions for categories of actions within the sub-area. For example, some areas that could initially be addressed include: disaster response and recovery activities by the Federal Emergency Management Agency (FEMA); certain Coast Guard navigational activities; and military activities.
 - Evaluate the opportunity to develop a geographic location description under the CZMA for specific activities in the area.
 - Develop use and resource-specific compatibility assessments using the Data Portal to enhance multiple use management by responsible parties under existing authorities (i.e., *not* as the basis for RPB determinations about what goes where, rather to provide information and awareness to support agency/sectoral problem-solving).
 - Identify and address data and/or procedural challenges associated with management interactions among specific uses/situations identified by the RPB, existing management entities, and/or stakeholders.

Relationship to the proposed criteria for identifying geographic areas: Demonstrates progress on region-wide topics. Addresses area of high current or potential user conflict and/or socio-economic value. Is consistent with Framework principles related to Economic Value, Best Available Science, Coordination and Government Efficiency, and could help address the Sustainable Uses goal through National Security (#1) and Maritime Commerce (#5) objectives.

Specific geographic areas example 2: Deepwater canyons

- *Example of IJC actions that would be specific to the deepwater canyons:*

- Enhance existing interagency research and management efforts by addressing data, analysis, and research needs.
- Develop approach to coordinate with Mid Atlantic Fishery Management Council and other entities with management responsibilities to address data needs, stakeholder engagement, management considerations, or other materials that support management and conservation responsibilities.

Relationship to the proposed criteria for identifying geographic areas: Demonstrates progress on region-wide topics. Addresses areas of significant ecological value and high current or potential user conflict. This is consistent with Framework principles related to Intrinsic Value, Best Available Science, and Recognize Interconnections, and could help address the Healthy Ocean Ecosystem goal through the Discovering, understanding, protecting, and restoring the ocean ecosystem objective (#1).

Appendix of selected environmental and regulatory authorities^{1,2} and potential use of data

All development activities in the Mid-Atlantic region are subject to NEPA compliance and similar regulatory review and [data requirements](#) under USACE permitting. At a minimum, data and information from the MARCO Mid-Atlantic Ocean Data Portal will provide a baseline context for each of the authorities. In addition, the RPB may choose to develop specific data products and management tools based on the Data Portal (which could include such IJC actions as developing best available data sets, baseline reference material, and materials that support regulatory consultations) to enhance existing review and permitting. For example, the Data Portal will help identify spatial concentrations of resources and human activities that will help the NEPA review and regulatory processes avoid, minimize, and mitigate potential impacts.

In summary form, the core environmental and regulatory review authorities include:³

- The **National Environmental Policy Act** requires “federal agencies... to determine if their proposed actions have significant environmental effects and to consider the environmental and related social and economic effects of their proposed actions.”⁴ NEPA applies in state and federal waters, as well as to terrestrial activities, to federal actions such as leasing of public lands (e.g. through OCSLA) and permitting development proposals (including USACE permitting), adoption of fishery management plans, and other federal activities. The NEPA process generally is the first process that federal agencies implement in permitting and leasing actions (in some cases, NEPA and permit processes run concurrently). The [NEPA process](#) uses data and information from agency and public participation to identify the potential impacts of a proposed action on the environment, evaluates potential alternatives that could have less impact, and identifies means by which unavoidable impacts can be minimized and mitigated. The lead federal agency is responsible for implementing the NEPA process and will engage the public, other federal agencies (sometimes formally designated as cooperating agencies to establish a formal coordinating relationship among agencies), and outside parties. If the extent and magnitude of impacts to the environment are unknown, the agency prepares an Environmental Assessment (EA). If the lead agency initially or through the EA process determines that there are likely to be significant impacts, the agency must prepare an Environmental Impact Statement (EIS) to evaluate project alternatives and identify measures to avoid, minimize, and mitigate impacts.

¹ Modified from *Northeast Regional Ocean Plan: Options for Effective Decision Making*, Report prepared for the Northeast Regional Planning Body, SeaPlan, et. al., September 2014.

² Descriptions of statutes and regulations are intended to generally characterize the subject matter. For detailed and authoritative materials, please follow the links.

³Numerous other authorities may apply depending on the type of activity.

⁴ *A Citizen's Guide to the NEPA*, Council on Environmental Quality, December 2007.

- **Use of data:** NEPA provides administrative flexibility in how lead federal agencies implement review, and each agency has established procedures (including guidance and regulation) to guide the process. Regardless of the administrative process, regional ocean plan data can provide a consistent informational framework for the review of proposed development projects. The MARCO Data Portal could inform key elements of NEPA review, including scoping (which identifies key stakeholders, issues, information gaps and needs, and other consultations that need to occur), identification of project alternatives, evaluation of environmental effects, description of the affected environment, and development of mitigation measures.
- The **Rivers and Harbors Act, section 10**, administered by the USACE, provides for the review of [work and structures](#) below the mean high water line of waters of the United States out to the three mile limit, and of fixed structures beyond the three mile limit.
 - **Use of data:** As a component of permitting under both the Rivers and Harbors Act and the Clean Water Act, the USACE conducts a “[public interest review](#)” to evaluate “the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.”⁵ The review addresses a wide range of natural, cultural, social, economic, and other issues, including, generally, “the needs and welfare of the people.”⁶ The MARCO Data Portal could provide strong support for the USACE review. Plan data should provide relevant information for existing and/or potential human activities, including commercial shipping, recreational fishing, commercial fishing, existing infrastructure including cables and pipelines, and others.
- The **Clean Water Act, section 404**, administered primarily by the USACE, in consultation with the EPA (which has a formal jurisdictional role), provides for the review and authorization of impacts of dredged or fill material on the marine ecosystem below the high tide line of waters of the United States out to the three mile limit, in consultation with federal resource agencies that have subject-matter jurisdiction to evaluate potential impacts to jurisdictional resources.
 - **Use of data:** The Clean Water Act section [404\(b\)\(1\) Guidelines](#) identify the information and analysis used to determine whether a proposed activity will have a significant adverse impact to the aquatic environment. The review addresses potential impacts to, among other things, the seabed, water quality, currents and circulation, endangered and threatened species, fish and other aquatic organisms, and other wildlife. In addition, the review addresses potential

⁵ 33 C.F.R. §320.4.

⁶ Ibid.

impacts to commercial and recreational fishing, water related recreation, aesthetics, and sanctuaries, refuges, and similar preserves.

The Guidelines identify a category of resources called Special Aquatic Sites, which are subject to a regulatory presumption that a proposed activity will have less significant impact to the aquatic environment if it is not located in the Special Aquatic Site. Such areas relevant to the ocean plan include wetlands (saltmarsh), vegetated shallows (sea grasses), mudflats, and coral reefs. The MARCO Data Portal and other sources of data and information can support spatial definition of Special Aquatic Sites and provide baseline information to inform the review process.

Federal consultations required under the following federal laws inform NEPA review and Clean Water Act and Rivers and Harbors Act permitting include:⁷

- The **Endangered Species Act (ESA)**, administered by the Department of the Interior's U.S. Fish and Wildlife Service (USFWS) for terrestrial species and the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS);
- The **Magnuson-Stevens Act Essential Fish Habitat (EFH)** provisions, administered by NOAA/NMFS provide for the review of potential impacts to essential fish habitat for species managed, in the Mid-Atlantic, by the Mid-Atlantic Fishery Management Council;
- The **Marine Mammal Protection Act (MMPA)**, administered by NOAA/NMFS, provides for the review of potential impacts to marine mammals and turtles;
- The **Migratory Bird Treaty Act (MBTA)**, administered by the USFWS, requires federal agencies to consult the Service about potential impacts to migratory bird species; and
- The **National Historic Preservation Act, section 106 (NHPA)**, administered by the Advisory Council on Historic Preservation, state historic preservation officers, and tribal preservation officers, provides for the review of potential impacts to cultural and historic resources.
 - **Use of data:** The MARCO Data Portal could support better informed and more efficient [ESA](#), [EFH](#), [MMPA](#), and [MBTA](#) consultations. The data may also provide opportunities to enhance these consultations by developing authoritative regional characterizations of resources and uses, reference data, and programmatic consultations. Baseline historic and cultural data developed to support [consultation under the NHPA](#) may be used to identify specific areas to

⁷ Other authorities may apply depending on the type of activity. These represent the core resource consultations that typically apply.

avoid or flag as potentially sensitive. Some data would not be represented due to sensitivity and/or confidentiality.

- The **Coastal Zone Management Act**, administered by [NOAA's Office of Ocean and Coastal Resource Management/Coastal Services Center](#) and state coastal management programs, authorizes states to review [federal actions](#) that have reasonably foreseeable effects to resources and uses of the state's coastal zone under the state's [enforceable policies](#). One way that states can formally exert jurisdiction is to define specific areas outside state waters in which it has been determined that a specific kind of activity will have an effect on uses or resources in state waters (requires approval by NOAA/OCRM). Data can also be used to support "general consistency" and similar provisions of the CZMA to achieve review efficiencies by conducting one initial review of a category or class of activity that can then be used to address all future activities within the category. This provides flexibility and efficiency for both the federal agency and the state conducting the review, both of which can ensure that their interests are addressed through the minimum necessary level of effort, and for private project applicants, who may not be required to submit an application.
 - **Use of data:** All data being developed through the regional ocean planning process will support both state and federal interests under the CZMA. Mid-Atlantic ocean planning will be based on federal, state and tribal data and will enhance the use of existing state data by providing greater regional context for data and resource issues in state waters. It will also support more informed application of the "[effects test](#)" used to determine whether federal actions will affect uses or resources of a state coastal zone.