FEDERAL CONSISTENCY
WORKBOOK









NOAA Ocean Service

OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL OCEAN SERVICE
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
Silver Spring, Maryland 20910

FEDERAL CONSISTENCY REQUIREMENTS*

November 1, 2001

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INTRODUCTION

The Coastal Zone Management Act (CZMA) was enacted on October 27, 1972, to encourage coastal States, Great Lake States, and United States Territories and Commonwealths (collectively referred to as coastal States) to develop management programs to manage and balance competing uses of and impacts to coastal resources. The CZMA is an important law implementing the concept of federalism and emphasizes the primacy of State decision making regarding the coastal

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zone. Section 307 of the CZMA (16 USC § 1456), called the Federal Consistency provision, is a major incentive for States to join the national coastal management program and is a powerful tool that States use to manage coastal uses and resources and to facilitate cooperation and coordination with Federal agencies.

Federal Consistency reviews are the responsibility of the lead State agency that implements or coordinates the State's federally approved Coastal Management Program (State CMP or CMP). At the federal level, the Office of Ocean and Coastal Resource Management (OCRM), within the National Oceanic and Atmospheric Administration's (NOAA's) National Ocean Service, among other duties and services, interprets the CZMA and oversees the application of Federal Consistency; provides management and legal assistance to coastal States, Federal agencies, Tribes and others; and mediates CZMA related disputes. NOAA's Office of General Counsel for Ocean Services assists OCRM and processes appeals to the Secretary of Commerce.

The purpose of this document is to provide a brief overview of Federal Consistency. For more detailed information and to fully comply with CZMA requirements, *see* CZMA section 307 (16 USC § 1456) and NOAA's Federal Consistency regulations, 15 CFR part 930.

Recent revisions to the regulations were promulgated at 65 *Federal Register* 77123-77175 (December 8, 2000), and were published in the Code of Federal Regulations on January 1, 2001. The new rules took effect on January 8, 2001. The preamble to the final rule published on December 8, 2000, also contains substantial information regarding Federal Consistency. The Conference Report to the 1990 amendments to the CZMA (Pub. L. No. 101-508) is a primary legislative source for some of the revisions to the regulations. The Conference Report is discussed in the preamble to the December 8, 2000, final rule and can also be located at, H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess., 970-972 (Conference Report).

DEFINITION

Federal Consistency is the CZMA requirement that ***federal actions*** that have reasonably foreseeable ***effects*** on any ***land or water use*** or ***natural resource*** of the coastal zone (also referred to as coastal uses or resources, or coastal effects) must be consistent with the ***enforceable policies*** of a coastal State's federally approved CMP.

Federal actions:

1. ***Federal agency activities*** -- activities and development projects performed by a Federal agency, or a contractor for the benefit of a Federal agency.

   E.g., Fisheries Plans by the National Marine Fisheries Service, Naval exercises, the disposal of federal land by the General Services Administration, a U.S. Army Corps of Engineers (Corps) breakwater or beach renourishment project, an outer continental shelf (OCS) oil and gas lease sale by the Minerals Management

Service (MMS), improvements to a military base, Naval disposal of radioactive or hazardous waste performed by a private contractor, activities in National Parks such as installation of mooring buoys or road construction;

2. ***Federal license or permit activities*** -- Activities not performed by a Federal agency, but requiring federal permits, licenses or other forms of federal approval.

   E.g., activities requiring Corps 404 permits, MMS approvals for OCS oil and gas plans, Corps permits for use of ocean dump-sites, Nuclear Regulatory Commission licenses for nuclear power plants, licenses from the Federal Energy Regulatory Commission (FERC) for hydroelectric facilities;

3. ***Federal financial assistance to State and local governments.***

   E.g., Federal Highway Administration funds to coastal state and local governments, construction grants for wastewater treatment works, hazardous waste management trust fund, Housing and Urban Development grants.

Effects:

At the heart of Federal Consistency is the "effects test." The CZMA was amended in 1990 to,

> establish[] a generally applicable rule of law that any federal agency activity (regardless of its location) is subject to [the consistency requirement] if it will ***affect*** any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

Conference Report at 970. The new effects language was added to replace previous language that referred to activities "directly affecting the coastal zone." It also reflects Congressional intent to overturn *Secretary of the Interior v. California*, 464 U.S. 312 (1984), and further to:

> eliminate "categorical exemptions" from consistency, and instead to establish a uniform threshold standard requiring federal agencies to make a case-by-case factual determination of reasonably foreseeable effects on the coastal zone. The amendments to section 307(c)(1) were intended to leave no doubt that all federal agency activities meeting the "effects" standard are subject to the CZMA consistency requirement; that there are no exceptions or exclusions from the requirement as a matter of law; and that the new "uniform threshold standard" requires a factual determination, based on the effects of such activities on the coastal zone, to be applied on a case-by-case basis.

Id. at 970-71; 136 Cong. Rec. H 8076 (Sep. 26, 1990). The Conference Report provides further clarification as follows:

> The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

These concepts are key to the effectiveness of the CZMA to allow States to balance resource protection with development in the coastal zone and are embodied in the revised Federal Consistency regulations.

Enforceable policies: An enforceable policy is a State policy that is legally binding under State law (e.g., through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions), and by which a State exerts control over private and public coastal uses and resources, and which are incorporated in the State's federally approved CMP.

Coastal uses: Coastal uses include such activities as: public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas, floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects, etc.

Coastal resources: Coastal resources include biological or physical resources that are found within a State's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, and reptiles, etc.

BENEFITS

Federal Consistency is an important mandatory, but flexible mechanism to foster consultation, cooperation, and coordination between States and Federal agencies. Federal consistency is more than just a procedural dictate. It helps ensure the balanced use and protection of coastal resources through State CMP policies.

To maximize the benefits of Federal Consistency, Federal agencies need to provide routine notification to coastal States of actions affecting the coastal zone, and coastal States need to pay attention to proposed federal actions, develop adequate consistency procedures, and notify Federal agencies, other State agencies, and others of a State's assertion of consistency. If a CMP is not receiving notice of federal activities affecting the coastal zone, then the CMP needs to address this issue with each Federal agency. States need to make connections with the Federal agencies, inform them of the Federal Consistency requirements, possibly develop memoranda of understanding (MOUs), ensure that the CMP obtains notice, and respond when the CMP does

receive notice. In summary, Federal agencies and others have an affirmative duty to comply with the Federal Consistency requirements, but States need to take consistent and assertive steps.

Federal consistency provides Federal agencies with an effective mechanism to document coastal effects and to address State coastal management concerns. Moreover, compliance with the consistency requirement complements National Environmental Policy Act (NEPA) requirements. Even though the CZMA effects test is different than NEPA's and the CZMA requires Federal agencies to alter projects to be consistent with State CMP policies, NEPA is an effective delivery mechanism for Federal Consistency and often provides necessary background information.

Early attention to Federal Consistency can provide the Federal agency with State CMP and public support and a smooth and expeditious federal consistency review. Early consultation and cooperation between Federal agencies and State CMPs can help Federal agencies avoid costly last minute changes to projects in order to comply with State CMP policies. For example, to avoid issues on specific projects, the Alaska CMP and MMS developed an MOU that specifies the process for consistency reviews of OCS oil and gas lease sales and approvals, and Alaska and the Forest Service established a similar MOU for Timber Sales.

States concur with approximately 93-95% of all federal actions reviewed. Maintaining this percentage means that States and Federal agencies need to know their consistency responsibilities and to develop cooperative relationships to foster effective coordination and consultation.

NATIONAL INTEREST SAFEGUARDS

Federal Consistency gives States substantial input into federal actions affecting the coastal zone. There are, however, safeguards which balance the need to ensure consistency for federal actions affecting the coastal zone and the importance of federal activities. These safeguards include:

Federally approved programs and State CMP enforceable policies. State CMPs and their enforceable policies must be approved by NOAA after substantial input by Federal agencies and other interested parties. Likewise, when a State modifies its CMP or seeks to add a new enforceable policy, NOAA must approve the program change after providing the opportunity for input from Federal agencies and others.

Consistency must be based on coastal effects. While the Federal Consistency effects test covers a wide range of federal actions, States only review federal actions that have reasonably foreseeable coastal effects. For Federal agency activities, Federal agencies make this determination of effects. For federal license or permit activities and federal financial assistance activities, OCRM makes the determination of effects by approving the ***lists*** of federal approvals and financial assistance programs that a State wishes to include in its CMP. In order to be on the list, the federal approval or funding program must have coastal effects in most cases. Federal agencies and other interested parties have input into OCRM's approval of such lists and additions to the lists. If a State wishes to review an ***unlisted*** federal license or permit activity, it must

notify the applicant and the Federal agency and seek OCRM approval to review the activity. OCRM's decision is based on whether the unlisted activity will have reasonably foreseeable coastal effects and, again, OCRM seeks input from the Federal agency and the applicant.

Consistent to the maximum extent practicable (Federal agency activities). Requires Federal agency activities (CZMA § 307(c)(1)) to be fully consistent unless federal legal requirements prohibit full consistency. This ensures that Federal agencies are able to meet their legally authorized mandates, even though the activity may not be consistent with a State's enforceable policy. If a Federal agency has the discretion to meet a State's enforceable policy, then it needs to be consistent with that policy. However, federal law may limit a Federal agency's discretion and, thus, a Federal agency's administrative record may dictate an action that is not fully consistent with a State's policy. A Federal agency may also deviate from full consistency due to "exigent circumstances." An exigent circumstance is an emergency or emergency-like or unexpected situation requiring the Federal agency to take quick or immediate action.

Consistent to the maximum extent practicable and exigent circumstances refers to consistency with a State CMP's substantive requirements as well as the procedural requirements of NOAA's regulations. There may be times that a federal legal requirements or an emergency situation requires a Federal agency to act sooner than the end of the 90-day consistency period. In such cases, the Federal agency needs to consult with the State CMP as early as possible.

A Federal agency cannot use a lack of funds as a basis for being consistent to the maximum extent practicable. Thus, Federal agencies are encouraged to consult early with State CMPs to ensure that the Federal agency has budgeted for meeting State CMP enforceable policies.

Appeal State objection to Secretary of Commerce (Non-Federal only). Non-federal applicants for federal license or permits and State and Local government applicants for federal financial assistance may appeal a State's objection to the Secretary of Commerce. If the appellant meets certain grounds, the Secretary will override the State's objection, allowing the Federal agency to issue its approval or funding.

Mediation by the Secretary or OCRM. Federal agencies and States may request the Secretary of Commerce to mediate serious disputes. OCRM is also available to mediate between Federal agencies and States, as well as with other parties. OCRM mediation has been used to resolve disputes between States and Federal agencies.

BASIC FEDERAL CONSISTENCY PROCEDURES

Two important things to keep in mind to facilitate consistency reviews is for the Federal agency, State CMP, and applicant to discuss a proposed activity as early in the process as possible, and that State CMPs and Federal agencies can agree, at any time, to more flexible consistency review procedures (providing public participation requirements are still met).

See Appendix A for a chart summary of the consistency requirements, and Appendices B and C for flow charts for Federal agency activities and Federal license or permit activities.

Federal Agency Activities and Development Projects

Federal agencies proposing an activity need to follow the requirements of CZMA section 307(c)(1), (2)(16 USC § 1456(c)(1), (2)) and 15 CFR part 930, subparts A, B and C, as revised by 65 Fed. Reg. 77123-77175 (December 8, 2000).

1. Federal development projects inside the coastal zone are automatically subject to consistency and require a Consistency Determination.
2. Federal agency determines if federal activity (in or outside coastal zone) and development projects outside coastal zone will have reasonably foreseeable coastal effects. States are encouraged to list activities that are expected to affect coastal uses or resources in their approved CMPs, and to monitor unlisted activities and to notify Federal agencies when an unlisted activity requires consistency review. However, the listing/unlisted provisions in NOAA's regulations are recommended procedures for facilitating State-Federal coordination. Whether or not an activity is listed, it is the Federal agency's responsibility to provide State CMPs with Consistency Determinations for Federal agency activities affecting the coastal zone.
3. The Federal agency should contact the State CMP at the earliest possible moment in the planning of the activity to ensure early State-Federal coordination and consultation.
4. If coastal effects are reasonably foreseeable, then Federal agency submits a Consistency Determination to State CMP at least 90 days before activity starts. While the form of the Consistency Determination may vary, it must include a detailed description of the proposed activity, its expected coastal effects, and an evaluation of the proposed activity in light of the applicable enforceable policies in the State's CMP.
5. If no effects, Federal agency may have to provide a Negative Determination.
6. State CMP has 60 days (plus appropriate extensions) to concur with or object to the Federal agency's consistency determination.
7. The State CMP must provide for public comment on the State's consistency review. The State cannot rely on the Federal agency notice, unless the Federal agency notice specifically says that comments on the ***State CMP's consistency review*** should be sent to the State CMP agency.
8. State concurrence presumed if State does not meet time frames.
9. If the State CMP agrees with the Consistency Determination, then the Federal agency may immediately proceed with the activity. If the State objects, then the State's objection must describe how the proposed activity is inconsistent with enforceable CMP policies. In the event of an objection, the State CMP and Federal agency should attempt to resolve any differences during the remainder of the 90 day period. If resolution has not been reached at the end of the 90 day period the Federal agency should consider postponing final federal action until the problems have been resolved. However, at the end of the 90 day period the Federal agency may, notwithstanding State CMP objection, proceed with

the activity only if the Federal agency clearly describes, in writing, to the State CMP the specific legal authority which limits the Federal agency's discretion to comply with the State CMP's enforceable policies.

10. If dispute between Federal agency and State CMP, either party may seek mediation by OCRM or the Secretary of Commerce (the Secretary's mediation is more formal).

Federal License or Permit Activities

A private individual or business, or a state or local government agency, or any other type of non-federal entity, applying to the federal government for a required permit or license or any other type of an approval or authorization, needs to follow the requirements of CZMA section 307(c)(3)(A)(16 USC § 1456(c)(3)(A)) and 15 CFR part 930, subparts A, B and D, as revised by 65 Fed. Reg. 77123-77175 (December 8, 2000).

1. State CMP, with OCRM approval, determines effects:
   a. listed v. unlisted activity.
   b. inside v. outside coastal zone.

All federal license or permit activities occurring in the coastal zone are deemed to affect coastal uses or resources, if the State CMP has "listed" the particular federal license, permit, or approval in its federally approved CMP document.

For a *listed* activity occurring *in the coastal zone*, the applicant must submit a Consistency Certification to the approving Federal agency and the State CMP. In addition to the Certification, the applicant must provide the State with the necessary data and information to allow the State to assess the project's effects. This information will usually be contained in the applicant's application to the Federal agency, but may include other information required by the State CMP, if the information requirement is *specifically included in the State's federally approved CMP document.*

For *listed* activities, *outside the coastal zone*, the applicant must submit a Consistency Certification to the State CMP and the Federal agency if the activity falls within the *geographic location* described in the State CMP document for listed activities outside the coastal zone. For listed activities outside the coastal zone where the State has *not* described the geographic location, the State CMP must follow the unlisted activity procedure described above, if it wants to review the activity.

An applicant may also be required to submit a Consistency Certification to the State CMP for *unlisted activities*. For unlisted activities, in or outside the coastal zone, the State CMP must notify the applicant, the relevant Federal agency, and OCRM that it intends to review the activity. OCRM must approve the State's consistency review. The State CMP must make this notification within 30 days of receiving notice of the activity, otherwise the State waives its consistency rights. The waiver does not apply where the State CMP does not receive notice (notice may be

actual or constructive so long as it is adequate). The applicant and the Federal agency have 15 days from receipt of the State CMP's request to provide comments to OCRM. OCRM will make a decision usually within 30 days of receipt of the State's request. The basis for OCRM's decision will be whether the proposed activity can be reasonably expected to affect any land or water use or natural resource of the coastal zone. The Federal agency may not approve the activity until the consistency process is complete.

2. Applicant for any required federal approval must submit a Consistency Certification and necessary data and information to the State CMP.
3. State CMP has six months to respond, but must notify applicant if review will go beyond three months.
4. The State must provide for public comment (State can require applicant to publish notice or may combine notice with Federal agency, if Federal agency agrees).
5. State concurrence presumed if State does not meet time frames.
6. If State objects, Federal agency cannot issue approval.
7. Applicant may renegotiate with State to remove State's objection or appeal the State's objection to the Secretary of Commerce within 30 days of the objection. If the Secretary overrides the State's objection, the Federal agency may approve the project.

OCS Plans

A private person or business applying to the U.S. Department of the Interior's Minerals Management Service (MMS) for outer continental shelf (OCS) exploration, development and production activities needs to follow the requirements of CZMA section 307(c)(3)(B)(16 USC § 1456(c)(3)(B)) and 15 CFR part 930, subparts A, B and E, as revised by 65 Fed. Reg. 77123-77175 (December 8, 2000).

1. Any person who submits to MMS an OCS plan for the exploration of, or development and production of, any area leased under the Outer Continental Shelf Lands Act, must certify to the relevant State CMPs that any activities described in detail in such OCS plans will be conducted in a manner consistent with the State CMPs. The process and requirements for this section generally mirror those of federal license or permit activities discussed above. State must notify applicant if State review will extend beyond three months, otherwise State's concurrence is presumed.

Federal Financial Assistance Activities

A state agency or local government applying for federal financial assistance needs to follow the requirements of CZMA section 307(d)(16 USC § 1456(d)) and 15 CFR part 930, subparts A, B and F, as revised by 65 Fed. Reg. 77123-77175 (December 8, 2000).

1. States list in their CMPs the federal financial assistance activities subject to review. The State CMP may also notify an applicant agency and Federal agency that it will review an

unlisted activity. OCRM approval is not required for the review of unlisted federal financial assistance activities.

2. NOAA regulations allow State CMPs to develop flexible procedures for reviewing and concurring with federal assistance activities. State CMP review of the activities is normally conducted through procedures established by States pursuant to Executive Order 12372 -- intergovernmental review of federal programs, or through State clearinghouse procedures.
3. Federal agency may not issue the funding until State CMP has concurred.
4. State or local government applicant agency may appeal State objection to the Secretary of Commerce who may override the State's objection.

Other Federal Actions

A federal action that will have reasonably foreseeable coastal effects, but which does not fall under 15 CFR part 930, subpart D (federal license or permit), subpart E (OCS plans), or subpart F (financial assistance to state agency or local government), is a Federal agency activity under subpart C. For example, if a Federal agency is providing funds to a private citizen for disaster relief from a hurricane, and the funds will be used for an activity with coastal effects, then the Federal agency must follow the requirements for Federal agency activities and provide the State CMP with a Consistency Determination.

Mediation of Disputes

In the event of a serious disagreement between a State CMP and a Federal agency, either party may request that the Secretary of Commerce mediate the dispute. All parties must agree to participate, agreement to participate is non-binding, and either party may withdraw from the mediation at any time. Secretarial mediation is a formal process that includes a public hearing, submission of written briefs, and meetings between the parties. A hearing officer, appointed by the Secretary, will propose a solution. Secretarial mediation is only for States and Federal agencies. Exhaustion of the mediation process is not a prerequisite to judicial review.

The availability of Secretarial mediation or litigation does not preclude the parties from informally mediating the dispute through OCRM or another facilitator. OCRM has successfully mediated disputes and offers its good offices to resolve conflicts. Most disputes are addressed through this informal method. Either party may request OCRM involvement, and participation is non-binding.

Appeals to the Secretary of Commerce

The CZMA provides an administrative appeal to the Secretary of Commerce from a consistency objection by a coastal State. In the case of a federal license or permit, an OCS oil and gas plan, or an application for federal financial assistance, the applicant may request that the Secretary override the State's consistency objection if the activity is consistent with the objectives of the

CZMA (Ground I), or is otherwise necessary in the interest of national security (Ground II). 16 USC § 1456(c)(3)(A),(B), and (d). Secretary appeals are not available for Federal agency activities. The requirements for appeals are found at 15 CFR part 930, subpart H, as revised by 65 Fed. Reg. 77123-77175 (December 8, 2000).

If the requirements of either Ground I or Ground II are met, the Secretary must override the State's objection. The inquiry by the Secretary into whether the grounds for an override have been met is based upon an administrative record developed for the appeal. While the Secretary will review the State objection for compliance with the CZMA and the implementing regulations, e.g., whether the objection is based on enforceable policies, the Secretary does not review the objection for compliance with State laws and policies.

If the Secretary overrides the State's objection the authorizing Federal agency may permit or fund the activity. A secretarial override does not obviate the need for an applicant to obtain any State permits or authorizations. Factors influencing the appeal process time include: nature and complexity of the dispute, stays requested by one of the parties, public hearings, and briefing schedules.

The Secretary appeal process is final Federal agency action under the Administrative Procedure Act and is a necessary administrative action prior to litigation. *See* Appendix D for a list of CZMA Secretarial override decisions and decisions on OCS activities.

Interstate Consistency

The regulations were revised to provide a process for a coastal State to review a federal action occurring in another State that will have coastal effects in the reviewing coastal State. The new requirements combine with the requirements under the various types of federal actions. The interstate regulations are found at 15 CFR part 930, subpart I, as revised by 65 Fed. Reg. 77123-77175 (December 8, 2000).

Information that Should Be in State Objection Letters

State objection letters under the CZMA Federal Consistency regulations should include the following information:

1. The objection (or conditional concurrence) must be based on enforceable policies that are part of the State's federally approved CMP.

2. The objection letter must describe ***how*** the activity is inconsistent with specific enforceable polices.

3. The objection must be timely. An objection letter should include the date the complete Consistency Certification or Consistency Determination and necessary information was

received by the State. The State's objection letter should also include the date that the State provided a three-month notice to the applicant for a federal license or permit activity describing the status of the State's review.

4. For federal license or permit activities, OCS oil and gas plans, or financial assistance activities, the objection letter must advise the applicant, person or applicant agency, of the right to appeal the state's objection to the U.S. Secretary of Commerce within 30 days of receipt of the letter.

5. If the objection is based on insufficient information, the objection letter must describe the nature of the information requested and the necessity of having that information to determine consistency.

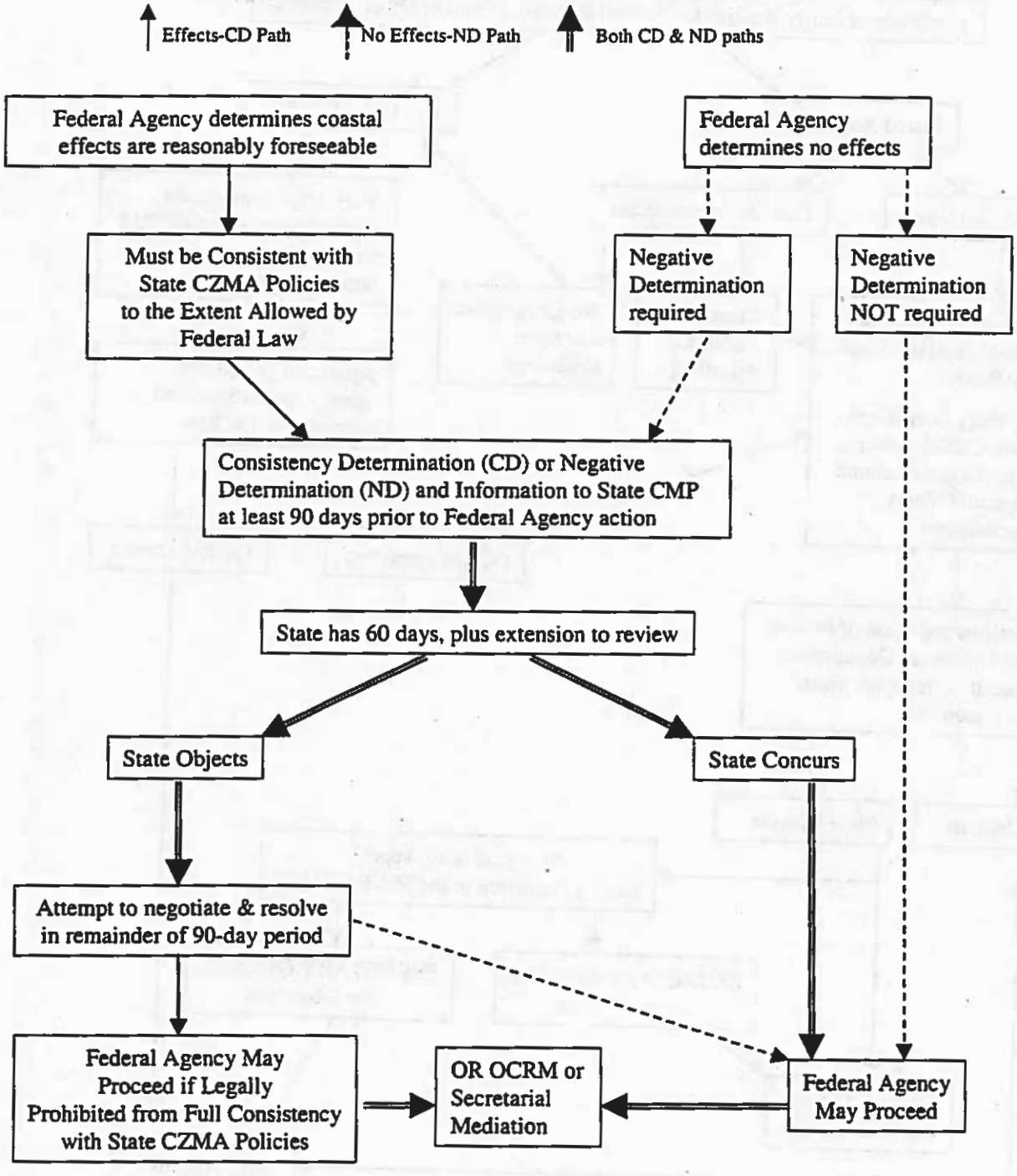
6. An objection letter should include alternatives that would be consistent with the State's CMP enforceable policies. Consistent alternatives should be described with as much specificity as possible to allow the applicant, or the Secretary of Commerce, to determine if the alternatives are available and reasonable.

7. The objection letter must be sent to the applicant, the appropriate Federal agency, and the Director of OCRM.

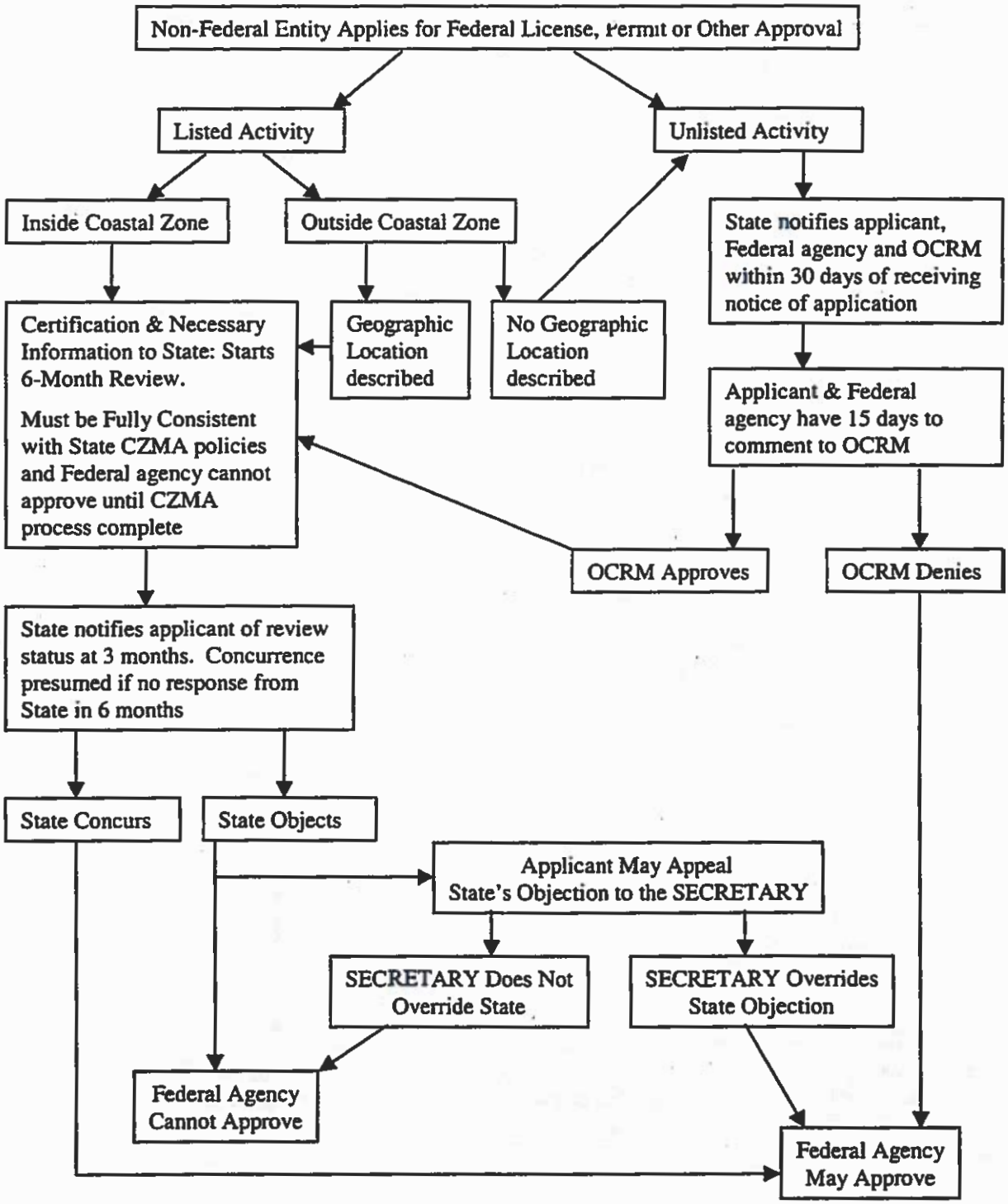
Appendix A: Summary of Federal Consistency Provisions

	Federal Agency Activities & Development Projects	Federal License or Permit Activities	OCS Plans: Exploration Development & Production	Federal Assistance to State and Local Govts.
CZMA Section 307	(c)(1)&(2)	(c)(3)(A)	(c)(3)(B)	(d)
Activity subject to review, if it ...	Affects any land or water use or natural resource of the coastal zone	Affects any land or water use or natural resource of the coastal zone	Affects any land or water use or natural resource of the coastal zone	Affects any land or water use or natural resource of the coastal zone
Consistency requirement	Consistent to maximum extent practicable with state CMP enforceable policies	Consistent with state CMP enforceable policies	Consistent with state CMP enforceable policies	Consistent with state CMP enforceable policies
Who decides effects?	Federal agency	State CMP and OCRM	State CMP and OCRM	State CMP and OCRM
Time limit	60 days, plus 15 day extension	6 months	3 months - state may extend to 6 months	Clearinghouse schedule
Impact of State Objection	Federal agency may proceed only if cite legal authority as to why it must proceed despite inconsistency	Federal agency may not issue permit, license, or other approval	Federal agency may not approve plan or issue permits	Federal agency may not grant assistance
Administrative conflict resolution	Mediation by the Secretary of Commerce or OCRM (voluntary, non-binding)	Appeal to the Secretary to override State objection	Appeal to the Secretary to override State objection	Appeal to the Secretary to override State objection

Appendix B: Federal Agency Activities Flow Chart (CZMA § 307(c)(1); 15 CFR part 930, subpart C)



Appendix C: Federal License or Permit Activities Flow Chart (CZMA § 307(c)(3)(A); 15 CFR part 930, subpart D)



Appendix D: Coastal Zone Management Act (CZMA)
Secretarial Override Decisions -- April 11, 2001

Under the CZMA section 307 Federal Consistency provision, proposed federal actions with effects on any coastal use or resource must be consistent with the enforceable policies of federally approved State Coastal Management Programs (CMPs). Under CZMA sections 307(c)(3) and (d), non-federal applicants for federal licenses, permits and other forms of federal approval, and federal financial assistance, must submit certifications to State CMPs for activities that have coastal effects. If the State CZMA agency objects to the certification, the non-federal applicant may appeal the State's objection to the Secretary of Commerce. The Secretary must override the State's objection if the Secretary finds that the activity is consistent with the objectives of the CZMA or is necessary in the interests of national security. If the Secretary overrides the State's objection, then the Federal permitting/funding agency may issue its approval or funding. If the Secretary does not override the State's objection, the Federal agency cannot issue its approval or funding. The Secretary's decision is based on the administrative record compiled for the appeal from the parties, other Federal agencies and the public. The regulations describing the Secretarial Override process and decision-making criteria can be found at 15 CFR part 930, subpart H (January 1, 2001) (revised December 8, 2000, 65 *Fed. Reg.* 77123-77175).

There are 33 federally approved State CMPs (35 coastal States are eligible). Since approval of the first CMP in the late 1970's, thousands of Federal agency activities, federal license or permit activities, outer continental shelf (OCS) oil and gas activities, and federal financial assistance activities have been reviewed for consistency with State CMPs. States have concurred with approximately 93-95% of all federal actions reviewed. Of the States' objections, there have been only 40 Secretarial decisions (some appeals are not decided as appellant's sometimes withdraw their appeals or the appellant and State negotiate a settlement).

The Secretary's decisions are listed below, followed by a breakdown of OCS oil and gas decisions. For more information on Secretarial appeals, please contact:

Office of the Assistant General Counsel for Ocean Services
National Oceanic and Atmospheric Administration
1305 East-West Highway, Suite 6111
Silver Spring, Maryland 20910
301-713-2967

For general CZMA Federal Consistency questions contact:

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301-713-3155, x144

CZMA Secretarial Appeal Decisions -- April 11, 2001				
Appellant & Project, Federal Agency	**State**	**Appeal Filed**	**Decision Date**	**Disposition**
1. Exxon (SYU) Development & Production Plan, MMS	CA	7/22/83	2/18/84	Decision delayed/Partial Findings CA ok with platforms, but obj. to Offshore Transportation and Transit. Upheld State b/c pipeline alternative.
2. Ford S. Worthy, Jr. Commercial marina, Corps § 10	NC	8/5/83	5/9/84	Did Not Override State Objection Effects outweigh national interest
3. Union Oil Company of California Exploration Plan, MMS	CA	12/12/83	11/9/84	Overrode State's Objection National interest outweigh effects
4. Exxon (SRU) (Santa Rosa) Exploration Plan, MMS	CA	3/9/84	11/14/84	Did Not Override State Objection Available alternative to drill outside Thresher Shark season.
5. Southern Pacific Transportation Co. R.R. Bridge/wetland fill, Corps 404	CA	10/23/84	9/24/85	Overrode State's Objection National interest outweigh effects
6. Gulf Oil Corporation Exploration Plan, MMS	CA	3/13/85	12/23/85	Overrode State's Objection National interest outweigh effects
7. Long Island Lighting Company Wetland fill for Nuclear Plant, Corps	NY	11/19/86	2/26/88	Overrode State's Objection National interest outweigh effects
8. John K. DeLyser Dock & Boathouse, Corps § 10	NY	1/6/87	2/26/88	Did Not Override State Objection Not further CZMA objectives
9. Korea Drilling Company, Ltd. Exploration Plan, MMS & NPDES, EPA	CA	12/15/86	1/19/89	Overrode State's Objection National interest outweigh effects
10. John Bianchi Restaurant pier, Corps § 10	NY	9/5/85	1/25/89	Did Not Override State Objection Alternative available
11. Texaco, Inc. Exploration Plan, MMS & NPDES, EPA	CA	3/23/88	5/10/89	Overrode State's Objection National interest outweigh effects
12. Exxon Service Station Wetland fill for gas station, Corps 404	NJ	1/7/87	6/14/89	Did Not Override State Objection Effects outweigh national interest
13. Amoco Production Company Exploration Plan, MMS	AK	4/3/89	7/20/90	Overrode State's Objection National interest outweigh effects
14. Michael P. Galgano Wetland fill for bulkhead, Corps 404	NY	7/14/88	10/29/90	Did Not Override State Objection Effects outweigh national interest

CZMA Secretarial Appeal Decisions -- April 11, 2001				
Appellant & Project, Federal Agency	**State**	**Appeal Filed**	**Decision Date**	**Disposition**
15. Chevron U.S.A., Inc. Exploration Plan, MMS & NPDES, EPA	CA	7/5/88	10/29/90	Did Not Override State Objection Alternative available re: air impact
16. Shickrey Anton Wetland fill, Corps 404	SC	10/2/89	5/21/91	Did Not Override State Objection Effects outweigh national interest
17. Sucesión Alberto Bachman Swimmer's barrier, Corps 404	PR	3/18/88	10/10/91	Did Not Override State Objection Alternative available
18. José Pérez-Villamil 125 ft pier, Corps § 10	PR	8/16/89	11/20/91	Did Not Override State Objection Effects outweigh national interest
19. Asociación de Propietarios de Los Indios - Houses/bulkheads, Corps	PR	9/26/88	2/19/92	Did Not Override State Objection Not further CZMA objectives
20. Davis Heniford Wetland fill/grocery store, Corps 404	SC	9/24/90	5/21/92	Did Not Override State Objection Effects outweigh national interest Available alternative
21. Yeamans Hall Club Wetland fill/dam & pond, Corps 404	SC	9/25/90	8/1/92	Did Not Override State Objection Alternative available
22. Roger W. Fuller Dredge&fill to increase lot, Corps 404	NC	12/7/89	10/2/92	Did Not Override State Objection Effects outweigh national interest
23. Claire Pappas Restaurant deck, Corps § 10	NY	3/13/90	10/26/92	Did Not Override State Objection Alternative available
24. A. Elwood Chestnut Wetland fill for livestock, Corps 404	SC	8/14/89	11/4/92	Did Not Override State Objection Effects outweigh national interest Alternative available
25. Robert E. Harris 75 ft dock/18 boat slips, Corps § 10	NY	10/26/90	12/2/92	Did Not Override State Objection Effects outweigh national interest Alternative available
26. Henry Crosby Wetland fill for pond, Corps 404	SC	10/17/89	12/29/92	Did Not Override State Objection Effects outweigh national interest
27. Mobil Exploration & Producing U.S. Inc., (Pulley Ridge) Exploration Plan, MMS	FL	1/11/89	1/7/93	Did Not Override State Objection Effects outweigh national interest
28. Union Exploration Partners, Ltd, (Unocal Pulley Ridge) Exploration Plan, MMS	FL	12/21/88	1/7/93	Did Not Override State Objection Effects outweigh national interest

CZMA Secretarial Appeal Decisions -- April 11, 2001				
Appellant & Project, Federal Agency	**State**	**Appeal Filed**	**Decision Date**	**Disposition**
29. Chevron (Destin Dome-Exploration) Exploration Plan, MMS	FL	3/27/91	1/8/93	Overrode State's Objection National interest outweigh effects
30. Jorge L. Guerrero-Calderon Pier, Corps § 10	PR	3/17/89	3/5/93	Did Not Override State Objection Effects outweigh national interest
31. Carlos A. Cruz Colón Pier, Corps § 10	PR	8/26/91	9/27/93	Did Not Override State Objection Alternative available
32. Virginia Electric and Power Company (Lake Gaston) 90 mile long water pipeline, FERC	NC	10/3/91	5/19/94	Overrode State's Objection National interest outweigh effects No alternative available
33. Mobil Oil Exploration & Producing Southeast, Inc. (Mobil Manteo) NPDES/drilling discharge, EPA	NC	7/31/90	9/2/94	Did Not Override State Objection Inadequate information
34. Mobil Oil Exploration & Producing Southeast, Inc. (Mobil Manteo) Exploration Plan, MMS	NC	12/3/90	9/2/94	Did Not Override State Objection Inadequate information
35. Olga Vélez Lugo Dock/boat ramp, Corps § 10	PR	7/9/92	9/9/94	Did Not Override State Objection Effects outweigh national interest
36. Mobil Exploration & Producing U.S. Inc. (Mobil Pensacola) Exploration Plan, MMS	FL	4/29/92	620/95	Overrode State's Objection National interest outweigh effects
37. Vieques Marine Laboratories Aquaculture, Corps § 10	PR	4/29/94	5/28/96	Did Not Override State Objection Effects outweigh national interest
38. Jessie W. Taylor Wetland fill/mini storage, Corps 404	SC	4/10/96	12/30/97	Overrode State's Objection National interest outweigh effects
39. Jessie W. Taylor (Re-issued with changes)	SC		12/28/98	Overrode State's Objection National interest outweigh effects
40. Mobil Oil Exploration & Producing Southeast, Inc. (Mobil Manteo) (Continuation of 33 and 34)	NC		12/8/99	Did Not Override State Objection (declined to reopen record)
41.				

Secretarial CZMA Decisions for OCS Oil and Gas Activities

There have been 15 Secretarial Decisions regarding OCS oil and gas Exploration Plans (EPs) and Development and Production Plans (DPPs), and OCS National Pollutant Discharge Elimination System permits (NPDES), issued by EPA. Of the 15 Decisions there has been:

7 decisions to override the State's objection,
7 decisions not to override the State's objection, and
1 decision not to reopen the record for a previous decision not to override a State's objection.

These decisions, taken from the above table, are listed below:

Appellant	EP, DPP, NPDES	State	Secretarial Decision	
Exxon (SYU)	DPP	California	Partial Decision for State	(1984)
Union Oil	EP	California	Overrode State	(1984)
Exxon (SRU)	EP	California	Did Not Override State	(1984)
Gulf Oil	EP	California	Overrode State	(1985)
Korea Drilling Co.	EP/NPDES	California	Overrode State	(1989)
Texaco	EP/NPDES	California	Overrode State	(1989)
Amoco	EP	Alaska	Overrode State	(1990)
Chevron	EP/NPDES	California	Did Not Override State	(1990)
Mobil (Pulley Ridge)	EP	Florida	Did Not Override State	(1993)
Union Oil (Pulley Ridge)	EP	Florida	Did Not Override State	(1993)
Chevron (Destin Dome)	EP	Florida	Overrode State	(1993)
Mobil (2 cases) (Manteo)	EP/NPDES	North Carolina	Did Not Override State	(1994)
Mobil (Pensacola)	EP	Florida	Overrode State	(1995)
Mobil (Manteo)	EP	North Carolina	Did Not Override State (declined to reopen record)	(1999)

From: WEST GROUP, Federal Environmental Laws 1997

COASTAL ZONE MANAGEMENT

COASTAL ZONE MANAGEMENT ACT OF 1972 [CZMA § _____]

(16 U.S.C.A. §§ 1451 to 1465)

CHAPTER 33—COASTAL ZONE MANAGEMENT

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Related Provisions

See, also, Federal Land Policy and Management, 43 U.S.C.A. § 1701 et seq., post and Outer Continental Shelf Resource Management, 43 U.S.C.A. § 1801 et seq., post.

§ 1451. Congressional findings

[CZMA § 302]

The Congress finds that—

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

(b) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthetic resources of immediate and potential value to the present and future well-being of the Nation.

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

(d) The habitat areas of the coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

(f) New and expanding demands for food, energy, minerals, defense needs, recreation, waste disposal, transportation, and industrial activities in the Great Lakes, territorial sea, exclusive economic zone, and Outer Continental Shelf are placing stress on these areas and are creating the need for resolution of serious conflicts among important and competing uses and values in coastal and ocean waters, [1]

(g) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

(h) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(i) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(j) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

(k) Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.

(*l*) Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.

(m) Because of their proximity to and reliance upon the ocean and its resources, the coastal states have substantial and significant interests in the protection, management, and development of the resources of the exclusive economic zone that can only be served by the active participation of coastal states in all Federal programs affecting such resources and, wherever appropriate, by the develop-

ment of state ocean resource plans as part of their federally approved coastal zone management programs.

(Pub.L. 89–454, Title III, § 302, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1280, and amended Pub.L. 94–370, § 2, July 26, 1976, 90 Stat. 1013; Pub.L. 96–464, § 2, Oct. 17, 1980, 94 Stat. 2060; Pub.L. 101–508, Title VI, § 6203(a), Nov. 5, 1990, 104 Stat. 1388–300.)

[1] So in original. Probably should be a period.

HISTORICAL AND STATUTORY NOTES

Short Title of 1996 Amendments

Pub.L. 104–150, § 1, June 3, 1996, 110 Stat. 1380, provided that: "This Act [enacting section 1465 of this title, amending sections 1454, 1455a, 1456a, 1456b, 1461, and 1464 of this title, and enacting provisions set out as a note under section 1454 of this title] may be cited as the 'Coastal Zone Protection Act of 1996'."

Short Title of 1990 Amendment

Section 6201 of Pub.L. 101–508 provided that: "This subtitle [enacting sections 1455b, 1456c and 1460 of this title, amending this section and sections 1452, 1453, 1454, 1455, 1455a, 1456, 1456a, 1456b, 1458, 1461 and 1464 of this title, and enacting provisions set out as notes under this section and section 1455 of this title] may be cited as the 'Coastal Zone Act Reauthorization Amendments of 1990'."

Short Title of 1986 Amendment

Pub.L. 99–272, Title VI, § 6041, Apr. 7, 1986, 100 Stat. 124, provided that: "This subtitle [amending sections 1455, 1455a, 1456a, 1458, 1461, and 1464 of this title, repealing sections 1456c and 1460 of this title and repealing provisions set out as a note under this section] may be cited as the 'Coastal Zone Management Reauthorization Act of 1985'."

Short Title of 1980 Amendment

Section 1 of Pub.L. 96–464 provided: "That this Act [enacting sections 1455a and 1463a of this title, amending sections 1451, 1452, 1453, 1455, 1456a, 1456b, 1458, 1461, 1462, and 1464 of this title, and enacting provisions set out as notes under sections 1455, 1458, and 1463a of this title] may be cited as the 'Coastal Zone Management Improvement Act of 1980'."

Short Title of 1976 Amendment

Section 1 of Pub.L. 94–370 provided: "That this Act [which enacted section 1511a of Title 15, Commerce and Trade, and sections 1456a to 1456c of this title, amended section 5316 of Title 5, Government Organization and Employees, and sections 1451, 1453 to 1456, and 1457 to 1464 of this title, and enacted provisions set out as notes under section 1511a of Title 15 and section 1462 of this title] may be cited as the 'Coastal Zone Management Act Amendments of 1976'."

Short Title

Section 301 of Pub.L. 89–454, as added by Pub.L. 92–583, provided that: "This title [enacting this chapter] may be cited as the 'Coastal Zone Management Act of 1972'."

Findings and Purposes of the Coastal Zone Act Reauthorization Amendments of 1990

Section 6202 of Pub.L. 101–508 provided that:

"(a) Findings.—Congress finds and declares the following:

"(1) Our oceans, coastal waters, and estuaries constitute a unique resource. The condition of the water quality in and around the coastal areas is significantly declining. Growing human pressures on the coastal ecosystem will continue to degrade this resource until adequate actions and policies are implemented.

"(2) Almost one-half of our total population now lives in coastal areas. By 2010, the coastal population will have grown from 80,000,000 in 1960 to 127,000,000 people, an increase of approximately 60 percent, and population density in coastal counties will be among the highest in the Nation.

"(3) Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of $12,000,000,000 a year.

"(4) Wetlands play a vital role in sustaining the coastal economy and environment. Wetlands support and nourish fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated $5,000,000,000 to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future.

"(5) Nonpoint source pollution is increasingly recognized as a significant factor in coastal water degradation. In urban areas, storm water and combined sewer overflow are linked to major coastal problems, and in rural areas, run-off from Agricultural activities may add to coastal pollution.

"(6) Coastal planning and development control measures are essential to protect coastal water quality, which is subject to continued ongoing stresses. Currently, not enough is being done to manage and protect our coastal resources.

"(7) Global warming results from the accumulation of man-made gases, released into the atmosphere from such activities as the burning of fossil fuels, deforestation, and the production of chlorofluorocarbons, which trap solar heat in the atmosphere and raise temperatures worldwide. Global warming could result in significant global sea level rise by 2050 resulting from ocean expansion, the melting of snow and ice, and the gradual melting of the polar ice cap. Sea level rise will result in the loss of natural resources such as beaches, dunes, estuaries, and wetlands, and will contribute to the salinization of drinking water supplies. Sea level rise will also result in damage to properties, infrastructures, and public works. There is a growing need to plan for sea level rise.

"(8) There is a clear link between coastal water quality and land use activities along the shore. State management programs under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.) [this chapter] are among the best tools for protecting coastal resources and must play a larger role, particularly in improving coastal zone water quality.

"(9) All coastal States should have coastal zone management programs in place that conform to the Coastal Zone Management Act of 1972, as amended by this Act [this chapter].

"(b) Purpose.—It is the purpose of Congress in this subtitle [subtitle C (sections 6201–6217) of title VI of Pub.L. 101–508, see Short Title of 1990 amendment note under this

section] to enhance the effectiveness of the Coastal Zone Management Act of 1972 [this chapter] by increasing our understanding of the coastal environment and expanding the ability of State coastal zone management programs to address coastal environmental problems."

Establishment of Positions and Fixing of Compensation by Secretary of Commerce; Appointments

Section 15(c) of Pub.L. 94–370, July 26, 1976, 90 Stat. 1013, which related to establishment and compensation of four new positions without regard to the provisions of chapter 51 of Title 5, was repealed by Pub.L. 99–272, Title VI, § 6045(3), Apr. 7, 1986, 100 Stat. 127.

Legislative History

For legislative history and purpose of Pub.L. 92–583, see 1972 U.S. Code Cong. and Adm. News, p. 4776. See, also, Pub.L. 94–370, 1976 U.S. Code Cong. and Adm. News, p. 1768; Pub.L. 96–464, 1980 U.S. Code Cong. and Adm. News, p. 4362.

For legislative history and purpose of Pub.L. 101–508, see 1990 U.S. Code Cong. and Adm. News, p. 2017.

§ 1452. Congressional declaration of policy

[CZMA § 303]

The Congress finds and declares that it is the national policy—

(1) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations;

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as the needs for compatible economic development, which programs should at least provide for—

(A) the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone,

(B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas likely to be affected by or vulnerable to sea level rise, land subsidence, and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands.[1]

(C) the management of coastal development to improve, safeguard, and restore the quality of coastal waters, and to protect natural resources and existing uses of those waters,

(D) priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists,

(E) public access to the coasts for recreation purposes,

(F) assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features,

(G) the coordination and simplification of procedures in order to ensure expedited governmental decisionmaking for the management of coastal resources,

(H) continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies,

(I) the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking,

(J) assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies, and

(K) the study and development, in any case in which the Secretary considers it to be appropriate, of plans for addressing the adverse effects upon the coastal zone of land subsidence and of sea level rise; and

(3) to encourage the preparation of special area management plans which provide for increased specificity in protecting significant natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, including those areas likely to be affected by land subsidence, sea level rise, or fluctuating water levels of the Great Lakes, and improved predictability in governmental decisionmaking;

(4) to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this chapter;

(5) to encourage coordination and cooperation with and among the appropriate Federal, State, and local agencies, and international organizations where appropriate, in collection, analysis, synthesis, and dissemination of coastal management information, research results, and technical assistance, to support State and Federal regulation of land use

practices affecting the coastal and ocean resources of the United States; and

(6) to respond to changing circumstances affecting the coastal environment and coastal resource management by encouraging States to consider such issues as ocean uses potentially affecting the coastal zone.

(Pub.L. 89–454, Title III, § 303, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1281, and amended Pub.L. 96–464, § 3, Oct. 17, 1980, 94 Stat. 2060; Pub.L. 101–508, Title VI, § 6203(b), Nov. 5, 1990, 104 Stat. 1388–301; Pub.L. 102–587, Title II, § 2205(b)(2), Nov. 4, 1992, 106 Stat. 5050.)

[1] So in original. The period probably should be a comma.

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776. See, also, Pub.L. 96–464, 1980 U.S.Code Cong. and Adm.News, p. 4362.

For legislative history and purpose of Pub.L. 101–508, see 1990 U.S. Code Cong. and Adm. News, p. 2017. See, also, Pub.L. 102–587, 1992 U.S. Code Cong. and Adm. News, p. 4264.

§ 1453. Definitions

[CZMA § 304]

For purposes of this chapter—

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of State title and ownership under the Submerged Lands Act (43 U.S.C. 1301 et seq.), the Act of March 2, 1917, (48 U.S.C. 749), the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by the Act of March 24, 1976 (48 U.S.C. 1681 note), or section 1 of the Act of November 20, 1963 (48 U.S.C. 1705), as applicable. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters, and to control those geographical areas which are likely to be affected by or vulnerable to sea level rise. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers, or agents.

(2) The term "coastal resource of national significance" means any coastal wetland, beach, dune, barrier island, reef, estuary, or fish and wildlife habitat, if any such area is determined by a coastal state to be of substantial biological or natural storm protective value.

(3) The term "coastal waters" means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (B) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(4) The term "coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this chapter, the term also includes Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territories of the Pacific Islands, and American Samoa.

(5) The term "coastal energy activity" means any of the following activities if, and to the extent that (A) the conduct, support, or facilitation of such activity requires and involves the siting, construction, expansion, or operation of any equipment or facility; and (B) any technical requirement exists which, in the determination of the Secretary, necessitates that the siting, construction, expansion, or operation of such equipment or facility be carried out in, or in close proximity to, the coastal zone of any coastal state;

(i) Any outer Continental Shelf energy activity.

(ii) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas.

(iii) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deepwater port, as defined in section 1502(10) of Title 33).

For purposes of this paragraph, the siting, construction, expansion, or operation of any equipment or facility shall be "in close proximity to" the coastal zone of any coastal state if such siting, construction, expansion, or operation has, or is likely to have, a significant effect on such coastal zone.

(6) The term "energy facilities" means any equipment or facility which is or will be used primarily—

(A) in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or

(B) for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in subparagraph (A).

The term includes, but is not limited to (i) electric generating plants; (ii) petroleum refineries and as-

sociated facilities; (iii) gasification plants; (iv) facilities used for the transportation, conversion, treatment, transfer, or storage of liquified natural gas; (v) uranium enrichment or nuclear fuel processing facilities; (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities including deepwater ports, for the transfer of petroleum; (viii) pipelines and transmission facilities; and (ix) terminals which are associated with any of the foregoing.

(6a) The term "enforceable policy" means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone.

(7) The term "estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(8) The term "estuarine sanctuary" means a research area which may include any part or all of an estuary and any island, transitional area, and upland in, adjoining, or adjacent to such estuary, and which constitutes to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(9) The term "Fund" means the Coastal Zone Management Fund established under section 1456a(b) of this title.

(10) The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 1456(g) of this title.

(11) The term "local government" means any political subdivision of, or any special entity created by, any coastal state which (in whole or part) is located in, or has authority over, such state's coastal zone and which (A) has authority to levy taxes, or to establish and collect user fees, or (B) provides any public facility or public service which is financed in whole or part by taxes or user fees. The term includes, but is not limited to, any school district, fire district, transportation authority, and any other special purpose district or authority.

(12) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this chapter, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(13) The term "outer Continental Shelf energy activity" means any exploration for, or any development or production of, oil or natural gas from the outer Continental Shelf (as defined in section 1331(a) of Title 43) or the siting, construction, expansion, or operation of any new or expanded energy facilities directly required by such exploration, development, or production.

(14) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state; the Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government.

(15) The term "public facilities and public services" means facilities or services which are financed, in whole or in part, by any state or political subdivision thereof, including, but not limited to, highways and secondary roads, parking, mass transit, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care. Such term may also include any other facility or service so financed which the Secretary finds will support increased population.

(16) The term "Secretary" means the Secretary of Commerce.

(17) The term "special area management plan" means a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies; standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone.

(18) The term "water use" means a use, activity, or project conducted in or on waters within the coastal zone.

(Pub.L. 89-454, Title III, § 304, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1281, and amended Pub.L. 94-370, § 3, July 26, 1976, 90 Stat. 1013; Pub.L. 96-464, § 4, Oct. 17, 1980, 94 Stat. 2061; Pub.L. 101-508, Title VI, § 6204, Nov. 5, 1990, 104 Stat. 1388-302; Pub.L. 102-587, Title II, § 2205(b)(3)-(7), Nov. 4, 1992, 106 Stat. 5050, 5051.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Submerged Lands Act, referred to in par. (1), is Act May 22, 1953, c. 65, 67 Stat. 29, as amended, which is classified generally to subchapters I and II (sections 1301 et seq., 1311 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 43 and Tables.

The Act of March 2, 1917, referred to in par. (1) is Act Mar. 2, 1917, c. 145, 39 Stat. 961, as amended, known as the

Puerto Rican Federal Relations Act and also popularly known as the Jones Act, which is classified principally to chapter 4 (section 731 et seq.) of Title 48, Territories and Insular Possessions. Section 8 of this Act is classified to section 749 of Title 48. For complete classification of this Act to the Code, see Short Title note set out under section 731 of Title 48 and Tables.

The Act of March 24, 1976, referred to in par. (1), is Pub.L. 94–241, Mar. 24, 1976, 90 Stat. 263, as amended, which is classified as a note entitled "Covenant to Establish Commonwealth of Northern Mariana Islands in Political Union with the United States of America" under section 1681 of Title 48, Territories and Insular Possessions.

Section 1 of the Act of November 20, 1963, referred to in par. (1), is section 1 of Pub.L. 88–183, Nov. 20, 1963, 77 Stat. 338, which was formerly classified to section 1701 of Title 48, Possessions and Insular Territories. Such section, which related to the authority of the Secretary of the Interior to transfer tidelands, submerged lands, and filled lands to the governments of Guam, Virgin Islands and American Samoa, was repealed by Pub.L. 93–435, § 5, Oct. 5, 1974, 88 Stat. 1212. Similar provisions were enacted by section 1 of Pub.L. 93–435, Oct. 5, 1974, 88 Stat. 1210, as amended, and are classified to section 1705 of Title 48.

Codification

Amendment of par. (1) by section 6204(a) of Pub.L. 101–508 was executed to the second sentence of par. (1), notwithstanding directory language reciting that it be executed to the third sentence, as the probable intent of Congress.

Legislative History

For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776. See, also, Pub.L. 94–370, 1976 U.S.Code Cong. and Adm.News, p. 1768; Pub.L. 96–464, 1980 U.S.Code Cong. and Adm.News, p. 4362.

For legislative history and purpose of Pub.L. 101–508, see 1990 U.S. Code Cong. and Adm. News, p. 2017. See, also, Pub.L. 102–587 1992 U.S. Code Cong. and Adm. News, p. 4264.

§ 1454. Management program development grants

[CZMA § 305]

(a) In fiscal years 1997, 1998, and 1999, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 1455 of this title. The amount of any such grant shall not exceed $200,000 in any fiscal year, and shall require State matching funds according to a 4–to–1 ratio of Federal–to–State contributions. After an initial grant is made to a coastal state pursuant to this subsection, no subsequent grant shall be made to that coastal state pursuant to this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than four grants pursuant to this subsection.

(b) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 1455 of this title.

(Pub.L. 89–454, Title III, § 305, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1282, and amended Pub.L. 93–612, § 1(1), Jan. 2, 1975, 88 Stat. 1974; Pub.L. 94–370, § 4, July 26, 1976, 90 Stat. 1015; Pub.L. 101–508, Title VI, § 6205, Nov. 5, 1990, 104 Stat. 1388–302; Pub.L. 102–587, Title II, § 2205(b)(1)(A), Nov. 4, 1992, 106 Stat. 5050; Pub.L. 104–150, § 2(a), (b)(1), June 3, 1996, 110 Stat. 1380.)

Amendment of Section

Pub.L. 104–150, § 2(b)(1), (3), June 3, 1996, 110 Stat. 1380, provided that, effective Oct. 1, 1999, section heading is amended to read, "Submittal of State program for approval", and subsec. (a) and subsec. (b) designation are struck out.

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 92–583, see 1972 U.S. Code Cong. and Adm. News, p. 4776. See, also, Pub.L. 93–612, 1974 U.S. Code Cong. and Adm. News, p. 7175; Pub.L. 94–370, 1976 U.S. Code Cong. and Adm. News, p. 1768.

For legislative history and purpose of Pub.L. 101–508, see 1990 U.S. Code Cong. and Adm. News, p. 2017. See, also, Pub.L. 102–587, 1992 U.S. Code Cong. and Adm. News, p. 4264; Pub.L. 104–150, 1996 U.S. Code Cong. and Adm. News, p. 1051.

§ 1455. Administrative grants

[CZMA § 306]

(a) Authorization; matching funds

The Secretary may make grants to any coastal state for the purpose of administering that state's management program, if the state matches any such grant according to the following ratios of Federal-to-State contributions for the applicable fiscal year:

(1) For those States for which programs were approved prior to enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 1 to 1 for any fiscal year.

(2) For programs approved after enactment of the Coastal Zone Act Reauthorization Amendments of 1990, 4 to 1 for the first fiscal year, 2.3 to 1 for the second fiscal year, 1.5 to 1 for the third fiscal year, and 1 to 1 for each fiscal year thereafter.

(b) Grants to coastal states; requirements

The Secretary may make a grant to a coastal state under subsection (a) of this section only if the Secretary finds that the management program of the coastal state meets all applicable requirements of this chapter and has been approved in accordance with subsection (d) of this section.

(c) Allocation of grants to coastal states

Grants under this section shall be allocated to coastal states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the program, population of the area, and other relevant factors. The Secretary shall establish, after consulting with the coastal states, maximum and minimum grants for any fiscal year to promote equity between coastal states and effective coastal management.

(d) Mandatory adoption of State management program for coastal zone

Before approving a management program submitted by a coastal state, the Secretary shall find the following:

(1) The State has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties and individuals, public and private, which is adequate to carry out the purposes of this chapter and is consistent with the policy declared in section 1452 of this title.

(2) The management program includes each of the following required program elements:

(A) An identification of the boundaries of the coastal zone subject to the management program.

(B) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(C) An inventory and designation of areas of particular concern within the coastal zone.

(D) An identification of the means by which the State proposes to exert control over the land uses and water uses referred to in subparagraph (B), including a list of relevant State constitutional provisions, laws, regulations, and judicial decisions.

(E) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(F) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, State, regional, and interstate agencies in the management process.

(G) A definition of the term "beach" and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(H) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including a process for anticipating the management of the impacts resulting from such facilities.

(I) A planning process for assessing the effects of, and studying and evaluating ways to control, or lessen the impact of, shoreline erosion, and to restore areas adversely affected by such erosion.

(3) The State has—

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone—

(i) existing on January 1 of the year in which the State's management program is submitted to the Secretary; and

(ii) which have been developed by a local government, an areawide agency, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (6) and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of those local governments and agencies in carrying out the purposes of this chapter; except that the Secretary shall not find any mechanism to be effective for purposes of this subparagraph unless it requires that—

(i) the management agency, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, shall send a notice of the management program decision to any local government whose zoning authority is affected;

(ii) within the 30-day period commencing on the date of receipt of that notice, the local government may submit to the management agency written comments on the management program decision, and any recommendation for alternatives; and

(iii) the management agency, if any comments are submitted to it within the 30-day period by any local government—

(I) shall consider the comments;

(II) may, in its discretion, hold a public hearing on the comments; and

(III) may not take any action within the 30-day period to implement the management program decision.

(4) The State has held public hearings in the development of the management program.

(5) The management program and any changes thereto have been reviewed and approved by the Governor of the State.

(6) The Governor of the State has designated a single State agency to receive and administer grants for implementing the management program.

(7) The State is organized to implement the management program.

(8) The management program provides for adequate consideration of the national interest involved in planning for, and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance. In the case of energy facilities, the Secretary shall find that the State has given consideration to any applicable national or interstate energy plan or program.

(9) The management program includes procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, historical, or esthetic values.

(10) The State, acting through its chosen agency or agencies (including local governments, areawide agencies, regional agencies, or interstate agencies) has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power—

(A) to administer land use and water use regulations to control development [1] to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(B) to acquire fee simple and less than fee simple interests in land, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(11) The management program provides for any one or a combination of the following general techniques for control of land uses and water uses within the coastal zone:

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement.

(B) Direct State land and water use planning and regulation.

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any State or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(12) The management program contains a method of assuring that local land use and water use regulations within the coastal zone do not unreasonably restrict or exclude land uses and water uses of regional benefit.

(13) The management program provides for—

(A) the inventory and designation of areas that contain one or more coastal resources of national significance; and

(B) specific and enforceable standards to protect such resources.

(14) The management program provides for public participation in permitting processes, consistency determinations, and other similar decisions.

(15) The management program provides a mechanism to ensure that all State agencies will adhere to the program.

(16) The management program contains enforceable policies and mechanisms to implement the applicable requirements of the Coastal Nonpoint Pollution Control Program of the State required by section 1455b of this title.

(e) Amendment or modification of State management program for coastal zone

A coastal state may amend or modify a management program which it has submitted and which has been approved by the Secretary under this section, subject to the following conditions:

(1) The State shall promptly notify the Secretary of any proposed amendment, modification, or other program change and submit it for the Secretary's approval. The Secretary may suspend all or part of any grant made under this section pending State submission of the proposed amendments, modification, or other program change.

(2) Within 30 days after the date the Secretary receives any proposed amendment, the Secretary shall notify the State whether the Secretary approves or disapproves the amendment, or whether the Secretary finds it is necessary to extend the review of the proposed amendment for a period not to exceed 120 days after the date the Secretary received the proposed amendment. The Secretary may extend this period only as necessary to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). If the Secretary does not notify the coastal state that the Secretary approves or disapproves the amendment within that period, then the amendment shall be conclusively presumed as approved.

(3)(A) Except as provided in subparagraph (B), a coastal state may not implement any amendment, modification, or other change as part of its approved management program unless the amendment, modification, or other change is approved by the Secretary under this subsection.

(B) The Secretary, after determining on a preliminary basis, that an amendment, modification, or other change which has been submitted for approval under this subsection is likely to meet the program approval standards in this section, may permit the State to expend funds awarded under this section to begin implementing the proposed amendment, mod-

ification, or change. This preliminary approval shall not extend for more than 6 months and may not be renewed. A proposed amendment, modification, or change which has been given preliminary approval and is not finally approved under this paragraph shall not be considered an enforceable policy for purposes of section 1456 of this title.

(Pub.L. 89–454, Title III, § 306, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1283, and amended Pub.L. 93–612, § 1(2), Jan. 2, 1975, 88 Stat. 1974; Pub.L. 94–370, § 5, July 26, 1976, 90 Stat. 1017; Pub.L. 96–464, § 5(a), Oct. 17, 1980, 94 Stat. 2062; Pub.L. 99–272, Title VI, § 6043(b)(1), (c), Apr. 7, 1986, 100 Stat. 124, 125; Pub.L. 101–508, Title VI, § 6206(a), Nov. 5, 1990, 104 Stat. 1388-303; Pub.L. 102–587, Title II, § 2205(b)(1)(A), (B), (8), Nov. 4, 1992, 106 Stat. 5050, 5051.)

[1] So in original. Probably should be "Regulations to control development.".

HISTORICAL AND STATUTORY NOTES

References in Text

The enactment of the Coastal Zone Act Reauthorization Amendments of 1990, referred to in subsec. (a)(1), (2), is probably a reference to the date of enactment of Pub.L. 101–508, Title VI, Subtitle C (section 6201 et seq.), Nov. 5, 1990, 104 Stat. 1388-299, which was approved Nov. 5, 1990.

The National Environmental Policy Act of 1969, referred to in subsec. (e)(2), is Pub.L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

Effective Date of 1980 Amendment

Section 5(b) of Pub.L. 96–464 provided that: "The amendments made by subsection (a)(1) and (2) of this section [amending subsecs. (a) and (b) of this section] apply with respect to grants made after September 30, 1980, under section 306 of the Coastal Zone Management Act of 1972 [this section] and, within two hundred and seventy days after such date, the Secretary of Commerce shall issue regulations relating to the administration of subsection (a) of such section 306 (as so amended by such subsection (a)(1)) [subsec. (a) of this section]."

Additional Program Requirements

Section 6206(b) of Pub.L. 101–508 provided that:

"Each State which submits a management program for approval under section 306 of the Coastal Zone Management Act of 1972 [this section], as amended by this subtitle (including a State which submitted a program before the date of enactment of this Act [Nov. 5, 1990]), shall demonstrate to the Secretary—

"(1) that the program complies with section 306(d)(14) and (15) of that Act [subsec. (d)(14) and (15) of this section] by not later than 3 years after the date of the enactment of this Act [Nov. 5, 1990]; and

"(2) that the program complies with section 306(d)(16) of that Act [subsec. (d)(16) of this section], by not later than 30 months after the date of publication of final guidance under section 6217(g) of this Act [section 1455b(g) of this title]."

Legislative History

For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776. See, also, Pub.L. 93–612, 1974 U.S.Code Cong. and Adm.News, p. 7175; Pub.L. 94–370, 1976 U.S.Code Cong. and Adm.News, p. 1768; Pub.L. 96–464, 1980 U.S.Code Cong. and Adm.News, p. 4362.

For legislative history and purpose of Pub.L. 99–272, see 1986 U.S. Code Cong. and Adm. News, p. 42. See, also, Pub.L. 101–508, 1990 U.S. Code Cong. and Adm. News, p. 2017; Pub.L. 102–587, 1992 U.S. Code Cong. and Adm. News, p. 4264.

§ 1455a. Coastal resource improvement program

[CZMA § 306A]

(a) Definitions

For purposes of this section—

(1) The term "eligible coastal state" means a coastal state that for any fiscal year for which a grant is applied for under this section—

(A) has a management program approved under section 1455 of this title; and

(B) in the judgment of the Secretary, is making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 1452(2)(A) through (K) of this title.

(2) The term "urban waterfront and port" means any developed area that is densely populated and is being used for, or has been used for, urban residential recreational, commercial, shipping or industrial purposes.

(b) Resource management improvement grants

The Secretary may make grants to any eligible coastal state to assist that state in meeting one or more of the following objectives:

(1) The preservation or restoration of specific areas of the state that (A) are designated under the management program procedures required by section 1455(d)(9) of this title because of their conservation recreational, ecological, or esthetic values, or (B) contain one or more coastal resources of national significance, or for the purpose of restoring and enhancing shellfish production by the purchase and distribution of clutch material on publicly owned reef tracts.

(2) The redevelopment of deteriorating and underutilized urban waterfronts and ports that are designated in the state's management program pursuant to section 1455(d)(2)(C) of this title as areas of particular concern.

(3) The provision of access to public beaches and other public coastal areas and to coastal waters in accordance with the planning process required under section 1455(d)(2)(G) of this title.

(4) The development of a coordinated process among State agencies to regulate and issue permits for aquaculture facilities in the coastal zone.

(c) Uses, terms and conditions of grants

(1) Each grant made by the Secretary under this section shall be subject to such terms and conditions as may be appropriate to ensure that the grant is used for purposes consistent with this section.

(2) Grants made under this section may be used for—

(A) the acquisition of fee simple and other interests in land;

(B) low-cost construction projects determined by the Secretary to be consistent with the purposes of this section, including but not limited to, paths, walkways, fences, parks, and the rehabilitation of historic buildings and structures; except that not more than 50 per centum of any grant made under this section may be used for such construction projects;

(C) in the case of grants made for objectives described in subsection (b)(2) of this section—

(i) the rehabilitation or acquisition of piers to provide increased public use, including compatible commercial activity,

(ii) the establishment of shoreline stabilization measures including the installation or rehabilitation of bulkheads for the purpose of public safety or increasing public access and use, and

(iii) the removal or replacement of pilings where such action will provide increased recreational use of urban waterfront areas,

but activities provided for under this paragraph shall not be treated as construction projects subject to the limitations in paragraph (B);

(D) engineering designs, specifications, and other appropriate reports; and

(E) educational, interpretative, and management costs and such other related costs as the Secretary determines to be consistent with the purposes of this section.

(d) State matching contributions; ratio; maximum amount of grants

(1) The Secretary may make grants to any coastal state for the purpose of carrying out the project or purpose for which such grants are awarded, if the state matches any such grant according to the following ratios of Federal to state contributions for the applicable fiscal year: 4 to 1 for fiscal year 1986; 2.3 to 1 for fiscal year 1987; 1.5 to 1 for fiscal year 1988; and 1 to 1 for each fiscal year after fiscal year 1988.

(2) Grants provided under this section may be used to pay a coastal state's share of costs required under any other Federal program that is consistent with the purposes of this section.

(3) The total amount of grants made under this section to any eligible coastal state for any fiscal year may not exceed an amount equal to 10 per centum of the total amount appropriated to carry out this section for such fiscal year.

(e) Allocation of grants to local governments and other agencies

With the approval of the Secretary, an eligible coastal state may allocate to a local government, an areawide agency designated under section 3334 of Title 42, a regional agency, or an interstate agency, a portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.

(f) Other technical and financial assistance

In addition to providing grants under this section, the Secretary shall assist eligible coastal states and their local governments in identifying and obtaining other sources of available Federal technical and financial assistance regarding the objectives of this section. (Pub.L. 89–454, Title III, § 306A, as added Pub.L. 96–464, § 6, Oct. 17, 1980, 94 Stat. 2062, and amended Pub.L. 99–272, Title VI, § 6043(b)(2), Apr. 7, 1986, 100 Stat. 124; Pub.L. 101–508, Title VI, §§ 6207, 6216(a), Nov. 5, 1990, 104 Stat. 1388–307, 1388–314; Pub.L. 102–587, Title II, § 2205(b)(9) to (12), Nov. 4, 1992, 106 Stat. 5051; Pub.L. 104–150, § 7(1), June 3, 1996, 110 Stat. 1381.)

HISTORICAL AND STATUTORY NOTES

Codification

Section 6216a of Pub.L. 101–508 directed the amendment of section 306a(b)(1) of the Coastal Zone Management Act of 1972. There is no such section of such Act. Section 306A(b)(1) of such Act is classified to subsec. (b)(1) of this section, and such amendment was executed to such subsec. as the probable intent of Congress.

Legislative History

For legislative history and purpose of Pub.L. 96–464, see 1980 U.S. Code Cong. and Adm. News, p. 4362.

For legislative history and purpose of Pub.L. 99–272, see 1986 U.S. Code Cong. and Adm. News, p. 42. See, also, Pub.L. 101–508, 1990 U.S. Code Cong. and Adm. News, p. 2017; Pub.L. 102–587, 1992 U.S. Code Cong. and Adm. News, p. 4264; Pub.L. 104–150, 1996 U.S. Code Cong. and Adm. News, p. 1051.

§ 1455b. Protecting coastal waters

(a) In general

(1) Program development

Not later than 30 months after the date of the publication of final guidance under subsection (g) of this section, each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 [16 U.S.C.A. § 1455] shall prepare and submit to the

Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

(2) Program coordination

A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 1288, 1313, 1329, and 1330 of Title 33 and with State plans developed pursuant to the Coastal Zone Management Act of 1972 [this chapter], as amended by this Act [Pub.L. 101–508, Title VI, Subtitle C]. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 1329 of Title 33, as the program under that section relates to land and water uses affecting coastal waters.

(b) Program contents

Each State program under this section shall provide for the implementation, at a minimum, of management measures in conformity with the guidance published under subsection (g) of this section, to protect coastal waters generally, and shall also contain the following:

(1) Identifying land uses

The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of—

(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes; or

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

(2) Identifying critical coastal areas

The identification of, and a continuing process for identifying, critical coastal areas adjacent to coastal waters referred to in paragraph (1)(A) and (B), within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those provided for in subsection (g) of this section.

(3) Management measures

The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 1313 of Title 33 and protect designated uses.

(4) Technical assistance

The provision of technical and other assistance to local governments and the public for implementing the measures referred to in paragraph (3), which may include assistance in developing ordinances and regulations, technical guidance, and modeling to predict and assess the effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

(5) Public participation

Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.

(6) Administrative coordination

The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.

(7) State coastal zone boundary modification

A proposal to modify the boundaries of the State coastal zone as the coastal management agency of the State determines is necessary to implement the recommendations made pursuant to subsection (e) of this section. If the coastal management agency does not have the authority to modify such boundaries, the program shall include recommendations for such modifications to the appropriate State authority.

(c) Program submission, approval, and implementation

(1) Review and approval

Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if—

(A) the Secretary determines that the portions of the program under the authority of the Secretary meet the requirements of this section and the Administrator concurs with that determination; and

(B) the Administrator determines that the portions of the program under the authority of the Administrator meet the requirements of this section and the Secretary concurs with that determination.

(2) Implementation of approved program

If the program of a State is approved in accordance with paragraph (1), the State shall implement the program, including the management measures included in the program pursuant to subsection (b) of this section, through—

(A) changes to the State plan for control of nonpoint source pollution approved under section 1329 of Title 33; and

(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972 [16 U.S.C.A. § 1455], as amended by this Act.

(3) Withholding coastal management assistance

If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972 [16 U.S.C.A. § 1455], as follows:

(A) 10 percent for fiscal year 1996.

(B) 15 percent for fiscal year 1997.

(C) 20 percent for fiscal year 1998.

(D) 30 percent for fiscal year 1999 and each fiscal year thereafter.

The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

(4) Withholding water pollution control assistance

If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 1329 of Title 33, for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

(A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.

(B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year 1996.

(C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year 1997.

(D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.

The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

(d) Technical assistance

The Secretary and the Administrator shall provide technical assistance to coastal States and local governments in developing and implementing programs under this section. Such assistance shall include—

(1) methods for assessing water quality impacts associated with coastal land uses;

(2) methods for assessing the cumulative water quality effects of coastal development;

(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal States and local governments in identifying, developing, and implementing pollution control measures; and

(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

(e) Inland coastal zone boundaries

(1) Review

The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after November 5, 1990, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972 [16 U.S.C.A. § 1455], and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(2) Recommendation

If the Secretary, in consultation with the Administrator, finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to protect coastal waters, the Secretary, in consultation with the Administrator, shall recommend appropriate modifications in writing to the affected State.

(f) Financial assistance

(1) In general

Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972 [16 U.S.C.A. § 1455], the Secretary, in consultation with the Administrator, may provide grants to the State for use for developing a State program under this section.

(2) Amount

The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

(3) State share

The State share of the cost of an activity carried out with a grant under this subsection shall be paid from amounts from non-Federal sources.

(4) Allocation

Amounts available for grants under this subsection shall be allocated among States in accordance with regulations issued pursuant to section 306(c) of the Coastal Zone Management Act of 1972 [16 U.S.C.A. § 1455(c)], except that the Secretary may use not more than 25 percent of amounts available for such grants to assist States which the Secretary, in consultation with the Administrator, determines are making exemplary progress in preparing a State program under this section or have extreme needs with respect to coastal water quality.

(g) Guidance for coastal nonpoint source pollution control

(1) In general

The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.

(2) Content

Guidance under this subsection shall include, at a minimum—

(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;

(B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;

(C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;

(D) quantitative estimates of the pollution reduction effects and costs of the measures;

(E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and

(F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

(3) Publication

The Administrator, in consultation with the Secretary, shall publish—

(A) proposed guidance pursuant to this subsection not later than 6 months after November 5, 1990; and

(B) final guidance pursuant to this subsection not later than 18 months after such date.

(4) Notice and comment

The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

(5) Management measures

For purposes of this subsection, the term "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(h) Authorizations of appropriations

(1) Administrator

There is authorized to be appropriated to the Administrator for use for carrying out this section not more than $1,000,000 for each of fiscal years 1992, 1993, and 1994.

(2) Secretary

(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of 1972 [16 U.S.C.A. § 1464(a)(4)], as amended by this Act [Pub.L. 101–508, Title VI, Subtitle C], not more than $1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f) of this section.

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than—

(i) $6,000,000 for fiscal year 1992;
(ii) $12,000,000 for fiscal year 1993;
(iii) $12,000,000 for fiscal year 1994; and
(iv) $12,000,000 for fiscal year 1995.

(i) Definitions

In this section—

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency;

(2) the term "coastal state" has the meaning given the term "coastal State" under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453) [16 U.S.C.A. § 1453];

(3) each of the terms "coastal waters" and "coastal zone" has the meaning that term has in the Coastal Zone Management Act of 1972 [this chapter];

(4) the term "coastal management agency" means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972 [16 U.S.C.A. § 1455(d)(6)];

(5) the term "land use" includes a use of waters adjacent to coastal waters; and

(6) the term "Secretary" means the Secretary of Commerce.

(Pub.L. 101–508, Title VI, § 6217, Nov. 5, 1990, 104 Stat. 1388–314; Pub.L. 102–587, Title II, § 2205(b)(24), Nov. 4, 1992, 106 Stat. 5052.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Coastal Zone Management Act of 1972, referred to in subsecs. (a)(2) and (i)(3), is Pub.L. 89–454, Title III (section 301 et seq.), as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to this chapter.

Section 304 of the Coastal Management Act of 1972, referred to in subsec. (i)(2), is section 304 of this same Act, which is classified to section 1453 of this title.

Section 306 of the Coastal Zone Management Act of 1972, referred to in subsecs. (a)(1), (c)(2)(B), (3), (e)(1) and (f)(1), is section 306 of this same Act, which is classified to section 1455 of this title.

Section 306(c) of the Coastal Zone Management Act of 1972, referred to in subsec. (f)(4), is section 1455(c) of this same Act, which is classified to section 1455(c) of this title.

Section 306(d)(6) of the Coastal Zone Management Act of 1972, referred to in subsec. (i)(4), is section 306(d)(6) of this same Act, which is classified to section 1455(d)(6) of this title.

Section 318(a)(4) of the Coastal Zone Management Act of 1972, referred to in subsec. (h)(2), is section 318(a)(4) of this same Act, which is classified to section 1464(a)(4) of this title.

As amended by this Act, referred to in subsecs. (a)(2), (c)(2)(B) and (h)(2), is a reference to the amendment of the Coastal Zone Management Act of 1972 by Pub.L. 101–508, Title VI, Subtitle C (section 6201 et seq.), Nov. 5, 1990, 104 Stat. 1388–299, known as the Coastal Zone Act Reauthorization Amendments of 1990, which is classified generally to this chapter.

For complete classification of these Acts to the Code, see Short Title and Short Title of Amendment notes set out under section 1451 of this title and Tables.

Codification

Section was enacted as part of the Coastal Zone Act Reauthorization Amendments of 1990, and not as part of the Coastal Zone Management Act of 1972, which comprises this chapter.

Legislative History

For legislative history and purpose of Pub.L. 102–587, see 1992 U.S. Code Cong. and Adm. News, p. 4264.

§ 1456. Coordination and cooperation

[CZMA § 307]

(a) Federal agencies

In carrying out his functions and responsibilities under this chapter, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) Adequate consideration of views of Federal agencies

The Secretary shall not approve the management program submitted by a state pursuant to section 1455 of this title unless the views of Federal agencies principally affected by such program have been adequately considered.

(c) Consistency of Federal activities with State management programs; Presidential exemption; certification

(1)(A) Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs. A Federal agency activity shall be subject to this paragraph unless it is subject to paragraph (2) or (3).

(B) After any final judgment, decree, or order of any Federal court that is appealable under section 1291 or 1292 of Title 28, or under any other applicable provision of Federal law, that a specific Federal agency activity is not in compliance with subparagraph (A), and certification by the Secretary that mediation under subsection (h) of this section is not likely to result in such compliance, the President may, upon written request from the Secretary, exempt from compliance those elements of the Federal agency activity that are found by the Federal court to be inconsistent with an approved State program, if the President determines that the activity is in the paramount interest of the United States. No such exemption shall be granted on the basis of a lack of appropriations unless the President has specifically requested such appropriations as part of the budgetary process, and the Congress has failed to make available the requested appropriations.

(C) Each Federal agency carrying out an activity subject to paragraph (1) shall provide a consistency determination to the relevant State agency designated under section 1455(d)(6) of this title at the earliest practicable time, but in no case later than 90 days before final approval of the Federal activity unless both the Federal agency and the State agency agree to a different schedule.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with the enforceable policies of approved State management programs.

(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the pro-

posed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certification, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or, until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 1455 of this title, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land or water use or natural resource of the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with the enforceable policies of such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until—

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

(d) Application of local governments for Federal assistance; relationship of activities with approved management program

State and local governments submitting applications for Federal assistance under other Federal programs, in or outside of the coastal zone, affecting any land or water use of natural resource of the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of section 6506 of Title 31. Federal agencies shall not approve proposed projects that are inconsistent with the enforceable policies of a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this chapter or necessary in the interest of national security.

(e) Construction with other laws

Nothing in this chapter shall be construed—

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, sub-

merged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Construction with existing requirements of water and air pollution programs

Notwithstanding any other provision of this chapter, nothing in this chapter shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended [33 U.S.C.A. § 1251 et seq.], or the Clean Air Act, as amended [42 U.S.C.A. § 7401 et seq.], or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this chapter and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) Concurrence with programs which affect inland areas

When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 1455 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program, with respect to that portion of the coastal zone management program affecting such inland areas.

(h) Mediation of disagreements

In case of serious disagreement between any Federal agency and a coastal state—

(1) in the development or the initial implementation of a management program under section 1454 of this title; or

(2) in the administration of a management program approved under section 1455 of this title;

the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

(i) Application fee for appeals

(1) With respect to appeals under subsections (c)(3) and (d) of this section which are submitted after November 5, 1990, the Secretary shall collect an application fee of not less than $200 for minor appeals and not less than $500 for major appeals, unless the Secretary, upon consideration of an applicant's request for a fee waiver, determines that the applicant is unable to pay the fee.

(2)(A) The Secretary shall collect such other fees as are necessary to recover the full costs of administering and processing such appeals under subsection (c) of this section.

(B) If the Secretary waives the application fee under paragraph (1) for an applicant, the Secretary shall waive all other fees under this subsection for the applicant.

(3) Fees collected under this subsection shall be deposited into the Coastal Zone Management Fund established under section 1456a of this title.

(Pub.L. 89-454, Title III, § 307, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1285 and amended Pub.L. 94-370, § 6, July 26, 1976, 90 Stat. 1018; Pub.L. 95-372, Title V, § 504, Sept. 18, 1978, 92 Stat. 693; Pub.L. 101-508, Title VI, § 6208, Nov. 5, 1990, 104 Stat. 1388-307; Pub.L. 102-587, Title II, § 2205(b)(13), (14), Nov. 4, 1992, 106 Stat. 5051.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Outer Continental Shelf Lands Act, referred to in subsec. (c)(3)(B), is Act Aug. 7, 1953, c. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (section 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (f), is Act June 30, 1948, c. 758, as amended generally by Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (section 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables volume.

The Clean Air Act, referred to in subsec. (f), is Act July 14, 1955, c. 360, as amended generally by Pub.L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub.L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (section 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub.L. 95-95, the Act was reclassified to chapter 85 (section 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables volume.

Codification

Amendment of subsec. (c)(3)(B) by Pub.L. 101–508, Title VI, § 6208(b)(3), was executed following "with", notwithstanding directory language which recited that it be executed following "complies", as the probable intent of Congress.

In subsec. (d), "section 6506 of Title 31" was substituted for "Title IV of the Intergovernmental Coordination [Cooperation] Act of 1968 [42 U.S.C.A. § 4231 et seq.]" on authority of Pub.L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Legislative History

For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776. See, also, Pub.L. 94–370, 1976 U.S.Code Cong. and Adm.News, p. 1768.

For legislative history and purpose of Pub.L. 101–508, see 1990 U.S. Code Cong. and Adm. News, p. 2017. See, also, Pub.L. 102–587, 1992 U.S. Code Cong. and Adm. News, p. 4264.

§ 1456a. Coastal Zone Management Fund

[CZMA § 308]

(a)(1) The obligations of any coastal state or unit of general purpose local government to repay loans made pursuant to this section as in effect before November 5, 1990, and any repayment schedule established pursuant to this chapter as in effect before November 5, 1990, are not altered by any provision of this chapter. Such loans shall be repaid under authority of this subsection and the Secretary may issue regulations governing such repayment. If the Secretary finds that any coastal state or unit of local government is unable to meet its obligations pursuant to this subsection because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such State or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such State or unit, take any of the following actions:

(A) Modify the terms and conditions of such loan.

(B) Refinance the loan.

(C) Recommend to the Congress that legislation be enacted to forgive the loan.

(2) Loan repayments made pursuant to this subsection shall be retained by the Secretary as offsetting collections, and shall be deposited into the Coastal Zone Management Fund established under subsection (b) of this section.

(b)(1) The Secretary shall establish and maintain a fund, to be known as the "Coastal Zone Management Fund", which shall consist of amounts retained and deposited into the Fund under subsection (a) of this section and fees deposited into the Fund under section 1456(i)(3) of this title.

(2) Subject to amounts provided in appropriation Acts, amounts in the Fund shall be available to the Secretary for use for the following:

(A) Expenses incident to the administration of this chapter, in an amount not to exceed for each of fiscal years 1997, 1998, and 1999 the higher of—

(i) $4,000,000; or

(ii) 8 percent of the total amount appropriated under this chapter for the fiscal year.

(B) After use under subparagraph (A)—

(i) projects to address management issues which are regional in scope, including interstate projects;

(ii) demonstration projects which have high potential for improving coastal zone management, especially at the local level;

(iii) emergency grants to State coastal zone management agencies to address unforeseen or disaster-related circumstances;

(iv) appropriate awards recognizing excellence in coastal zone management as provided in section 1460 of this title;

(v) program development grants as authorized by section 1454 of this title, in an amount not to exceed $200,000 for each of fiscal years 1997, 1998, and 1999; and

(vi) to provide financial support to coastal states for use for investigating and applying the public trust doctrine to implement State management programs approved under section 1455 of this title.

(3) On December 1 of each year, the Secretary shall transmit to the Congress an annual report on the Fund, including the balance of the Fund and an itemization of all deposits into and disbursements from the Fund in the preceding fiscal year.

(Pub.L. 89–454, Title III, § 308, as added Pub.L. 94–370, § 7, July 26, 1976, 90 Stat. 1019; and amended Pub.L. 95–372, Title V, §§ 501, 503(a) to (d), Sept. 18, 1978, 92 Stat. 690, 692, 693; Pub.L. 96–464, § 7, Oct. 17, 1980, 94 Stat. 2064; Pub.L. 99–272, Title VI, § 6047, Apr. 7, 1986, 100 Stat. 128; Pub.L. 101–508, Title VI, § 6209, Nov. 5, 1990, 104 Stat. 1388–308; Pub.L. 102–587, Title II, § 2205(b)(1)(A), (B), (15) to (18), Nov. 4, 1992, 106 Stat. 5050, 5052; Pub.L. 104–150, §§ 2(b)(2), 5, June 3, 1996, 110 Stat. 1380, 1381.)

Amendment of Subsec. (b).

Pub.L. 104–150, § 2(b)(2), (3), June 3, 1996, 110 Stat. 1380, provided that, effective Oct. 1, 1999, subsec. (b)(2)(B) is amended in cl. (iv) by adding "and" after the semicolon, by striking out former cl. (v), and by redesignating former cl. (vi) as (v).

HISTORICAL AND STATUTORY NOTES

Codification

Section 6209 of Pub.L. 101–508 directed the amendment of section 308 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456). Section 308 of such Act is section 308 of Pub.L. 89–454, Title III, as added Pub.L. 94–370, § 7, July

26, 1976, 90 Stat. 1019, as amended, which is classified to section 1456a of this title. Such amendment was executed to this section as the probable intent of Congress.

Section 1460 of this title, referred to in subsec. (b)(2)(B)(iv), was in the original section 314. Translation was made to section 1460 of this title as the probable intent of Congress.

Extension of Loan Making Authority Under Subsection (d)(1); Amount of Loan

Pub.L. 99-626, § 6, Nov. 7, 1986, 100 Stat. 3506, provided that: "The authority of the Secretary of Commerce to make loans under paragraph (1) of subsection (d) of section 308 of the Coastal Zone Management Act of 1972 (Public Law 92-583, 16 U.S.C. 1451, et seq.) as amended [subsec. (d)(1) of this section], shall extend to September 30, 1987, for loans made to eligible States or units pursuant to and in accord with agreements entered into between the Secretary and any State prior to September 30, 1986, that provided for a total sum of loans to be made to that State or its units, but such loan authority shall be limited to $7,000,000."

Legislative History

For legislative history and purpose of Pub.L. 94-370, see 1976 U.S. Code Cong. and Adm. News, p. 1768. See, also, Pub.L. 96-464, 1980 U.S. Code Cong. and Adm. News, p. 4362.

For legislative history and purpose of Pub.L. 99-272, see 1986 U.S. Code Cong. and Adm. News, p. 42. See, also, Pub.L. 101-508, 1990 U.S. Code Cong. and Adm. News, p. 2017; Pub.L. 102-587, 1992 U.S. Code Cong. and Adm. News, p. 4264; Pub.L. 104-150, 1996 U.S. Code Cong. and Adm. News, p. 1051.

§ 1456b. Coastal zone enhancement grants

[CZMA § 309]

(a) "Coastal zone enhancement objective" defined

For purposes of this section, the term "coastal zone enhancement objective" means any of the following objectives:

(1) Protection, restoration, or enhancement of the existing coastal wetlands base, or creation of new coastal wetlands.

(2) Preventing or significantly reducing threats to life and destruction of property by eliminating development and redevelopment in high-hazard areas, managing development in other hazard areas, and anticipating and managing the effects of potential sea level rise and Great Lakes level rise.

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

(4) Reducing marine debris entering the Nation's coastal and ocean environment by managing uses and activities that contribute to the entry of such debris.

(5) Development and adoption of procedures to assess, consider, and control cumulative and secondary impacts of coastal growth and development, including the collective effect on various individual uses or activities on coastal resources, such as coastal wetlands and fishery resources.

(6) Preparing and implementing special area management plans for important coastal areas.

(7) Planning for the use of ocean resources.

(8) Adoption of procedures and enforceable policies to help facilitate the siting of energy facilities and Government facilities and energy-related activities and Government activities which may be of greater than local significance.

(9) Adoption of procedures and policies to evaluate and facilitate the siting of public and private aquaculture facilities in the coastal zone, which will enable States to formulate, administer, and implement strategic plans for marine aquaculture.

(b) Limits on grants

(1) Subject to the limitations and goals established in this section, the Secretary may make grants to coastal states to provide funding for development and submission for Federal approval of program changes that support attainment of one or more coastal zone enhancement objectives.

(2)(A) In addition to any amounts provided under section 1455 of this title, and subject to the availability of appropriations, the Secretary may make grants under this subsection to States for implementing program changes approved by the Secretary in accordance with section 1455(e) of this title.

(B) Grants under this paragraph to implement a program change may not be made in any fiscal year after the second fiscal year that begins after the approval of that change by the Secretary.

(c) Evaluation of State proposals by Secretary

The Secretary shall evaluate and rank State proposals for funding under this section, and make funding awards based on those proposals, taking into account the criteria established by the Secretary under subsection (d) of this section. The Secretary shall ensure that funding decisions under this section take into consideration the fiscal and technical needs of proposing States and the overall merit of each proposal in terms of benefits to the public.

(d) Promulgation of regulations by Secretary

Within 12 months following November 5, 1990, and consistent with the notice and participation requirements established in section 1463 of this title, the Secretary shall promulgate regulations concerning coastal zone enhancement grants that establish—

(1) specific and detailed criteria that must be addressed by a coastal state (including the State's priority needs for improvement as identified by the Secretary after careful consultation with the State)

as part of the State's development and implementation of coastal zone enhancement objectives;

(2) administrative or procedural rules or requirements as necessary to facilitate the development and implementation of such objectives by coastal states; and

(3) other funding award criteria as are necessary or appropriate to ensure that evaluations of proposals, and decisions to award funding, under this section are based on objective standards applied fairly and equitably to those proposals.

(e) No State contribution required

A State shall not be required to contribute any portion of the cost of any proposal for which funding is awarded under this section.

(f) Funding

Beginning in fiscal year 1991, not less than 10 percent and not more than 20 percent of the amounts appropriated to implement sections 1455 and 1455a of this title shall be retained by the Secretary for use in implementing this section, up to a maximum of $10,000,000 annually.

(g) Eligibility; suspension of State for noncompliance

If the Secretary finds that the State is not undertaking the actions committed to under the terms of the grant, the Secretary shall suspend the State's eligibility for further funding under this section for at least one year.

(Pub.L. 89–454, Title III, § 309, as added Pub.L. 94–370, § 8, July 26, 1976, 90 Stat. 1028, and amended Pub.L. 96–464, § 8, Oct. 17, 1980, 94 Stat. 2064; Pub.L. 101–508, Title VI, § 6210, Nov. 5, 1990, 104 Stat. 1388–309; Pub.L. 102–587, Title II, § 2205(b)(1)(B), Nov. 4, 1992, 106 Stat. 5050; Pub.L. 104–150, §§ 3, 7(2), June 3, 1996, 110 Stat. 1380, 1382.)

HISTORICAL AND STATUTORY NOTES

Codification

Section 6210 of Pub.L. 101–508 directed the amendment of section 309 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452b). Section 309 of such Act is this section, and such amendment was executed to this section as the probable intent of Congress.

Legislative History

For legislative history and purpose of Pub.L. 94–370, see 1976 U.S. Code Cong. and Adm. News, p. 1768. See, also, Pub.L. 96–464, 1980 U.S. Code Cong. and Adm. News, p. 4362.

For legislative history and purpose of Pub.L. 101–508, see U.S. Code Cong. and Adm. News, p. 2017. See, also, Pub.L. 102–587, 1992 U.S. Code Cong. and Adm. News, p. 4264; Pub.L. 104–150, 1996 U.S. Code Cong. and Adm. News, p. 1051.

§ 1456c. Technical assistance

[CZMA § 310]

(a) The Secretary shall conduct a program of technical assistance and management-oriented research necessary to support the development and implementation of State coastal management program amendments under section 1456b of this title, and appropriate to the furtherance of international cooperative efforts and technical assistance in coastal zone management. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and technical assistance which does not interfere with the performance of the primary duties of such department, agency, or instrumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(b)(1) The Secretary shall provide for the coordination of technical assistance, studies, and research activities under this section with any other such activities that are conducted by or subject to the authority of the Secretary.

(2) The Secretary shall make the results of research and studies conducted pursuant to this section available to coastal states in the form of technical assistance publications, workshops, or other means appropriate.

(3) The Secretary shall consult with coastal states on a regular basis regarding the development and implementation of the program established by this section.

(Pub.L. 89–454, Title III, § 310, as added Pub.L. 101–508, Title VI, § 6211, Nov. 5, 1990, 104 Stat. 1388–311.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 1456c, Pub.L. 89–454, Title III, § 310, as added Pub.L. 94–370, § 9, July 26, 1976, 90 Stat. 1029, which related to research and technical assistance for coastal zone management, was repealed by Pub.L. 99–272, Title VI, § 6045(1), Apr. 7, 1986, 100 Stat. 127.

Legislative History

For legislative history and purpose of Pub.L. 101–508, see 1990 U.S.Code Cong. and Adm.News, p. 2017.

§ 1457. Public hearings

[CZMA § 311]

All public hearings required under this chapter must be announced at least thirty days prior to the hearing date. At the time of the announcement, all

agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

(Pub.L. 89–454, Title III, § 311, formerly, § 308, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1287, and renumbered Pub.L. 94–370, § 7, July 26, 1976, 90 Stat. 1019.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1458. Review of performance

[CZMA § 312]

(a) Evaluation of adherence with terms of grants

The Secretary shall conduct a continuing review of the performance of coastal states with respect to coastal management. Each review shall include a written evaluation with an assessment and detailed findings concerning the extent to which the state has implemented and enforced the program approved by the Secretary, addressed the coastal management needs identified in section 1452(2)(A) through (K) of this title, and adhered to the terms of any grant, loan, or cooperative agreement funded under this chapter.

(b) Public participation; notice of meetings; reports

In evaluating a coastal state's performance, the Secretary shall conduct the evaluation in an open and public manner, and provide full opportunity for public participation, including holding public meetings in the State being evaluated and providing opportunities for the submission of written and oral comments by the public. The Secretary shall provide the public with at least 45 days' notice of such public meetings by placing a notice in the Federal Register, by publication of timely notices in newspapers of general circulation within the State being evaluated, and by communications with persons and organizations known to be interested in the evaluation. Each evaluation shall be prepared in report form and shall include written responses to the written comments received during the evaluation process. The final report of the evaluation shall be completed within 120 days after the last public meeting held in the State being evaluated. Copies of the evaluation shall be immediately provided to all persons and organizations participating in the evaluation process.

(c) Suspension of financial assistance for noncompliance; notification of Governor; length of suspension

(1) The Secretary may suspend payment of any portion of financial assistance extended to any coastal state under this chapter, and may withdraw any unexpended portion of such assistance, if the Secretary determines that the coastal state is failing to adhere to (A) the management program or a State plan developed to manage a national estuarine reserve established under section 1461 of this title, or a portion of the program or plan approved by the Secretary, or (B) the terms of any grant or cooperative agreement funded under this chapter.

(2) Financial assistance may not be suspended under paragraph (1) unless the Secretary provides the Governor of the coastal state with—

(A) written specifications and a schedule for the actions that should be taken by the State in order that such suspension of financial assistance may be withdrawn; and

(B) written specifications stating how those funds from the suspended financial assistance shall be expended by the coastal state to take the actions referred to in subparagraph (A).

(3) The suspension of financial assistance may not last for less than 6 months or more than 36 months after the date of suspension.

(d) Withdrawal of approval of program

The Secretary shall withdraw approval of the management program of any coastal state and shall withdraw financial assistance available to that State under this chapter as well as any unexpended portion of such assistance, if the Secretary determines that the coastal state has failed to take the actions referred to in subsection (c)(2)(A) of this section.

(e) Notice and hearing

Management program approval and financial assistance may not be withdrawn under subsection (d) of this section, unless the Secretary gives the coastal state notice of the proposed withdrawal and an opportunity for a public hearing on the proposed action. Upon the withdrawal of management program approval under this subsection (d) of this section, the Secretary shall provide the coastal state with written specifications of the actions that should be taken, or not engaged in, by the state in order that such withdrawal may be canceled by the Secretary.

(f) Repealed. Pub.L. 101–508, Title VI, § 6212(d), Nov. 5, 1990, 104 Stat. 1388–311

(Pub.L. 89–454, Title III, § 312, formerly § 309, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1287, renumbered and amended Pub.L. 94–370, §§ 7, 10, July 26, 1976, 90 Stat. 1019, 1029; Pub.L. 96–464, § 9(a), Oct. 17, 1980, 94 Stat. 2065; Pub.L. 99–272, Title VI, § 6043(a), Apr. 7, 1986, 100 Stat. 124; Pub.L. 101–508, Title VI, §§ 6212, 6216(b), Nov. 5, 1990, 104 Stat. 1388–311, 1388–314; Pub.L. 102–587, Title II, § 2205(b)(1)(A), (C), Nov. 4, 1992, 106 Stat. 5050.)

HISTORICAL AND STATUTORY NOTES

Issuance of Regulations

Section 9(b) of Pub.L. 96–464 provided that: "Within two hundred and seventy days after the date of the enactment of this Act [Oct. 17, 1980], the Secretary of Commerce shall issue such regulations as may be necessary or appropriate to administer section 312 of the Coastal Zone Management Act of 1972 (as amended by subsection (a) of this section) [this section]."

Legislative History

For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776. See, also, Pub.L. 94–370, 1976 U.S.Code Cong. and Adm.News, p. 1768; Pub.L. 96–464, 1980 U.S.Code Cong. and Adm.News, p. 4362.

For legislative history and purpose of Pub.L. 99–272, see 1986 U.S. Code Cong. and Adm. News, p. 42. See, also, Pub.L. 101–508, 1990 U.S. Code Cong. and Adm. News, p. 2017; Pub.L. 102–587, 1992 U.S. Code Cong. and Adm. News, p. 4264.

§ 1459. Records and audit

[CZMA § 313]

(a) Maintenance of records by recipients of grants or financial assistance

Each recipient of a grant under this chapter or of financial assistance under section 1456a of this title, as in effect before November 5, 1990, shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant and of the proceeds of such assistance, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Access by Secretary and Comptroller General to records, books, etc., of recipients of grants or financial assistance for audit and examination

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall—

(1) after any grant is made under this chapter or any financial assistance is provided under section 1456a of this title, as in effect before November 5, 1990; and

(2) until the expiration of 3 years after—

(A) completion of the project, program, or other undertaking for which such grant was made or used, or

(B) repayment of the loan or guaranteed indebtedness for which such financial assistance was provided,

have access for purposes of audit and examination to any record, book, document, and paper which belongs to or is used or controlled by, any recipient of the grant funds or any person who entered into any transaction relating to such financial assistance and which is pertinent for purposes of determining if the grant funds or the proceeds of such financial assistance are being, or were, used in accordance with the provisions of this chapter.

(Pub.L. 89–454, Title III, § 313, formerly § 310, as added Pub.L. 92–583, Oct. 27, 1972, 86 Stat. 1287, renumbered and amended Pub.L. 94–370, §§ 7, 11, July 26, 1976, 90 Stat. 1019, 1030; Pub.L. 102–587, Title II, § 2205(b)(19), Nov. 4, 1992, 106 Stat. 5052.)

HISTORICAL AND STATUTORY NOTES

Codification

Another section 313 of Pub.L. 89–454, Title III, as added Pub.L. 101–508, Title VI, § 6213, Nov. 5, 1990, 104 Stat. 1388–312, is classified to section 1460 of this title, set out post.

Legislative History

For legislative history and purpose of Pub.L. 92–583, see 1972 U.S.Code Cong. and Adm.News, p. 4776. See, also, Pub.L. 94–370, 1976 U.S.Code Cong. and Adm.News, p. 1768.

For legislative history and purpose of Pub.L. 102–587, see 1992 U.S. Code Cong. and Adm. News, p. 4264.

§ 1460. Walter B. Jones excellence in coastal zone management awards

[CZMA § 314]

(a) Establishment

The Secretary shall, using sums in the Coastal Zone Management Fund established under section 1456a of this title and other amounts available to carry out this chapter (other than amounts appropriated to carry out sections 1454, 1455, 1455a, 1456, 1456c, and 1461 of this title), implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.

(b) Annual selection of recipients

The Secretary shall select annually—

(1) one individual, other than an employee or officer of the Federal Government, whose contribution to the field of coastal zone management has been the most significant;

(2) 5 local governments which have made the most progress in developing and implementing the coastal zone management principles embodied in this chapter; and

(3) up to 10 graduate students whose academic study promises to contribute materially to development of new or improved approaches to coastal zone management.

(c) Solicitation of nominations for local government recipients

In making selections under subsection (b)(2) of this section the Secretary shall solicit nominations from the coastal states, and shall consult with experts in local government planning and land use.

(d) Solicitation of nominations for graduate student recipients

In making selections under subsection (b)(3) of this section the Secretary shall solicit nominations from coastal states and the National Sea Grant College Program.

(e) Funding; types of awards

Using sums in the Coastal Zone Management Fund established under section 1456a of this title and other amounts available to carry out this chapter (other than amounts appropriated to carry out sections 1454, 1455, 1455a, 1456, 1456c, and 1461 of this title), the Secretary shall establish and execute appropriate awards, to be known as the "Walter B. Jones Awards," including—

(1) cash awards in an amount not to exceed $5,000 each;

(2) research grants; and

(3) public ceremonies to acknowledge such awards.

(Pub.L. 89-454, Title III, § 314, formerly § 313, as added Pub.L. 101-508, Title VI, § 6213, Nov. 5, 1990, 104 Stat. 1388-312, renumbered § 314 and amended Pub.L. 102-587, Title II, § 2205(b)(20), Nov. 4, 1992, 106 Stat. 5052.)

HISTORICAL AND STATUTORY NOTES

Prior Provisions

A prior section 1460, Pub.L. 89-454, Title III, § 314, formerly § 311, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1287, and renumbered Pub.L. 94-370, § 7, July 26, 1976, 90 Stat. 1019, which related to the establishment of the Coastal Zone Management Advisory Committee, was repealed by Pub.L. 99-272, Title VI, § 6045(2), Apr. 7, 1986, 100 Stat. 127.

Legislative History

For legislative history and purpose of Pub.L. 102-587, see 1992 U.S. Code Cong. and Adm. News, p. 4264.

§ 1461. National Estuarine Research Reserve System

[CZMA § 315]

(a) Establishment of System

There is established the National Estuarine Research Reserve System (hereinafter referred to in this section as the "System") that consists of—

(1) each estuarine sanctuary designated under this section as in effect before April 7, 1986; and

(2) each estuarine area designated as a national estuarine reserve under subsection (b) of this section.

Each estuarine sanctuary referred to in paragraph (1) is hereby designated as a national estuarine reserve.

(b) Designation of national estuarine reserves

After April 7, 1986, the Secretary may designate an estuarine area as a national estuarine reserve if—

(1) the Governor of the coastal state in which the area is located nominates the area for that designation; and

(2) the Secretary finds that—

(A) the area is a representative estuarine ecosystem that is suitable for long-term research and contributes to the biogeographical and typological balance of the System;

(B) the law of the coastal state provides long-term protection for reserve resources to ensure a stable environment for research;

(C) designation of the area as a reserve will serve to enhance public awareness and understanding of estuarine areas, and provide suitable opportunities for public education and interpretation; and

(D) the coastal state in which the area is located has complied with the requirements of any regulations issued by the Secretary to implement this section.

(c) Estuarine research guidelines

The Secretary shall develop guidelines for the conduct of research within the System that shall include—

(1) a mechanism for identifying, and establishing priorities among, the coastal management issues that should be addressed through coordinated research within the System;

(2) the establishment of common research principles and objectives to guide the development of research programs within the System;

(3) the identification of uniform research methodologies which will ensure comparability of data, the broadest application of research results, and the maximum use of the System for research purposes;

(4) the establishment of performance standards upon which the effectiveness of the research efforts and the value of reserves within the System in addressing the coastal management issues identified in paragraph (1) may be measured; and

(5) the consideration of additional sources of funds for estuarine research than the funds authorized under this chapter, and strategies for encouraging the use of such funds within the System, with particular emphasis on mechanisms established under subsection (d) of this section.

In developing the guidelines under this section, the Secretary shall consult with prominent members of the estuarine research community.

(d) Promotion and coordination of estuarine research

The Secretary shall take such action as is necessary to promote and coordinate the use of the System for research purposes including—

(1) requiring that the National Oceanic and Atmospheric Administration, in conducting or supporting estuarine research, give priority consideration to research that uses the System; and

(2) consulting with other Federal and State agencies to promote use of one or more reserves within the System by such agencies when conducting estuarine research.

(e) Financial assistance

(1) The Secretary may, in accordance with such rules and regulations as the Secretary shall promulgate, make grants—

(A) to a coastal state—

(i) for purposes of acquiring such lands and waters, and any property interests therein, as are necessary to ensure the appropriate long-term management of an area as a national estuarine reserve,

(ii) for purposes of operating or managing a national estuarine reserve and constructing appropriate reserve facilities, or

(iii) for purposes of conducting educational or interpretive activities; and

(B) to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c) of this section.

(2) Financial assistance provided under paragraph (1) shall be subject to such terms and conditions as the Secretary considers necessary or appropriate to protect the interests of the United States, including requiring coastal states to execute suitable title documents setting forth the property interest or interests of the United States in any lands and waters acquired in whole or part with such financial assistance.

(3)(A) The amount of the financial assistance provided under paragraph (1)(A)(i) with respect to the acquisition of lands and waters, or interests therein, for any one national estuarine reserve may not exceed an amount equal to 50 percent of the costs of the lands, waters, and interests therein or $5,000,000, whichever amount is less.

(B) The amount of the financial assistance provided under paragraph (1)(A)(ii) and (iii) and paragraph (1)(B) may not exceed 70 percent of the costs incurred to achieve the purposes described in those paragraphs with respect to a reserve; except that the amount of financial assistance provided under paragraph (1)(A)(iii) may be up to 100 percent of any costs for activities that benefit the entire System.

(C) Notwithstanding subparagraphs (A) and (B), financial assistance under this subsection provided from amounts recovered as a result of damage to natural resources located in the coastal zone may be used to pay 100 percent of the costs of activities carried out with the assistance.

(f) Evaluation of System performance

(1) The Secretary shall periodically evaluate the operation and management of each national estuarine reserve, including education and interpretive activities, and the research being conducted within the reserve.

(2) If evaluation under paragraph (1) reveals that the operation and management of the reserve is deficient, or that the research being conducted within the reserve is not consistent with the research guidelines developed under subsection (c) of this section, the Secretary may suspend the eligibility of that reserve for financial assistance under subsection (e) of this section until the deficiency or inconsistency is remedied.

(3) The Secretary may withdraw the designation of an estuarine area as a national estuarine reserve if evaluation under paragraph (1) reveals that—

(A) the basis for any one or more of the findings made under subsection (b)(2) of this section regarding that area no longer exists; or

(B) a substantial portion of the research conducted within the area, over a period of years, has not been consistent with the research guidelines developed under subsection (c) of this section.

(g) Report

The Secretary shall include in the report required under section 1462 of this title information regarding—

(1) new designations of national estuarine reserves;

(2) any expansion of existing national estuarine reserves;

(3) the status of the research program being conducted within the System; and

(4) a summary of the evaluations made under subsection (f) of this section.

(Pub.L. 89-454, Title III, § 315, formerly § 312, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1288, renumbered and amended Pub.L. 94-370, §§ 7, 12, July 26, 1976, 90 Stat. 1019, 1030; Pub.L. 96-464, § 11, Oct. 17, 1980, 94 Stat. 2067; Pub.L. 99-272, Title VI, § 6044, Apr. 7, 1986, 100 Stat. 125; Pub.L. 101-508, Title VI, § 6214, Nov. 5, 1990, 104 Stat. 1388-313; Pub.L. 102-587, Title II, § 2205(b)(1)(A), (B), (21), (22), Nov. 4, 1992, 106 Stat. 5050, 5052; Pub.L. 104-150, § 6, June 3, 1996, 110 Stat. 1381.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 92-583, see 1972 U.S. Code Cong. and Adm. News, p. 4776. See, also, Pub.L. 94-370, 1976 U.S. Code Cong. and Adm. News, p.

1768; Pub.L. 96-464, 1980 U.S. Code Cong. and Adm. News, p. 4362.

For legislative history and purpose of Pub.L. 99-272, see 1986 U.S. Code Cong. and Adm. News, p. 42. See, also, Pub.L. 101-508, 1990 U.S. Code Cong. and Adm. News, p. 2017; Pub.L. 102-587, 1992 U.S. Code Cong. and Adm. News, p. 4264; Pub.L. 104-150, 1996 U.S. Code Cong. and Adm. News, p. 1051.

§ 1462. Coastal zone management reports

[CZMA § 316]

(a) Biennial reports

The Secretary shall consult with the Congress on a regular basis concerning the administration of this chapter and shall prepare and submit to the President for transmittal to the Congress a report summarizing the administration of this chapter during each period of two consecutive fiscal years. Each report, which shall be transmitted to the Congress not later than April 1 of the year following the close of the biennial period to which it pertains, shall include, but not be restricted to (1) an identification of the state programs approved pursuant to this chapter during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this chapter and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved, and a statement of the reasons for such action; (5) a summary of evaluation findings prepared in accordance with subsection (a) of section 1458 of this title, and a description of any sanctions imposed under subsections (c) and (d) of section 1458 of this title; (6) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 1456 of this title, are not consistent with an applicable approved state management program; (7) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (8) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (9) a summary of outstanding problems arising in the administration of this chapter in order of priority; (10) a description of the economic, environmental, and social consequences of energy activity affecting the coastal zone and an evaluation of the effectiveness of financial assistance under section 1456a of this title in dealing with such consequences; (11) a description and evaluation of applicable interstate and regional planning and coordination mechanisms developed by the coastal states; (12) a summary and evaluation of the research, studies, and training conducted in support of coastal zone management; and (13) such other information as may be appropriate.

(b) Recommendations for legislation

The report required by subsection (a) of this section shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this chapter and enhance its effective operation.

(c) Review of other Federal programs; report to Congress

(1) The Secretary shall conduct a systematic review of Federal programs, other than this chapter, that affect coastal resources for purposes of identifying conflicts between the objectives and administration of such programs and the purposes and policies of this chapter. Not later than 1 year after October 17, 1980, the Secretary shall notify each Federal agency having appropriate jurisdiction of any conflict between its program and the purposes and policies of this chapter identified as a result of such review.

(2) The Secretary shall promptly submit a report to the Congress consisting of the information required under paragraph (1) of this subsection. Such report shall include recommendations for changes necessary to resolve existing conflicts among Federal laws and programs that affect the uses of coastal resources. (Pub.L. 89-454, Title III, § 316, formerly § 313, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1288, renumbered and amended Pub.L. 94-370, §§ 7, 13, July 26, 1976, 90 Stat. 1019, 1030; Pub.L. 96-464, § 10, Oct. 17, 1980, 94 Stat. 2066; Pub.L. 102-587, Title II, § 2205(b)(23), Nov. 4, 1992, 106 Stat. 5052.)

HISTORICAL AND STATUTORY NOTES

Shellfish Sanitation

Section 16 of Pub.L. 94-370 provided that:

"(a) The Secretary of Commerce shall—

"(1) undertake a comprehensive review of all aspects of the molluscan shellfish industry, including, but not limited to, the harvesting, processing, and transportation of such shellfish; and

"(2) evaluate the impact of Federal law concerning water quality on the molluscan shellfish industry.

The Secretary of Commerce shall, not later than April 30, 1977, submit a report to the Congress of the findings, comments, and recommendations (if any) which result from such review and evaluation.

"(b) The Secretary of Health, Education, and Welfare [now Health and Human Services] shall not promulgate final regulations concerning the national shellfish safety program before June 30, 1977. At least 60 days prior to the promulgation of any such regulations, the Secretary of Health, Education, and Welfare, in consultation with the Secretary of Commerce, shall publish an analysis (1) of the economic impact of such regulations on the domestic shellfish industry, and (2) the cost of such national shellfish safety program relative to the benefits that it is expected to achieve."

Legislative History

For legislative history and purpose of Pub.L. 92-583, see 1972 U.S.Code Cong. and Adm.News, p. 4776. See, also, Pub.L. 94-370, 1976 U.S.Code Cong. and Adm.News, p. 1768; Pub.L. 96-464, 1980 U.S. Code Cong. and Adm.News, p. 4362.

For legislative history and purpose of Pub.L. 102-587, see 1992 U.S. Code Cong. and Adm. News, p. 4264.

§ 1463. Rules and regulations

[CZMA § 317]

The Secretary shall develop and promulgate, pursuant to section 553 of Title 5, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private; such rules and regulations as may be necessary to carry out the provisions of this chapter.

(Pub.L. 89-454, Title III, § 317, formerly § 314, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1288, and renumbered Pub.L. 94-370, § 7, July 26, 1976, 90 Stat. 1019.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 92-583, see 1972 U.S.Code Cong. and Adm.News, p. 4776.

§ 1463a. Omitted

HISTORICAL AND STATUTORY NOTES

Codification

Section, Pub.L. 96-464, § 12(a) to (g), Oct. 17, 1980, 94 Stat. 2067; Pub.L. 98-620, Title IV, § 402(20), Nov. 8, 1984, 98 Stat. 3358, which set forth procedures and definitions applicable to Congressional disapproval for final rules, was omitted pursuant to section 12(h) of Pub.L. 96-464 providing that this section shall cease to have any force or effect after Sept. 30, 1985.

§ 1463b. National Coastal Resources Research and Development Institute

(a) Establishment by Secretary; administration

The Secretary of Commerce shall provide for the establishment of a National Coastal Resources Research and Development Institute (hereinafter in this section referred to as the "Institute") to be administered by the Oregon State Marine Science Center.

(b) Purposes of Institute

The Institute shall conduct research and carry out educational and demonstration projects designed to promote the efficient and responsible development of ocean and coastal resources, including arctic resources. Such projects shall be based on biological, geological, genetic, economic and other scientific research applicable to the purposes of this section and shall include studies on the economic diversification and environmental protection of the Nation's coastal areas.

(c) Determination of Institute policies

(1) The policies of the Institute shall be determined by a Board of Governors composed of—

(A) two representatives appointed by the Governor of Oregon;

(B) one representative appointed by the Governor of Alaska;

(C) one representative appointed by the Governor of Washington;

(D) one representative appointed by the Governor of California; and

(E) one representative appointed by the Governor of Hawaii.

(2) Such policies shall include the selection, on a nationally competitive basis, of the research, projects, and studies to be supported by the Institute in accordance with the purposes of this section.

(d) Establishment of Advisory Council; functions and composition

(1) The Board of Governors shall establish an Advisory Council composed of specialists in ocean and coastal resources from the academic community.

(2) To the maximum extent practicable, the Advisory Council shall be composed of such specialists from every coastal region of the Nation.

(3) The Advisory Council shall provide such advice to the Board of Governors as such Board shall request, including recommendations regarding the support of research, projects, and studies in accordance with the purposes of this section.

(e) Administration of Institute

The Institute shall be administered by a Director who shall be appointed by the Chancellor of the Oregon Board of Higher Education in consultation with the Board of Governors.

(f) Evaluation of Institute by Secretary

The Secretary of Commerce shall conduct an ongoing evaluation of the activities of the Institute to ensure that funds received by the Institute under this section are used in a manner consistent with the provisions of this section.

(g) Report to Secretary

The Institute shall report to the Secretary of Commerce on its activities within 2 years after July 17, 1984.

(h) Access to Institute books, records, and documents

The Comptroller General of the United States, and any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers and records of the

Institute that are pertinent to the funds received under this section.

(i) Status of Institute employees

Employees of the Institute shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(j) Authorization of appropriations

For the purposes of this section, there are authorized to be appropriated in each fiscal year $5,000,000, commencing with fiscal year 1985.

(Pub.L. 98-364, Title II, § 201, July 17, 1984, 98 Stat. 443.)

HISTORICAL AND STATUTORY NOTES

Codification

This section was not enacted as part of the Coastal Zone Management Act of 1972, which comprises this chapter.

Legislative History

For legislative history and purpose of Pub.L. 98-364, see 1984 U.S.Code Cong. and Adm.News, p. 635.

§ 1464. Authorization of appropriations

[CZMA § 318]

(a) Sums appropriated to Secretary

There are authorized to be appropriated to the Secretary, to remain available until expended—

(1) for grants under sections 1455, 1455a, and 1456b of this title—

(A) $47,600,000 for fiscal year 1997;
(B) $49,000,000 for fiscal year 1998; and
(C) $50,500,000 for fiscal year 1999; and

(2) for grants under section 1461 of this title—

(A) $4,400,000 for fiscal year 1997;
(B) $4,500,000 for fiscal year 1998; and
(C) $4,600,000 for fiscal year 1999.

(b) Limitations

Federal funds received from other sources shall not be used to pay a coastal state's share of costs under section 1455 or 1456b of this title.

(c) Reversion to Secretary of unobligated State funds; availability of funds

The amount of any grant, or portion of a grant, made to a State under any section of this chapter which is not obligated by such State during the fiscal year, or during the second fiscal year after the fiscal year, for which it was first authorized to be obligated by such State shall revert to the Secretary. The Secretary shall add such reverted amount to those funds available for grants under the section for such reverted amount was originally made available.

(d) Redesignated (c)

(Pub.L. 89-454, Title III, § 318, formerly § 315, as added Pub.L. 92-583, Oct. 27, 1972, 86 Stat. 1289, amended Pub.L. 93-612, § 1(3), Jan. 2, 1975, 88 Stat. 1974, renumbered and amended Pub.L. 94-370, §§ 7, 14, July 26, 1976, 90 Stat. 1019, 1031; amended Pub.L. 95-372, Title V, §§ 502, 503(e), (f), Sept. 18, 1978, 92 Stat. 692, 693; Pub.L. 96-464, § 13, Oct. 17, 1980, 94 Stat. 2070; Pub.L. 99-272, Title VI, § 6046, Apr. 7, 1986, 100 Stat. 127; Pub.L. 99-626, § 7, Nov. 7, 1986, 100 Stat. 3506; Pub.L. 101-508, Title VI, § 6215, Nov. 5, 1990, 104 Stat. 1388-313; Pub.L. 104-150, § 4, June 3, 1996, 110 Stat. 1381.)

HISTORICAL AND STATUTORY NOTES

Codification

Amendment to this section by section 6046 of Pub.L. 99-272, which directed that this section be amended by revising par. (1), striking former par. (2), renumbering former pars. (3) to (6) as (2) to (5), respectively, and revising pars. (3) to (5), as so renumbered, has been executed to pars. (1) to (6) of subsec. (a) of this section as the probable intent of Congress.

Legislative History

For legislative history and purpose of Pub.L. 92-583, see 1972 U.S. Code Cong. and Adm. News, p. 4776. See, also, Pub.L. 93-612, 1974 U.S. Code Cong. and Adm. News, p. 7175, Pub.L. 94-370, 1976 U.S. Code Cong. and Adm. News, p. 1768; Pub.L. 96-464, 1980 U.S. Code Cong. and Adm. News, p. 4362.

For legislative history and purpose of Pub.L. 99-272, see 1986 U.S. Code Cong. and Adm. News, p. 42. See, also, Pub.L. 99-626, 1986 U.S. Code Cong. and Adm. News, p. 5931; Pub.L. 101-508, 1990 U.S. Code Cong. and Adm. News, p. 2017; Pub.L. 104-150, 1996 U.S. Code Cong. and Adm. News, p. 1051.

§ 1465. Appeals to the Secretary

[CZMA § 319]

(a) Notice

The Secretary shall publish in the Federal Register a notice indicating when the decision record has been closed on any appeal to the Secretary taken from a consistency determination under section 1456(c) or (d) of this title. No later than 90 days after the date of publication of this notice, the Secretary shall—

(1) issue a final decision in the appeal; or

(2) publish a notice in the Federal Register detailing why a decision cannot be issued within the 90-day period.

(b) Deadline

In the case where the Secretary publishes a notice under subsection (a)(2) of this section, the Secretary shall issue a decision in any appeal filed under section 1456 of this title no later than 45 days after the date of the publication of the notice.

(c) Application

This section applies to appeals initiated by the Secretary and appeals filed by an applicant.

(Pub.L. 89–454, Title III, § 319, as added Pub.L. 104–150, § 8, June 3, 1996, 110 Stat. 1382.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 104–150, see 1996 U.S. Code Cong. and Adm. News, p. 1051.

COASTAL ZONE MANAGEMENT ACT

FEDERAL CONSISTENCY REGULATIONS 15 CFR PART 930 (JANUARY 1, 2001)

As Revised By:

65 *Federal Register* 77123-77175 (December 8, 2000)

EFFECTIVE DATE NOTE: At 65 FR 77154, Dec. 8, 2000, part 930 was revised, effective January 8, 2001. For the convenience of the user, the revised text is set forth as follows.

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AUTHORITY: 16 U.S.C. 1451 *et seq.*

Subpart A—General Information

§ 930.1 Overall objectives.

The objectives of this part are:

(a) To describe the obligations of all parties who are required to comply with the federal consistency requirement of the Coastal Zone Management Act;

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the federal consistency requirement of the Act are satisfied. Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action, and may mutually agree to intergovernmental coordination efforts to meet the requirements of these regulations, provided that public participation requirements are met and applicable State management program enforceable policies are considered.

(d) To interpret significant terms in the Act and this part;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the enforceable policies of approved management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved management programs; and

(g) To provide procedures which permit the Secretary to review federal license or permit activities, or federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security.

§ 930.2 Public participation.

State management programs shall provide an opportunity for public participation in the State agency's review of a Federal agency's consistency determination or an applicant's or person's consistency certification.

§ 930.3 Review of the implementation of the federal consistency requirement.

As part of the responsibility to conduct a continuing review of approved management programs, the Director of the Office of Ocean and Coastal Resource Management (Director) shall review the performance of each State's implementation of the federal consistency requirement. The Director shall evaluate instances where a State agency is believed to have either failed to object to inconsistent federal actions, or improperly objected to consistent federal actions. This evaluation shall be incorporated within the Director's general efforts to ascertain instances where a State has not adhered to its approved management program and such lack of adherence is not justified.

§ 930.4 Conditional concurrences

(a) Federal agencies, applicants, persons and applicant agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under subpart C or in a Federal agency's approval under subparts D, E, F or I of this part, would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable subpart and notify, pursuant to §930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

(3) The Federal agency (for subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable subpart.

§ 930.5 State enforcement action.

The regulations in this part are not intended in any way to alter or limit other legal remedies, including judicial review or State enforcement, otherwise available. State agencies and Federal agencies should first use the various remedial action and mediation sections of this part to resolve their differences or to enforce State agency concurrences or objections.

§ 930.6 State agency responsibility.

(a) This section describes the responsibilities of the "State agency" described in §930.11(o). A designated State agency is required to uniformly and comprehensively apply the enforceable policies of the State's management program, efficiently coordinate all State coastal management requirements, and to provide a single point of contact for Federal agencies and the public to discuss consistency issues. Any appointment by the State agency of the State's consistency responsibilities to a designee agency must be described in the State's management program. In the absence of such description, all consistency determinations, consistency certifications and federal assistance proposals shall be sent to and reviewed by the State

agency. A State may have two State agencies designated pursuant to §306(d)(6) of the Act where the State has two geographically separate federally-approved management programs.

(b) The State agency is responsible for commenting on and concurring with or objecting to Federal agency consistency determinations and negative determinations (*see* subpart C of this part), consistency certifications for federal licenses, permits, and Outer Continental Shelf plans (*see* subparts D, E and I of this part), and reviewing the consistency of federal assistance activities proposed by applicant agencies (*see* subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other State, regional, or local government agencies, and, where applicable, the public. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal consistency determination or negative determination, a consistency certification, or determine the consistency of a proposed federal assistance activity.

(c) If described in a State's management program, the issuance or denial of relevant State permits can constitute the State agency's consistency concurrence or objection if the State agency ensures that the State permitting agencies or the State agency review individual projects to ensure consistency with all applicable State management program policies and that applicable public participation requirements are met. The State agency shall monitor such permits issued by another State agency.

Subpart B—General Definitions

§930.10 Index to definitions for terms defined in part 930

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State agency	930.11(o)

§930.11 Definitions.

(a) *Act.* The term "Act" means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464).

(b) *Any coastal use or resource.* The phrase "any coastal use or resource" means any land or water use or natural resource of the coastal zone. Land and water uses, or coastal uses, are defined in sections 304(10) and (18) of the act, respectively, and include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found within a State's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also includes uses and resources appropriately described in a management program.

(c) *Assistant Administrator.* The term "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

(d) *Associated facilities.* The term "associated facilities" means all proposed facilities which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (*e.g.*, activity, development project, license, permit, or assistance), and without which the federal action as proposed, could not be conducted. The proponent of a federal action shall consider whether the federal action and its associated facilities affect any coastal use or resource and, if so, whether these interrelated activities satisfy the requirements of the applicable subpart (subparts C, D, E, F or I).

(e) *Coastal Zone.* The term "coastal zone" has the same definition as provided in §304(1) of the Act.

(f) *Director.* The term "Director" means the Director of the Office of Ocean and Coastal

Resource Management (OCRM), National Ocean Service, NOAA.

(g) *Effect on any coastal use or resource (coastal effect).* The term "effect on any coastal use or resource" means any reasonably foreseeable effect on any coastal use or resource resulting from a federal action. (The term "federal action" includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

(h) *Enforceable policy.* "The term "enforceable policy" means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone," 16 USC 1453(6a), and which are incorporated in a management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses. Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

(i) *Executive Office of the President.* The term "Executive Office of the President" means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal State.

(j) *Federal agency.* The term "Federal agency" means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the federal government, or any wholly owned federal government corporation.

(k) *Management program.* The term "management program" has the same definition as provided in section 304(12) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal State in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

(l) *OCRM.* The term "OCRM" means the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration ("NOAA"), U.S. Department of Commerce.

(m) *Secretary.* The term "Secretary" means the Secretary of Commerce and/or designee.

(n) *Section.* The term "Section" means a section of the Coastal Zone Management Act of 1972, as amended.

(o) *State agency.* The term "State agency" means the agency of the State government designated pursuant to section 306(d)(6) of the Act to receive and administer grants for an approved management program, or a single designee State agency appointed by the 306(d)(6) State agency.

Subpart C—Consistency for Federal Agency Activities

§ 930.30 Objectives.

The provisions of this subpart are intended to assure that all Federal agency activities including development projects affecting any coastal use or resource will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for Federal agency activities having interstate coastal effects.

§ 930.31 Federal agency activity.

(a) The term "Federal agency activity" means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. This encompasses a wide range of Federal agency activities which initiate an event or series of events where coastal effects are reasonably foreseeable, *e.g.*, rulemaking, planning, physical alteration, exclusion of uses. The term "Federal agency activity" does not include the issuance of a federal license or permit to an applicant or person (*see* subparts D and E of this part) or the granting of federal assistance to an applicant agency (*see* subpart F of this part).

(b) The term federal "development project" means a Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and includes the acquisition, use, or disposal of any coastal use or resource.

(c) The Federal agency activity category is a residual category for federal actions that

are not covered under subparts D, E, or F of this part.

(d) A general permit program proposed by a Federal agency is subject to this subpart if the general permit program does not involve case-by-case approval by the Federal agency, unless a Federal agency chooses to subject its general permit program to consistency review under subpart D of this part, by providing the State agency with a consistency certification. When proposing a general permit program, a Federal agency shall provide a consistency determination to the relevant management programs and request that the State agency(ies) provide the Federal agency with conditions that would permit the State agency to concur with the Federal agency's consistency determination. State concurrence shall remove the need for the State agency to review future case-by-case uses of the general permit for consistency with the enforceable policies of management programs. Federal agencies shall, to the maximum extent practicable, incorporate the State conditions into the general permit. If the State conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not authorized for that State unless the State agency concurs that the activity is consistent with the enforceable policies of its management program. Accordingly, the applicants in those States shall provide the State agency with a consistency certification under subpart D of this part.

(e) The terms "Federal agency activity" and "Federal development project" also include modifications of any such activity or development project which affect any coastal use or resource, provided that, in the case of modifications of an activity or development project which the State agency has previously reviewed, the effect on any coastal use or resource is substantially different than those previously reviewed by the State agency.

§930.32 Consistent to the maximum extent practicable.

(a)(1) The term "consistent to the maximum extent practicable" means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

(2) Section 307(e) of the Act does not relieve Federal agencies of the consistency requirements under the Act. The Act was intended to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing in such agencies. Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates. If a Federal agency asserts that full consistency with the management program is prohibited, it shall clearly describe, in writing, to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to be fully consistent with the enforceable policies of the management program.

(3) For the purpose of determining consistent to the maximum extent practicable under paragraphs (a)(1) and (2) of this section, federal legal authority includes Federal appropriation Acts if the appropriation Act includes language that specifically prohibits full consistency with specific enforceable policies of management programs. Federal agencies shall not use a general claim of a lack of funding or insufficient appropriated funds or failure to include the cost of being fully consistent in Federal budget and planning processes as a basis for being consistent to the maximum extent practicable with an enforceable policy of a management program. The only circumstance where a Federal agency may rely on a lack of funding as a limitation on being fully consistent with an enforceable policy is the Presidential exemption described in section 307(c)(1)(B) of the Act (16 USC 1456(c)(1)(B)). In cases where the cost of being consiatent with the enforceable policies of a management program was not included in the Federal agency's budget and planning processes, the Federal agency should determine the amount of funds needed and seek additional federal funds. Federal agencies should include the cost of being fully consistent with the enforceable policies of management programs in their budget and planning processes, to the same extent that a Federal agency would plan for the cost of complying with other federal requirements.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of an emergency or other similar unforeseen circumstance ("exigent circumstance"), which presents the Federal agency with a substantial obstacle that prevents complete adherence to the approved program. Any deviation shall be the minimum necessary to address the exigent circumstance. Federal agencies shall carry out their activities consistent to the maximum extent practicable with the enforceable policies of a management program, to the extent that the exigent circumstance allows. Federal agencies shall consult with State agencies to the extent that an exigent circumstance allows and shall attempt to seek State agency concurrence prior to addressing the exigent circumstance. Once the exigent circumstances have passed, and if the Federal agency is still carrying out an activity with coastal effects, Federal agencies shall comply with all applicable provisions of this

subpart to ensure that the activity is consistent to the maximum extent practicable with the enforceable policies of management programs. Once the Federal agency has addressed the exigent circumstance or completed its emergency response activities, it shall provide the State agency with a description of its actions and their coastal effects.

(c) A classified activity that affects any coastal use or resource is not exempt from the requirements of this subpart, unless the activity is exempted by the President under section 307(c)(1)(B) of the Act. Under the consistent to the maximum extent practicable standard, the Federal agency shall provide to the State agency a description of the project and coastal effects that it is legally permitted to release or does not otherwise breach the classified nature of the activity. Even when a Federal agency may not be able to disclose project information, the Federal agency shall conduct the classified activity consistent to the maximum extent practicable with the enforceable policies of management programs. The term classified means to protect from disclosure national security information concerning the national defense or foreign policy, provided that the information has been properly classified in accordance with the substantive and procedural requirements of an executive order. Federal and State agencies are encouraged to agree on a qualified third party(ies) with appropriate security clearance(s) to review classified information and to provide non-classified comments regarding the activity's reasonably foreseeable coastal effects.

§ 930.33 Identifying Federal agency activities affecting any coastal use or resource.

(a) Federal agencies shall determine which of their activities affect any coastal use or resource of States with approved management programs.

(1) Effects are determined by looking at reasonably foreseeable direct and indirect effects on any coastal use or resource. An action which has minimal or no environmental effects may still have effects on a coastal use (*e.g.*, effects on public access and recreational opportunities, protection of historic property) or a coastal resource, if the activity initiates an event or series of events where coastal effects are reasonably foreseeable. Therefore, Federal agencies shall, in making a determination of effects, review relevant management program enforceable policies as part of determining effects on any coastal use or resource.

(2) If the Federal agency determines that a Federal agency activity has no effects on any coastal use or resource, and a negative determination under §930.35 is not required, then the Federal agency is not required to coordinate with State agencies under section 307 of the Act.

(3) (i) *De minimis* Federal agency activities. Federal agencies are encouraged to review their activities, other than development projects within the coastal zone, to identify *de minimis* activities, and request State agency concurrence that these de minimis activities should not be subject to further State agency review. *De minimis* activities shall only be excluded from State agency review if a Federal agency and State agency have agreed. The State agency shall provide for public participation under section 306(d)(14) of the Act when reviewing the Federal agency's *de minimis* activity request. If the State agency objects to the Federal agency's *de minimis* finding then the Federal agency must provide the State agency with either a negative determination or a consistency determination pursuant to this subpart. OCRM is available to facilitate a Federal agency's request.

(ii) *De minimis* activities are activities that are expected to have insignificant direct or indirect (cumulative and secondary) coastal effects and which the State agency concurs are *de minimis*.

(4) *Environmentally beneficial activities.* The State agency and Federal agencies may agree to exclude environmentally beneficial Federal agency activities (either on a case-by-case basis or for a category of activities) from further State agency consistency review. Environmentally beneficial activity means an activity that protects, preserves, or restores the natural resources of the coastal zone. The State agency shall provide for public participation under section 306(d)(14) of the Act for the State agency's consideration of whether to exclude environmentally beneficial activities.

(5) General consistency determinations, phased consistency determinations, and national or regional consistency determinations under §930.36 are also available to facilitate federal-State coordination.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities affecting any coastal use or resource. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.

(c) Federal agency activities and development projects outside of the coastal zone, are subject to Federal agency review to determine whether they affect any coastal use or resource.

(d) Federal agencies shall broadly construe the effects test to provide State agencies with a consistency determination under §930.34 and not a negative determination under §930.35 or other determinations of no effects. Early coordination and cooperation between a Federal agency and the State agency can enable the parties to focus their

efforts on particular Federal agency activities of concern to the State agency.

§ 930.34 Federal and State agency coordination.

(a)(1) Federal agencies shall provide State agencies with consistency determinations for all Federal agency activities affecting any coastal use or resource. To facilitate State agency review, Federal agencies should coordinate with the State agency prior to providing the determination.

(2) *Use of existing procedures.* Federal agencies are encouraged to coordinate and consult with State agencies through use of existing procedures in order to avoid waste, duplication of effort, and to reduce Federal and State agency administrative burdens. Where necessary, these existing procedures should be modified to facilitate coordination and consultation under the Act.

(b) *Listed activities.* State agencies are strongly encouraged to list in their management programs Federal agency activities which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. Listed Federal agency activities shall be described in terms of the specific type of activity involved (*e.g.*, federal reclamation projects). In the event the State agency chooses to describe Federal agency activities that occur outside of the coastal zone, which the State agency believes will have reasonably foreseeable coastal effects, it shall also describe the geographic location of such activities (*e.g.*, reclamation projects in coastal floodplains).

(c) *Unlisted activities.* State agencies should monitor unlisted Federal agency activities (*e.g.*, by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, and the FEDERAL REGISTER) and should notify Federal agencies of unlisted Federal agency activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. The provisions in paragraphs (b) and (c) of this section are recommended rather than mandatory procedures for facilitating federal-State coordination of Federal agency activities which affect any coastal use or resource. State agency notification to the Federal agency (by listed or unlisted notification) is neither a substitute for nor does it eliminate Federal agency responsibility to comply with the consistency requirement, and to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal agency activities which the Federal agency finds affect any coastal use or resource, regardless of whether the State agency has listed the activity or notified the Federal agency through case-by-case monitoring.

(d) *State guidance and assistance to Federal agencies.* As a preliminary matter, a decision that a Federal agency activity affects any coastal use or resource should lead to early consultation with the State agency (*i.e.*, before the required 90-day period). Federal agencies should obtain the views and assistance of the State agency regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of a management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the Federal agency, the State agency shall identify any enforceable policies applicable to the proposed activity based upon the information provided to the State agency at the time of the request.

§ 930.35 Negative determinations for proposed activities.

(a) If a Federal agency determines that there will not be coastal effects, then the Federal agency shall provide the State agencies with a negative determination for a Federal agency activity:

(1) Identified by a State agency on its list, as described in § 930.34(b), or through case-by-case monitoring of unlisted activities; or

(2) Which is the same as or is similar to activities for which consistency determinations have been prepared in the past; or

(3) For which the Federal agency undertook a thorough consistency assessment and developed initial findings on the coastal effects of the activity.

(b) *Content of a negative determination.* A negative determination may be submitted to State agencies in any written form so long as it contains a brief description of the activity, the activity's location and the basis for the Federal agency's determination that the activity will not affect any coastal use or resource. In determining effects, Federal agencies shall follow § 930.33(a)(1), including an evaluation of the relevant enforceable policies of a management program and include the evaluation in the negative determination. The level of detail in the Federal agency's analysis may vary depending on the scope and complexity of the activity and issues raised by the State agency, but shall be sufficient for the State agency to evaluate whether coastal effects are reasonably foreseeable.

(c) A negative determination under paragraph (a) of this section shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule. A State

agency is not obligated to respond to a negative determination. If a State agency does not respond to a Federal agency's negative determination within 60 days, State agency concurrence with the negative determination shall be presumed. State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. If a State agency objects to a negative determination, asserting that coastal effects are reasonably foreseeable, the Federal agency shall consider submitting a consistency determination to the State agency or otherwise attempt to resolve any disagreement within the remainder of the 90-day period. If a Federal agency, in response to a State agency's objection to a negative determination, agrees that coastal effects are reasonably foreseeable, the State agency and Federal agency should attempt to agree to complete the consistency review within the 90-day period for the negative determination or consider an alternative schedule pursuant to §930.36(b)(1). Federal agencies should consider postponing final Federal agency action, beyond the 90-day period, until a disagreement has been resolved. State agencies are not required to provide public notice of the receipt of a negative determination or the resolution of an objection to a negative determination, unless a Federal agency submits a consistency determination pursuant to §930.34.

(d) In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity affects any coastal use or resource, either party may seek the Secretarial mediation or OCRM mediation services provided for in subpart G.

§930.36 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal agency activities which affect any coastal use or resource in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. Federal agencies should consult with State agencies at an early stage in the development of the proposed activity in order to assess whether such activities will be consistent to the maximum extent practicable with the enforceable policies of such programs.

(b) *Timing of consistency determinations.* (1) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to reasonably determine the consistency of the activity with the management program, but before the Federal agency reaches a significant point of decisionmaking in its review process, i.e., while the Federal agency has the ability to modify the activity. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal agency activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

(2) Federal and State agencies may mutually agree upon procedures for extending the notification requirement beyond-90 days for activities requiring a substantial review period, and for shortening the notification period for activities requiring a less extensive review period, provided that public participation requirements are met.

(c) *General consistency determinations.* In cases where Federal agencies will be performing repeated activity other than a development project (*e.g.*, ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (*see* §930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it shall thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(d) *Phased consistency determinations.* In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the Federal agency shall provide the State agency with one consistency determination for the entire activity or development project. In cases where federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (*e.g.*, planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal

agencies shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the management program.

(e) *National or regional consistency determinations.* (1) A Federal agency may provide States with consistency determinations for Federal agency activities that are national or regional in scope (*e.g.*, rulemaking, national plans), and that affect any coastal use or resource of more than one State. Many States share common coastal management issues and have similar enforceable policies, *e.g.*, protection of a particular coastal resource. The Federal agency's national or regional consistency determination should, at a minimum, address the common denominator of these policies, *i.e.*, the common coastal effects and management issues, and thereby address different States' policies with one discussion and determination. If a Federal agency decides not to use this section, it must issue consistency determinations to each State agency pursuant to §930.39.

(2) Federal agency activities with coastal effects shall be consistent to the maximum extent practicable with the enforceable policies of each State's management program. Thus, the Federal agency's national or regional consistency determination shall contain sections that would apply to individual States to address coastal effects and enforceable policies unique to particular States, if common coastal effects and enforceable policies cannot be addressed under paragraph (e)(1). Early coordination with coastal States will enable the Federal agency to identify particular coastal management concerns and policies. In addition, the Federal agency could address the concerns of each affected State by providing for State conditions for the proposed activity. Further, the consistency determination could identify the coordination efforts and describe how the Federal agency responded to State agency concerns.

§930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements

A Federal agency may use its NEPA documents as a vehicle for its consistency determination or negative determination under this subpart. However, a Federal agency's federal consistency obligations under the Act are independent of those required under NEPA and are not necessarily fulfilled by the submission of a NEPA document. If a Federal agency includes its consistency determination or negative determination in a NEPA document, the Federal agency shall ensure that the NEPA document includes the information and adheres to the timeframes required by this subpart. Federal agencies and State agencies should mutually agree on how to best coordinate the requirements of NEPA and the Act.

§930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination is required for ongoing Federal agency activities other than development projects initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination is required for major, phased federal development project decisions described in §930.36(d) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider effects on any coastal use or resource not fully evaluated at the outset of the project. This provision shall not apply to phased federal decisions which were specifically described, considered and approved prior to management program approval (*e.g.*, in a final environmental impact statement issued pursuant to NEPA).

§930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination, or provided to the State agency simultaneously with the consistency determination if the evaluation is contained in another document. Where a Federal agency is aware, prior to its submission of its consistency determination, that its activity is not fully consistent with a management program's enforceable policies, the Federal agency shall describe in its consistency determination the legal authority that prohibits full consistency as required by §930.32(a)(2). Where the Federal agency is not aware of any inconsistency until after submission of its consistency determination, the Federal agency shall submit its description

of the legal authority that prohibits full consistency to the State agency as soon as possible, or before the end of the 90-day period described in §930.36(b)(1). The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity its effects on any coastal use or resource, associated facilities (*e.g.*, proposed siting and construction of access road, connecting pipeline, support buildings, and the effects of the associated facilities (*e.g.*, erosion, wetlands, beach access impacts), must all be consistent to the maximum extent practicable with the enforceable policies of the management program.

(c) In making their consistency determinations, Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable, policies of the management program. However, Federal agencies should give consideration to management program provisions which are in the nature of recommendations.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the management program, the Federal agency may continue to apply its stricter standards. In such cases the Federal agency shall inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

(e) *State permit requirements.* Federal law, other than the CZMA, may require a Federal agency to obtain a State permit. Even when Federal agencies are not required to obtain State permits, Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such State permit programs that are part of a management program.

§930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in a Federal agency activity or its associated facilities affecting any coastal use or resource, or is involved in a group of Federal agency activities related to each other because of their geographic proximity, the Federal agencies may prepare one consistency determination for all the federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination shall be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies and shall comply with the requirements of §930.39.

§930.41 State agency response.

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not received within 60 days from receipt of the Federal agency's consistency determination and supporting information. The 60-day review period begins when the State agency receives the consistency determination and supporting information required by §930.39(a). If the information required by §930.39(a) is not included with the determination, the State agency shall immediately notify the Federal agency that the 60-day review period has not begun, what information required by §930.39(a) is missing, and that the 60-day review period will begin when the missing information is received by the State agency. If a Federal agency has submitted a consistency determination and information required by §930.39(a), then the State agency shall not assert that the 60-day review period has not begun for failure to submit information that is in addition to that required by §930.39(a).

(b) State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action shall not be taken sooner than 90 days from the receipt by the State agency of the consistency determination unless the State concurs or concurrence is presumed, pursuant to paragraphs (a) and (b), with the activity, or unless both the Federal agency and the State agency agree to an alternative period.

(d) *Time limits on concurrences.* A State agency cannot unilaterally place an expiration date on its concurrence. If a State agency believes that an expiration date is necessary, State and Federal agencies may agree to a time limit. If there is no agreement, later phases of, or modifications to, the activity that will have effects not evaluated at the time of the original consistency

determination will require either a new consistency determination, a supplemental consistency determination under §930.46, or a phased review under §930.36(d) of this subpart.

(e) *State processing fees.* The Act does not require Federal agencies to pay State processing fees. State agencies shall not assess a Federal agency with a fee to process the Federal agency's consistency determination unless payment of such fees is required by other federal law or otherwise agreed to by the Federal agency and allowed by the Comptroller General of the United States. In no case may a State agency stay the consistency review period or base its objection on the failure of a Federal agency to pay a fee.

§930.42 Public participation.

(a) Management programs shall provide for public participation in the State agency's review of consistency determinations. Public participation, at a minimum, shall consist of public notice for the area(s) of the coastal zone likely to be affected by the activity, as determined by the State agency.

(b) *Timing of public notice.* States shall provide timely public notice after the consistency determination has been received by the State agency, except in cases where earlier public notice on the consistency determination by the Federal agency or the State agency meets the requirements of this section. A public comment period shall be provided by the State sufficient to give the public an opportunity to develop and provide comments on whether the project is consistent with management program enforceable policies and still allow the State agency to issue its concurrence or objection within the 60 day State response period.

(c) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency with the enforceable policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information, *e.g.*, a State agency web site; and

(4) Specify a contact for submitting comments to the State agency.

(d) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, *e.g.*, web sites. However, electronic notices, *e.g.*, web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. States shall not require that the Federal agency provide public notice. Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, to minimize duplication of effort and to avoid unnecessary delays, so long as the joint notice meets the other requirements of this section.

§930.43 State agency objection.

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe:

(1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and

(2) The specific enforceable policies (including citations).

(3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

(b) If the State agency's objection is based upon a finding that the Federal agency has failed to supply sufficient information, the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal agency activity with the enforceable policies of the management program

(c) State agencies shall send to the Director a copy of objections to Federal agency consistency determinations.

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (*see* §930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period, Federal agencies should consider using the dispute resolution mechanisms of this part and postponing final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless:

(1) the Federal agency has concluded that under the "consistent to the maximum extent practicable' standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§930.32(a) and 930.39(a)) or

(2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

§ 930.44 Availability of mediation for disputes concerning proposed activities.

In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed federal activity affecting any coastal use or resource, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G.

§ 930.45 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program.

(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:

(1) Previously determined to be consistent to the maximum extent practicable with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the management program; or

(2) Previously determined not to be a Federal agency activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, the activity affects any coastal use or resource and is not consistent to the maximum extent practicable with the enforceable policies of the management program. The State agency's request shall include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G of this part.

§ 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are intended to ensure that any required federal license or permit activity affecting any coastal use or resource is conducted in a manner consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal license or permit activities having interstate coastal effects.

§ 930.51 Federal license or permit.

(a) The term "federal license or permit" means any required authorization, certification, approval, lease, or other form of permission which any Federal agency is empowered to issue to an applicant. The term does not include OCS plans, and federal license or permit activities described in detail in OCS plans, which are subject to subpart E of this part. The term "lease," means a lease issued

by a Federal agency to a non-federal entity that authorizes or approves the use of federal property for a non-federal activity. The term lease does not include leases issued pursuant to lease sales conducted by a Federal agency (*e.g.*, outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part if coastal effects are reasonably foreseeable.

(b) The term also includes the following types of renewals and major amendments which affect any coastal use or resource:

(1) Renewals and major amendments of federal license or permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which are filed after and are subject to management program changes not in existence at the time of original State agency review; and

(3) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which will cause an effect on any coastal use or resource substantially different than those originally reviewed by the State agency.

(c) The term "major amendment" of a federal license or permit activity means any subsequent federal approval that the applicant is required to obtain for modification to the previously reviewed and approved activity and where the activity permitted by issuance of the subsequent approval will affect any coastal use or resource, or, in the case of a major amendment subject to §930.51(b)(3), affect any coastal use or resource in a way that is substantially different than the description or understanding of effects at the time of the original activity.

(d) The term "renewals" of a federal license or permit activity means any subsequent re-issuance, re-approval or extension of an existing license or permit that the applicant is required to obtain for an activity described under paragraph (b) of this section.

(e) The determination of substantially different coastal effects under paragraphs (b)(3), and (c) of this section is made on a case-by-case basis by the State agency, Federal agency and applicant. The opinion of the State agency shall be accorded deference and the terms "major amendment," "renewals" and "substantially different" shall be construed broadly to ensure that the State agency has the opportunity to review activities and coastal effects not previously reviewed.

(f) *This subpart applies to active applications.* If an applicant withdraws its application to the Federal agency, then the consistency process is terminated. If the applicant reapplies to the Federal agency, then a new consistency review process will start. If a Federal agency stops or stays the Federal license or permit application process, then the consistency review period will be stopped or stayed for the same amount of time as for the Federal application process.

§930.52 Applicant.

The term "applicant" means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any nation, State, or any State, regional, or local government, who, following management program approval, either files an application for a required individual federal license or permit, or who files a consistency certification for a required general federal license or permit under §930.31(d) to conduct an activity affecting any coastal use or resource. The term "applicant" does not include Federal agencies applying for federal licenses or permits. Federal agency activities requiring federal licenses or permits are subject to subpart C of this part.

§930.53 Listed federal license or permit activities.

(a) State agencies shall develop a list of federal license or permit activities which affect any coastal use or resource, including reasonably foreseeable effects, and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the federal license or permit activities shall be described in terms of the specific licenses or permits involved (*e.g.*, Corps of Engineers 404 permits, Coast Guard bridge permits). In the event the State agency chooses to review federal license or permit activities, with reasonably foreseeable coastal effects, outside of the coastal zone, it must generally describe the geographic location of such activities.

(1) The geographic location description should encompass areas outside of the coastal zone where coastal effects from federal license or permit activities are reasonably foreseeable. The State agency should exclude geographic areas outside of the coastal zone where coastal effects are not reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its coastal effects. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas. Federal lands located within the boundaries of a State's coastal zone are automatically included within the geographic location description; State agencies do not have to describe these areas.

State agencies do have to describe the geographic location of listed activities occurring on federal lands located beyond the boundaries of a State's coastal zone.

(2) For listed activities occurring outside of the coastal zone for which a State has not generally described the geographic location of review, States must follow the conditions for review of unlisted activities under §930.54 of this subpart.

(b) *General concurrences for minor activities.* To avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (*see* §930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor federal license or permit activities and the relevant conditions which are covered by the general concurrence. Minor federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(c) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval by the Director pursuant to the program change requirements found at 15 CFR part 923, subpart H.

(1) Consultation with the affected Federal agency means, at least 60 days prior to submitting a program change request to OCRM, a State agency shall notify in writing the relevant regional or field Federal agency staff and the head of the affected Federal agency, and request comments on the listing change. The notification shall describe the proposed change and identify the regional Federal agency staff the State has contacted for consultation.

(2) A State agency must include in its program change request to OCRM a description of any comments received from the affected Federal agency.

(d) No federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses or permits of the requirements of this subpart.

§930.54 Unlisted federal license or permit activities.

(a)(1) With the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities (*e.g.*, by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, FEDERAL REGISTER notices). State agencies shall notify Federal agencies, applicants, and the Director of unlisted activities affecting any coastal use or resource which require State agency review within 30 days from notice of the license or permit application, that has been submitted to the approving Federal agency, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the federal license or permit application.

(2) Federal agencies or applicants should provide written notice of the submission of applications for federal licenses or permits for unlisted activities to the State agency. Notice to the State agency may be constructive if notice is published in an official federal public notification document or through an official State clearinghouse (*i.e.*, the FEDERAL REGISTER, draft or final NEPA EISs that are submitted to the State agency, or a State's intergovernmental review process). The notice, whether actual or constructive, shall contain sufficient information for the State agency to learn of the activity, determine the activity's geographic location, and determine whether coastal effects are reasonably foreseeable.

(b) The State agency's notification shall also request the Director's approval to review the unlisted activity and shall contain an analysis that supports the State agency's assertion that coastal effects are reasonably foreseeable. Following State agency notification to the Federal agency, applicant and the Director, the Federal agency shall not issue the license or permit until the requirements of this subpart have been satisfied, unless the Director disapproves the State agency's request to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Director regarding the State agency's request to review the activity. The sole basis for the Director's approval or disapproval of the State agency's request will relate to whether the proposed activity's coastal effects are reasonably foreseeable. The Director shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice. The Director may extend the decision deadline beyond 30 days due to the complexity of the issues or to address the needs of the State agency, the Federal agency, or the applicant. The Director shall consult with the State agency, the Federal

agency and the applicant prior to extending the decision deadline, and shall limit the extension to the minimum time necessary to make its decision. The Director shall notify the relevant parties of the expected length of an extension.

(d) If the Director disapproves the State agency's request, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Director approves the State agency's request, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Director, the applicant shall amend the federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary data and information (*see* §§930.58, 930.62 and 930.63). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (*see* paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and necessary data and information, whichever period terminates last.

(f) The unlisted activity procedures in this section are provided to ensure that State agencies are afforded an opportunity to review federal license or permit activities with reasonably foreseeable coastal effects. Prior to bringing the issue before the Director, the concerned parties should discuss coastal effects and consistency. The applicant can avoid delay by simply seeking the State agency's expeditious concurrence rather than waiting for the Director's decision. If an applicant, of its own accord or after negotiations with the State agency, provides a consistency certification and necessary data and information to the State agency, the review shall be deemed to have received the Director's approval, and all of the provisions of this subpart shall apply and the State agency need not request the Director's approval. If an applicant for an unlisted activity has not subjected itself to the consistency process within the 30 day notification period contained in paragraph (a) of this section, the State agency must adhere to the unlisted activity review requirements of this section to preserve its right to review the activity.

§930.55 Availability of mediation for license or permit disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted federal license or permit activity is subject to the federal consistency requirement, either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding approval of a license or permit application for an activity on an approved management program list (*see* §930.53) or individually approved by the Director (*see* §930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Director approval.

§930.56 State agency guidance and assistance to applicants.

As a preliminary matter, any applicant for a federal license or permit selected for review by a State agency should obtain the views and assistance of the State agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the applicant, the State agency shall identify any enforceable policies applicable to the proposed activity, based upon the information submitted to the State agency.

§930.57 Consistency certifications.

(a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.

(b) The applicant's consistency certification shall be in the following form: "The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program."

§930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity, its associated facilities, the coastal effects, and comprehensive data and information sufficient to support the applicant's consistency certification. Maps, diagrams, technical data and other relevant material

shall be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency);

(2) Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include State or local government permits or permit applications which are required for the proposed activity. Required data and information may not include confidential and proprietary material; and

(3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall demonstrate that the activity will be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal effects of the proposal.

§ 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related federal license or permit activities affecting any coastal use or resource for State agency review. State agencies shall, to the extent practicable, provide applicants with a "one-stop" multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license or permit activities found to be consistent with the management program.

§ 930.60 Commencement of State agency review.

(a) Except as provided in § 930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

(1) If an applicant fails to submit a consistency certification in accordance with § 930.57, or fails to submit necessary data and information required pursuant to § 930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the missing certification or information, and that:

(i) The State agency's review has not yet begun, and that its review will commence once the necessary certification or information deficiencies have been corrected; or

(ii) The State agency's review has begun, and that the certification or information deficiencies must be cured by the applicant during the State's review period.

(2) Under paragraph (a)(1) of this section, State agencies shall notify the applicant and the Federal agency, within 30 days of receipt of the completed certification and information, of the date when necessary certification or information deficiencies have been corrected, and that the State agency's consistency review commenced on the date that the complete certification and necessary data and information were received by the State agency.

(3) State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock or extend the six-month review period. Such an agreement shall be in writing and shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such an agreement exists or where a State agency's review period, under paragraph (a)(1)(i) of this section, has not begun.

(b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

§ 930.61 Public participation.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. Public notice shall be provided for the

area(s) of the coastal zone likely to be affected by the proposed activity, as determined by the State agency. At the discretion of the State agency, public participation may include one or more public hearings. The State agency shall not require an applicant or a Federal agency to hold a public hearing. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter.

(b) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency under the policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the management program.

(c) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of the coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, *e.g.*, web sites. However, electronic notices, *e.g.*, web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. The State agency may require the applicant to provide the public notice. State agencies shall not require that the Federal agency provide public notice. The State agency may rely upon the public notice provided by the Federal agency reviewing the application for the federal license or permit (*e.g.*, notice of availability of NEPA documents) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, whenever possible to minimize duplication of effort and to avoid unnecessary delays.

§ 930.62 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. The State agency may issue a general concurrence for minor activities (*see* § 930.53(b)). Concurrence by the State agency shall be conclusively presumed if the State agency's response is not received within six months following commencement of State agency review.

(b) If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the federal permitting agency may deny approval of the federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant and the State agency.

(d) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the federal license or permit to ensure that proposed conditions satisfy federal as well as management program requirements (*see also* § 930.4).

§ 930.63 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Director of the objection. A State agency may assert alternative bases for its objection, as described in paragraphs (b) and (c) of this section.

(b) State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(c) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 930.58 or other information necessary for the State agency to determine consistency. If the State agency objects on the grounds of insufficient information, the objection shall describe the nature of the information requested and the necessity of

having such information to determine the consistency of the activity with the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(d) *Alternatives.* If a State agency proposes an alternative(s) in its objection letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal under subpart H. Application of the specificity requirement demands a case specific approach. More complicated activities or alternatives generally need more information than less-complicated activities or alternatives. *See* §930.121(d) for further details regarding alternatives for appeals under subpart H of this part.

(e) A State agency objection shall include a statement to the following effect:

Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the [Name of State] management program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

§930.64 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the federal license or permit except as provided in subpart H of this part.

§930.65 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal license or permit activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal license or permit activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program; or

(2) Previously determined not to be an activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally described and, as a result, the activity affects any coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant and the Director. Remedial actions shall be linked to coastal effects substantially different than originally described.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant is failing to comply substantially with the management program, the governor or State agency may file a written objection with the Director. If the Director finds that the applicant is conducting an activity that is substantially different from the approved activity, the applicant shall submit an amended or new consistency certification and supporting information to the Federal agency and to the State agency, or comply with the originally approved certification.

(e) An applicant shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally described by the applicant and, as a result, the activity is no longer being conducted in a manner consistent with the enforceable policies of the management program. The Director may make a finding that an applicant is conducting an activity substantially different from the approved activity only after providing 15 days for the applicant and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§930.66 Supplemental coordination for proposed activities

(a) For federal license or permit proposed activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, applicants shall further coordinate with the State agency and prepare a supplemental consistency certification if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant to implement the proposed activity consistent with the management program. State agency notification under subsection (b) does not remove the requirement under subsection (a) for applicants to notify State agencies.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§ 930.70 Objectives.

The provisions of this subpart are intended to ensure that all federal license or permit activities described in detail in OCS plans and which affect any coastal use or resource are conducted in a manner consistent with approved management programs.

§ 930.71 Federal license or permit activity described in detail.

The term "federal license or permit activity described in detail" means any activity requiring a federal license or permit, as defined in § 930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

§ 930.72 Person.

The term "person" means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State; the federal government; any State, regional, or local government; or any entity of such federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail federal license or permit activities.

§ 930.73 OCS plan.

(a) The term "OCS plan" means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail federal license or permit activities.

(b) The requirements of this subpart do not apply to federal license or permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

Except for States which do not anticipate coastal effects resulting from OCS activities, management program lists required pursuant to § 930.53 shall include a reference to OCS plans which describe in detail federal license or permit activities affecting any coastal use or resource.

§ 930.75 State agency assistance to persons.

As a preliminary matter, any person intending to submit to the Secretary of the Interior an OCS plan which describes in detail federal license or permit activities affecting any coastal use or resource should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document. Upon request by such persons, the State agency shall identify any enforceable policies applicable to the proposed activities, based upon the information submitted to the State agency.

§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.

Any person submitting any OCS plan to the Secretary of the Interior or designee shall:

(a) Identify all activities described in detail in the plan which require a federal license or permit and which will have reasonably foreseeable coastal effects;

(b) Submit necessary data and information pursuant to § 930.58;

(c) When satisfied that the proposed activities meet the federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification and necessary data and information. The Secretary of the Interior or designee shall furnish the State agency with a copy of the OCS plan (excluding proprietary information), necessary data and information and consistency certification.

(d) The person's consistency certification shall be in the following form.

The proposed activities described in detail in this plan comply with (name of State(s))

approved management program(s) and will be conducted in a manner consistent with such program(s).

§ 930.77 Commencement of State agency review and public notice.

(a)(1) Except as provided in §930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by §930.76 shall not extend the date of commencement of State agency review.

(2) To assess consistency, the State agency shall use the information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program (*see* 30 CFR part 252) regulations and necessary data and information (*see* 15 CFR 930.58).

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with §930.61.

§ 930.78 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify in writing the person, the Secretary of the Interior or designee and the Director of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the person, the Secretary of the Interior or designee and the Director of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the commencement of the State agency's review. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed if the State agency's response to the consistency certification is not received within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with §930.63.

§ 930.79 Effect of State agency concurrence.

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time federal applications are actually filed for the federal licenses or permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of federal license or permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.80 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification related to federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue any of such licenses or permits except as provided in subpart H of this part.

§ 930.81 Multiple permit review.

(a) A person submitting a consistency certification for federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related federal license or permit activities affecting any coastal use or resource which are not required to be described in detail in OCS plans but which are subject to State agency consistency review (*e.g.*, Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of subpart D of this part.

(b) A State agency objection to one or more of the OCS-related federal license or permit activities submitted for consolidated review shall not prevent the person from receiving Federal agency approval:

(1) For those OCS-related license or permit activities found by the State agency to be consistent with the management program; and

(2) For the license or permit activities described in detail in the OCS plan provided

the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.82 Amended OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, the Secretary does not determine that each of the objected to federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the amended consistency certification. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed federal license or permit activities described in detail in the amended plan will be conducted in a manner consistent with the management program.

§ 930.83 Review of amended OCS plans; public notice.

After receipt of a copy of the amended OCS plan, consistency certification, and necessary data and information, State agency review shall begin. The requirements of §§ 930.77, 930.78, and 930.79, apply to the review of amended OCS plans, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

§ 930.84 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended OCS plan, the prohibition in § 930.80 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to subpart H of this part may take place, and the development of an additional amended OCS plan and consistency certification may be required pursuant to §§ 930.82 through 930.83.

§ 930.85 Failure to comply substantially with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor federally licensed or permitted activities described in detail OCS plans to make certain that such activities continue to conform to both federal and State requirements.

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include: a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person and the Director.

(c) If, after 30 days following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or State agency may file a written objection with the Director. If the Director finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the State agency. Following such a finding by the Director, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Director and the Minerals Management Service, pending approval of the amended or new OCS plan. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

(d) A person shall be found to have failed substantially to comply with an approved OCS plan if the State agency claims and the Director finds that one or more of the activities described in detail in the OCS plan which affects any coastal use or resource are being conducted or are having an effect on any coastal use or resource substantially different than originally described by the person in the plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the management program. The Director may make a finding that a person has failed substantially to comply with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the State agency's objection and to submit comments for the Director's consideration.

Subpart F—Consistency for Federal Assistance To State and Local Governments

§ 930.90 Objectives.

The provisions of this subpart are intended to ensure that federal assistance to applicant agencies for activities affecting any coastal use or resource is granted only when such activities are consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal assistance activities having interstate coastal effects.

§ 930.91 Federal assistance.

The term "federal assistance" means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

The term "applicant agency" means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for federal assistance.

§ 930.93 Intergovernmental review process.

The term "intergovernmental review process" describes the procedures established by States pursuant to E.O. 12372, "Intergovernmental Review of Federal Programs," and implementing regulations of the review of federal financial assistance to applicant agencies.

§ 930.94 State review process for consistency.

(a) States with approved management programs should review applications from applicant agencies for federal assistance in accordance with E.O. 12372 and implementing regulations.

(b) The applicant agency shall submit an application for federal assistance to the State agency for consistency review, through the intergovernmental review process or by direct submission to the State agency, for any proposed federal assistance activity that is listed in the management program as a type of activity that will have a reasonably foreseeable effect on any coastal use or resource and occurring within the coastal zone (*see* § 930.95(a)) or within a described geographic area outside of the coastal zone (*see* § 930.95(b)).

(c) *Applicant agency evaluation.* The applicant agency shall provide to the State agency, in addition to the federal application, a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the management program.

§ 930.95 Guidance provided by the State agency.

(a) State agencies should include within the management program a listing of specific types of federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change.

(b) In the event the State agency chooses to review applications for federal assistance activities outside of the coastal zone but with reasonably foreseeable coastal effects, the State agency shall develop a federal assistance provision within the management program generally describing the geographic area (*e.g.*, coastal floodplains) within which federal assistance activities will be subject to review. This provision, and any refinements, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the coastal nonpoint pollution control program, or other ecologically identifiable areas.

(c) The State agency shall provide copies of any federal assistance list or geographic provision, and any refinements, to Federal agencies and units of applicant agencies empowered to undertake federally assisted activities within the coastal zone or described geographic area.

(d) For review of unlisted federal assistance activities, the State agency shall follow the same procedures as it would follow for review of listed federal assistance activities outside of the coastal zone or the described geographic area. (*See* § 930.98.)

§ 930.96 Consistency review.

(a)(1) If the State agency does not object to the proposed activity, the Federal agency may grant the federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing (so long as they do not approve) applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(2) During the period when the State agency is reviewing the activity, the applicant

agency and the State agency should attempt, if necessary, to agree upon conditions which, if met by the applicant agency, would permit State agency approval. The parties shall also consult with the Federal agency responsible for providing the federal assistance to ensure that proposed conditions satisfy federal requirements as well as management program requirements.

(b) If the State agency objects to the proposed project, the State agency shall notify the applicant agency, Federal agency and the Director of the objection pursuant to §930.63.

§930.97 Federal assisting agency responsibility.

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in subpart H of this part.

§930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

State agencies should monitor proposed federal assistance activities outside of the coastal zone or the described geographic area (*e.g.*, by use of the intergovernmental review process, review of NEPA documents, FEDERAL REGISTER) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the State in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The Director shall be guided by the provisions in §930.54(c). For purposes of this subpart, State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

§930.99 Availability of mediation for federal assistance disputes.

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Director has disapproved a State agency decision to review an activity.

§930.100 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program, or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant agency is failing to comply substantially with the management program, the State agency may file a written objection with the Director. If the Director finds that the applicant agency is conducting an activity that is substantially different from the approved activity, the State agency may reinitiate its review of the activity, or the applicant agency may conduct the activity as it was originally approved.

(e) An applicant agency shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the State agency and, as a result, the activity is no longer being conducted in a manner consistent with the management program. The Director may make a finding that an applicant agency is conducting an activity substantially different

from the approved activity only after providing a reasonable opportunity for the applicant agency and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.101 Supplemental coordination for proposed activities.

(a) For federal assistance activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, the applicant agency shall further coordinate with the State agency if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant agency, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant agency to implement the proposed activity consistent with the management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicant agencies to notify State agencies.

Subpart G—Secretarial Mediation

§ 930.110 Objectives.

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 OCRM mediation.

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCRM shall be available to assist the parties in these efforts.

§ 930.112 Request for Secretarial mediation.

(a) The Secretary or other head of a Federal agency, or the Governor or the State agency, may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. A party may also provide the hearing officer with written comments. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§ 930.114 Secretarial mediation efforts.

(a) Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by

representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(b) Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

§ 930.115 Termination of mediation.

Mediation shall terminate:

(a) At any time the Federal and State agencies agree to a resolution of the serious disagreement,

(b) If one of the agencies withdraws from mediation,

(c) In the event the agencies fail to reach a resolution of the disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or

(d) For other good cause.

§ 930.116 Judicial review.

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

§ 930.120 Objectives.

This subpart sets forth the procedures by which the Secretary may find that a federal license or permit activity, including those described in detail in an OCS plan, or a federal assistance activity, which a State agency has found to be inconsistent with the enforceable policies of the management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§ 930.121 Consistent with the objectives or purposes of the Act.

A federal license or permit activity, or a federal assistance activity, is "consistent with the objectives or purposes of the Act" if it satisfies each of the following three requirements:

(a) The activity furthers the national interest as articulated in §302 or §303 of the Act, in a significant or substantial manner,

(b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. When determining whether a reasonable alternative is available, the Secretary may consider but is not limited to considering, previous appeal decisions, alternatives described in objection letters and alternatives and other new information described during the appeal.

§ 930.122 Necessary in the interest of national security.

A federal license or permit activity, or a federal assistance activity, is "necessary in the interest of national security" if a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Appellant and Federal agency.

(a) The "appellant" is the applicant, person or applicant agency submitting an appeal to the Secretary pursuant to this subpart.

(b) For the purposes of this subpart, the "Federal agency" is the agency whose proposed issuance of a license or permit or grant of assistance is the subject of the appeal to the Secretary.

§ 930.124 Computation of time.

The first day of any period of time allowed or prescribed by these rules, shall not be included in the computation of the designated period of time. The last day of the time period computed shall be included unless it is a Saturday, Sunday or a Federal holiday, in which case the period runs until the next day which is not one of the aforementioned days.

§ 930.125 Notice of appeal and application fee to the Secretary.

(a) To obtain Secretarial review of a State agency objection, the appellant shall file a notice of appeal with the Secretary within 30 days of receipt of a State agency objection.

(b) The appellant's notice of appeal shall be accompanied by payment of an application fee or a request for a waiver of such fees. An appeal involving a project valued in excess of $1 million shall be considered a

major appeal and the application fee is $500.00. All other appeals shall be considered minor appeals and the application fee is $200.00.

(c) The appellant shall send the Notice of appeal to the Secretary, Herbert C. Hoover Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; a copy of the notice of appeal to the objecting State agency; and to the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

(d) No extension of time will be permitted for the filing of a notice of appeal.

(e) The Secretary shall waive any or all fees if the Secretary concludes upon review of the appellant's fee waiver request that such fees impose an economic hardship on appellant. The request for a waiver and demonstration of economic hardship shall accompany the notice of appeal. If the Secretary denies a request for a waiver and the appellant wishes to continue with the appeal, the appellant shall submit the appropriate fees to the Secretary within 20 days of receipt of the Secretary's denial. If the fees are not received by the 20th day, then the Secretary shall dismiss the appeal.

§ 930.126 Consistency appeal processing fees.

The Secretary shall collect as a processing fee such other fees from the appellant as are necessary to recover the full costs of administering and processing appeals to the Secretary under section 307(c) of the Act. All processing fees shall be assessed and collected no later than 60 days after publication of the Federal Register Notice closing the decision record. Failure to submit processing fees shall be grounds for extending the time for issuance of a decision pursuant to section 319(a)(2) of the Act (16 USC 1465(a)(2)) and § 930.130 of this subpart.

§ 930.127 Briefs and supporting materials.

(a) The Secretary shall establish a schedule of dates and time periods for submission of briefs and supporting materials by the appellant and the State agency.

(b) Both the appellant and State agency shall send copies of their briefs, supporting materials and all requests and communications to the Secretary, each other, and to the Assistant General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910.

(c) The Secretary may extend the time for submission of briefs and supporting materials on his own initiative or at the request of a party so long as the request is received prior to the date prescribed in the briefing schedule. A copy of the request for an extension of time shall be sent to the Assistant General Counsel for Ocean Services.

(d) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in sections 930.129(b) and (c).

§ 930.128 Public notice, comment period, and public hearing.

(a) The Secretary shall provide timely public notice of the appeal after the receipt of the notice of appeal, and payment of application fees. At a minimum, public notice shall be provided in the FEDERAL REGISTER and the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) The Secretary shall provide an opportunity for public comment on the appeal. The public shall be afforded no less than 30 days to comment on the appeal. Notice of the public comment period shall take the same form as Notice required in paragraph (a) of this section.

(c) The Secretary shall afford interested Federal agencies, including the Federal agency whose proposed action is the subject of the appeal, with an opportunity to comment on the appeal. The Secretary shall afford notice to the Federal agencies of the time for filing their comments.

(d) The Secretary may extend the time for submitting comments on his own initiative or at the written request of a party or interested Federal agency, so long as the request is received prior to the comment date identified in the public notice. A copy of the request for an extension of time shall be sent to the Assistant General Counsel for Ocean Services.

(e) The Secretary may hold a public hearing in response to a request or on his own initiative. If a hearing is held by the Secretary, it shall be guided by the procedures described within § 930.113.

§ 930.129 Dismissal, remand, stay, and procedural override.

(a) The Secretary may dismiss an appeal for good cause. A dismissal is the final agency action. Good cause shall include, but is not limited to:

(1) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(2) Failure of the appellant to submit a brief or supporting materials within the required period;

(3) Failure of the appellant to pay a required fee;

(4) Denial by the Federal agency of the federal license, permit or assistance application; or

(5) Failure of the appellant to base the appeal on grounds that the proposed activity is

either consistent with the objectives or purposes of the Act, or necessary in the interest of national security.

(b) If the State agency's consistency objection is not in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part, the Secretary shall override the State's objection. The Secretary may make this determination as a threshold matter.

(c) The Secretary may stay the processing of an appeal on her own initiative or upon request of an appellant or State agency for the following purposes:

(1) to allow additional information to be developed relevant to the analysis required of the Secretary in 930.121,

(2) to allow mediation or settlement negotiations to occur between the applicant and State agency, or

(3) to allow for remand pursuant to paragraph (d) of this section.

(d) The Secretary may stay the processing of an appeal and remand it to the State agency for reconsideration of the project's consistency with the enforceable policies of the State's management program if significant new information relevant to the State agency's objection, that was not provided to the State agency as part of its consistency review, is submitted to the Secretary by the appellant, the public or a Federal agency. The Secretary shall determine a time period for the remand to the State not to exceed three months. If the State agency responds that it still objects to the activity, then the Secretary shall continue to process the appeal and shall include the significant new information in the decision record. If the State agency concurs, then the Secretary shall dismiss the appeal and notify the Federal agency that the activity may be federally approved.

§ 930.130 Closure of the decision record and issuance of decision.

(a) No sooner than 30 days after the close of the public comment period, the Secretary shall publish a notice in the Federal Register stating that the decision record is closed and that no further information, briefs or comments will be considered in deciding the appeal.

(b) No later than 90 days after the closure of the decision record the Secretary shall issue a decision or publish a notice in the FEDERAL REGISTER explaining why a decision cannot be issued at that time. The Secretary shall issue a decision within 45 days of the publication of such notice.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion. In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion.

(e)(1) If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(2) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

§ 930.131 Review initiated by the Secretary.

(a) The Secretary may, on her own initiative, choose to consider whether a federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review shall only be initiated after the completion of State agency review pursuant to the relevant subpart. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the relevant Federal and State agencies. The notice shall include a statement describing the reasons for the review.

(b) With the exception of application and processing fees, all other provisions under this subpart governing the processing and administering of appeals will apply to Secretarial reviews initiated under this section.

Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

§ 930.150 Objectives.

(a) A federal activity may affect coastal uses or resources of a State other than the State in which the activity will occur. Effective coastal management is fostered by ensuring that activities having such reasonably foreseeable interstate coastal effects are conducted consistent with the enforceable policies of the management program of each affected State.

(b) The application of the federal consistency requirement to activities having interstate coastal effects is addressed by this subpart in order to encourage cooperation among States in dealing with activities having interstate coastal effects, and to provide States, local governments, Federal agencies, and the public with a predictable framework for evaluating the consistency of these federal activities under the Act.

§ 930.151 Interstate coastal effect.

The term "interstate coastal effect" means any reasonably foreseeable effect resulting from a federal action occurring in one State of the United States on any coastal use or resource of another State that has a federally approved management program. Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. The term "affects" means have an effect on. Effects on any coastal use or resource may also be referred to as "coastal effects."

§ 930.152 Application.

(a) This subpart applies to federal actions having interstate coastal effects, and supplements the relevant requirements contained in 15 CFR part 930, subparts C (Consistency for Federal Agency Activities), D (Consistency for Activities Requiring a Federal License or Permit), E (Consistency for OCS Exploration, Development and Production Activities) and F (Consistency for Federal Assistance to State and Local Governments). Except as otherwise provided by this subpart, the requirements of other relevant subparts of part 930 apply to activities having interstate coastal effects.

(b) Federal consistency is a requirement on federal actions affecting any coastal use or resource of a State with a federally-approved management program, regardless of the activities' locations (including States without a federally approved management program). The federal consistency requirement does not alter a coastal State's jurisdiction. The federal consistency requirement does not give States the authority to review the application of laws, regulations, or policies of any other State. Rather, the Act allows a management program to review federal actions and may preclude federal action as a result of a State objection, even if the objecting State is not the State in which the activity will occur. Such objections to interstate activities under subparts D, E and F may be overridden by the Secretary pursuant to subpart H of this part.

§ 930.153 Coordination between States in developing coastal management policies.

Coastal States are encouraged to give high priority to:

(a) Coordinating State coastal management planning, policies, and programs with respect to contiguous areas of such States;

(b) Studying, planning, and implementing unified coastal management policies with respect to such areas; and

(c) Establishing an effective mechanism, and adopting a federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to activities having interstate coastal effects.

§ 930.154 Listing activities subject to routine interstate consistency review.

(a) *Geographic location of listed activities.* Each coastal State intending to conduct a consistency review of federal activities occurring in another State shall:

(1) List those Federal agency activities, federal license or permit activities, and federal assistance activities that the State intends to routinely review for consistency; and

(2) Generally describe the geographic location for each type of listed activity.

(b) In establishing the geographic location of interstate consistency review, each State must notify and consult with the State in which the listed activity will occur, as well as with relevant Federal agencies.

(c) *Demonstrate effects.* In describing the geographic location for interstate consistency reviews, the State agency shall provide information to the Director that coastal effects from listed activities occurring within the geographic area are reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas.

(d) *Director approval.* State agencies shall submit their lists and geographic location descriptions developed under this section to the Director for approval as a routine program change under subpart H of 15 CFR part 923. Each State submitting this program change shall include evidence of consultation with States in which the activity will occur, evidence of consultation with relevant Federal agencies, and any agreements with other States and Federal agencies regarding coordination of activities.

(e) *State failure to list interstate activities.* A coastal State that fails to list federal activities subject to interstate review, or to describe the geographic location for these activities, under paragraphs (a) through (d) of this section, may not exercise its right to review activities occurring in other States,

until the State meets the listing requirements. The listing of activities subject to interstate consistency review, and the description of the geographic location for those listed activities, should ensure that coastal States have the opportunity to review relevant activities occurring in other States. States may amend their lists and geographic location descriptions pursuant to the requirements of this subpart and subpart H of 15 CFR part 923. States which have complied with paragraphs (a) through (d) of this section may also use the procedure at §930.54 to review unlisted activities. States will have a transition period of 18 months from the date this rule takes effect. In that time a State may review an interstate activity pursuant to §930.54 of this part. After the transition period States must comply with this subpart in order to review interstate activities.

§930.155 Federal and State agency coordination.

(a) Identifying activities subject to the consistency requirement. The provisions of this subpart are neither a substitute for nor eliminate the statutory requirement of federal consistency with the enforceable policies of management programs for all activities affecting any coastal use or resource. Federal agencies shall submit consistency determinations to relevant State agencies for activities having coastal effects, regardless of location, and regardless of whether the activity is listed.

(b) *Notifying affected States.* Federal agencies, applicants or applicant agencies proposing activities listed for interstate consistency review, or determined by the Federal agency, applicant or applicant agency to have an effect on any coastal use or resource, shall notify each affected coastal State of the proposed activity. State agencies may also notify Federal agencies and applicants of listed and unlisted activities subject to State agency review and the requirements of this subpart.

(c) *Notice of intent to review.* Within 30 days from receipt of the consistency determination or certification and necessary data and information, or within 30 days from receipt of notice of a listed federal assistance activity, each State intending to review an activity occurring in another State must notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur (either the State's management program, or if the State does not have a management program, the Governor's office), and the Director, of its intent to review the activity for consistency. The State's notice to the parties must be received by the 30th day after receipt of the consistency determination or certification. If a State fails, within the 30 days, to notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur, and the Director, of its intent to review the activity, then the State waives its right to review the activity for consistency. The waiver does not apply where the State intending to review the activity does not receive notice of the activity.

§930.156 Content of a consistency determination or certification and State agency response.

(a) The Federal agency or applicant is encouraged to prepare one determination or certification that will satisfy the requirements of all affected States with approved management programs.

(b) State agency responses shall follow the applicable requirements contained in subparts C, D, E and F of this part.

§930.157 Mediation and informal negotiations.

The relevant provisions contained in subpart G of this part are available for resolution of disputes between affected States, relevant Federal agencies, and applicants or applicant agencies The parties to the dispute are also encouraged to use alternative means for resolving their disagreement. OCRM shall be available to assist the parties in these efforts.

PARTS 932–933 [RESERVED]



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Coastal Zone Management Act Federal Consistency Regulations; Final Rule

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

15 CFR Part 930

[Docket No. 990723202–0338–02]

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Coastal Zone Management Act Federal Consistency Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) revises the regulations implementing the federal consistency provision of the Coastal Zone Management Act of 1972 (CZMA). The Coastal Zone Act Reauthorization Amendments of 1990, enacted November 5, 1990, as well as the Coastal Zone Protection Act of 1996, enacted June 3, 1996, amended and reauthorized the CZMA. Among the amendments were revisions to the federal consistency requirement contained in section 307 of the CZMA. Current federal consistency regulations were promulgated in 1979 and are in need of revision after 20 years of implementation. The purpose of this final rule is to make such revisions.

DATES: Effective January 8, 2001.

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SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued under the authority of the CZMA, 16 USC 1451 *et seq.*

II. Background

The following terms are defined for the purpose of this preamble:

The term "management program" means the objectives, policies and other requirements of a State coastal management program that has been federally approved by NOAA, pursuant to CZMA § 306.

The term "State agency" means the designated federal consistency agency for a particular management program.

The term "consistency determination" means the determination provided by a Federal agency to a State agency for a Federal agency activity under CZMA § 307(c)(1) that the Federal agency determines will have reasonably foreseeable effects on any land or water use or natural resource of a State's coastal zone (such effects are also referred to as "coastal effects" or "effects on any coastal use or resource").

The term "negative determination" means the determination provided by a Federal agency to a State agency for a Federal agency activity under CZMA § 307(c)(1) that the Federal agency determines will not have reasonably foreseeable coastal effects.

The term "consistency certification" means the certification provided by an applicant for a federal approval under CZMA § (c)(3) or a State agency's or local government's certification under CZMA § 307(d).

The term "concurrence" means a State agency's approval of a consistency determination, negative determination, or consistency certification.

The term "objection" means a State agency's disagreement/disapproval of a consistency determination, negative determination, or consistency certification.

The term "enforceable policy" means a policy that is legally binding under State law and is part of that State's management program.

The term "maximum extent practicable" means that Federal agencies must conduct their activities under CZMA § 307(c)(1) in a manner that is fully consistent with the enforceable policies of a management program, unless prohibited from full consistency by the requirements of federal law applicable to the activity.

The CZMA was enacted to develop a national coastal management program that comprehensively manages and balances competing uses of and impacts to any coastal use or resource. The national coastal management program is implemented by individual State management programs in partnership with the Federal Government. The CZMA federal consistency requirement, CZMA § 307, requires that Federal agency activities be consistent to the maximum extent practicable with the enforceable policies of a management program. The federal consistency requirement also requires that non-federal activities requiring federal permits, licenses or that receive federal financial assistance, be fully consistent with a State's federally approved management program. The federal consistency requirement is an important mechanism to address coastal effects, to ensure federal consideration of State management programs, and to avoid conflicts between States and Federal agencies by fostering early consultation and coordination.

Congress strongly re-emphasized the importance of consistency in the CZMA amendments of 1990 and specifically endorsed long-standing requirements of the CZMA consistency regulations. Thus, in making regulatory changes NOAA has been careful to adhere to statutory requirements and has given deference to the long-standing consistency provisions that comport with new statutory requirements. The implementation of consistency by the States and Federal agencies and guidance by NOAA, especially in the past few years, for the most part has been based on reasonableness, objectivity, collaboration and cooperation. The strength of revised regulations and State-Federal interaction needs to further these goals and be solidly grounded in the statute and long-standing usage. With that in mind, aside from the revisions required by the changes to the CZMA, it is not NOAA's intent to fundamentally change or "weaken" the consistency requirement. NOAA's intent is to clarify certain sections, provide additional guidance where needed, and provide States and Federal agencies with greater flexibility for Federal-State coordination and cooperation.

III. Coastal Zone Act Reauthorization Amendments of 1990

This final rule codifies changes made to CZMA § 307 in 1990. The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) (Pub. L. No. 101–508) amended the CZMA to clarify that the federal consistency requirement applies when any federal activity, regardless of location, affects any land or water use or natural resource of the coastal zone. This new "effects" language was added by the CZARA to replace previous language that referred to activities "directly affecting the coastal zone," establishing:

> a generally applicable rule of law that any federal agency activity (regardless of its location) is subject to [the consistency requirement] if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 968–975, 970 (hereinafter Conference Report). The focus of the Federal agency's evaluation should be on coastal effects, not on the nature of the activity. The Conference Report

provides further clarification on the scope of the effects test:

> The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term "affecting" is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Id. at 970–71. These changes reflect an unambiguous Congressional intent that all Federal agency activities meeting the "effects" test are subject to the CZMA consistency requirement; that there are no exceptions or exclusions from the requirement as a matter of law; and that the "uniform threshold standard" requires a factual determination, based on the effects of such activities on the coastal zone, to be applied on a case-by-case basis. *Id.*; 136 Cong. Rec. H 8076 (Sep. 26, 1990).

Other changes made to the CZMA by the CZARA include the addition of § 307(c)(1)(B) which, under certain circumstances, authorizes the President to exempt a specific Federal agency activity if the President determines that the activity is in the paramount interest of the United States. This section does not require implementing regulations. The CZARA also makes clear the requirement that Federal agency activities and federal license or permit and federal assistance activities must be consistent with the enforceable policies of management programs. Finally, the CZARA made technical and conforming changes to the other existing federal consistency requirements of CZMA §§ 307(c)(3)(A) and (B), and 307(d) for the purpose of conforming these existing sections with changes made to § 307(c)(1).

IV. CZARA and *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984)

In 1984, the Supreme Court held that outer continental shelf (OCS) oil and gas lease sales by the Department of the Interior's Minerals Management Service were not activities subject to the CZMA consistency requirement as the lease sales did not directly affect the coastal zone. *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984). In amending the CZMA federal consistency section in 1990, Congress overturned the effect of the decision in *Secretary of the Interior* and made it clear that OCS oil and gas lease sales are subject to the consistency requirement. Conference Report at 970. Congress also intended this change to clarify that other federal activities (in or outside the coastal zone) in addition to OCS oil and gas lease sales are subject to the federal consistency requirement. The remainder of the consistency discussion in the Conference Report makes this clear as does similar discussion in the Congressional Record, 136 Cong. Rec. H 8068 (Sep. 26, 1990) [hereinafter Congressional Record] (incorporated into the Conference Report, *see* Conference Report at 975).

Changes to the consistency section clarify that any federal activity is subject to the consistency requirement (regardless of location) if coastal effects are reasonably foreseeable, and that there are no categorical exemptions. Conference Report at 970. The discussion in the Conference Report on whether to list other federal activities that are subject to the consistency requirement, *e.g.*, activities under the Ocean Dumping Act, further clarifies that no federal activities are categorically exempt and that the determination of whether consistency applies is a case-by-case analysis based on reasonably foreseeable effects on any coastal use or resource. *See* Conference Report at 971.

The Congressional Record sheds further light on the intent and the scope of Congress' rejection of *Secretary of the Interior*. Congress not only rejected *Secretary of the Interior*, but eliminated the "'shadow effect" of the Court's decision (*i.e.*, its potentially erosive effect on the application of the federal consistency requirements to other Federal agency activities) * * * and also to dispel any doubt as to the applicability of this requirement to all federal agency activities that meet the standard [*i.e.*, the effects test] for review." Congressional Record at H 8076.

Thus, the application of the consistency requirement is not dependent on the type of activity or what form the activity takes (*e.g.*, rulemaking, regulation, physical alteration, plan). Consistency applies whenever a federal activity initiates a series of events where coastal effects are reasonably foreseeable. *See* H.R. Rep. No. 1012, 96th Cong., 2d Sess. 4382. The CZMA, the Conference Report, and NOAA regulations are specifically written to cover a wide range of federal functions. The only test for whether a Federal agency function is a Federal agency activity subject to the consistency requirement is an "effects test." Whether a particular federal action affects the coastal zone is a factual determination.

V. Coastal Zone Protection Act of 1996

On June 3, 1996, the President signed into law the Coastal Zone Protection Act of 1996 (CZPA), Pub. L. No. 104–150. Section 8 of the CZPA addresses the Secretarial override process whereby the Secretary of Commerce may override a State's consistency objection to a federal permit, license or funded project. Specifically, CZPA section 8 requires the Secretary to publish a notice in the **Federal Register** indicating when the decision record in a consistency appeal has closed. No later than 90 days after the date of publication of this notice, the Secretary is required to issue a final decision or publish another notice in the **Federal Register** detailing why the decision cannot be issued within the 90-day period. In the latter case, the Secretary is required to issue a decision no later than 45 days after the date of the publication of the notice. This final rule makes conforming changes in the Secretarial override regulations contained in subpart H of part 930.

VI. Purpose of This Final Rulemaking

A proposed rule to revise portions of the federal consistency regulations was published on April 14, 2000 (65 Fed. Reg. 20269–20302). The purpose of this final rule is to codify the 1990 and 1996 statutory changes to CZMA § 307, and to update the federal consistency regulations after 20 years of implementation by NOAA, States and Federal agencies. This final rule is also the result of a two year informal effort by NOAA to work with Federal agencies, State agencies, and other interested parties to identify issues and obtain comments on draft proposed revisions to the regulations. Thus, this final rule has already undergone substantial review and modification by Federal agencies, State agencies and other interested parties.

VII. Section-by-Section Discussion of Final Changes and Response to Comments on the Proposed Rule

Throughout part 930 NOAA makes a number of minor revisions, as well as a number of revisions that will implement the CZARA and the CZPA. The minor revisions include changes that will update the regulations and make them easier to use. The following is a section-specific discussion of some of these changes, as well as changes that will implement the CZARA and the CZPA. In addition, there were numerous comments on the proposed rule and NOAA. These comments are summarized under the relevant sections

below along with NOAA's response. While many commenters suggested changes to the regulations, these same Federal agencies, State agencies and others provided comments that noted the importance of and the improvements to the regulations, and the need to finalize the regulations. NOAA greatly appreciates these comments and the assistance that the Federal agencies, State agencies and other interested parties have provided to NOAA over the past three years to develop these revised regulations. Because of the number of changes made to the regulations, 15 CFR part 930 is published in its entirety in this **Federal Register** notice.

Subpart A—General Information

Minor changes are made to clarify that the obligations imposed by the regulations are for State agencies as well as for Federal agencies and other parties, and to clarify that the purpose of the regulations is to address both the need to ensure consistency of federal actions affecting any coastal use or resource with the enforceable policies of management programs and the importance of federal programs. Changes are made to encourage State agencies and Federal agencies to coordinate as early as possible, and to allow State agencies and Federal agencies to mutually agree to consistency procedures different from those contained in the regulations, providing that public participation requirements are still met and that all relevant management program enforceable policies are considered. Minor editorial changes are not individually identified in the section-by-section analysis.

Section 930.1(c). One commenter claimed that the proposed rule complicates rather than simplifies the administrative process. NOAA does not agree. The rule clarifies existing NOAA policy that State agencies, Federal agencies and applicants may mutually agree to augment or replace the requirements of the consistency regulations with other intergovernmental coordination efforts, so long as public participation requirements are met and the State agency is adequately enforcing its management program. Such intergovernmental coordination efforts may be more efficient and effective for the particular State and specific activity. Most States already have procedures to simplify and coordinate their consistency and other permit reviews. In addition, NOAA's changes improve the clarity of some sections that are currently cause for confusion. This increased clarity will provide a more predictable and better understood process.

Another commenter noted that public participation is an important element of the CZMA and should receive a high priority in the regulation. NOAA agrees and has made the last parenthetical in subsection (c) a clause within the sentence.

Section 930.1(e). One State commented that the section should retain reference to objectives of management programs, and not just to enforceable policies. NOAA disagrees. In 1990, Congress placed great emphasis on the need for State agency consistency decisions to be based on enforceable policies. *See* CZMA § 304(6a), Conference Report at 972. The CZMA was changed, in part, to expressly require consistency with enforceable policies. CZMA §§ 307(c)(1) and (c)(3)(A). Advisory policies are still addressed in section 930.39(c). The terms objectives, standards, policies and criteria are not retained, either for the reasons stated above, or because they are redundant with enforceable policies.

Sections 930.1(h) and (i) are removed. *See* below under sections 930.132–134, and subpart I.

Section 930.2 codifies the requirement for public participation for all types of consistency reviews which was added by CZARA, CZMA § 306(d)(14). Environmental groups commented that public participation should be required for "negative determinations." NOAA disagrees. CZMA § 306(d)(14) requires that State agencies provide for public participation in the State agencies' review of consistency determinations (Federal agency activities), and other similar decisions. NOAA believes that this provision refers to consistency determinations and certifications which are submitted for activities which the project proponent reasonably expects will have coastal effects and where State agency review is required. Where a State agency decision or review is not required, public participation is not required. State agencies are required to review consistency determinations and certifications. *See* response to comment regarding section 930.3. Public notice under CZMA § 306(d)(14) is not required for State agency review of negative determinations, since a State agency is not required to review, and in fact may never review, a Federal agency's negative determination, which is a finding of no coastal effects. The new time frames for State agency review of negative determinations are only provided if a State agency decides to review a negative determination and to ensure that such a discretionary review occurs in a timely manner. If a Federal agency were to agree that coastal effects are reasonably foreseeable and that its negative determination was not correct, then the Federal agency would submit a consistency determination pursuant to subpart C, which would be subject to public comment.

Section 930.3 was formerly located at section 930.145. Two State commenters said that this section misconstrues the CZMA claiming that State agency implementation of federal consistency is not required, but is discretionary. NOAA does not agree. Another commenter recommended that the regulations allow citizens to petition NOAA if a citizen believes a management program is not being implemented. The comments regarding State agency obligation to perform consistency reviews incorrectly interprets CZMA program development, approval and continuing review requirements; the "presumption" language in CZMA § 307; and ignores the public participation requirement added by Congress in 1990. A coastal State voluntarily participates in the CZMA program. However, to obtain management program approval a State must develop a program pursuant to CZMA and NOAA regulatory guidelines. Further, to continue to have an approvable program, the coastal State must adhere to CZMA and NOAA regulatory implementation requirements and must implement its federally-approved management program. NOAA monitors such implementation through the CZMA § 312 evaluation process. Federal consistency is one of the requirements that a State must implement. If a State is not reviewing federal activities for consistency and allowing the public to comment on the State's reviews, then the State is not adequately implementing its federally-approved management program.

The CZMA contains numerous sections that are part of the requirement for States to implement federal consistency if the States want to maintain an approvable program. For example, CZMA § 306(d) requires States to implement federally-approved management programs, particularly §§ 306(d)(1) (management program adopted pursuant to NOAA regulations), § 306(d)(2)(D) (identification of the means by which the State will exert control over coastal uses), and § 306(d)(2)(F) (the organizational structure used to implement the management program).

Moreover CZMA § 312(a) requires the Secretary to evaluate State programs to ensure that a State has adequately

"implemented and enforced" its program. If the State is not adequately implementing and enforcing its program the Secretary may suspend the State's grant for non-compliance, CZMA § 312(c)(1), and require the State to take necessary actions to remedy the non-compliance, CZMA § 312(c)(2)(A). If the State does not remedy the non-compliance, then the Secretary may withdraw program approval. CZMA § 312(d). A State cannot adequately implement its management program unless the State ensures, through federal consistency, that federal activities are consistent with the State's enforceable policies. For instance, one State waived consistency on numerous projects due to a State statute that required the State to issue all State decisions within 90 days or the State's permission is presumed. NOAA identified this as a management program implementation problem and required the State, to "seek administrative or regulatory mechanisms that ensures consistency is separate from issuance of a permit by default, or ensure consistency is conducted within the 90-day permit review period." OCRM/NOAA, Evaluation Findings for the New Jersey Coastal Management Program for the Period from September 1991 through November 1994, at 30 (June 1995). As a result, the State clarified the application of the 90-day statute and took steps to complete its consistency reviews within the 90-day State-imposed period. NOAA followed up on this issue in the State's next evaluation and required the State to provide an explanation of how it is enforcing its program in light of the 90-day State statute. OCRM/NOAA, Evaluation Findings for the New Jersey Coastal Management Program for the Period from December 1994 through November 1997, at 23 (April 1998).

In 1990 Congress added CZMA § 306(d)(14) which requires States to provide for public participation in a State's review of federal consistency determinations and other consistency decisions by a State. Thus, if a State agency receives a consistency determination from a Federal agency, the State cannot simply waive consistency review. The State agency must provide for public comment on a State review to either concur with or object to the determination. In addition, the State must implement its program and cannot do so if it ignores federal activities under CZMA § 307, which will affect the State's coastal uses or resources.

CZMA § 307 also specifies that State's must implement its program through federal consistency. For instance, § 307(c)(3)(A) provides that States "shall" establish procedures for public participation and "shall" notify Federal agencies and applicants of its concurrence or objection. The "presumption" of a State agency's concurrence in the CZMA and NOAA's regulations is not an indication of State agency discretion to be non-responsive. The "presumption" of concurrence is to ensure that consistency reviews occur in a timely fashion by providing a penalty to the State for not responding within the statutorily specified time frames. Patterns of non-compliance are remedied through the CZMA § 312 evaluation process, as described above.

NOAA's regulations also contain numerous sections requiring States to implement their federally-approved programs, including federal consistency. For example, 15 CFR section 923.1(b) requires States to comply with CZMA §§ 306 and 307 for program approval; section 923.1(c)(6) requires States to have sufficient means to implement and ensure conformance with their management programs (which includes their federal consistency programs); section 923.1(c)(7) mirrors CZMA § 306(d)(14) requiring public participation in its consistency reviews; sections 923.40(a) and (b) and 923.46 require States to have the organizational structure to implement their programs; section 923.53 requires a State to include in its program "the procedures it will use to implement the Federal consistency requirements. * * *"; section 923.133(c)(1)(i) requires that for continued management program approval that the State has "[i]mplemented and enforced the [federally approved program.]" and, under section 923(c)(2)(i)(C), the State "is effectively carrying out the provisions of Federal consistency." Finally, the criteria for invoking interim sanctions for non-compliance, under sections 923.135(a)(3)(i)(A), (D), and (E), include "ineffective or inconsistent implementation of legally enforceable policies," "ineffective implementation of Federal consistency authority," and "inadequate opportunity for intergovernmental cooperation and public participation" including input through CZMA § 306(d)(14) (public input into consistency decisions).

Federal consistency is an integral part of ensuring consistent application of State enforceable policies to all entities, be they public, private, local government or federal, and ensuring adequate implementation of the State's management program, and as such, the statute, the regulations and agency practice require States to meet the CZMA § 307 federal consistency requirements.

As for the comment regarding a process for citizen notification to OCRM of State non-compliance, the CZMA already contains such a process under the section 312 program evaluation process.

Section 930.4 clarifies the use by State agencies of conditional concurrences. Conditions of concurrence should not replace State objections and the identification of alternatives for activities that the State agency finds are inconsistent with its management program. Since conditional concurrences could seriously weaken the State authority granted by the CZMA consistency requirement, this rule only allows conditional concurrences pursuant to the following criteria: (1) Conditions must be based on specific enforceable policies, (2) the applicant must amend its federal application, and (3) the Federal agency approves the application as amended with the State conditions. If all of these requirements are not met, then the conditional concurrence is an objection.

Several Federal agencies, many State agencies and others provided comments either in support of or against this provision. The CZMA does not specifically address conditional concurrences. The CZMA provides predictability and finality by requiring the State agency to concur or object within a prescribed time period. The CZMA does not provide the State agency with the authority to enforce its concurrence (or conditions) beyond the State's consistency decision deadline (*e.g.*, six months for licenses or permits). Once a State agency has concurred, even with conditions, the State agency retains no further consistency authority over the project (unless the project has changed and not begun, *see* proposed supplemental coordination under sections 930.46, 66 and 101).

If a State agency objects, then the State agency retains its authority over the project; the Federal agency cannot issue the license or permit and a Federal agency may not be able to proceed with a Federal agency activity. Some States still prefer conditional concurrences, presumably as a more positive response to an applicant or Federal agency. However, a conditional concurrence may not provide an applicant or a Federal agency with a definitive response within the specified review periods. A conditional concurrence interjects less clarity into the consistency process. Also, when a State agency issues a conditional concurrence the Federal agency may issue the permit or, in the case of a Federal agency activity, proceed with the activity. Thus, issuing an objection and describing

alternatives provides applicants and Federal agencies with a definitive response and retains State agency authority.

A State cannot, through the CZMA, enforce its conditions after it has concurred. The State may request that the Federal agency take enforcement action or may seek a court order against the applicant. The CZMA does not require a Federal agency to adopt a State's conditions of concurrence and OCRM could not require this through regulation. A State condition may also be outside the purview of the Federal agency. The CZMA only requires that the Federal agency shall not grant its approval until the State agency has concurred, concurrence is conclusively presumed, or the Secretary overrides a State agency's objection. Also, if a State agency concurs with conditions and the Federal agency issues its approval consistent with the conditions, but the applicant later does not comply with the conditions, the Federal agency is not required to take an enforcement action. Enforcement action is a purely discretionary action by a Federal agency. *See State of New York* v. *DeLyser*, 759 F. Supp. 982 (W.D.N.Y. 1991).

However, the revised regulations do include the concept that the applicant may modify its federal permit application pursuant to State conditions and if the Federal agency approved the amended application, the Federal agency would be more likely to enforce the State's conditions (since the State conditions would be part of the federal permit). When reviewing activities under CZMA § 307(c)(3)(A), it is the responsibility of the applicant to submit a consistency certification to the State agency and therefore it is also the responsibility of the applicant to address the State's conditions in the application, rather than have the Federal agency granting the permit or license directly impose the conditions. If the applicant did not modify its federal permit application pursuant to the State conditions or the Federal agency did not approve the amended application (with the State conditions), then the concurrence would be deemed an objection. Providing for conditional concurrences in the regulations does not preclude States from issuing an objection. A discussion of whether the Federal agency can enforce the State's conditions should take place during the review period to help determine if a conditional concurrence is the best course of action. States have a choice of choosing either option on a case by case basis.

Under section 930.4, the existing time frames for State agency review of consistency certifications and consistency determinations still apply. If the State has proposed conditions and is awaiting a response from the applicant or Federal agency on proposed conditions and does not hear back within the specified review period, the State agency can still issue an objection. The State agency, applicant and Federal agency can also negotiate a new timeframe for responding to the State's proposed conditions and issuing the conditional concurrence.

Section 930.5 is added to clarify that the mediation and negotiation sections of the regulations do not preclude other State enforcement actions where the State has jurisdiction or believes it is necessary to take enforcement or judicial action. One commenter asked that mediation be mandatary. NOAA disagrees. The use of the remedial action and mediation provisions are not mandated by the statute, the existing regulations or long-standing practice. These provisions are provided in statute and regulation to provide mechanisms to resolve conflict, but are not the only possible remedies, hence the first sentence of this section referring to other possible actions. Certainly, States and Federal agencies are encouraged to attempt to resolve any differences outside of judicial review.

Section 930.6 moves the non-definitional parts of section 930.11(o) (formerly section 930.18) to a section describing the responsibilities of the State agency. Section 930.6(a) acknowledges that a State may have two separate management programs (for distinct regions) and two separate federal consistency agencies. Currently, California has two separate management agencies (the California Coastal Commission and the San Francisco Bay Conservation and Development Commission).

Section 930.6(b) simplifies consistency terminology. At present, different terms are used to describe State responses for Federal agency activities ("agreement or disagreement") and federal license or permit activities ("objection or concurrence"). Now, a State agency would either object to or concur with a consistency determination or a consistency certification. In response to one commenter, NOAA added public participation language to this subsection. While the public participation requirements are adequately covered in other sections, mention of the requirements here would be appropriate and helpful. Thus, in subsection (b), the phrase "and, where applicable, the public." is added after "local government agencies." In subsection (c), the phrase "and that applicable public participation requirements are met." is added to the end of the first sentence after "State management program policies."

Section 930.6(c) is added to clarify the role of the single State agency for coordinating federal actions and the State agency's responsibility to apply all relevant enforceable policies when conducting consistency reviews.

Several State agencies and others supported section 930.6 in their comments, while also recommending changes that were not compatible with the Statute regarding the State agency. NOAA did not make any of the suggested changes for the following reasons. For the reasons Stated above in response to comments on section 930.3, and further elaboration below, the words "uniformly and comprehensively" are retained. States are required to implement their federally approved programs and to apply all relevant enforceable policies to a particular federal activity. The CZMA requires compliance with all relevant enforceable policies of a "management program" and not a subset thereof. *See e.g.*, CZMA §§ 307(c)(3)(A), 304(12). A major criterion for management program approval is a determination that State agencies responsible for implementing the management program do so in conformance with the policies of the management program. 15 CFR section 923.40(b). *See* also section 923.41(b)(2). Networked management programs must also demonstrate that management program authorities implement the full range of policies. Section 923.43(c). The federal consistency regulations mirror the requirement for the application of enforceable policies in a comprehensive manner. Uniformity is required to ensure that States are not applying policies differently, or in a discriminatory way, among various entities for the same type of project for similar purposes, *e.g.*, holding a Federal agency to a higher standard than a local government or private citizen. Obviously, if similar projects, *e.g.*, shoreline stabilization, are proposed for different purposes, then the States review and decision will vary between the two projects.

Other sections contain information regarding Federal agency responsibilities. This section only applies to State agencies. The CZMA requires that a State have a single State agency for grant administration and management program implementation (including federal consistency). CZMA §§ 306(d)(6) and 307(c)(1)(C). Further,

NOAA's program approval regulations require a single State agency charged with implementing federal consistency, section 923.53(a)(1), as does the existing federal consistency regulation, section 930.18. The need for a designated State consistency agency is to ensure: uniform application of a State's management program policies, efficient coordination of all management program requirements, comprehensive coastal management review, that all relevant enforceable policies are considered for a federal consistency review, that public participation requirements are met, and that there is a single point of contact for Federal agencies and the public to discuss consistency issues. The State agency coordinates consistency reviews, issues concurrences and objections, coordinates with Federal agencies, provides guidance on complying with the consistency requirement, handles appeals to the Secretary and mediation requests, etc. The State agency may rely on the expertise of other State agencies, but other State agencies may not be the designated State agency for consistency reviews, decisions, etc.

Regarding the use of State permits, as discussed above, the State agency must ensure that all applicable enforceable policies are applied to a consistency matter. If described in a State's management program, the issuance of relevant State permits can constitute the State agency's consistency concurrence for federal license or permit activities if the State agency ensures that the State permitting agencies (or the State agency) review individual projects in light of all applicable management program policies. The State agency must monitor such permits issued by another State agency. Monitoring does not mean that the State agency has some sort of overlord role or the ability to overrule another State agency's permit decision (although some State agencies may have this authority). Monitoring means that the State agency is aware of other State agencies' actions that affect the management program, the State agency ensures that other State agencies' decisions are consistent with the management program, and that decisions are being made within the consistency timeframes, etc.

If all management program enforceable policies are contained in State permit standards, then usually the issuance of the relevant State permit(s) will be sufficient for determining consistency. However, there may be cases where a State permit is not required, but the policies contained in a permit program are applicable to the project. In these cases, the State agency must ensure that the activity is consistent with these policies. The State agency must also ensure that public participation requirements are met.

A State agency may develop alternative consistency procedures with Federal agencies. In doing so, the State agency must still be the consistency contact and ultimate decision maker, the State must enforce its CMP, and public participation requirements must be met by the State.

In response to a comment on section 930.6, regarding compliance with State environmental review laws, as discussed above, States are required to apply relevant enforceable policies of the management program. The preparation and use of State environmental review documents, and compliance with such State environmental review laws, is governed by applicable State law, and not the CZMA or NOAA's regulations. What is required, is that the State implement its federally approved management program, as discussed above. Likewise, how the State coordinates with NEPA documents is not proscribed by the CZMA. The CZMA and NEPA are two separate statutes with distinct requirements. Often consistency reviews are coordinated through NEPA documents as a matter of administrative convenience and also to provide environmental information to support a consistency determination. NOAA encourages such practice, as previously discussed in the preamble to the proposed rule under proposed section 930.37.

Subpart B—General Definitions

The definitions have been re-designated to reduce the total number of regulation sections. There is now just a section 930.10 for the index and a section 930.11(a) through (o) for the definitions contained in subpart B.

Section 930.11(d) clarifies that associated facilities are indispensable parts of the proposed federal action. A variant of the addition was previously a comment to the 1979 regulations. 44 Fed. Reg. 37145. This addition ensures that the State agency would have sufficient information to fulfill its coastal planning and management responsibilities, and the proponent of the federal action would not be faced with the situation where there has been receipt of State agency approval regarding one element of the project with later objection to an associated facility which was not earlier reviewed with the remainder of the proposal.

Sections 930.11(b) and (g) define "any coastal use or resource" and "effect on any coastal use or resource," respectively. These terms are not intended to alter the statutory requirement which refers to any land or water use or natural resource of the coastal zone. These terms are merely a simpler description of the statutory requirement. The term "minerals" has been added to include both surface and subsurface mineral resources. Aesthetics and scenic qualities are not natural resources, but are enjoyment or use of natural resources. These concepts have been added to the definition of coastal use. Land has been added to natural resource. A sentence has also been added to include coastal uses and resources detailed in a management program. Resource creation or restoration projects has been added as a coastal use. This includes tidal and nontidal restoration and creation projects. Air and invertebrates have been added as natural resources. Since historic and cultural resources are important coastal resources under the CZMA (*see* §§ 302(e), 303(2) and 303(2)(F)), the protection of historic and cultural resources of the coastal zone is included in the examples of coastal uses.

Several States and environmental groups commented that these sections are the core of the 1990 amendments and fully supported these sections. Several commenters wanted additions or deletions to these sections and for NOAA to define "reasonably foreseeable" in subsection (g). NOAA did not make changes to these sections based on these comments. The definition for coastal uses and resources is derived primarily from CZMA § 304 (coastal uses of national significance are defined in CZMA § 304(2)). Not all coastal uses or resources can be added. The list is not exclusive, but is meant to highlight the more common uses and resources. The list includes coastal resources of national significance, which include beaches and barrier islands, as defined in CZMA § 304(2). The definition also uses the term "land" in its description of natural resources, which includes barrier islands, spits, beaches and bluffs. Therefore, NOAA disagrees that it is necessary to add these terms to the definition of coastal resource. Biological, hydrological, and geophysical systems are not resources, but processes that affect resources. The resources that are affected by these processes are included in the definition. It is also not clear why just these processes are proposed to be listed. Such a list would imply that other processes are not included. These three terms have not been added.

The definition of coastal effects is not over broad, but is consistent with the CZMA, legislative history and CEQ/

NEPA definitions of cumulative and secondary effects. The changes to the CZMA in 1990 specifically removed application of federal consistency to "direct" effects (and likewise "significant" or "substantial" effects). *See also* response to comments regarding section 930.31(a), and the preamble to this rule. Explanation of the change in 1990 is contained in the Conference Report. The "effects" language is taken from the Conference Report. The Conference Report is persuasive authority for interpreting the CZMA. The Conference Report states that coastal effects are to be construed broadly and include both direct effects which result from the activity and occur at the same time and place, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. The Conference Report makes it clear that the test for triggering consistency is not whether the effect is significant or substantial, but whether it is reasonably foreseeable. NOAA could not put back in (or retain what is currently in) regulation that which Congress specifically removed in 1990.

Whether consistency applies is not dependent on the type of federal activity, but on reasonably foreseeable coastal effects. For example, a planning document or regulation prepared by a Federal agency would be subject to the federal consistency requirement if coastal effects from those activities are reasonably foreseeable.

Again, the application of consistency is not limited by the geographic location of a federal action; consistency applies if there are reasonably foreseeable coastal effects resulting from the activity. A federal action occurring outside the coastal zone may cause effects felt within the coastal zone (regardless of the location of the affected coastal use or resource). For example, a State's fishing or whale watching industry (which are coastal uses) could be affected by federal actions occurring outside the coastal zone. Thus, the effect on a resource or use while that resource or use is outside of the coastal zone could result in effects felt within the coastal zone. However, it is possible that a federal action could temporarily affect a coastal resource while that resource is outside of the coastal zone, *e.g.*, temporary harassment of a marine mammal, such that resource impacts are not felt within the coastal zone. As stated above, the coastal effects test is a fact-specific inquiry. NOAA is not further defining "reasonably foreseeable." Congress envisioned that Federal-State coordination through consistency would be interactive. Thus, the application of consistency, the varied State management programs, the analysis of effects, and the case-by-case nature of federal consistency precludes fast and hard definitions of effects and what is reasonably foreseeable.

The "substantial" language in sections 930.46 and 930.66 refer to supplemental coordination for proposed activities. The intent in these sections was to address situations where coastal effects have substantially changed, not to define the scope of effects to trigger initial State agency review.

The proposed definition includes cumulative and secondary effects as part of indirect effects via the following language: "indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable." The definition goes on to State that "Indirect effects resulting from incremental impact of the federal action when added to other past, present and reasonably foreseeable actions, regardless of what person(s) undertake such actions." This language is consistent with the Council on Environmental Quality's definition of cumulative effects. 40 CFR section 1508.7.

The so-called "chain of events" concept was already captured in the proposed rule under section 930.31, which is derived from legislative history discussing the scope of consistency.

Section 930.11(h) adds a definition of enforceable policy by reference to CZMA § 304(6a), and clarifies that an enforceable policy must be sufficiently comprehensive and specific to control coastal uses while not necessarily inflexibly committing the State to a particular path. *See American Petroleum Institute* v. *Knecht*, 456 F. Supp. 889, 919 (C.D. Cal. 1978), *aff'd*, 609 F.2d 1306 (9th Cir. 1979); 15 CFR section 923.40(a); Conference Report at 972. One Federal agency, three States and the environmental groups had various comments on this definition. These comments included: the definition is too broad, enforceable policies should include federal law, the section should require compliance with State environmental review requirements, and that not all policies should have to be formally incorporated into federally approved management programs.

NOAA did not change the definition based on these comments. Changing the scope of the definition of enforceable policies would be inconsistent with the CZMA. Under CZMA § 307(c), Federal agencies are required to submit a consistency determination to the State agency if it determines that there are reasonably foreseeable effects. The consistency determination should include an evaluation of the proposed activity in light of the applicable enforceable policies in the State's Coastal Management Program (CMP). The State has the authority to then review this consistency determination and decide whether it agrees with it, including the Federal agency's interpretation of the State's enforceable policies. If the State disagrees with the consistency determination, then it must describe how the activity is inconsistent with the enforceable CMP policies and alternatives (if they exist) that would allow the activity to be conducted in a manner consistent to the maximum extent practicable. If agreement cannot be reached between the State and Federal agencies, the Federal agency may still proceed with the activity, as long as it clearly describes to the State the specific legal authority which limits the Federal agency's discretion to comply with the State CMP's enforceable policies.

The regulations encourage early discussions between the State and the Federal agency over the meaning of the State's enforceable policies. For instance, section 930.34 encourages early consultation between Federal and State agencies to obtain the State views and assistance regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the State's CMP. In addition, the definition envisions that discussions between the State and Federal agencies may be necessary in order to determine the consistency of the activity with the State's enforceable policies.

CZMA § 307(e) requires that States with approved CMPs must submit changes to the CMP for approval by OCRM before they can be considered enforceable policies under the CMP. Therefore, States cannot use enforceable policies that are not part of the State's CMP for review of activities under federal consistency. States are encouraged to send in proposed changes to their CMPs as soon as possible for review by OCRM.

The CZMA does not provide for the inclusion of federal laws into State CMPs, but rather a listing of the State enforceable policies (*e.g.*, laws, constitutional provisions, regulations and judicial decisions). Federal agencies or applicants for federal permits undertaking activities that have reasonably foreseeable coastal effects must consider the enforceable policies of the State's CMP (*see* CZMA

§§ 307(c)(1)(A) and (3)(A)). This does not preclude the need for these activities to comply with relevant federal laws, but the CZMA does not grant authority to States to consider federal laws as State CMP enforceable policies when reviewing Federal agency activities or federal license or permit activities.

In addition, in order for a State law to be used under federal consistency, it must be a part of the State's approved CMP. Under CZMA § 306(d)(2)(D), the State must include a list of enforceable policies in its coastal management program. Under CZMA § 306(e)(1), it is the State's responsibility to request that OCRM consider including new or revised enforceable policies for inclusion in the State CMP. Therefore, in order for a State to add an enforceable policy to its CMP for the purposes of federal consistency, such as the California Environmental Quality Act (CEQA), the State must make that request to OCRM. Also, whether a Federal agency must be fully consistent with CEQA would depend on whether Federal law precluded full consistency, pursuant to the section 930.32 consistent to the maximum extent practicable standard.

Management measures does not refer to the "(g)" guidance for Coastal Nonpoint Programs. It is a term borrowed from the Conference Report and *American Petroleum Institute* v. *Knecht* that describes reasonable State interpretations of its enforceable policies.

Subpart C—Consistency for Federal Agency Activities

Throughout the regulations the phrase "directly affecting the coastal zone" has been changed to read "affecting any coastal use or resource." This codifies changes made to the CZMA by CZARA and includes reasonably foreseeable effects on any land or water use or natural resource of the coastal zone.

In section 930.30 NOAA deleted "conducted or supported" to conform this section with changes made by CZARA. In addition the title of subpart C and throughout subpart C, the term "Federal activity" is changed to "Federal agency activity" to avoid confusion with federal activities under subparts D, E, and F. The phrase Federal agency activity is taken directly from the CZMA.

NOAA amended section 930.31(a) to further describe the scope of the federal consistency effects test by clarifying the term "functions." This language is derived from the CZMA's legislative history. Three Federal agencies commented that the definition is too broad and should not include certain federal activities. NOAA disagrees. Federal agency activities are not defined by the type of activity, but rather, whether the activity will have reasonably foreseeable coastal effects. Despite this clear statutory and legislative intent, there have been questions over the years as to whether a particular Federal agency action is subject to the consistency requirement. These questions have primarily arisen for rulemaking and planning activities, and that is why these activities are included in the rule. Clearly, these are Federal agency functions. A rulemaking by NMFS that limits the catch of a species of fish is a rulemaking that affects a State's fishing industry, which is an effect on a coastal use. A rulemaking by the Corps to authorize activities in navigable waters and wetlands under its Nationwide Permit Program will allow activities that affect coastal resources. Likewise, if a Federal agency takes an action that interferes with a coastal use, an "exclusion of uses," *e.g.*, prohibiting public access or fishing, that is a Federal agency activity that has a coastal effect. A Federal agency activity that initiates a series of events where coastal effects are reasonably foreseeable, is subject to consistency. Congress emphasized this as far back as 1980, H.R. Rep. No. 96–1012, 96th Cong., 2d Sess. 34 (May 16, 1980), and re-emphasized the concept in 1990 when it declared that consistency applies to Federal agency activities with cumulative and secondary direct and indirect effects. Conference Report at 970.

The question at hand is whether such actions will have reasonably foreseeable coastal effects. If so, then consistency applies. If not, then consistency does not apply. (Although the Federal agency may have to provide the State agency with a "negative determination" if: (1) The activity is listed in the management program, (2) the State agency notifies the Federal agency that the State believes that an unlisted activity will have coastal effects, (3) the Federal agency provided consistency determinations for similar activities in the past, or (4) the Federal agency conducted a thorough assessment and developed initial findings on coastal effects.) The question of coastal effects must be made on a case-by-case basis, except where States and Federal agencies have agreed that a class of activities will not have coastal effects (or will have de minimis effects as provided for in section 930.33(a)(3)), and are thus not subject to consistency. Thus, if a Federal agency does not believe that a particular rulemaking or plan will have reasonably foreseeable coastal effects, then the Federal agency does not have to provide a consistency determination.

As to the comments regarding the CZMA and the Outer Continental Shelf Lands Act ("OCSLA"), the Comment makes NOAA's case. The comment talks about activities that do not affect the coastal zone. If that is the case, then the Federal agency does not need to provide a consistency determination and may have to provide a negative determination. As for the matter of 5-year OCS plans by Interior, the position of the United States was made clear by the U.S. Department of Justice by its Office of Legal Counsel (Justice) in a letter from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, Justice, to Mr. C.L. Haslam, General Counsel, Department of Commerce, and Mr. Leo M. Krulitz, Solicitor, Department of the Interior, dated April 20, 1979 (Justice Opinion). In addition, the clear language of the 1990 amendments to the CZMA, and Congressional intent as described in the Conference Report for the 1990 amendments, 5-year OCS plans are subject to the CZMA federal consistency effects test, 5-year OCS plans are not exempted from the consistency requirement as a matter of law or policy, and there are efficient ways to address consistency and 5-year OCS plans if Interior determines that coastal effects are reasonably foreseeable. *See* letter from NOAA's Office of Ocean and Coastal Resource Management to Interior's Minerals Management Service, dated August 7, 1996. If Interior determines that coastal effects from the 5-year OCS plans are *not* reasonably foreseeable, then Interior should issue a negative determination.

Section 18 of the OCSLA requires that procedures be established for consideration of State coastal management programs. Interior asserts that this section and the 1978 amendments to the OCSLA deliberately reject the consistency requirement in favor of providing for consideration of State coastal management programs. NOAA believes that this interpretation of the OCSLA as applied to the CZMA is incorrect for four reasons: (1) The plain language of the conference report (and other legislative history) for the 1978 amendments to the OCSLA does not reject the consistency requirement, (2) the 1978 amendments to the OCSLA added clear language that the consistency requirement was not affected, (3) in 1979 Justice determined that pre-lease sale activities are subject to the consistency effects test, and (4)

even if the intent of the 1978 amendments to the OCSLA was to reject the consistency requirement, the 1990 amendments to the CZMA clarifies that all federal activities are subject to the consistency requirement if there are reasonably foreseeable coastal effects. Further, consideration of management program concerns to the maximum extent practicable at the 5-year OCS plan stage lays a foundation for leasing activities that will also be consistent to the maximum extent practicable.

When the CZMA and the OCSLA are read together, the OCSLA requirement for "consideration" of State coastal management programs is consistent with the CZMA requirement that Federal agencies conduct their activities consistent with State coastal management programs. If the intent of Congress was to repeal the CZMA federal consistency requirement for pre-lease sale activities then it would have specifically said so. As Justice stated:

> [T]he intention of the legislation to repeal must be clear and manifest; that every attempt must be made to reconcile the statutes involved; and that a repeal by implication will be found only where there is a "positive repugnancy" between the statutes in question. *Morton* v. *Mancari*, 417 U.S. 535, 549–551 (1974); *Borden* v. *United States*, 308 U.S. 188, 198–199 (1939).

Justice Opinion at 10. In this case, requiring Interior to conduct an effects test, and to provide a State with a consistency determination or a negative determination, where appropriate, does not interfere with Interior's pre-lease responsibility under the OCSLA.

The 1978 OCSLA conference report contains two references to the CZMA. Under "Considerations," page 103, the report states:

> The House amendment includes among the consideration for a leasing program the policies and plans under the [CZMA]. The Senate bill contains no comparable provision. The conference report follows the House amendment and contains no such specific provision as it is included within the consideration of "laws, goals, and policies of affected States."

This discussion in the conference report and the corresponding section of the OCSLA specifically require Interior to address State coastal management program requirements and says nothing about rejecting the CZMA federal consistency requirements. The second reference to the CZMA in the conference report is on page 105, and it States:

> Both versions provide for regulations as to coastal zone management applicability. The House amendment provides for regulations involving "consideration" of a program "being developed or administered" pursuant to section 305 or 306, respectively, of the [CZMA]. The Senate bill provides for "coordination" of the program with the management program being developed and also for "consistency" to the extent practicable with the management program. The conference report is the same as the House amendment. The Secretary is to establish procedures by regulation for consideration of State coastal zone management programs.

While the Senate version was more specific as to the federal consistency requirement, the House version does not reject the consistency requirement.

Section 608(a) of the 1978 OCSLA amendments expressly provides that: "[E]xcept as otherwise *expressly* provided in this Act, nothing in this Act shall be construed to modify, or repeal any provision in the CZMA" (emphasis added). This language was also included in the section-by-section analysis of section 19 in the House report. Justice Opinion at 12, *citing*, H. Rept. 5–590, at 153, n.52. No section of the OCSLA expressly repeals the CZMA and the sections on pre-lease sale activities do not expressly modify the CZMA. Thus, there is no basis to reject the CZMA consistency requirement based on the conference report language.

Justice also found, after the 1978 amendments, "that neither the [CZMA] Amendments of 1976 nor the [OCSLA] Amendments of 1978 affect the application of § 307(c)(1) to [OCSLA] pre-leasing activities." Justice Opinion at 2. Justice also reviewed the legislative history and found that it did not exempt pre-lease sale activities from consistency. *Id.* at 12. Justice found that pre-lease sale activities are subject to consistency effects test just like any other federal function. *Id.* at 2.

Lastly, the 1990 amendments clarified that any federal activity is subject to the consistency requirement if coastal effects are reasonably foreseeable. The 1990 amendments to the CZMA also specifically rejected any categorical exemptions. The only test for the application of consistency is the effects test. Thus, even if, arguendo, pre-lease sale activities were exempted, pursuant to the OCSLA amendments of 1978, from consistency, they are now, pursuant to the 1990 CZMA amendments, clearly subject to the consistency requirement.

Applying the consistency requirement to the 5-year OCS program is sound policy for several reasons. First, the CZMA consistent to the maximum extent practicable standard is not onerous (especially at an early stage of OCS development). Second, the 5-year OCS plan offers a good opportunity, early in the OCS process, to attempt to resolve State concerns. Addressing consistency at the 5-year OCS plan stage allows States to identify coastal concerns, such as the location of future lease sales, and reduces potential conflict. Third, Interior NEPA documents have determined that the 5-year plan is a major federal action with expected environmental effects which present an excellent point to determine consistency with management programs.

In 1984, the Supreme Court held that OCS oil and gas lease sales by MMS were not activities subject to the CZMA consistency requirement as the lease sales did not directly affect the coastal zone. *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984). Despite NOAA regulations and Justice opinions indicating that the ruling was limited to oil and gas lease sales, other Federal agencies relied on *Secretary of the Interior* to argue that their activities were not subject to the federal consistency requirement. In amending the CZMA in 1990, Congress overturned the effect of the decision in *Secretary of the Interior* and made clear that OCS oil and gas lease sales are subject to the consistency requirement. Conference Report at 970–72. Congress also intended this change to apply to other federal activities (in and outside the coastal zone) in addition to OCS oil and gas lease sales. The remainder of the consistency discussion in the Conference Report makes this clear as does similar discussion in the Congressional Record, 136 Cong. Rec. H 8068 (Sep. 26, 1990) [hereinafter "Congressional Record"] (incorporated into the Conference Report, *see* Conference Report at 975). The Conference Report clearly states that changes to the consistency section clarify that any federal activity is subject to the consistency requirement (regardless of location) if coastal effects are reasonably likely, and that there are no categorical exemptions. Conference Report at 970. The discussion in the Conference Report on whether to list other federal activities that are subject to the consistency requirement, e.g., activities under the Ocean Dumping Act, further clarifies that no federal activities are categorically exempt and that the determination of whether consistency applies is a case-by-case analysis based on reasonably likely effects on any coastal use or resource. *See* Conference Report at 971.

The Congressional Record sheds further light on the intent and the scope of Congress' rejection of *Secretary of the Interior*. Congress noted that since the Court's decision, "other federal agencies have broadly interpreted the case in a manner that would exclude their

activities from [consistency]," and that "[t]he federal consistency provisions are at the heart of the Nation's coastal zone management program and it has become increasingly clear that the combination of Supreme Court dicta and federal agency belligerence are a troublesome combination." Congressional Record at H 8072–73. Congress not only rejected *Secretary of the Interior*, but eliminated the "'shadow effect' of the Court's decision (i.e., its potentially erosive effect on the application of the federal consistency requirements to other federal agency activities) * * * and also to dispel any doubt as to the applicability of this requirement to all federal agency activities that meet the standard [the effects test] for review." *Id.* at H 8076.

Within the existing regulations and the proposed rule are means for Interior to provide consistency determinations, where applicable, in a reasonable and efficient manner. Briefly, the regulations would allow Interior to use the effects test to determine whether a consistency determination is required; or could note the lack of information at that 5-year OCS plan stage; and could provide a consistency determination to more than one State under the new section for determinations for activities that are national in scope or affect more than one State; and, finally, States and Interior could agree that the 5-year plan is too early in the OCSLA process, and that consistency determinations may be provided at later stages.

Section 930.31(b). One Federal agency commented that a "development project" should include a characteristic from each of the two groups of descriptors. The "and" in this section has always been interpreted as including at least one characteristic from each of the two groups. However, to make it clearer, the word "includes" has been inserted after "and".

Section 930.31(c) is added to clarify that CZMA § 307(c)(1) is a residual category. Federal actions that do not fall into subparts D, E, or F are Federal agency activities. CZMA § 307(c)(1)(A); *see* 44 Fed. Reg. 37146. One Federal agency commented that NOAA should state that fisheries licensing programs are subject to subpart C. No change is required for this section. A fisheries licensing program would continue to be under subpart C. An individual license to an applicant to conduct an activity would be under subpart D. No change is needed to continue the status quo.

Section 930.31(d) addresses the hybrid nature of general permit programs developed by Federal agencies. This occurs when a Federal agency proposes to replace the need for an applicant to obtain an individual permit with a general set of requirements which, if met by the applicant, would allow the applicant to proceed with the activity without a case-by-case approval by the Federal agency. Two examples are the Corps' Nation-wide Permit (NWP) program under the Clean Water Act § 404 and the Environmental Protection Agency's (EPA's) general National Pollutant Discharge Elimination System (NPDES) permits for discharges from OCS oil and gas facilities. The development of the general permit program is best thought of as a Federal agency activity. Even though a general permit will authorize license or permit activities, the development of the federal requirements is an action by a Federal agency, not an applicant. Moreover, there is not a discreet federal or license permit activity to review and there is not an applicant. Neither the statute nor the regulations contemplated the hybrid nature of general permits. CZMA § 307(c)(1)(A) does provide that a Federal agency is subject to § 307(c)(1) unless it is subject to paragraph (2) or (3)(license or permit activities). However, this does not resolve the matter since § 307(c)(3) does not imply or anticipate a situation where a Federal agency is an applicant for its own approval, and for general permits the Federal agency is not actually undertaking the license or permit activity covered by the general permit. Federal agencies may of course choose to subject their general permit programs to CZMA § 307(c)(3)(A).

Several commenters had various suggested changes to section 930.21(d). NOAA made corresponding changes to the rule. NOAA agrees that subpart C applies to general permit programs and not case-by-case approvals to non-Federal applicants. This was the intent of the section and clarifying language has been added. "Should" is changed to "shall" as the intent was to remove the need for case-by-case reviews where the State agency concurs with the general permit program. Language was added to address the situation where a Federal agency subjects itself to subpart D. Some Federal agencies want to subject their general permit programs to the requirements of subpart D. This gives States greater leverage over the Federal action. If Federal agencies want to do that, NOAA wants to provide them that flexibility. NOAA has added clarifying language regarding the need for State agency concurrence for an individual general permit, where the State objected to the general permit program.

Even though general permit programs are for activities that would normally be subject to subpart D, the consistent to the maximum extent practicable standard still applies since the general permit program is covered under subpart C. It may be possible, although unlikely, that a federal statute requires a Federal agency to conduct a program in such a manner that would not be fully consistent with a State's enforceable policies. The regulations already contain numerous instructions to Federal agencies regarding notice to State agencies and the content of consistency determinations.

Section 930.31(e) is added in response to a comment from a State to clarify existing NOAA interpretation that a modification to a Federal agency activity that has coastal effects and has not been subject to State agency consistency review, is a Federal agency activity subject to the consistency requirement.

NOAA amended section 930.32 to clarify the consistent to the maximum extent practicable standard. NOAA divided section 930.32(a) into 3 subsections. Subsections (1) and (2) are the existing regulations and subsection (3) is new. Minor changes were made to section 930.32(a)(1) and the last sentence in (a)(1) is moved to the end of (a)(2). These changes are made for clarity and brevity; there are no substantive changes in subsections (a)(1) and (2). The term "discretion" as included in the existing regulations and retained in the revised regulations means that the more discretion a Federal agency has under its legal requirements, the more the Federal agency must be consistent with the management program's enforceable policies. In subsection (a)(2), NOAA deleted the term "supplemental" since the CZMA requires that a management program's enforceable policies are requirements, not supplemental requirements. Also, supplemental is somewhat redundant with the rest of the sentence.

Two Federal agencies commented that the consistent to the maximum extent practicable standard was too restrictive and one State agency commented that "legislative history" is not federal legal authority. The final, proposed and pre-existing regulations all correctly describe "consistent to the maximum extent practicable" for purposes of the CZMA. Congress clearly intended Federal agencies to be consistent with State management programs (*see e.g.*, H.R. Rep. No. 92–1049, 94th Cong., 2d Sess. 18–19), the regulations have reflected this for over 20 years, courts have upheld the definition (*see e.g.*, *California Coastal Commission* v. *Navy*, No. 97cv2219 (S.D. Cal. Jan. 28, 1998),

and Congress specifically endorsed the definition in the 1990 amendments in the Conference Report.

Section 930.32(a)(3) clarifies the effect of federal appropriations law on the consistent to the maximum extent practicable standard. A lack of funding does not excuse a Federal agency from having to conduct a federal activity in a manner that is consistent with management program enforceable policies. Management program enforceable policies are, in most cases, in place long before the planning of many federal projects and in advance of budgeting for annual appropriations. A Federal agency cannot avoid any State requirement that it finds burdensome simply by not funding the required action. Advance planning and early coordination can help alleviate these concerns. If Federal agencies know what the State's enforceable policies are then costs can be factored into an agency's planning. Also, just as Federal agencies cannot avoid other federal and State law requirements (e.g., under the Clean Water or Air Acts, NEPA) due to funding constraints, they cannot avoid management program enforceable policies. State enforceable policies are developed pursuant to the CZMA, approved by the Federal Government, and applicable to Federal agencies through the CZMA federal consistency requirement.

One Federal agency commented that section 930.32(a)(3) overturns long held views of Federal agencies and NOAA or preempts the Federal budgetary process. Another Federal agency, while acknowledging that a lack of funding does not automatically render an action not practicable, it may not always be possible to plan for State requirements in advance. Several States commented that NOAA should require Federal agencies to plan for State policies and that the word "only" should be inserted. One commenter wanted NOAA to rewrite the section, and the environmental groups commented that there were contradictory statements in the section. The only modification NOAA has made is to remove the word "discretionary" as it is somewhat redundant and limiting. In response to the comments, it is NOAA's understanding that the "long held views" of the Federal agencies, with the possible exception of one or two offices within one or two Federal agencies, are compatible and in agreement with this section. Moreover, the changes made by Congress to the CZMA in 1990 carry more weight than a Federal agency's "view." NOAA must base its regulations on the statute. In this case, the definition of "consistent to the maximum extent practicable" is well-established and recognized by Federal agencies and was specifically endorsed in the 1990 CZMA changes. *See* Conference Report at 972. This section is also consistent with previous statements made by the Department of Commerce's General Counsel. The letter that the commenter refers to was a comment submitted to the Corps on the Corps' proposed regulations. *See* letter from Douglas A. Riggs, General Counsel, Department of Commerce, to the Corps (Aug. 20, 1986) (Riggs letter). The comments provided to the Corps in the Riggs letter recommend that the Corps use NOAA's regulations to define coordination between the Corps' program and the coastal States and discusses "consistent to the maximum extent practicable" consistent with NOAA's existing and proposed regulations. The reference to "appropriations" in the Riggs letter is ambiguous at best, but, if interpreted with the statute and NOAA's regulations at the time, merely mean that if something in appropriations law prohibits full consistency, then the Corps is consistent to the maximum extent practicable. Any ambiguities in the Riggs letter were replaced by the clear language of the CZMA as amended in 1990. Problems arise if Federal agencies use dollar amounts specified in appropriations law as part of the consistent to the maximum extent practicable equation. These problems are: (1) The CZMA Presidential exemption in CZMA § 307(c)(1)(B) is the only express exemption due to lack of appropriation amounts (even then, the appropriations needed for full consistency would have to be specifically requested by the President as part of the budgetary process, and Congressional appropriations would have to specifically exclude from funding the cost of being fully consistent); (2) appropriations laws often provide little guidance as to how funds are to be used; and (3) the CZMA mandates that State enforceable policies are substantive requirements. Sometimes appropriations are insufficient due to inadequate planning, failure to include the cost of CZMA compliance in a budget request, or insufficient funds from other sources. The solution is to ensure that Federal agencies plan and budget for full consistency early in the scoping process for an activity and to include specific costs for full consistency in their budgetary process.

NOAA believes the meaning of section 930.32(a)(3) is clear and has not added the word "only." NOAA has not replaced "should" with "shall" when discussing the admonition for Federal agencies to plan and budget for the costs of being consistent with State policies as there is no basis in the statute for NOAA to impose such a directive. The statute requires the Federal agency to be consistent to the maximum extent practicable with enforceable policies. How a Federal agency does this and how it funds such consistency is determined by other Federal law or each agency's planning, budgetary and policy-making processes. The language of this section is clear regarding appropriations and consistency. There is no contradiction as the section merely acknowledges that appropriation laws are Federal law which may contain specific legal prohibitions to full consistency. Absent such specific prohibitions, the Presidential exemption is the only provision which may be used by a Federal agency to make a finding that a lack of funds prohibits full consistency.

Section 930.32(b) clarifies that in an emergency, or other similar unforeseen circumstance, the Federal agency must still adhere to the consistency requirements, to the extent that exigent circumstances allow. For example, a Federal agency, responding to an emergency, must still provide a consistency determination to the State agency, if time allows. If the time frame for responding to an emergency is too short for a consistency determination, the Federal agency should coordinate with the State agency to the extent possible. To avoid uncertainty in these instances, the Federal agency and State agency may mutually agree to emergency response planning prior to an actual emergency, or develop expedited procedures or a general review for reasonably foreseeable emergency situations and activities. The phrase "exigent circumstances" is used since many agencies respond to emergencies, but they may not be mandated by law to respond within a certain time frame. Thus, their rapid response may be determined by the emergency nature of the activity (*i.e.*, the exigent circumstances), not their discretionary authority. Several State agencies commented that this section needs to be clearer regarding Federal agency responsibilities to ensure that Federal agencies deviate only when there is a true emergency and that even when there is an emergency, the Federal agency still complies with the consistency requirements if the action continues after the emergency is past. NOAA agrees that this section needed revision to better reflect the

"emergency" nature of deviating from consistency. The consistency requirements should not be set aside unless absolutely necessary and if an emergency arises, then consistency should be adhered to once the emergency passes if there is still an activity occurring. NOAA has made corresponding changes to this section.

Section 930.32(c) addresses national security activities that are "classified." The 1990 changes to the CZMA make it clear that all federal activities are subject to the consistency requirement. Thus, a classified activity that will affect coastal uses or resources is subject to the consistency requirement unless exempted by the President under CZMA § 307(c)(1)(B)). However, under the consistent to the maximum extent practicable standard, the Federal agency need only provide project information that it is legally permitted to release. Despite the fact that a Federal agency may not be able to disclose certain project information, the Federal agency must still conduct the classified activity consistent to the maximum extent practicable with the management program. Concerned management programs may want to consider developing general consistency agreements with relevant Federal agencies for classified activities. The definition of "classified" is adopted from the Freedom of Information Act. Information concerning the national defense or foreign policy is protected from disclosure provided it has been properly classified in accordance with the substantive and procedural requirements of an executive order. As of October 14, 1995, the executive order in effect is E.O. 12,958, 3 CFR 333, reprinted in 50 U.S.C. § 435 note (1994). Generally, it is preferable, however, not to identify the particular executive order in the regulations, because it may be supplanted by a new order and courts have held that agencies should always apply the executive order in effect at the time the classified determination is made—*i.e.*, an agency does not have to go back through all of its old information and reclassify it pursuant to the latest executive order. One commenter said the definition of classified activity was too broad and that the rule should encourage the use of qualified third parties to review classified materials. NOAA does not agree that the language of the subsection is over broad. The subsection adequately instructs Federal agencies to withhold only classified material. NOAA agrees that using a qualified third party to review classified material is appropriate where both the Federal agency and State agency agree.

Section 930.33(a)(1) clarifies that effects on any coastal use or resource are not limited to environmental effects and that a review of relevant management program enforceable policies is necessary to determine whether the activity will affect any coastal use or resource. Two commenters recommended that NOAA add language that an activity has coastal effects if it initiates actions leading to effects (so-called "chain of events" language) and that NOAA add language regarding State-Federal consultation. NOAA has added the chain of events language from section 930.31(a) to this section as well. The sentence regarding consultation with State agencies is not added as the regulations contain sufficient direction for Federal agencies to consult with State agencies.

Section 930.33(a)(2) clarifies when federal consistency does not apply to a Federal agency activity. If there are no effects on any coastal use or resource and a negative determination is not required, then the Federal agency need not provide anything to the State. Several States and the environmental groups commented that Federal agencies should consult with State agencies even when there are no coastal effects or to provide a negative determination. NOAA added the phrase "Federal agency activity" to distinguish this section from the need to consult with State agencies for development projects. The other comments are not accepted, because the intent of this section is to clarify when Federal agencies must consult with State agencies. The CZMA does not require Federal agencies to coordinate with State agencies for activities that do not have coastal effects. To require coordination for such activities would be contrary to the CZMA, unreasonable and place an enormous burden on the Federal agencies with little or no benefit to management programs. NOAA also believes it would also be unwise to "encourage" such unnecessary coordination. The regulations do require that a Federal agency provide a State agency with a negative determination in certain circumstances, and this has been retained in the revised regulations.

Section 930.33(a)(3) provides a process whereby State agencies and Federal agencies can more efficiently address "*de minimis*" activities. *De minimis* activities cannot be unilaterally excluded from the Federal consistency requirement. Two Federal agencies commented that this section will be very useful, but suggested NOAA use a different word than "trifling." Another Federal agency commented that *de minimis* activities should be excluded, by rule, from the consistency requirement. State commenters supported the section with suggested wording changes. One environmental group commented that *de minimis* activities should only be excluded after opportunity for public comment. Other environmental groups opposed this section as contrary to Congressional intent that no activities be excluded that have coastal effects. These groups also asked that public comment be provided for if the section were retained.

NOAA has replaced the word "trifling" with "insignificant" and has also clarified that *de minimis* applies to activities with insignificant direct and indirect coastal effects. While the use of this section will be limited to activities with little or no coastal effect, NOAA agrees that States need to provide for public input before excluding such activities. NOAA believes that the CZMA provides States with the flexibility to exclude such activities with insignificant effects, by agreement with Federal agencies and with opportunity for public input. NOAA intends to foster efficient and effective administrative mechanisms. This section allows States to do that.

If Federal agencies cannot unilaterally exclude their activities from consistency, neither can NOAA on its own, by rule, exclude activities. The 1990 amendments to the CZMA clearly require that federal actions are subject to consistency if they affect coastal uses or resources. There is no distinction as to the magnitude of effects. Seemingly minor effects may have substantial coastal effects when cumulative and secondary effects are considered. Congress specifically recognized this in 1990. Conference Report at 970–72. There are several problems with listing or mandating a *de minimis* exception, as suggested by the comment. As the court noted in *Environmental Defense Fund* v. *EPA*, 82 F.3d 451 (D.C. Cir. 1996), *modified* by 92 F.3d 1209 (D.C. Cir. 1996), "[t]he ability to create a *de minimis* exemption is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design. * * * Of course, * * * a *de minimis* exemption cannot stand if it is contrary to the express terms of the statute." The express terms of the CZMA are that consistency applies to "each" federal activity "affecting" "any" coastal use or resource. Neither the CZMA nor the Conference Report specifically authorize a *de minimis* exception. Conference Report at 970–972. Rather, the Conference Report provides persuasive

authority regarding legislative design: "effects" are to be construed broadly and include reasonably foreseeable direct and indirect effects. Further, Congress amended the CZMA in 1990 to specifically guard against Federal agencies exempting their activities. Thus, any attempt to address *de minimis* activities must be done cautiously and only with the concurrence of the State agency. Finally, many States are concerned with the cumulative effect of seemingly *de minimis* activities. States are not only concerned with resource protection issues, but ensuring that their efforts to address *de minimis* activities through other planning and permitting activities are not compromised by exempting other *de minimis* activities.

The CZMA, however, allows States and Federal agencies to agree to address *de minimis* activities in a flexible manner. The proposed revisions do not provide detailed definitions of *de minimis* activities. Rather, OCRM proposes some general guidelines and then leaves it to the Federal agency and States, with opportunity for public comment, to agree as to what is *de minimis*.

Section 930.33(a)(4) allows State agencies and Federal agencies to mutually agree to exclude environmentally beneficial activities from further State agency review. Two commenters said that environmentally beneficial activities should not be excluded from review, that public comment is needed and that the section should be deleted. NOAA believes that States and Federal agencies should have the flexibility to agree to exclude activities from consistency review that will be beneficial to the environment. This is consistent with the CZMA's directives regarding administrative efficiency and effectiveness. *See* CZMA § 303(2)(G), (H) and (I). NOAA has clarified that environmentally beneficial refers to the protection and restoration of natural resources of the coastal zone. NOAA also recognizes the importance of such decisions to the public and has specifically required that any such exclusion requires public notice and comment pursuant to CZMA § 306(d)(14).

Section 930.33(c)(2) is removed. Outer continental shelf (OCS) oil and gas lease sales are Federal agency activities and are subject to the CZMA consistency requirement. *See* Sections III and IV of this proposed rule. Likewise, pre-lease sale activities are also subject to the consistency requirement if coastal effects are reasonably foreseeable. *See* 44 Fed. Reg. 37154 (comment to section 930.71); Letter from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Dept. of Justice, to C.L. Haslam, General Counsel, U.S. Dept. of Commerce and Leo M. Krulitz, Solicitor, U.S. Dept. of the Interior (Apr. 20, 1979).

Section 930.33(d) clarifies the CZMA federal consistency "effects test." Early Federal-State coordination is emphasized to reduce conflict, build public support, provide a smooth and expeditious federal consistency review, and to help Federal agencies avoid costly last minute changes to projects in order to comply with management program enforceable policies. The earlier the coordination, the less likely it is that conflict will arise. Early coordination also enables a Federal agency to address coastal management concerns while the agency still has the discretion to alter the activity and before substantial resources have been expended.

Section 930.34 is replaced by a new section 930.34, which contains some of the information from the original section 930.34. Other parts of the original section 930.34 are moved to section 930.36.

Section 930.34(a)(2) encourages Federal agencies and State agencies to use existing procedures to coordinate consistency reviews. However, for permit requirements in management programs that are not required of Federal agencies by federal law other than the CZMA, the Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied. NOAA has encouraged the practice of management programs using State permitting procedures as an administrative convenience to process Federal agency consistency determinations under CZMA § 307(c)(1) and (2). This results in efficient State consistency reviews by taking advantage of existing review procedures otherwise applicable to permitting actions. This new section is based on a comment in the original 1979 regulations, 44 Fed. Reg. 37147.

There were various comments on section 930.34(a) regarding a description of the nature of coordination being recommended, mandating early coordination, cross-referencing the section to section 930.36(b) and section 930.39, the meaning of the removal of the word "directly," standardizing notification and response procedures, and adding "cumulative effects" to the section. NOAA has not made any changes based on these comments. The regulations should not specify the nature of the coordination recommended as States and Federal agencies should have flexibility to determine how best to conduct such coordination. NOAA cannot require early coordination. If a State has problems conducting consistency within the specified time periods, then the State needs to make changes to State laws or processes. The State could also develop an MOU with particular Federal agencies. Cross references to other sections are redundant and not necessary. As stated earlier, all references to coastal effects refers back to the definition in section 930.11(g), which includes reasonably foreseeable direct and indirect (cumulative and secondary) effects on coastal uses or resources.

Section 930.34(b) is moved to section 930.36(b) and amended to clarify that the Federal agency must provide a consistency determination to the State while the Federal agency still has the ability to alter the activity to address management program policies.

Sections 930.34(b)(2) and (c) is deleted, with parts of these sections moved to new section 930.34(c). These sections are confusing and are not needed, because the listing provision for Federal agency activities is a recommendation and not a requirement and Federal agencies must provide a consistency determination to applicable States for activities with coastal effects regardless of whether the State has listed the activity. One commenter said that the State agency should provide for public comment before an activity is listed or de-listed. Public comment is already provided for when the State proposes to submit a listing or de-listing to NOAA as a program change, under 15 CFR part 923, subpart H.

Other comments were made on section 930.34(c) by two Federal agencies and several State agencies requesting clarification and changes to unlisted Federal agency activities. In response, NOAA added language to subsections (b) and (c) to clarify that listing of Federal agency activities is optional. Thus, time limits for State agency notification of unlisted Federal agency activities are not appropriate since a Federal agency is required by statute to provide a consistency determination when coastal effects are reasonably foreseeable. In some cases, the Federal agency may not be aware of its CZMA responsibilities and NOAA cannot, by rule, remove the consistency requirement when there may be coastal effects. If a Federal agency actually makes a determination of no effects, in many cases a negative determination will be required so that the State will receive notice with attendant time frames. If a negative determination is

not required, and the Federal agency made a CZMA determination of no effects, it may so notify the State agency as a matter of comity and improved coordination. Previous language is not retained as it was confusing. Consistency is an affirmative duty for Federal agencies and, as such, the State agency listing procedure is not mandatory.

Section 930.34(d) encourages Federal agencies to seek assistance from the State agency in its determination of effects and consistency. At a minimum, State agencies must be able to provide Federal agencies with the applicable enforceable policies. Because identifying a State's enforceable policies can be difficult, Federal agencies noted the importance of this provision. Also, providing the Federal agency with the applicable policies will help focus the Federal agency's efforts on the State agency's concerns. One State agency commented that identifying enforceable policies could be problematic, because a State agency may fail to identify all applicable policies or the Federal agency may overlook policies. One State agency commented that State agencies should have flexibility to decide how to offer assistance, and one commenter said that the public or local governments should be able to identify additional policies.

NOAA did not change the rule based on these comments. The statute and regulations clearly require Federal agencies to be consistent with all applicable enforceable policies, including those that may have been overlooked at one time. Moreover, the regulation already addresses early identification of enforceable policies by stating that such identification is: "based upon the information provided to the State agency at the time of the request."

The statute and regulations are clear that the Federal agency prepares the consistency determination. If a State does not want to assist the Federal agency in the preparation, then the State loses a good opportunity to ensure that all of its relevant policies are considered and accurately interpreted. Further, NOAA believes that it is the State agency's responsibility to be able to accurately and completely identify its enforceable policies. The implementation of federal consistency at the State level is solely the responsibility of the State agency. Neither the public nor local governments can identify, or interpret, applicable management program enforceable policies for federal consistency purposes. *See* sections 930.6 and 930.11(o) (for responsibilities and definition of the State agency), and response to the comment regarding section 930.6.

Section 930.35 applies to negative determinations and clarifies existing requirements for negative determinations. Various comments were made regarding the State lists and when a negative determination should be provided. NOAA responded by adding a reference to the list in section 930.34(b). The word "relevant" is removed. NOAA has re-inserted the language from existing section 930.35(a)(3). NOAA had previously proposed to eliminate this subsection as not used and redundant. However, States provided persuasive information and examples that demonstrated that this section is used often, and used differently than the other requirements for negative determinations, and provides States with an effective notification of Federal agency activities. A consistency determination is not required if a State agency objects to a negative determination. The determination of coastal effects is made by the Federal agency and even if a State objects, the Federal agency may still rely on its no effects determination and proceed with the activity. In such cases, State and Federal agencies may enter into mediation to resolve the matter, or the State may litigate. NOAA cannot require a Federal agency to provide a consistency determination or a negative determination prior to the 90-day notification requirement. The regulations already contain sufficient encouragement for Federal agencies to consult with State agencies prior to the 90-day period and early in the planning phase of a Federal agency activity.

Section 930.35(b) clarifies the information requirements for a negative determination. A negative determination, by definition, is a finding of no effects. Thus, the information provided to the State agency for a negative determination may not be as substantial as that provided for a consistency determination. One Federal agency commented that it opposed the need to provide an evaluation of enforceable policies as part of its negative determination. A Federal agency's review of a State's enforceable policies is essential for determining coastal effects. This is emphasized in changes to section 930.33(a)(1) (Identifying Federal agency activities affecting any coastal use or resource).

Section 930.35(c) clarifies that if a State agency wishes to disagree with a Federal agency's negative determination, it must do so within 60 days or its concurrence is presumed. Public notice under CZMA § 306(d)(14) is not required for State agency review of negative determinations since negative determinations are not consistency determinations as contemplated by the Act. This section also clarifies that, if a Federal agency were to agree that coastal effects are reasonably foreseeable and that its negative determination was not correct, then the State agency and Federal agency may agree to an alternative schedule to promote administrative efficiency. One Federal agency objected to applying the 90-day statutory notification period and the 60-day State agency response period to negative determinations. Another Federal agency asked that the section be clarified regarding State lists and the postponement of the activity by the Federal agency. Several States commented that Federal agencies should be required to postpone action until disagreements have been resolved. One commenter and the environmental groups commented that States should provide for public comment of the State agency's review of a negative determination. NOAA responded by adding language to subsection (c) to clarify that State agencies are not obligated to respond to a negative determination. As such, States are not required to provide for public participation for negative determinations under CZMA § 306(d)(14). A State could acquiesce in all negative determinations that it receives without providing any review or response. It is simply an acknowledgment of the Federal agency's determination that its activity will not have coastal effects, and that, therefore, the activity is not subject to the consistency requirement. If a State agency believes that the activity will have coastal effects and the Federal agency agrees, then the Federal agency would provide a consistency determination, which would require the State agency to provide for public participation in the State agency's review of the consistency determination. To clarify this, the final clause of the subsection from the proposed rule is deleted as it does not matter whether a new 90-day clock is started or whether an alternative schedule is agreed upon for a consistency determination, public participation would be required.

To be consistent with the change to § 930.43(d), "should postpone" is changed to "should consider postponing." A Federal agency cannot be required to postpone final action past the 90-day period. If a Federal agency

maintains that coastal effects are not reasonably foreseeable, and has met the procedural requirements of these regulations, then the Federal agency has fully met its consistency responsibilities. If a State disagrees with a negative determination, it can seek mediation where the Federal agency might agree to postpone action, or sue the Federal agency for making an arbitrary and capricious finding that coastal effects are not reasonably foreseeable. The regulations already require that a negative determination be submitted at least 90 days prior to agency action. NOAA does not intend to disturb this long-standing provision. This is based on the statutory requirement for consistency determinations since a Federal agency could determine, after input from a State, that the activity does in fact have coastal effects. The new review period, which is reasonably based on the review periods for consistency determinations, is provided to ensure that States respond in a timely fashion, if a State elects to respond. These review periods will actually provide a Federal agency with a more timely response to a negative determination, *i.e.*, within 60 days rather than 90 days. As States are not required to list Federal agency activities, neither can they be required to list activities for which negative determinations have been prepared in the past. A Federal agency could request that State do so, and it would be in the best interest of the State to provide such information, but it cannot be required.

Section 930.36 is moved to section 930.35(d). Section 930.36 incorporates existing sections 930.37 and 930.34(b) and elaborates on consistency determinations for proposed activities.

Section 930.36(c) clarifies the use of general consistency determinations. Federal agencies may provide State agencies with general consistency determinations for repetitive activities in the same manner that they provide single consistency determinations. A general consistency determination is still only allowed in a limited number of cases where the activities are repetitive and do not affect any coastal use or resource when performed separately. NOAA has added greater flexibility for State agencies and Federal agencies to mutually agree to use general determinations. The primary purpose of a general determination is for repetitive activities. Allowing a Federal agency to unilaterally provide a general determination for non-repetitive activities that have cumulative effects would be inconsistent with the 1990 CZMA changes. A general consistency determination may be used for de minimis activities only when the Federal agency and State agency have mutually agreed to do so. The terms "periodic" and "substantially similar in nature" are proposed to be deleted as the concept of "repetitive" includes these terms. One Federal agency commented that the section was vague. Several States commented that coordination with States prior to submitting a general determination should be required. Periodic consultation on a general consistency determination will vary depending on the nature of the Federal agency activity. Thus, NOAA is leaving this phrase unchanged and allowing States and Federal agencies to develop consultation periods. As is the case for non-general consistency determinations, Federal agencies cannot be required to consult with States prior to the 90-day period. It is certainly in the interest of all concerned to consult prior to submitting a general consistency determination and the regulations contain ample encouragement for early coordination.

Section 930.36(d). One Federal agency commented that a State agency should not be able to re-review earlier phases of an activity with which the State concurred. The regulation is clear that a consistency determination will be provided for each phase. By definition, the State then reviews and objects or concurs with each determination. The State cannot revisit its earlier concurrence. If the activity is substantially changed then the later phased consistency determination should cover the changes from the previous phase or new section 930.46 may require a supplemental determination.

Section 930.36(e) describes a method to efficiently address consistency requirements for a federal activity that is national or regional in scope. For example, a federal activity, such as a rulemaking or planning activity, may apply to more than one coastal State where coastal effects are reasonably foreseeable. Providing each State with a separate consistency determination may be difficult, inefficient and not cost effective, even with early coordination. The proposed regulation provides States and Federal agencies with the means to effectively coordinate, ensure adequate consideration of management programs, and provide an efficient, cost effective and timely method for meeting the consistency requirement. Two Federal agencies expressed concerns on whether national rulemaking or plans should be subject to consistency. One Federal agency commented that it was unclear how the process differed for national consistency determinations. One State commented that a State should be able to require additional information to start the consistency review period. One commenter said that a national consistency determination should require essentially the same information as that for a consistency determination submitted to one State.

NOAA disagrees that this subsection will not facilitate the development of consistency determinations that apply to multiple States. This section allows Federal agencies to send one consistency determination applicable to all States, using one discussion for coastal effects and enforceable policies that are in common among the States. There would be individual State sections in the consistency determination only for those State effects and policies that are not in common. The second sentence in subsection (e)(2) has been amended to clarify this. As discussed in response to comments on section 930.31, the CZMA makes no distinction between Federal agency activities that are local in scope and those activities, regulations, and plans, that are national or regional in scope. Whether these national activities are subject to consistency is based on whether coastal effects are reasonably foreseeable as a result of the activities. NOAA has not added language regarding additional information. Such a circumstance is already addressed in the regulations. Section 930.39 describes the content of a consistency determination. If the information required by section 930.39, in conjunction with section 930.36(e), is not provided, then the Federal agency has failed to submit a complete consistency determination and, thus, the 60-day State agency review period has not started and will not start until the information is provided. To require separate consistency determinations under this section would defeat the purpose of this section.

Section 930.37(c) is moved to section 930.36(d) and amended to clarify that phased consistency determinations refers to development projects and activities. Section 930.37 clarifies coordination of consistency with the use of NEPA documents to address consistency requirements. Federal agencies are not required to address consistency requirements in NEPA documents, but may use NEPA documents, at the Federal agency's discretion, as an efficient and effective mechanism to address the consistency requirements. The use of NEPA documents for consistency purposes does not, however, mean that a NEPA document necessarily satisfies all

consistency requirements. The Federal agency must still comply with the applicable sections in 15 CFR part 930, subpart C. Section 930.37 provides flexibility for States and Federal agencies to agree to different NEPA/consistency review procedures. Coordination between States and Federal agencies on federal consistency requirements should occur at an early stage, usually at the draft environmental impact statement (EIS) stage, and before the Federal agency reaches a significant point in its decision making and while the Federal agency still has discretion to modify the activity. A final EIS is a significant point in an agency's decision making and further modifications are much harder to do and require more resources. It is more efficient and in keeping with the intent of consistency for State agencies and Federal agencies to coordinate at the draft EIS stage. Arrangements should be made to do supplemental consistency reviews in case the project substantially changes in the final EIS or Record of Decision. Several commenters noted how useful this section will be regarding NEPA and CZMA coordination. One commenter, however, asserted that the section is flawed and is contrary to NEPA. NOAA disagrees.

NOAA has not added language to the rule regarding when to do consistency reviews in conjunction with NEPA, as many Federal agencies and States earlier commented that they want the flexibility to work out the timing of consistency and NEPA among themselves. Thus, the discussion above regarding draft EIS documents remains. This section is not flawed, and in fact, is consistent with and complements NEPA and CEQ's regulations. The CEQ regulations referred to in the comment discuss integrating NEPA, not the CZMA, into a Federal agencies decision making process. In addition, NEPA and the CZMA have different "effects tests." Thus, it may be that a NEPA document may not contain needed CZMA information or that a conclusion regarding effects for NEPA purposes will not satisfy the CZMA effects test. What this section does do is encourage government efficiency and reduce paperwork by specifically encouraging Federal agencies to use NEPA as a vehicle to address all CZMA consistency issues, as well as NEPA issues in the same environmental review document.

Section 930.38. One State asked if program changes, including additions to management programs through the incorporation of a State's Coastal Nonpoint Program, applies to this section. NOAA's response is that all enforceable policies that become part of a management program through program changes, including the program change process for Coastal Nonpoint Programs, apply for federal consistency purposes once approved by NOAA.

Section 930.39(a) is amended to clarify that the Federal agency's evaluation of the management program's enforceable policies is included in the consistency determination, and that the Federal agency's consistent to the maximum extent practicable justification accompanies the consistency determination, if the Federal agency is aware that its activity will not be fully consistent with the management program's enforceable policies. Section 930.32(a)(2) already requires a written justification to the State agency describing the legal impediments to full consistency. The State agency needs to know this information as soon as the Federal agency is aware of an inconsistency. Thus, when a Federal agency knows that it is not fully consistent prior to issuing its consistency determination, it should provide its justification to the State agency as part of its consistency determination. There are times, however, when the Federal agency believes it is fully consistent and does not learn that it is not fully consistent until after submittal of the determination. In such cases the Federal agency needs to provide its justification to the State agency as soon as it learns of the activity's inconsistency, in any event before the end of the 90-day period. The last sentence in subsection (a) is derived from the last sentence of former section 930.34(a). One Federal agency commented that this section should allow for the Federal agency's evaluation of enforceable policies in documents accompanying the consistency determination. NOAA agrees. The evaluation of relevant enforceable policies requires that the State agency identify those policies upon request. The regulations already allow a Federal agency to provide its determination in any manner it chooses. Thus the evaluation could be in an accompanying NEPA document if the document was provided to the State agency along with the consistency determination. The section has been amended to more clearly address this.

Section 930.39(b) is amended to conform to CZARA. Federal agencies are responsible for evaluating the consistency of nonassociated facilities or any other indirect effects if the effects are reasonably foreseeable. The last clause is deleted since it is inconsistent with CZARA and the effects test and is covered under the proposed new definition of effects. One Federal agency commented that this section incorrectly expands the consistency requirement to the effects of activities. Consistency is based on the effects of Federal agency activities. Thus, there is no expansion of consistency beyond the statutory requirement. If a Federal agency did not consider the effects from its activity, there would be no basis on which to make its consistency determination or negative determination. The last clause is deleted since it is inconsistent, perhaps redundant, with the coastal effects definition, particularly the clarifications made by CZARA. While the CZMA does not confer upon Federal agencies jurisdiction to regulate activities beyond that granted to the Federal agency by its authorities, under the CZMA "effects test" Federal agencies are responsible for evaluating the consistency of nonassociated facilities or any other indirect effects if coastal effects are reasonably foreseeable. This is now more appropriately covered under the new definition of effects contained in section 930.11(g).

The last sentence of section 930.39(c) is deleted, because it is redundant with the rest of section 930.39(c). One Federal agency commented that adequate consideration is vague. NOAA has deleted "adequate" as the word is vague and "consideration" provides sufficient guidance to Federal agencies regarding non-enforceable policies. By definition, a Federal agency does not have to be consistent with non-enforceable policies, but, hopefully, will at least consider such policies and satisfy the policies if possible. If a management program does not have an applicable enforceable policy, then the Federal agency need not evaluate any corresponding coastal effects. However, experience has shown that it is very rare that a management program does not have some applicable enforceable policy, albeit a broadly applicable policy.

Section 930.39(d) is amended to clarify that if a Federal agency applies its more restrictive standards, it must, under the consistent to the maximum extent practicable standard, notify the State agency that it is proceeding with the activity even though the more restrictive federal standard may not be consistent with the State standard.

Section 930.39(e) clarifies the relationship between State permit requirements and the federal consistency requirements. Federal agencies must obtain State permits (including management program permits) when required by Federal law (other than the CZMA). For example,

the Clean Water Act (CWA) requires Federal agencies to obtain State permits and certifications that regulate and control dredging and water pollution within the navigable waters of the State. *See* 33 USC §§ 1323, 1341, 1344(t); *Friends of the Earth* v. *Department of the Navy*, 841 F.2d 927 (9th Cir. 1988). However, in some instances, there may be an issue as to the scope of a State or local permit that a Federal agency is required to obtain by another federal law. To insure that such a requirement is "not enlarged beyond what the language [of the federal law] requires," *Department of Energy* v. *Ohio*, 503 U.S. 607 (1992), *citing*, *Eastern Transportation Co.* v. *United States*, 272 U.S. 675, 686 (1927), and to minimize conflicts in situations where the scope of the State permit requirement is an issue, Federal agencies or States should consult with the U.S. Department of Justice on the scope of the federal law. When a Federal agency is not required to obtain a State permit, the Federal agency must, pursuant to the CZMA, still be consistent to the maximum extent practicable with management program enforceable policies, including the standards that underlie a State's permit program.

Section 930.40 is amended to simplify the reference to section 930.39, by deleting subsections (b) and (c) and adding a reference to section 930.39 at the end of section 930.40.

Section 930.41(a) and (b) is amended to simplify terms used in these regulations, extend the time for State agency review of consistency determinations from 45 to 60 days, and clarify that State agency objections must be received by the last day of the 60-day review period (or last day of an extended period). Presently, a State response to a Federal agency's consistency determination is either an agreement or disagreement, and a State agency's response to an applicant's consistency certification for a federal license or permit activity is either a concurrence or an objection. The difference is largely semantic and confusing. Thus, all State responses to any consistency determination or certification are now either a concurrence or an objection. The intent of the change regarding the State agency's response is to clarify when the Federal agency may presume concurrence.

The time period for a State agency's response to a consistency determination would be increased from 45 days to 60 days to allow States to provide adequate public participation as required by CZMA § 306(d)(14) (added in 1990 by CZARA). Federal agencies must provide consistency determinations to State agencies at least 90 days prior to federal action. CZMA § 307(c)(1)(C). Currently, NOAA regulations require States to respond within 45 days of receiving the determination. Section § 930.41(a). If a State needs more time, a Federal agency must allow one 15-day extension. Section 930.41(b). These regulatory requirements were promulgated prior to the addition of CZMA § 306(d)(14). OCRM's Final Guidance implementing CZMA § 306(d)(14) did not change these requirements. 59 Fed. Reg. 30339. It will be difficult for many States to meet the public participation requirement under State law and still respond within 45 days. The likely result of this new requirement is that for most reviews of consistency determinations, States will need at least one 15 day extension, resulting in at least a 60-day review. Thus, in order for States to develop meaningful public participation procedures, and to provide greater predictability for Federal agencies as to when a State agency's consistency review will be completed, NOAA has provided States with a 60-day review period (extension provision remain the same). This should alleviate the inconsistency between current regulations and the CZMA § 306(d)(14) requirement. The total time allowed before a Federal action may commence (90 days) does not change.

Two Federal agencies and one interest group commented that they disagree with extending the State agency's response time to 60 days. One Federal agency commented that responses should be received by the last day and not postmarked. Several States commented on the wording of the section related to "postmarked" as provided for in the proposed rule. NOAA agrees that using "postmarked" may create confusion and will not provide the notification deadline that is needed for consistency reviews and which are contemplated by the statute and which has been the long-standing interpretation of the existing regulations. By statute, there must be a date whereby concurrence can be presumed. NOAA also agrees that the use of fax machines and email make it much easier for the State agency to send its response, and the Federal agency to receive it by the deadline. This change is also reasonable given the longer State agency review period for Federal agency activities. Thus, NOAA has changed "postmarked" to "receipt" in sections 930.41(a), 930.62(a), 930.78(b) and 930.155(d).

NOAA does not believe that the reduction in time between a State agency's response and the end of the 90-day period will substantially alter any necessary discussions between the State and the Federal agency. Experience shows that States and Federal agencies usually know before a State response if there is a problem. Usually a Federal agency will delay starting its activity past the 90 days to try and reach agreement with the State. If the Federal agency cannot do this, and it is consistent to the maximum extent practicable, then it can proceed at the end of the 90-day period.

The word "immediately" is retained since the Federal agency is under the impression that the 60-day review period has begun and needs to know as soon as possible if its determination and accompanying information is not complete. Even two weeks may be too long a time. There should not be a problem with networked management programs, as a completeness review is minimally substantive and should just be making sure the information required by section 930.39(a) is included. The information may not have everything the State wants, but that is not what is required by section 930.39(a) to start the review period.

Section 930.41(c) is amended to clarify that the 90-day period begins when the State agency receives the determination and that Federal agency action cannot commence prior to the end of the 90-day period unless the State agency concurs or the Federal agency and the State agree to a shorter period.

Section 930.41(d) is added to clarify that States cannot unilaterally place an expiration date on their concurrences. States must decide if they can concur with a consistency determination absent an agreement on time limits. One Federal agency commented that the language of the section is vague. States commented that the section may not be necessary and could be covered by section 930.4 (conditional concurrences). The word "modifications" has been inserted to clarify that a later action involving a previously reviewed activity could be a later phase or a modification. A cross-reference to supplemental consistency determinations under section 930.46 is also added.

There are several reasons why time limits are not acceptable. First, the CZMA requires a Federal agency to provide a consistency determination 90 days before final Federal agency approval. CZMA § 307(c)(2). The CZMA does not allow States to re-review the same activity. Second, State consistency decisions and objections must be based on the enforceable policies of a State's management program. A time limit on a

State's concurrence would be based on the possibility that the activity or the State's program would change and not on enforceable policies, as required by the CZMA. Further, State agencies and Federal agencies may agree to a time limit for a State's concurrence, including concurrences for de minimis activities and general determinations. The CZMA does, however, require Federal agencies to carry out each activity in a manner that is consistent to the maximum extent practicable with a State's enforceable policies. Thus, if a project substantially changes between the time that the State reviews the activity and when the activity begins, the Federal agency must provide a new or supplemental consistency determination since the State would not have had the opportunity to review the "new" activity. This is precisely the situation section 930.46 is designed to address. Section 930.46 only applies to previously reviewed activities that have not yet begun and the coastal effects are substantially different then as originally reviewed by the State agency.

Regarding the use of a conditional concurrence under section 930.4 to impose time limits, the CZMA only authorizes one bite of the consistency apple for any particular Federal agency activity. It is a basic consistency requirement that Federal agencies provide consistency determinations for proposed activities and the States review the activity based on the information available at that time. If an activity later substantially changes, the Federal agency may have to provide a supplemental or a phased consistency determination. A conditional concurrence, therefore, cannot be used to provide for subsequent review of the same activity. For the same reasons a "time" condition would also be inconsistent with the CZMA. That is why a State should object rather than issue a conditional concurrence. Thus, NOAA has not cross-referenced section 930.4. If a State agency does issue a conditional concurrence with a time limit, and the Federal agency does not agree, the conditional concurrence automatically becomes an objection. It may also be that the objection would be invalid unless the time limitation has a basis in an enforceable policy. Under the proposed section 930.41(d), a State agency and a Federal agency may agree on a time limitation. The proposed section 930.41(d) provides for instances where a project changes or the effects change.

Section 930.41(e) clarifies that a State agency may not assess the Federal agency with a fee for the State's review of the Federal agency's consistency determination, unless such a fee is required under federal law applicable to that agency. One State commented that fees should be allowed. NOAA disagrees. The CZMA does not require Federal agencies to pay processing fees. OCRM cannot require such fees by regulation. Thus, States cannot hold up their consistency reviews or object based on a failure by a Federal agency to pay a fee. Such a requirement would require a change to the CZMA itself, or other federal laws. This is beyond the scope of these revisions to the regulations.

Section 930.42 is moved to section 930.43. New section 930.42 details the public participation requirement for Federal agency activities. Public participation for a State's review of a Federal agency's consistency determination is required by CZMA § 306(d)(14). *See* NOAA's final guidance on this requirement, 59 Fed. Reg. 30339. The statutory section requires that "[t]he management program provide for public participation in permitting processes, consistency determinations, and other similar decisions." Proposed section 930.42 is sufficiently broad to give States flexibility in developing public participation procedures that meet the intent of § 306(d)(14). NOAA reviews each State's procedures during regularly scheduled evaluations of management programs under CZMA § 312 for compliance with the public participation requirement under § 306(d)(14), and will recommend procedural changes if necessary to meet proposed section 930.42. The purpose of the requirement is to provide the public with an opportunity to comment to the State agency on the program's review of a federal activity for consistency with the enforceable policies of a management program, in addition to commenting on the activity itself. Thus, a Federal agency cannot be required to publish or pay for the notice.

A number of States commented that electronic public notices, including web sites, should be acceptable public notice. Other States had various comments on notice in remote areas, the Federal agency providing names and addresses of interested persons, notice for the affected area, and joint notices. The environmental groups commented that electronic notices should not be a procedural option. Electronic notices cannot be the only form of public notice used. Many people do not yet have ready access to a computer or the Internet. Thus, the regulations have been clarified to exclude electronic notices as the sole notice. They can be used in conjunction with other notices. Electronic means can also be used as the source of additional information since people can use public libraries and other facilities that have Internet access. In very rural areas where there are no local papers or access to State gazettes, etc., the State will have to use its best judgement as to how to adequately notify the public. In remote areas of Alaska, this may mean posting a notice in a Post Office or other public area. The current regulations allow this flexibility. Federal agencies are under no obligation to fulfill the requirements of this section regarding public comment on the State's review of a consistency determination. Thus, the Federal agency is under no obligation to provide names of interested parties as this may result in an expectation, and demand, that the Federal agency do so. NOAA has changed "in the area" to "for the area" as "for" is broader and provides the State with flexibility for providing adequate public notice, as suggested in the comment. However, NOAA reiterates that electronic notice cannot be the sole method of notice to the public. NOAA has included the language encouraging joint notices as this would not impose an additional burden on the Federal agency, and if used, should be a more efficient use of Federal and State resources.

Section 930.42(a) is re-designated as section 930.43(a) and amended to clarify that State objections must be based on the enforceable policies of an approved management program and that the objection letter must describe and cite the enforceable policies, and must state how the federal activity is inconsistent with the enforceable policy. This section also clarifies that the identification of alternatives by the State is optional, but that State agencies should describe alternatives, if they exist.

Sections 930.43, 930.63(b) and (d). One Federal agency commented that the mandatory nature of the current regulations regarding the identification of alternatives by the State agency be retained. Two commenters said that it is not clear what happens when an applicant adopts a State alternative. Several States commented that States should not have to re-design a project through describing alternatives.

While identifying alternatives is useful to States, Federal agencies and applicants, the CZMA does not require that States identify alternatives. The optional nature of alternatives was recognized in the previous regulations by the phrase "(if any)" and is necessary since the identification of an alternative does not remove the State agency's objection. An applicant would always have to go back to the State agency to

have the State agency remove the objection to allow Federal agency approval (unless the applicant appealed the State agency's objection to the Secretary). NOAA also agrees that State agencies should not be responsible for the design of a project, although States should describe alternatives with sufficient specificity to demonstrate their reasonableness. The regulations recognize this in section 930.63(d) by having the applicant determine its alternative options "in consultation with the State agency: * * *" This would allow the State agency to describe an alternative, but would still require the applicant to "design" the alternative and to consult with the State agency on whether the altered project was consistent. Then, when an applicant adopts a consistent alternative, the State would remove its objection and the Federal agency could approve the activity so long as the approval was consistent with the alternative agreed to between the State and the applicant.

Section 930.43(d) clarifies that, in the event of a State objection, the remainder of the 90-day period should be used to resolve differences and that Federal agencies should postpone agency action after the 90-day period, if differences have not been resolved. It also clarifies that, notwithstanding unresolved issues, after the 90 days a Federal agency may only proceed with the activity over a State's objection if the Federal agency clearly describes, in writing, the federal legal requirements that prohibit the Federal agency from full consistency. Several Federal agencies commented that language contained in the proposed rule regarding Federal agency obligations when the Federal agency asserts it is fully consistent was unworkable and not consistent with the statute. Several States commented that clarifying language was needed regarding when and how the Federal agency should submit its consistent to the maximum extent practicable justification. Two States commented that mediation should be required if there is a dispute and before the Federal agency proceeds with the activity. One State commented that the section should include a statement that the State may institute legal action if not satisfied with the Federal agency's response. The environmental groups commented that a Federal agency should not be able to proceed with an activity over a State's objection.

NOAA understands that there may be disagreements between a State agency and Federal agency as to whether a Federal agency is fully consistent with a management program's enforceable policies. This is particularly problematic where the State's policy is broadly worded. A Federal agency activity that is fully consistent and has met the consistency requirements should be able to proceed with the activity. A State agency may object based on its interpretation of its policies. In such cases, the State may be requiring consistency for an interpretation that is not set forth in the enforceable policies. This does not make the enforceable policy invalid, but it does create a factual issue regarding full consistency. In such cases, mediation may resolve the matter, or an MOU developed, as was the case between Alaska and the Forest Service. If this does not work, and the Federal agency elects to proceed with the activity after 90 days, then the State may choose to litigate the question of whether the Federal agency is in fact fully consistent. The section has been modified accordingly.

In response to one comment, NOAA agrees that it is the "Federal agency's belief" that it is consistent that controls its action, and has addressed this comment by including the phrase: "the Federal agency has concluded * * *" NOAA has also added a reference to the new language in section 930.39(a), requiring that the Federal agency's consistent to the maximum extent practicable justification be included in the consistency determination if the agency is aware that its activity will not be fully consistent at the time the determination is submitted to the State agency.

The use of the word "cannot" and the use of the suggested "can" may both cause misunderstanding. The intent of section 930.43(d) is to provide an appropriate mechanism for the Federal agency to examine whether it is prohibited by law from acting in a manner consistent to the maximum extent practicable. To be absolutely clear in this very important, and much discussed section, NOAA has not used "can" and has replaced the word "cannot" with specific language from the consistent to the maximum extent practicable standard in section 930.32.

Mediation under the CZMA and NOAA's regulations is optional and non-binding. NOAA cannot, by rulemaking, require a Federal agency to enter into mediation. Likewise, if a State requests mediation, the Federal agency is not required to participate. As for notice to the Federal agency regarding possible State litigation, a State may always sue a Federal agency under the Administrative Procedures Act. It is not necessary to place such language in this section, although the regulations discuss State enforcement, including legal action, in the new section 930.5.

This section does not refute the basic purpose of the federal consistency requirement. A fundamental component of federal consistency is that a Federal agency, despite a State's objection, may proceed with a Federal agency activity after the 90-day period, so long as the Federal agency describes to the State agency, in writing, the federal legal requirements that prohibit the Federal agency from being fully consistent with the enforceable policies of the State's management program. Section 930.43(d) clarifies this component of the CZMA and existing NOAA regulations. As was suggested by several commenters, the CZMA federal consistency requirement can be thought of as a limited waiver of federal supremacy. (Under Article VI, cl. 2 of the U.S. Constitution, Federal law is the supreme law of the land and State law cannot interfere with the execution of federal law. *See McCulluch* v. *Maryland*, 17 U.S. (4 Wheat) 316 (1819). Congress, as part of its legislative powers, can limit the Federal Government's supremacy and sovereign immunity.) The waiver of federal supremacy in the CZMA is the requirement to be consistent with State management programs. The limits are defined by the consistent to the maximum extent practicable standard and CZMA §§ 307(e) and (f). CZMA § 307(e) requires that the CZMA does not supersede, modify or repeal existing law. CZMA § 307(f) requires that the CZMA shall not affect the pollution control requirements of the Clean Water Act or Clean Air Act. The CZMA § 307(c)(1) requires that federal activities "be carried out in a manner that is consistent to the maximum extent practicable" with the enforceable policies of a State's management program. The phrase "be carried out" implies that the activity may proceed. The qualifier is that the activity must be carried out in a manner consistent to the maximum extent practicable with a State's enforceable policies. Further, the statute expected that federal activities could proceed after 90 days by stating that Federal agencies provide a consistency determination no later than 90 days "before final approval" of the federal activity. Congress stated that it is not anticipated that there will be many situations where as a practical matter a Federal agency cannot carry out its activities without deviating from approved management programs. H.R. Rep. No. 1049, 94th Cong., 2d Sess. 19 (1972). Congress also found that there may be instances where a Federal agency activity cannot be conducted

fully consistent with a State's enforceable policies and may proceed over a State's objection. *Id.* It is precisely this legislative intent that led, in 1979, to NOAA's regulations requiring full consistency unless full consistency is prohibited based upon existing legal authority applicable to the Federal agency's operations. Deviation from full consistency is allowed due to unforeseen circumstances which present a substantial obstacle preventing complete adherence to the management program. Further evidence of Congressional intent regarding whether a Federal agency activity may proceed over a State's objection is found in the different language in the other CZMA federal consistency sections. CZMA §§ 307(c)(3)(A), (B), and 307(d) all specifically prohibit a Federal agency from issuing its approval or funding if a State agency has objected. Because Congress included such clear language in these three other instances, it follows that Congress intentionally excluded this meaning from other sections, *i.e.*, CZMA § 307(c)(1). If Congress intended to require that a Federal agency activity proceed only with State agency agreement it would have said so.

The Presidential exemption contained in CZMA § 307(c)(1)(B) does not support the view that Federal agencies may not proceed over a State's objection. The Presidential exemption was added to address a situation where a State agency disagrees with a Federal agency's consistency determination, resolution by mediation is not likely, the State agency sues the Federal agency, and the Court finds that the activity is not in compliance with a State's enforceable policies. In those instances, the Secretary may request that the President exempt the specific activity from consistency if the President finds that the activity is in the paramount interest of the United States. The section was added to be consistent with similar extraordinary remedies of other federal statutes and to reinforce the point that no Federal agency activities are categorically exempt from the consistency requirement. Congress would not have couched a requirement that Federal agencies cannot proceed over a State agency's objection in an elaborate Presidential exemption.

NOAA's regulations further define the long-standing interpretation that Federal agencies may proceed with an activity despite a State agency's objection. NOAA's definition of consistent to the maximum extent practicable requires full consistency "unless compliance is prohibited based on the requirements of existing law applicable to the Federal agency's operations." Section 930.32(a)(existing). This interpretation is also supported by a comment to the original regulations where NOAA stated that "Federal agencies are encouraged to suspend implementation of the activity beyond the 90-day period pending resolution of the disagreement." Section 930.42(c) (44 Fed. Reg. 37149, Monday, June 25, 1979) (emphasis added). Thus, if a Federal agency asserts full consistency is prohibited and describes the legal authority which "limits the Federal agency's discretion to comply," the Federal agency may proceed with the activity at the end of the 90-day period. *Id.*; Section 930.34(b) (existing).

Section 930.46 addresses the situation where a proposed activity previously reviewed, but not yet begun, will have coastal effects substantially different than originally described to the management program. A similar section is repeated at the end of subparts D and F. *See* sections 930.66 and 930.101. Two commenters said that the State agency should be required to notify others under subsection (b). Several other States commented that there should be a rebuttable presumption that a project is subject to re-review if the project has not commenced in 5 years. One commenter asserted that this provision would put offshore projects in a never-ending loop of approval and should be re-worked to reduce this uncertainty.

NOAA has not changed the rule, based on these comments. If a proposed project has substantially changed, and the State has not reviewed the changes, then it is a new project, and a new consistency determination is required. Since the consistency test depends on whether coastal effects are reasonably foreseeable, and not on the nature of the activity, substantial new coastal effects would also trigger the consistency requirement. Thus, where an activity has not started, substantial new effects have been discovered, and the State has not had the opportunity to review the activity for consistency in light of these effects, sections 930.46, 930.66 and 930.101 would require a supplemental consistency determination or certification. This is an affirmative duty on the part of Federal agencies and applicants. However, there may be times when Federal agencies or applicants do not provide supplemental consistency statements. In such cases, subsection (b) of these sections allow a State agency to notify the Federal agency or applicant that it believes that a supplemental review is needed. Such notification is at the State agency's discretion, thus "may" is retained and "shall" is not used. States may seek compliance through negotiation, mediation or litigation. This proposed section is similar to NEPA requirements for supplemental statements. *See* 40 CFR section 1502.9(c)(1). NOAA expects that this section will be little used, but where it is used will eliminate confusion as to the consistency process and brings the regulations into conformance with the changes made by CZARA.

NOAA has not added a rebuttable presumption that if a project has not commenced within a certain amount of time, it should be subject to re-review. Time is not the issue here. The intent of this section is not to give the State agency a second bite at the consistency apple, but rather, to give States the opportunity to review substantial changes in the project or foreseeable coastal effects not previously reviewed by the State.

Finally, NOAA rejects the argument that supplemental review will create a never-ending loop of approval. The sections apply only to activities that have not yet begun and which are substantially different than that which the State previously reviewed. Even without these sections, Federal agency activities meeting these two criteria would be required to provide a new consistency determination and for license or permit activities, in many cases applicants would provide a new consistency certification since such changes would require a modification to the federal application that would require consistency review. Regarding offshore projects, a supplemental coordination section is not added to subpart E, since subpart E and the regulations implementing the Outer Continental Shelf Lands Act already contain a detailed process for supplemental consistency reviews when OCS plans have substantially changed. NOAA is not disturbing this existing coordination between the two statutes.

Subpart D—Consistency for Federal License or Permit Activities

Sections 930.50 and 930.51(a) are amended to be consistent with the statutory language referring to "required" federal license or permit activities. A required federal approval means that the activity could not be performed without the approval or permission of the Federal agency. The approval does not have to be mandated by federal law, it only has to be a requirement to perform the activity. One commenter suggested adding additional effects language to section 930.50. Additional effects language is not added to this section, because effects are defined in section 930.11(g), and apply throughout the regulations when discussing coastal effects.

Section 930.51(a) clarifies that a federal lease to a non-federal applicant, *e.g.*, to use federal land for a private or commercial purpose, is a form of authorization or permission under the definition of federal license or permit, with the exception of leases issued pursuant to lease sales, *e.g.*, under the Outer Continental Shelf Lands Act, which are Federal agency activities under 15 CFR part 930, subpart C. One Federal agency commented the definition is extremely broad and that it needs to clarify the application of this subpart to OCS plans. The commenter further states that the regulation seems to ignore the importance of effects when determining whether a federal license or permit is subject to consistency. Finally, this Federal agency comment argued that OCS lease suspensions should not be subject to consistency, and the language regarding "lease sales" should be clarified to distinguish lease sales from leases. One State commented that a "lease" is a form of approval regardless of other applicable federal approvals. One State and another commenter suggested that "right-of-way" permits and "easements" be added to the definition. One commenter urged that a decision that no consistency review will take place should be subject to public comment.

The definition of license or permit has been in place and well-understood for over 20 years. In NOAA's view, an inclusive description of federal approvals is necessary to implement Congress' intent that consistency apply to all federal actions that have coastal effects. The statute is clear that OCS plans, and federal approvals described in detail in such plans, are subject to subpart E, and the section now states this.

The term "federal license or permit" refers to any required federal approval. Whether a license or permit activity is subject to the consistency requirement does depend on whether coastal effects are reasonably foreseeable and which is determined by NOAA either when the State agency lists (*see* section 930.53) a particular federal approval in its management program or when a State agency seeks to review an unlisted activity (*see* section 930.54). The same applies to OCS "lease suspensions." As stated in NOAA's letter to the California Coastal Commission, dated November 12, 1999, OCS lease suspensions are federal license or permits under NOAA's regulations. However, NOAA made no determination whether there were coastal effects resulting from the suspensions at issue and, thus, no determination whether consistency applied. If a State agency were to review a lease suspension for consistency, the State's review would be limited to the effects of the lease suspension itself and any cumulative effects that may flow from the suspension(s). Since a lease suspension is not a renewal of the lease, the State could not review the underlying lease. When requesting a suspension, a lessee is not requesting a re-leasing approval, and MMS does not re-evaluate the lease when granting or directing a suspension. If a lease were to terminate and MMS were to "re-lease" the tracts, then the re-leasing would be subject to consistency under CZMA § 307(c)(1).

In NOAA's November 12, 1999, letter, NOAA concluded that as a general matter, lease suspensions do not affect coastal uses or resources and do not generally authorize activities to occur during the suspension period that can be reasonably expected to affect coastal uses or resources. Therefore, it is highly unlikely that NOAA would approve the listing of lease suspensions in a management program as a federal license or permit subject to consistency, or approve a State agency's request to review a lease suspension as an unlisted activity. In determining whether to approve the review of a lease suspension as an unlisted activity, NOAA would examine the effect of the lease suspension in extending the term of the lease or postponing the coastal effects of the OCS activities to a point in time in the future or such other effects as are reasonably foreseeable from granting of the lease suspension(s). This effects test must be met by the State agency submitting a request to review the lease suspension(s) as an unlisted activity. NOAA cannot completely rule out the possibility that a lease suspension or set of lease suspensions could affect the uses or resources of a State's coastal zone, and thus the CZMA bars NOAA from categorically exempting suspensions from consistency. NOAA also believes that OCS lease suspensions could be removed from possible State agency review under subpart D, if MMS were to describe the expected universe of lease suspensions in detail in the OCS plans. In the alternative, specific suspensions can be addressed between lessees, MMS and coastal States as it was in the Memorandum of Understanding between MMS, Mobil and the State of North Carolina. *See* Appendix I, at I–3, Final Environmental Impact Report on Proposed Exploratory Drilling Offshore North Carolina, August 1990. If MMS were to do this, then a State agency concurrence in an OCS plan under subpart E, would also include concurrence of any lease suspensions granted for the expected reasons described in the OCS plans.

It is not correct to say that OCS activities are not subject to subpart D. It is correct that OCS plans, and federal licenses or permits described in detail in OCS plans, are subject to subpart E. However, subparts D and E are intertwined, as provided for in the statute (CZMA § 307(c)(3)(B)) which subjects subpart E reviews to CZMA § 307(c)(3)(A). Thus, OCS plans and licenses or permits described in detail in the plans are subject to subpart E, except for some information/procedural items. OCS related federal license or permits not described in detail in OCS plans are subject to subpart D and lease sales themselves are subject to subpart C.

NOAA agrees that the relationship of "leases" and "lease sales" could be clearer and has clarified that the term lease does not include leases issued pursuant to OCS lease sales. NOAA also agrees with the comment that leases that are federal license or permits as defined in this section are federal approvals regardless of whether there are other federal approvals required and has deleted the language referring to other approvals.

Rights of way and easements are not specifically included as the definition is sufficiently broad to cover these actions if they are "required federal approvals." A State agency can always list specific approvals in its management program. Public participation is not added for a decision that consistency review will not occur. A decision that consistency will not occur, either because there are no coastal effects, there is no federal application, or there is no required federal approval, means that the CZMA consistency provision does not apply, and public review is not mandated.

Section 930.51(b)(2) is amended to clarify that "management program amendments" as used in this section means any program change, *i.e.*, amendment or routine program change, approved by OCRM under 15 CFR part 923, subpart H.

Section 930.51(c) clarifies that a major amendment is not a minor change to a previously reviewed activity, but a change that affects any coastal use or resource in a way that is substantially different than effects previously reviewed by the State agency. One State commented that the section as proposed did not apply the definition of major amendment to all contexts used in subsection (b). NOAA agrees that the definition of major amendment needs to apply to all three cases under subsection (b), and has made this change.

Section 930.51(d) clarifies that a "renewal" includes subsequent re-approvals, issuances or extensions. Administrative extensions that are required must be treated like any other renewal or major amendment. Otherwise, some activities that should obtain a renewal continue to operate for years under administrative extensions. These activities may have coastal effects that have not been reviewed by management programs and which need to be consistent with a State's enforceable policies. These activities are, in a sense new activities. Renewals cannot be used to negate the consistency requirement.

Section 930.51(e) describes some parameters for how the determination of major amendments, renewals and substantially different coastal effects in section 930.51 shall be made. Whether the effects from a renewal or major amendment are substantially different is a case-by-case factual determination that requires the input from all parties. However, a State agency's views should be accorded deference to ensure that the State agency has the opportunity to review coastal effects substantially different than previously reviewed.

Section 930.51(f) clarifies the ramifications to the consistency process when an applicant withdraws its application for a federal approval or if the approving Federal agency stays the application review process. If the applicant withdraws its application, then the consistency process stops (since there is no longer a federal application to trigger consistency). If the applicant re-applies, then a new consistency review is required. Likewise, if the Federal agency stays its proceeding, then the consistency review process will be stayed for the same amount of time. This will avoid confusion as to what the consistency review period is in these cases.

Section 930.52 is amended to add to the definition of "applicant" applicants from other nations for a United States required approval, and applicants filing a consistency certification under the proposed general permit consistency process under section 930.31(d). Regarding other nations, the CZMA requires any applicant for a required federal license or permit to certify consistency with management programs. There may be instances where a foreign company or individual must obtain a United States approval.

Two commenters want subpart D to apply to Federal agencies applying for federal permits. Federal agency activities are not subject to CZMA § 307(c)(3) requirements. The CZMA is clear: Federal agency activities are subject to CZMA § 307(c)(1). CZMA § 307(c)(3) applies to non-federal applicants for federal permits or licenses. Congress declared that CZMA §§ 307(c)(3)(A) and (B) and 307(d) "govern the consistency of private activities for which federal licenses or permits are required" and that the 1990 CZMA changes do "not alter the statutory requirements as currently enforced under [the CZMA]. These requirements are outlined in the NOAA regulations (15 CFR 930.50–930.66) and the conferees endorse this status quo." Conference Report at 971–72 (emphasis added).

Section 930.53(a) is removed. Thirty-three of the thirty-five eligible coastal States have federally approved management programs and the remaining two States are in the process of developing a management program. Thus, this section is no longer necessary. Also, federal involvement in the identification of federal activities is addressed in the program development regulations. *See* section 923.53.

Section 930.53(b) is moved to section 930.53(a).

Sections 930.53(a)(1) and (2) are added to clarify the review of listed federal license or permit activities occurring outside of the coastal zone. The geographic location requirement is a means of notifying applicants and Federal agencies of activities with reasonably foreseeable coastal effects and are, subject to consistency review. The most effective way for a State to review listed activities outside the coastal zone is to describe the geographic location of a State's review. States are strongly encouraged to modify their programs to include a description of the geographic location for listed activities occurring outside the coastal zone to be reviewed for consistency. This section also codifies existing administrative policy that treats listed activities outside the coastal zone (for which a State has not described a geographic location), and listed activities outside a geographically described location, as unlisted activities under this subpart. (Because a State's coastal zone boundary is a geographic location description, Federal lands located within the boundaries of a State's coastal zone are sufficiently described for federal license or permit activities occurring on those federal lands.)

Section 930.53(b). Several States commented that listing should not be required for general concurrences. One State commented that the relationship between general concurrences and federal general permit programs is not clear. The environmental groups commented that "minor" is not defined. One commenter asserted that general concurrences are misused by States and cumulative impact studies should be done with public comment and should be re-reviewed every three years.

NOAA has not changed the listing requirement. General concurrences are encouraged as a matter of administrative convenience and for more efficient consistency reviews of minor activities. If a State agency chooses to develop a general concurrence, applicants for the federal approval must be notified of the general concurrence. Since the general concurrences are tied to the federal license or permit activities listed in the management program, the State's list is an effective place to provide notice of the general concurrences. The regulations recognize that these minor activities can have cumulative effects and that the State agency can develop conditions allowing concurrence for such activities. The section already requires that prior to developing a general concurrence, the State agency provide for public notice and comment pursuant to section 930.61. This section does not affect the Nationwide permit program or other federal general permits (unless the State agency chooses to adopt a general concurrence for federal approvals under these programs). The promulgation of federal general permit programs is a Federal agency activity and is not affected by this section.

Sections 930.53(c), (d) and (e) are moved to sections 930.53(b), (c) and (d), respectively. The addition of sections 930.53(c)(1) and (2) clarify the procedures for consultation with Federal agencies and approval by the Director. One Federal agency commented that the State's notification to the Federal agency needs to adequately describe the proposed change in order for the Federal agency to respond. NOAA agrees that the State agency needs to describe what the proposed change is, thus, the phrase "should describe" is changed to "shall describe."

Section 930.54(a)(1) is amended to clarify where State agencies should look to monitor unlisted activities. Specifically, draft NEPA documents and **Federal Register** notices are key documents State agencies should review. This section also clarifies that State agency notice should be sent to the applicant, the Federal agency, and the Director of OCRM. The term "immediately" has been deleted as there is already specified a 30-day time period in which to respond. Two commenters believe this section should be clearer regarding an "application" to a Federal agency. One State commented that

Federal agencies or applicants be required to provide notice of unlisted activities.

NOAA agrees that the language in subsection (a)(1) is clear that the 30-day time period for State agencies to notify an applicant and the Federal agency is notice of an application that has been submitted. To make this perfectly clear, NOAA has added clarifying language. NOAA has not used the language in the comment since that language could be interpreted to require the State agency to act within 30 days from the date of the submission of the application, rather than 30 days from notice of an application that has been submitted. A State should have the opportunity to request review of an unlisted activity 30 days from receiving notice that an application has been submitted and not just 30 days from when the application was actually submitted to the approving Federal agency. Written notice is not required, however, in subsections (a)(1) or (2), because Federal agencies and applicants are not under an affirmative duty to notify the State agency unless the federal license or permit is listed in the management program. Such notice is encouraged, but cannot be required.

Section 930.54(b) is amended to clarify that the State agency's notification must also include a request for OCRM approval and the State agency's analysis supporting its claim that coastal effects are reasonably foreseeable.

Section 930.54(c) is amended to clarify that the Director's decision deadline may be extended by the Director for complex issues or to address the needs of one or more of the parties. This codifies existing practice which has been useful in resolving issues often leading to the State agency's withdrawal of its request. One Federal agency commented that an extension of NOAA's decision deadline be limited to a specified time.

It is unnecessary to specify a time frame for the Director's decision since the extensions, if any, may need to vary in duration depending on the issues. However, NOAA has added a sentence requiring the Director to consult with the State agency, Federal agency and applicant prior to issuing any extension. Also, the proposed revision states that the Director shall notify the parties of the expected length of the extension, therefore a specified time frame will be established for each extension.

Section 930.54(d). One commenter believes that NOAA should not assess coastal effects, but that States should do so. NOAA does not agree. NOAA's long-standing administrative process implemented through these regulations determines coastal effects for listed activities or unlisted activities. Listed activities are first approved by NOAA as part of program approval or through a program change. Once NOAA has approved a federal approval as listed in a management program, then effects are assumed. If an activity is unlisted, coastal effects must be determined, and again, it is NOAA's responsibility and role to make such a determination. Congress has endorsed this implementation of the statute and all parties, States, Federal agencies and applicants rely on NOAA to ensure consistency reviews occur only where activities have coastal effects.

Section 930.54(f) provides applicants and State agencies with the flexibility to agree to forego the unlisted activity procedure, have the applicant subject itself to consistency, and expedite the consistency process. This provision will help to resolve coastal management issues informally and avoid delays due to disagreement over whether the application should be subject to State agency consistency review. One State commented that a Federal agency and State agency should be able to agree to subject an unlisted activity to consistency.

NOAA disagrees. The consistency requirements in this subpart are for the State agency, the Federal agency and applicants. The listing requirement puts all on notice that the listed activities are subject to consistency and the State's review. Any other decision, outside of the unlisted process, that would subject an applicant to the consistency requirement, would require agreement by the applicant. The Federal agency and State agency cannot subject an applicant to consistency outside the listed and unlisted procedures. A Federal agency could notify the State agency of an application for an unlisted activity, and then the State agency could initiate the unlisted activity process.

Section 930.56(b) is moved to section 930.58(a)(2). This will consolidate all material on necessary data and information in one section. The last sentence of section 930.56 is added as State agencies need to be able to identify their enforceable policies and have an obligation to identify the applicable policies to Federal agencies and applicants. Also, since many management programs now contain substantial numbers of enforceable policies, it is more efficient and effective if States can identify the applicable policies to the applicants, rather than the applicant having to pick and choose from all the State policies.

Section 930.58 is modified to clarify information requirements and to consolidate language from other sections. Subsection 930.58(a)(1) (formerly section 930.56(b)) clarifies that the necessary data and information which applicants must provide to the State agency may include State permits or permit applications. One Federal agency commented that subsections (a)(1) and (a)(3) are duplicative and that the section should specify what an applicant should do if not satisfied that there is not adequate protection against disclosure of proprietary information. Two States requested various wording changes. One commenter believes that subsection (a)(2) should be deleted regarding State permits as necessary data and information. One commenter said that subsection (a)(2) and (c) should be integrated.

Subsections (a)(1) and (a)(3) are not duplicative. Subsection (a)(1) is identifying coastal effects and (a)(3) is an evaluation of effects in the context of enforceable policies. Subsection (c) allows applicants to disclose proprietary information if the applicant is satisfied that adequate protection against public disclosure exists. There is no conflict between subsections (a)(2) and (c) regarding proprietary information since (a)(2) is for "required" information and proprietary information is not required. NOAA has added language to subsection (a)(3) to clarify that it is the activity that must be consistent. These sections do not require an applicant to have all State permits. Management programs can, however, require that an applicant have the State permits in hand as the issuance of a State permit is, for some States, the means of demonstrating that an applicant is consistent with the underlying enforceable policies. States that require State permits conduct the federal consistency review at the same time that the State permit is being processed. This is not an obstacle as the six month CZMA review period is still in place.

Section 930.59. One commenter said that this section should require "one stop shopping." The CZMA does not require one-stop-shopping for consistency. Also there are different procedures for different federal and State programs that may not lend themselves to one-stop shopping. In addition, some projects may be complicated long-term projects and information may not be available for later phases. Thus, the later phases would be subject to consistency at a later date.

Sections 930.60(a)(1), (2) and (3) clarify when the consistency time clock may begin; the consequences of an incomplete certification; and State agency notice requirements to the

applicant and the Federal agency. Where the applicant has submitted an incomplete certification and the State begins the consistency time clock, the State agency cannot later stop the time clock unless the applicant agrees. Section 930.60(a)(2) requires State agencies to notify the applicant and the Federal agency of the date when necessary certification or information deficiencies have been corrected, and the State agency's review has begun. Subsection (a)(3) allows States and applicants to mutually agree to alter the review time period.

One Federal agency commented that "certification or information deficiencies" be replaced with "missing certification or information" and that a State agency should be able to determine if information is missing in 15 days, not 30 days. One State commented that a State agency and Federal agency should be able to agree to extend the six-month time period. Another State commented that a State should be able to stop the six-month consistency time period. Several States commented that this section should address the issue of whether there is an active federal permit application. One commenter implied that under the current regulations the Federal agency determines completeness for consistency and that this is changed in the new rule.

NOAA agrees that subsection (a)(1) refers to incomplete certifications or information, and not the adequacy of the information. Thus, "missing certification or information" replaces "deficiencies." NOAA believes that 30 days to determine completeness is reasonable given a project's complexity and some programs may need to check with networked agencies. This completeness check does not extend the six-month period, if submission is complete. Because this subpart affects applicants, the State agency and the Federal agency cannot change the review period without the applicant's agreement. The statute gives States six months to review. States cannot unilaterally stop, stay or otherwise alter the review period without an applicant's agreement. *See* section 930.51(f) regarding Federal agency acceptance and processing which applies to "active" federal applications. Current regulations do not allow the Federal agency to determine completeness for consistency review; only the State agency can make such a determination. If there is a disagreement, the parties can consult and seek mediation by NOAA. This is not changed in the revised regulations.

Section 930.61. One Federal agency commented that the rule should clarify who is responsible for conducting a public hearing. Two commenters offered word changes regarding "reasonable." Three States commented that electronic notification should be allowed. The environmental groups commented that electronic notification should not be the single form of notification. One commenter encouraged NOAA to require public hearings.

NOAA has specified that the State agency is responsible for public hearings and has inserted "reasonably" and removed "reasonable." This change is also made to section 930.78(a). Electronic notification cannot be the sole source of notification. This restriction is added to this section. *See* response to comments on section 930.42 for further discussion. The statute clearly provides that State agencies have the discretion to hold public hearings, thus NOAA cannot require public hearings. CZMA § 307(c)(3)(A).

Section 930.62 is deleted and part of it moved to section 930.61(a). The following section numbers in this subpart are renumbered. One State commented that NOAA should cross-reference section 930.60(a)(3). Another commenter encouraged NOAA to shorten the six-month review period. A cross reference is not needed and would be redundant. NOAA cannot shorten the six-month review period as it is set by statute, CZMA § 307(c)(3)A).

Section 930.63(a) (redesignated as section 930.62(a)) is amended to clarify that a State agency's objection must be received before or on the last day of the six-month review period.

Section 930.62(c). Two commenters said that Federal agencies should delay denying permits, rather than processing permits. NOAA disagrees. The term "processing" is correct. While States are conducting their consistency review, Federal agencies can, and should, continue processing the federal application (but not approve) to avoid prolonging the federal process if a State concurs.

Section 930.62(d) is moved from section 930.64(c). Two commenters said to change "within three months" to "after three months." Several States commented that the three-month notification may be constructive, electronic, written or verbal.

NOAA has retained "within" three months as it is required by CZMA § 307(c)(3)(B). NOAA has also left the means of notification open as the State agency needs only to be able to document the actual notification. Notice must actual, not constructive notice.

Section 930.63. One commenter recommended that a local government coastal agency be allowed to object to a consistency certification, even if the State agency does not object. NOAA disagrees. Only the State agency can implement the State's federal consistency program. *See* sections 930.6 and 930.11(o).

Section 930.64(b) (redesignated as section 930.63(b)) is amended to clarify that State agency objections must be based on enforceable policies. Sections 930.63(b) and (d) are revised to clarify that identification of alternatives is an option for the State and to provide requirements on descriptions of alternatives if a State agency chooses to identify them. These changes recognize the fact that, even if an applicant proposes to adopt a State agency's alternative, the Federal agency cannot approve the project due to the State agency's objection. Thus, if an applicant wants the federal approval the applicant must consult with the State agency and the State agency must remove its objection, unless an applicant appeals to the Secretary and prevails.

Section 930.64(c) (redesignated as section 930.63(c)). One Federal agency commented that a State should not be able to object based on a lack of information, where the information is in addition to that required by section 930.58. NOAA disagrees. The information required by section 930.58 is the information needed to start the six-month review period. In most cases this information will provide the State agency with all information that the State agency needs for its review. However, the State agency may need additional information regarding coastal effects or the project's design during the period of the State agency's review. This information would allow the State to determine whether the activity will be consistent with the management program's enforceable policies.

Section 930.64(e) (redesignated as section 930.63(e)) is amended to clarify the notification of availability of the Secretarial override process. Since a concurrence with conditions may also become an objection, a conditional concurrence must also include similar appeal language. One State commented that this subsection refers to the CZMA as opposed to the CZMA as amended in 1990. NOAA disagrees. A reference to the "CZMA" is a reference to the existing statute. It is unnecessary to refer to various amendments.

Section 930.66 (redesignated as section 930.65) is amended to provide States with a more meaningful opportunity to address instances where the State agency claims that an activity

once found consistent or not affecting any coastal use or resource, is not being conducted as originally proposed and which will cause effects on a coastal use or resource substantially different than originally proposed. Previously, States could only request that the Federal agency take remedial action. If a Federal agency does not take remedial action the State agency can request that the Director find that the effects of the activity have substantially changed and require the applicant to submit an amended or new consistency certification and supporting information, or comply with the originally approved certification. This change mirrors the existing remedial action section of subpart E (*see* section 930.86) and, like section 930.86, is not expected to be used frequently. However, the procedure exists to ensure that federal license or permit activities continue to be conducted consistent with a management program.

Section 930.66 contains a supplemental coordination for proposed activities provision. *See* discussion of section 930.46.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

Section 930.75(b) is deleted as redundant with the changes to section 930.76(b) and with section 930.58. One commenter urged that a local government coastal agency or a citizen could identify additional enforceable policies. NOAA disagrees. Only the State agency can provide a consistency response to an applicant, person or Federal agency and only the State agency can interpret the management program's enforceable policies, including local government policies that are part of the management program. *See* sections 930.6 and 930.11(o). A State agency can provide for public and local government input into its response.

Section 930.77 is deleted, because this information is redundant with section 930.58, which is referenced in section 930.76(b). The rest of the sections in this subpart are renumbered accordingly (with additional minor changes, mostly conforming with changes made in subpart D). One Federal agency commented that references to MMS regulations should be updated and noted that States should not be able to object based on a lack of information where the information is in addition to that required by section 930.58. One commenter recommended that a local government coastal agency be able to object.

The citations in section 930.77 have been updated. The information required by section 930.58 is the information needed to start the six-month review period. In most cases this information will provide the State agency with the information needed to complete its review. However, additional information may be needed regarding coastal effects or the project's design for purposes of the State agency's review.

Only the State agency can provide a consistency response to an applicant, person or Federal agency and only the State agency can interpret the management program's enforceable policies, including local government policies that are part of the management program. A State agency can provide for public and local government input into its interpretation or decision, but the local government cannot make the consistency decision. *See also* sections 930.6 and 930.11(o).

Section 930.78(b) is amended to require that the State agency's response must be received within the six-month response period.

Section 930.79(a). One Federal agency and one other commenter noted that the authority to require revisions to OCS plans rest with the Secretary of the Interior, not Commerce, through the OCSLA. NOAA agrees that the OCSLA and its implementing regulations provide specific directives regarding whether an amended plan is required and whether a consistency review is required for the amended plan.

Section 930.81. One Federal agency commented that language from section 930.62 regarding Federal agency processing should be repeated in subsection (b). One commenter voiced objection to "phasing" of OCS projects. Repeating section 930.62 is not necessary in this section since the procedural requirements of subpart D apply unless modified by subpart E. The section provides for sufficient State agency control of various OCS permits to prevent unwanted "phasing" as suggested by the comment. Thus, it is reasonable and fair to allow a person to obtain a permit with which the State agency has concurred.

Section 930.82. One Federal agency commented that the CZMA does not authorize NOAA to require OCS plan amendments. NOAA disagrees. This is an existing regulatory requirement and is mandated by the CZMA, CZMA § 307(c)(3)(B). Further, this section was clarified by adding that an amended plan is required, if the person still intends to proceed with the activity.

Sections 930.83(b)–(e) (currently section 930.84(b)–(e)) are deleted since they are unnecessary and are replaced by the new reference in revised setion 930.83. One Federal agency commated that the CZMA does not authorize NOAA to require plan amendments. One commenter recommended using a six-month review period instead of three months for plan amendments. NOAA disagrees. This is an existing regulatory requirement and is mandated by CZMA § 307(c)(3)(B). Further, section 930.82 was clarified by adding that an amended plan is required, if the person still intends to proceed with the activity. The three-month review period is required by the CZMA, and cannot be extended by rule to six months. *See* CZMA § 307(c)(3)(B).

Section 930.85. One Federal agency commented that the CZMA does not authorize NOAA to require a new or amended OCS plan. NOAA disagrees. Unlike the previous section where this comment was raised, section 930.82, the CZMA specifically requires an "amended" or "new" plan be submitted to the Secretary of the Interior. CZMA § 307(c)(3)(B). Section 930.85 is an existing section that facilitates such an occurrence.

Subpart F—Consistency for Federal Assistance to State and Local Governments

Section 930.94 is amended to clarify that all federal assistance activities that affect any coastal use or resource are subject to the consistency requirement. While the intergovernmental review process is the preferred method for notifying the State agency and for State agency review, the intergovernmental review process may not provide notification for all federal assistance activities subject to the consistency requirement. Sections 930.94(b) and 930.95 provide methods to ensure adequate notification and review, by specifying a listed and unlisted procedure. One State commented that subsection (a) should clarify how this subpart applies to applications for programmatic funding. Two States commented that the subpart should clarify that a State can object for lack of information. One Federal agency commented that subsection (b)(2) should be deleted, and subsection (b)(1) amended to reflect State flexibility in determining which Federal assistance activities will be subject to consistency through the listing procedure.

While it is not clear what the distinction is between programmatic and individual funding, the same consistency requirements would apply: effects test and consistency with enforceable policies. The basis for State agency objections under this subpart are the same as that for subpart D, section

930.63, as referenced in section 930.96(b). NOAA agrees that subsection b)(2) be deleted and (b)(1) amended.

Section 930.94(c) is added to conform o the statutory requirement that the pplicant agency provide an evaluation f consistency with enforceable policies. See CZMA § 307(d).

Sections 930.96(c)–(e) are deleted ince the reference to section 930.63 in ection 930.63(b) eliminates the need for hese subsections. Two commenters ecommended that the section clarify hat Federal agencies not delay rocessing an application, "as long as hey do not approve" the application, nd that language regarding agreeing on onditions may be out of date due to ection 930.4. One State commented hat a time period for State review needs o be specified.

NOAA agrees that language should be dded so that Federal agencies do not nadvertently approve funding pending tate agency decisions. Section 930.96(a)(2) is still applicable, even vith the addition of section 930.4. State gencies, applicant agencies and Federal gencies should always attempt to agree n conditions that meet both State and ederal requirements. This will provide he applicant agency with greater ssurance of State and Federal approval. NOAA agrees that section 930.98(b) is edundant with section 930.97. Thus, ection 930.98(b) is deleted. CZMA 307(d) provides that review periods for ederal assistance activities shall be le termined pursuant to State ntergovernmental review periods. Thus, the regulations do not specify a ime period—that is left up to ndividual State law.

The unlisted activity procedure in ection 930.98 follows the unlisted ctivity procedures found at section 930.54, except that Director approval is ot required, because the State agency, hrough its monitoring and review of ederal assistance activities, determines f coastal effects are reasonably oreseeable. Section 930.98(b) is deleted s it is redundant with section 930.97.

Section 930.100 is amended to rovide States with more meaningful pportunity to address remedial action or previously reviewed activities. See liscussion of section 930.65.

Section 930.101 contains a upplemental coordination for proposed ctivities provision. See discussion of ection 930.46.

Subpart G—Secretarial Mediation

Only minor changes were made to ubpart G. Subpart G provides a process or Federal agencies and coastal States o request that the Secretary of Commerce mediate serious disputes regarding the federal consistency requirements. Subpart G also provides for more informal mediation by OCRM. Both Secretarial mediation and OCRM mediation require the participation of both agencies and are non-binding.

Section 930.110. One commenter said that including the word "negotiator" could be perceived as an advocate for the Federal agency. NOAA has deleted reference to "negotiation." It was not the intent of this language to change NOAA's role, but rather to refer to the next section on informal negotiations. However, to clarify NOAA's mediation role, "negotiation" is removed from section 930.110, the title of section 930.111 is changed to "OCRM mediation," and the title of section 930.112 is changed to "Request for Secretarial mediation."

Section 930.113(a). One commenter said that public hearings should be required for Secretarial mediation. NOAA agrees. For Secretarial mediation the CZMA requires that the Secretary hold "public hearings which shall be conducted in the local area concerned." CZMA § 307(h)(2). Thus, the language from the original regulations is retained.

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

Pursuant to section 307 of the Act, no Federal agency may issue a license or permit for an activity until an affected coastal State has concurred that the activity will be conducted in a manner consistent with the management program unless the Secretary, on his own initiative or on appeal by the applicant, finds that the activity is consistent with the objectives of the Act or is otherwise necessary in the interest of national security. Subpart H sets forth the procedures applicable to such appeals and the requirements for such findings by the Secretary.

Changes were made to section 930.121(a) and (b) to ensure that the Secretary overrides a State's objection only where the activity significantly or substantially furthers the national interest and that interest outweighs the adverse coastal effects of the activity. Several commenters noted that the changes would improve the appeal process. One commenter said that States are not required to undertake consistency reviews, and said that the criteria needs to be changed so that the Secretary is not substituting his judgement for that of the State when no compelling national interest is at stake, and that there must be a strong presumption in favor of upholding the State's decision.

NOAA agrees that changes to this section are necessary to clarify the criteria established for the Secretarial override of State objections to consistency certifications. However, NOAA disagrees that the regulations need wholesale revision. The CZMA directs the Secretary to consider whether an activity that a State has determined to be inconsistent with the enforceable policies of its management program is nonetheless consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. An activity is consistent with the objectives of the CZMA only if it satisfies *each* of the three (previously four) elements of section 930.121. The Secretary's review is an independent assessment of the proposed activity and whether the proposed activity meets the objectives of the CZMA or is necessary in the interest of national security. The Secretary does not review the judgement of the State agency other than to ensure that the State's objection was properly made within the requirements of subparts D, E, F and I. Although one of the central goals of the CZMA is to encourage State management of coastal resources, the Secretary's review is available to ensure that proposals that further the national objectives articulated in the Act may be allowed to proceed notwithstanding their inconsistency with the enforceable policies of a management program. *See also* response to comment on section 930.3.

Section 930.121(a). Several States and the environmental groups commented that the phrase "one or more of" the CZMA objectives is inconsistent with the statutory language and is a mere checklist approach resulting in the appellant automatically satisfying this element. The regulatory language should refer to all the objectives. The States also commented that subsection (c) should be deleted. The States also commented that the phrase "de minimis" did not convey the importance of having the Secretary override a State's objection only where there is a national interest in the CZMA objective being addressed. One Federal agency commented that "de minimis" was confusing.

NOAA agrees with the majority of commenters that Secretarial overrides should occur only where a project furthers the national interest in a significant or substantial way. Congress acknowledged a national objective in the "effective management, beneficial use, and development of the coastal zone" and specifically chose the States as the best vehicle to further this national interest. CZMA § 302(a). The

language and structure of §§ 302 and 303 make clear that Congress chose the States, in partnership with the federal government, to further the national interest "to preserve, protect, develop and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations." CZMA § 303(1). The Secretarial review function is not intended to upend the State management structure by replacing the State agency's decision with the Secretary's, for projects which are essentially local government land use decisions and which do not significantly or substantially further the national interest in the CZMA's objectives. The purpose of the Secretary's review is to ensure that projects which do significantly or substantially further the national interest in the CZMA's objectives, and where the national interest outweighs impacts to coastal uses and resources, may be federally approved notwithstanding their inconsistency with the enforceable policies of a management program. NOAA acknowledges the views of several commenters that the application of NOAA's regulations has presented the Secretary with proposed activities that, while falling under the CZMA's objectives, did not significantly or substantially contribute to the national interest in the CZMA objectives. This application of the regulations has created the appearance that the Secretary overlooked the intent of the Act to support the States' use of section 307 to require that federal license or permit activities be consistent with federally approved management programs. The proposed rule attempted to address this concern and the final rule offers the further clarification requested by all commenters.

The proposed rule introduced the concept that a proposed activity have more than a *de minimis* relationship to the national objectives articulated in §§ 302 and 303 of the Act. As stated in the preamble to the proposed rule, the purpose of the change was to allow the Secretary to focus her review on activities of national concern not local land use issues with a minimal connection to the national goals of coastal resource management. 65 Fed. Reg. 20279. However, as all of the commenters pointed out, the use of de minimis as a descriptor was insufficient to convey the need to focus the Secretary's review on proposed activities of a national import.

In response to these comments, NOAA has removed the phrase de minimis and replaced it with the phrase "furthers the national interest * * * in a significant or substantial manner" with the intent of emphasizing the need for an appellant to demonstrate that the proposed activity is of such import to the national goals for coastal resource management that, despite the will of State and local government decision makers, the Secretary of Commerce should independently review the proposed activity to determine its consistency with the CZMA. The final rule uses the same phrase as that contained in 930.121(b), "national interest," instead of "one or more of the competing objectives and purposes" to clarify the necessity that a proposed activity have a national component to its furtherance of the policies and objectives of the Act.

By adding the words significantly and substantially to describe the degree to which the proposed activity advances the national interest, NOAA intends to emphasize the importance of the relationship between the activity and the national perspective of the goals articulated in §§ 302 and 303. The dictionary definition of substantial includes "considerable in importance, value, degree, amount or extent." The American Heritage Dictionary, 1976. In other words, the activity must be more than related to one of the category of objectives described in §§ 302 or 303—it must contribute to the national achievement of those objectives in an important way or to a degree that has a value or impact on a national scale. The use of the word significant (which is defined as "important, notable, valuable") is added to convey NOAA's view that a project can be of national import without being quantifiably large in scale or impact on the national economy.

Requiring that a proposed activity demonstrate that it significantly or substantially furthers the national interest creates the appropriate relationship between the central objective of the CZMA to encourage State management of coastal resources and the Secretary's role in ensuring the national interest is fully considered in the implementation of management programs. To determine whether a project significantly or substantially furthers the national interest, NOAA encourages appellants and States to consider three factors: (1) The degree to which the activity furthers the national interest; (2) the nature or importance of the national interest furthered as articulated in the CZMA; and (3) the extent to which the proposed activity is coastal dependent.

An example of an activity that significantly or substantially furthers the national interest is the siting of energy facilities or OCS oil and gas development. Such activities are coastal dependent industries with economic implications beyond the immediate locality in which they are located. Some activities, such as a house, a restaurant, or a food store, may contribute to the economy of the coastal municipality or State, but are not coastal dependent and may not provide significant or substantial economic contributions to the national interest furthered by the objectives in §§ 302 and 303. It may be more difficult to discern whether other activities significantly or substantially further the national interest. For instance, a marina facility is coastal dependent, furthers the goals of the CZMA in public access and recreation on our coasts, but its economic effects may be purely local. Conversely, the addition of a runway to an international airport may significantly enhance the national economy while not being coastal dependent. Whether a project significantly or substantially furthers the national interest in the objectives of §§ 302 and 303, especially for the latter types of projects (the marina and airport examples), will depend on the Secretary's decision record.

Section 930.121(b). Several States commented that the national interest in subsection (b) be a compelling national interest and one State commented that the revised language weakens the current language. One State did understand NOAA's change by commenting that under the current regulation, subsection (b) can be read as meaning that if the State interest, or effects to coastal resources, and the national interest are equal, then the national interest in the activity will take precedence.

NOAA views many of the comments concerning the balancing of the national interest and the effects on coastal uses and resources to have been addressed by the change to section 930.121(a) requiring the proposed activity to further the national interest in a significant or substantial manner. *See* NOAA response above. In the final rule, NOAA reorganized the clauses in the proposed rule to address the concern that section 930.121(b) is grammatically ambiguous. It is not NOAA's intent that the cumulative benefits of a proposed activity be weighed against coastal effects. Not only could this lead to the consideration of an endless stream of benefits from the flow of commerce, it could diminish one of the essential purposes of the CZMA to assist States in planning, restoring and conserving coastal resources. The reordered language is intended to make clear that

to override a State's objection the Secretary must find that the national interest found to be furthered in a significant or substantial manner in section 930.121(a), outweighs the potential individual or cumulative effects the proposed activity may have on coastal uses and resources.

Section 930.121(c). Several States and others commented that this section should be deleted, because any activity must comply with the requirements of the Clean Air and Water Acts. NOAA agrees. Removal of this criteria does not alter in any way the Secretary's obligation to evaluate and consider the potential adverse effects of a proposed activity on coastal air and water resources. NOAA will continue to seek the views and comments of the expert agencies charged with implementation of these statutes. The deletion of this criterion simply removes the obligation of the Secretary to develop an administrative finding that a proposed activity will or will not meet the requirements of the Clean Air Act and Clean Water Act. As the commenters point out, that obligation is fulfilled by other State and Federal agencies. As provided for in CZMA § 307(f), States must include water pollution control and air pollution control requirements in their management programs and those requirements may form the basis of a State objection.

Section 930.121(d) was amended to clarify the determination by the Secretary of the availability of alternatives. Currently, under the other elements of section 930.121, the Secretary may consider many factors when determining whether an appellant has met a particular element. Regarding the element on alternatives, there is confusion as to when alternatives may be raised, the consequences of a State agency not providing alternatives or when it issues its objection, and the level of specificity that the State agency needs to provide to satisfy the element on appeal. The changes to section 930.121(d) reflect the independent basis of the Secretary's decision by not restricting the scope of the Secretary's review. These changes will ensure that the Secretary's findings regarding alternatives will not be restricted, but will be informed and based on the Secretary's independent administrative record for each case. In this way, both the State and appellant will be able to provide the Secretary with information on whether an alternative is reasonable and described with sufficient specificity that might not have been available when the State issued its objection. Several States commented that this section should require that the activity can only be done at the proposed location or that alternatives for other uses of the property be considered. One Federal agency commented that the Federal permitting agency's opinion be given considerable weight when determining whether an alternative is reasonable.

NOAA disagrees with the comments. NOAA intended this provision to make clear that there is a broad range of sources from which the Secretary may draw his examination of the alternatives to the activity as proposed. The Secretary is limited in consideration to reasonable alternatives that meet in whole or at least in part the appellant's purpose. The Secretary does not consider alternatives that are unrelated to or do not meet in some reasonable way the appellant's objective in proposing the activity. NOAA does not intend this provision to deter a State, or other parties, from proposing to move the proposed activity to another site to make better use of existing infrastructure. Nevertheless, alternatives must be "reasonable." NOAA disagrees that the new rule language diminishes or in any way affects the weight the Secretary accords the comments of Federal agencies.

Section 930.125 is revised to make it consistent with the 1990 amendments to the CZMA. The changes include the requirement that an appellant pay a filing fee to the Secretary.

Section 930.126 codifies and explains the statutory requirement for the Secretary to collect fees from appellants to recover the costs of administering and processing appeals. These fees are in addition to the filing fees. *See* CZMA § 307(i).

Section 930.127 clarifies when an appellant must submit supporting data and information. This requirement is necessary so that the Secretary can meet new time limits placed on the Secretary by the 1996 amendments to the CZMA. One commenter urged that rather than listing NOAA's address, it would be better to note a source for finding the correct address. NOAA disagrees. NOAA provides the address of the Assistant General Counsel for Ocean Services for the benefit of appellants using the regulations to form and file their appeals to the Secretary. This office has been in the same location for seven years, and if it moves, mail will be forwarded and the Code of Federal Regulations may be updated in due course.

Section 930.129(a)(6). One commenter objected to subsection (a)(6) regarding dismissal of appeals due to an improperly lodged State objection. One Federal agency commented that this language was confusing and should be reworded such that if a State improperly lodges its objection, the Secretary would rule in favor of the appellant. NOAA agrees that the language is confusing and has modified the rule accordingly. In addition, this provision is now a separate provision to illustrate its difference with other grounds for dismissal. The purpose of this provision is improve the administration of the appeals process by addressing procedural deficiencies in the issuance of the State's objection early in the process before the parties and the Secretary have invested significant resources in the development of an administrative record. A State's objection is not properly issued if it fails to comply with the requirements of section 307 of the Act or with the regulations contained in subparts D, E, F and I. To dismiss an objection because the State has not followed the proper procedures is actually to override the State's objection on procedural grounds. In the event an appellant claims that a State objection has not been properly issued, the Secretary may review the question as a threshold matter and upon finding that the objection was not properly issued, may override the State's objection.

Section 930.129(d). One Federal agency commented that, while supporting this provision to remand significant new information to the State agency, a three month review period be imposed. One commenter said that this subsection would lengthen the process and be inconsistent with the 1996 CZMA amendments. One State commented that the State should have the full statutory time of six months to review significant new information.

The purpose of this part is to ensure that a State agency has an opportunity to review significant new information to determine whether in light of that new information a proposed project is consistent with the enforceable policies of its management program. The Secretarial review follows the requirements of section 930.121 and does not examine the proposed project for consistency with the management program. When new information is developed that is significant to issues raised by the State, it is appropriate for the Secretary to request the State to determine whether its objection continues or whether in light of the new information the proposed activity is consistent with the management program and the State objection can be removed. Increasingly, appeals to the Secretary result in the development of extensive administrative records containing information never reviewed by the State agency. This provision and

those in section 930.129(b) and (c) are intended to ensure that a State agency has an opportunity to reexamine a proposed activity when significant new information is developed or provided. In addition, NOAA added a time limitation on the remand to the State to a period of three (3) months, since the remand to the State is not another consistency review. Three months is sufficient time for the State agency to review the significant new material and determine if its objection still stands.

Section 930.131(a)(2). One State commented that the Secretary should not have the authority to override a State's objection when the State objected for lack of information. NOAA disagrees. The Secretary may override a State objection based on lack of information if she finds the administrative record before her provides sufficient information to make the findings required by section 930.121. There is no authority to the contrary. This section is moved to section 930.127(d).

Section 930.131 is amended to clarify the procedures applicable to reviews initiated by the secretary on his/her own initiative. Section 930.132(b) is superseded by section 8 of the Coastal Zone Protection Act of 1996, Pub. L. 104–150. Section 8 created a new § 319 of the CZMA concerning the timing of appeals which is reflected in new section 930.130.

Sections 930.133 and 134 are deleted, because these provisions are included in other sections of subpart H.

Subpart I—Assistant Administrator Reporting and Review

Existing subpart I is deleted. This subpart has never been used, and there are other existing CZMA mechanisms for reporting and review: oversight and monitoring under CZMA section 306, evaluations under CZMA § 312, appeals under CZMA § 307, and unlisted activity review approvals.

In addition, section 930.145 is revised and moved to section 930.3.

Proposed Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

The CZARA clarified that the federal consistency trigger is coastal effects, regardless of the geographic location of the federal activity. *See* CZMA § 307; Conference Report at 970–972. Thus, federal consistency applies to all relevant federal actions, even when they occur outside the State's coastal zone and in another State. For example, State A may review a federal permit application for an activity occurring wholly within State B if State A has a federally approved coastal management program and the activity will have coastal effects. An example of this type of activity is the placement of a sewage outfall pipe in State B's waters that results in impacts to shellfish harvesting waters in State A. NOAA believes that regulations are needed so that the application of interstate consistency is carried out in a predictable, reasonable, and efficient manner. NOAA is specifically addressing interstate consistency to encourage neighboring States to cooperate in dealing with common resource management issues, and to provide States, permitting agencies, and the public with a more predictable application of the consistency requirement to these activities. Interstate resource management issues are best resolved on a cooperative, proactive basis.

Section 930.151. Two States and one other commenter commented that the CZMA does not authorize interstate consistency. One State commented that section 930.151 should be amended to include all federal activities to take into account activities in the Exclusive Economic Zone.

NOAA strongly disagrees with the comments stating that the CZMA does not authorize interstate consistency. The Secretary has previously made clear that the CZMA authorizes interstate consistency, upholding NOAA's long-standing position. For a detailed analysis on the CZMA and interstate consistency which responds to and refutes all the arguments raised by the commenters, see Secretary of Commerce, Decision and Findings in the Consistency Appeal of the Virginia Electric and Power Company from an Objection by the North Carolina Department of Environment, Health and Natural Resources, at vi and 9–18 (May 19, 1994), upheld in *North Carolina* v. *Brown*, Civil Action No. 94–1569 (TFH) (D.D.C. Sep. 27, 1994). This decision was based on a 1989 NOAA General Counsel opinion, the language of the CZMA and the Conference Report. *See also* 136 Cong. Rec. H 8077 (Sep. 26, 1990). At the time of the Secretary's 1994 decision, previous statements by the Army Corps of Engineers and the U.S. Department of Justice (Justice) that were contrary to NOAA's position were reconciled when Justice deferred to NOAA's interpretation of the CZMA regarding the application of consistency to an activity occurring in another State. Justice stated that, "we believe the department of Commerce is the agency with statutorily assigned responsibilities for administering the CZMA and therefore Commerce has the authority in the first instance to interpret the Act." Letter from Webster L. Hubbell, Associate Attorney General, Justice, to Carol C. Darr, General Counsel, Commerce (Dec. 14, 1993).

Generally, an activity, regardless of its location, that requires federal approval is subject to the CZMA § 307(c)(3)(A). The CZMA requires that: "any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall * * * [certify] that the proposed activity complies with the enforceable policies of the state's approved program * * *." CZMA § 307(c)(3)(A). Thus, federal consistency is triggered when an activity affects the coastal zone. Project location and political boundaries are, generally, irrelevant. The procedural and substantive dictates that allow the reviewing State to review an activity are the same, whether the activity is within its State boundaries, but outside the coastal zone; or located wholly in another State. Interstate consistency does not expand a coastal State's jurisdiction or affect the sovereignty of other States. Federal consistency applies only to federal actions, not State actions. If State A determines that an activity in State B would affect its coastal resources, but no federal permit or other federal action is required to undertake the activity, State A does not have any authority under the CZMA to review that activity. The CZMA also, even when there is a federal consistency trigger, does not give coastal States the authority to review the application of the laws, regulations, or policies of any other State. The CZMA only allows a State agency to review the federal approval of an activity.

This subpart deals with "interstate" activities. Thus, Federal agency activities or federal license or permit activities occurring in Federal waters are covered under subpart C and D.

Sections 930.153 and 154. One State commented that if a State followed the listing procedures why would the unlisted procedure be needed. One State objected to having to list interstate activities. One Federal agency and one State noted that the listing requirements are essential and fair.

The unlisted activity language is included in section 930.154(e) for two reasons: (1) To clarify that the unlisted procedure is not available until the State first goes through the listing procedure for those permits it wants to review, and (2) to clarify that the unlisted activity procedure is available, even after going through the listing procedure to ensure that the State agency has the opportunity to review activities with

coastal effects that were not foreseen at the time of listing.

A consistency list is a reasonable interpretation of the statute as a means of providing an orderly and predictable process. The proposed interstate consistency notification/consultation/listing procedure does not add a new program requirement. States are already required to have such lists and to define the geographic area outside the coastal zone where the lists will apply. Few States have described this geographic area. To meet the interstate requirement a State may choose to not change its list, but only to add an interstate geographic scope. The proposed procedure also does not mean that a State cannot review a type of federal activity; it means that the State must first consult with neighboring States and notify potential interstate applicants and federal agencies. This consultation procedure does not require that the State prove coastal effects or that neighboring States concur with the listing and geographic location description. Thus, NOAA does not believe that meeting this requirement is burdensome. NOAA believes that it is important that States must first go through the notification and listing procedure. Only then can a State review an interstate activity. This is necessary due to the often controversial nature of reviewing interstate activities. This will help ensure that interstate consistency reviews are carried out in a reliable, predictable and efficient manner, with notification to individuals in other States potentially subject to consistency review.

Sections 930.155(c), 156(a) and (b). One Federal agency commented that there is no statutory requirement for Federal agencies to coordinate with States in developing a proposed activity, beyond the coordination required under CZMA § 307. NOAA agrees. Sections 930.155(c) and 156(a) are deleted as other subparts provide the requirements for coordination through consistency determinations and consistency certifications.

VIII. Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 13132: Federalism Assessment

NOAA concluded that this regulatory action is consistent with federalism principles, criteria, and requirements stated in Executive Order 13132. The changes in the federal consistency regulations facilitate Federal agency coordination with coastal States, and ensure that federal actions affecting any coastal use or resource are consistent with the enforceable policies of management programs. The CZMA and these revised regulations promote the principles of federalism articulated in Executive Order 13132 by granting the States a qualified right to review certain federal activities that affect the land and water uses or natural resources of State coastal zones. CZMA § 307 and these regulations effectively transfer power from Federal agencies to State agencies when Federal agencies propose activities or applicants for federal licenses or permits propose to undertake activities affecting State coastal uses or resources. Through the CZMA, Federal agencies carry out their activities in a manner that is consistent to the maximum extent practicable with federally approved management programs and licensees and permittees to be fully consistent with the management programs. The CZMA and these implementing regulations, rather than preempting a State provide a mechanism for it to object to federal activities that are not consistent with the management program. A State objection prevents the issuance of the federal permit or license, unless the Secretary of Commerce overrides the objection. Because the CZMA and these regulations promote the principles of federalism and enhance State authorities, no federalism assessment need be prepared.

Executive Order 12866: Regulatory Planning and Review

This regulatory action has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, when this rule was proposed, that the rule, if adopted, would not have a significant impact on a substantial number of small entities. One comment was received regarding the substance of that certification. One Federal agency commented that there may be additional factors, which may not have been adequately considered, that could have potential impacts on small businesses, and asked that NOAA consider this information. In particular, the infrastructure needed to explore and develop the OCS requires planning in advance of an expected drilling or construction date. For example, certain types of infrastructure (such as specialized drilling rigs) are in limited supply, requiring that contracts be signed well before permitted activities commence. Many of the changes contemplated in the proposed rule involve new procedures, extensions of time for consistency review, and additional information collection and reporting requirements during the consistency review and appeals processes. These changes may cause unpredictability that could affect a substantial number of small businesses operating on the OCS. Currently, four out of five people who work on the OCS work for contractors, not large oil companies. Many of these contractors employ fewer than 500 people. The issues raised by the commenter were considered in the analysis that provided the factual basis for the certification. With respect to the issues raised in the comment, the analysis found that the changes contained in the proposed, and this final, rule regarding information, appeal and time requirements were minor. The conclusion in the analysis was that these changes should not have a significant economic impact on contractors for the applicant or cause unpredictability since these requirements are, for the most part, already part of doing business under the CZMA federal consistency requirement. Accordingly, the basis for the certification has not changed and neither an initial nor a final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0411. Public reporting burden for this collection of information is estimated to average the following times per response: 8 hours for a State objection and concurrence to consistency certifications or determinations; 12 hours for a State request to review unlisted activities; 1 hour for a public notice requirement; 12 hours for a request for remedial action and supplemental review; 1 hour for a listing notice; 6 hours for a request for Secretarial mediation; and 200 hours for an average appeal to the Secretary of Commerce. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for

reducing the burden, to NOAA and OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a valid OMB Control Number.

National Environmental Policy Act

NOAA has concluded that this regulatory action is categorically excluded from NEPA as not having the potential for significant impact on the quality of the human environment pursuant to NAO 216–6.03c3(i). Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR part 930

Administrative practice and procedure, Coastal zone, Reporting and record keeping requirements.

Dated: November 30, 2000.

John Oliver,

Chief Financial Officer, National Ocean Service.

For the reasons set out in the preamble, NOAA has revised 15 CFR part 930 to read:

Final Revision of 15 C.F.R. part 930

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

Subpart A—General Information

930.1 Overall objectives.
930.2 Public participation.
930.3 Review of the implementation of the federal consistency requirement.
930.4 Conditional concurrences.
930.5 State enforcement action.
930.6 State agency responsibility.

Subpart B—General Definitions

930.10 Index to definitions for terms defined in part 930.
930.11 Definitions.

Subpart C—Consistency for Federal Agency Activities

930.30 Objectives.
930.31 Federal agency activity.
930.32 Consistent to the maximum extent practicable.
930.33 Identifying Federal agency activities affecting any coastal use or resource.
930.34 Federal and State agency coordination.
930.35 Negative determinations for proposed activities.
930.36 Consistency determinations for proposed activities.
930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements.
930.38 Consistency determinations for activities initiated prior to management program approval.
930.39 Content of a consistency determination.
930.40 Multiple Federal agency participation.
930.41 State agency response.
930.42 Public participation.
930.43 State agency objection.
930.44 Availability of mediation for disputes concerning proposed activities.
930.45 Availability of mediation for previously reviewed activities.
930.46 Supplemental coordination for proposed activities.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

930.50 Objectives.
930.51 Federal license or permit.
930.52 Applicant.
930.53 Listed federal license or permit activities.
930.54 Unlisted federal license or permit activities.
930.55 Availability of mediation for license or permit disputes.
930.56 State agency guidance and assistance to applicants.
930.57 Consistency certifications.
930.58 Necessary data and information.
930.59 Multiple permit review.
930.60 Commencement of State agency review.
930.61 Public participation.
930.62 State agency concurrence with a consistency certification.
930.63 State agency objection to a consistency certification.
930.64 Federal permitting agency responsibility.
930.65 Remedial action for previously reviewed activities.
930.66 Supplemental coordination for proposed activities.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

930.70 Objectives.
930.71 Federal license or permit activity described in detail.
930.72 Person.
930.73 OCS plan.
930.74 OCS activities subject to State agency review.
930.75 State agency assistance to persons.
930.76 Submission of an OCS plan, necessary data and information and consistency certification.
930.77 Commencement of State agency review and public notice.
930.78 State agency concurrence or objection.
930.79 Effect of State agency concurrence.
930.80 Federal permitting agency responsibility.
930.81 Multiple permit review.
930.82 Amended OCS plans.
930.83 Review of amended OCS plans; public notice.
930.84 Continuing State agency objections.
930.85 Failure to comply substantially with an approved OCS plan.

Subpart F—Consistency for Federal Assistance to State and Local Governments

930.90 Objectives.
930.91 Federal assistance.
930.92 Applicant agency.
930.93 Intergovernmental review process.
930.94 State review process for consistency.
930.95 Guidance provided by the State agency.
930.96 Consistency review.
930.97 Federal assisting agency responsibility.
930.98 Federally assisted activities outside of the coastal zone or the described geographic area.
930.99 Availability of mediation for federal assistance disputes.
930.100 Remedial action for previously reviewed activities.
930.101 Supplemental coordination for proposed activities.

Subpart G—Secretarial Mediation

930.110 Objectives.
930.111 OCRM mediation.
930.112 Request for Secretarial mediation.
930.113 Public hearings.
930.114 Secretarial mediation efforts.
930.115 Termination of mediation.
930.116 Judicial review.

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

930.120 Objectives.
930.121 Consistent with the objectives or purposes of the Act.
930.122 Necessary in the interest of national security.
930.123 Appellant and Federal agency.
930.124 Computation of time.
930.125 Notice of appeal and application fee to the Secretary.
930.126 Consistency appeal processing fees.
930.127 Briefs and supporting materials.
930.128 Public notice, comment period, and public hearing.
930.129 Dismissal, remand, stay and procedural override.
930.130 Closure of the decision record and issuance of decision.
930.131 Review initiated by the Secretary.

Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

930.150 Objectives.
930.151 Interstate coastal effect.
930.152 Application.
930.153 Coordination between States in developing coastal management policies.
930.154 Listing activities subject to interstate consistency review.
930.155 Federal and State agency coordination.
930.156 Content of a consistency determination or certification and State agency response.
930.157 Mediation and informal negotiations.

Authority: 16 U.S.C. 1451 *et seq.*

Subpart A—General Information

§ 930.1 Overall objectives.

The objectives of this part are:

(a) To describe the obligations of all parties who are required to comply with the federal consistency requirement of the Coastal Zone Management Act;

FEDERAL CONSISTENCY DETERMINATION OUTLINE

This document is an outline for Federal agencies to use when making a Consistency Determination under the Coastal Zone Management Act section 307(c)(1) & (2).

Coastal Zone Management Act (CZMA) Consistency Determination.

This document provides the [name of State] Coastal Management Program with the [name of Federal agency's] Consistency Determination under CZMA § 307(c)(1) [or (2)] and 15 CFR part 930, subpart C, for the [name of Federal activity]. The information in this Consistency Determination is provided pursuant to 15 CFR § 930.39. This activity includes:

[describe the Federal agency activity or reference relevant pages of NEPA document]

The [name of Federal agency] has determined that the [activity] affects the land or water uses or natural resources of [name of State] in the following manner:

[provide analysis of effects or reference relevant pages of NEPA document].

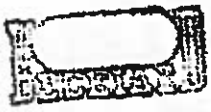
The [name of State's] Coastal Management Program contains the following applicable enforceable policies:

[list and/or briefly describe the State's applicable enforceable policies].

Based upon the following information, data and analysis the [name of Federal agency] finds that the [activity] is consistent to the maximum extent practicable with the enforceable policies of the [name of State] Coastal Management Program. [provide information, data and analysis supporting the determination of consistency with the applicable enforceable policies].

Pursuant to 15 CFR § 930.41, the [name of State] Coastal Management Program has 60 days from the receipt of this letter in which to concur with or object to this Consistency Determination, or to request an extension under 15 CFR §930.41(b). The State's concurrence will be presumed if the State's response is not received by the [name of Federal agency] on the 60th day from receipt of this determination. The State's response should be sent to:

[provide Federal agency contact information]



Environmental Assessment
Rehabilitate Valley of 10,000 Smokes Road
Draft Sand, Rock, and Gravel Plan

KATMAI

National Park and Preserve • Alaska

United States Department of the Interior • National Park Service

APPENDIX C: FEDERAL CONSISTENCY DETERMINATION VALLEY OF TEN THOUSAND SMOKES ROAD REHABILITATION PROJECT/ SAND, ROCK & GRAVEL PLAN LAKE AND PENINSULA BOROUGH, ALASKA

The Coastal Zone Management Act (CZMA) requires that "each federal agency activity within or outside the coastal zone that effects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved state management programs." 16 U.S.C. § 1456(c)(1)(A).

The State of Alaska has an approved coastal zone management program, the Alaska Coastal Management Program (ACMP) which includes regulations in Title 6, Chapter 50 of the Alaska Administrative Code (6 AAC 50). The Alaska Division of Governmental Coordination (DGC) coordinates review of federal consistency determinations as per 6 AAC 50.020. The Alaska Coastal Policy Council promulgates standards for the ACMP in chapter 80 of Title 6 (6 AAC 80). Guidelines for District Coastal Management Programs are provided in 6 AAC 85. The Lake and Peninsula Borough (LPB) has an approved Coastal Management Plan (CMP). The DGC recommends that the NPS follow enforceable policies set forth in the ACMP and LPB/CMP (Bukovick, pers. com.). The ACMP "Coastal Zone Boundaries of Alaska" Map #58 for the Mt. Katmai Quadrangle, shows that lands in the northwest half of the Valley of Ten Thousand Smokes (VTTS) Road Rehabilitation Project fall within the coastal zone of the Lake and Peninsula Borough.

This section details an analysis by which the National Park Service (NPS) has determined that its proposed road project along the Valley Road in Katmai National Park and Preserve would be consistent to the maximum extent practicable with the enforceable policies of the Alaska Coastal Management Program.

The NPS has determined that the "Proposed Rehabilitation of the Valley of Ten Thousand Smokes Road in Katmai National Park" may affect land or water uses or natural resources of Alaska in the following manner:

a) Public access to an important recreational, scenic and wildlife viewing area would be improved to maximize public safety and visual quality along the road corridor.

b) The road project would be conducted in a manner to minimize adverse impacts to natural and cultural resources. Minor impacts may occur to cultural resources, and wildlife such as brown bear and migratory birds may be temporarily disturbed by the project. Disturbance to soils, vegetation and surface topography would be reclaimed

c) Proposed work at stream crossings may cause short-term reductions in water quality. The NPS has evaluated the following relevant enforceable policies of the ACMP and Lake and Peninsula Borough CMP where it is more specific or restrictive than the ACMP:

ACMP USES and ACTIVITIES:

6 AAC 80.040. COASTAL DEVELOPMENT.

(a) In planning for and approving development in coastal areas, districts and state agencies shall give in the following order, priority to:

(1) water-dependent uses and activities;

(2) water-related uses and activities: and

(3) uses and activities which are neither water-dependent nor water-related for which there is no feasible and prudent inland alternative to meet the public need for the use or activity.

The Valley Ten Thousand Smokes Road Rehabilitation Project calls for realignment and regrading of the road to improve safety of driving conditions, reduce the number of borrow pits, and restore abandoned sites along the road corridor. The western half of the project area occurs within the coastal boundary of the Lake and Peninsula Borough as depicted on Alaska Coastal Zone Map # 58, Mt. Katmai. Primary activities near the road include wildlife viewing, sport fishing, sight-seeing and hiking, many of which are water-dependent to some degree. The road crosses three tributaries to Margot Creek that are all just outside the boundaries of the coastal zone and at least one mile above the anadromous fish run. There is no feasible alternative route for the road that connects Brooks Camp and Brooks Lodge to the edge of the Valley of Ten Thousand Smokes, largely because the road corridor is limited by designated wilderness.

6 AAC 80.060. RECREATION:

(a) Districts shall designate areas for recreational use. Criteria for designation of areas of recreational use are

(1) the area receives significant use by persons engaging in recreational pursuits or is a major tourist destination; or

(2) the area has potential for high quality recreational use because of physical, biological, or cultural features.

The Brooks River Area and the Valley of Ten Thousand Smokes in Katmai National Park have become major tourist attractions in the borough. The Brooks River area is famous for wildlife viewing, especially of brown bears feeding on red salmon. The Brooks River Archeological District, a property on the National Register of Historic Places, is now also designated a national historic landmark. The area also provides world class sport fishing for salmon and trophy-size rainbow trout. The Valley of Ten Thousand Smokes, the scenic results of the planet's largest volcanic eruption this century, attracts scientists and world travelers.

6 AAC 80.130. HABITATS.

(a) Habitats in the coastal area that are subject to the Alaska coastal management program include:

(3) wetlands and tide flats:

(7) rivers, streams, and lakes; and

(8) important upland habitat.

(b) The habitats contained in (a) of this section must be managed so as to maintain or enhance the biological. physical, and chemical characteristics of the habitat which contributes to its capacity to support living resources.

The stream fords are outside the coastal zone, but these crossings would be graded periodically to maintain shallow and relatively flat contours. A stockpile berm would be removed from the third stream crossing to restore the stream to its natural contours. Otherwise, the removal of material from the channels would not be allowed in order to protect natural stream processes. A fourth small drainage would have a new culvert installed. The proposed construction and maintenance activities would not affect wetlands as defined for purposes of carrying out the Clean Water Act.

LAKE and PENINSULA BOROUGH CMP, GENERAL POLICIES:

A-2 Mitigation

All land and water use activities shall be conducted with appropriate planning, implementation, and monitoring/enforcement to mitigate potentially adverse effects and/or cumulative impacts on the following resources of local, state, or national importance:

a) fish and wildlife populations and their habitats;
d) air and water quality;
e) cultural resources; and
f) recreational resources.

The VTTS Road Rehabilitation Project calls for numerous mitigation measures to reduce adverse impacts to natural and cultural resources and socioeconomic concerns. Construction activities, including moving equipment, would be concentrated during periods with low visitation. Delays to tour vans and buses would normally be limited to 15-20 minutes, and visitors would be warned about construction activities. An archeological inventory would be conducted for all areas prior to construction activities, and if impacts to cultural resources could not be avoided, mitigation measures would be developed in consultation with the Alaska State Historic Preservation Office and appropriate Native Alaska groups. If previously unknown archeological resources are uncovered during construction, work would be stopped and the NPS would consult according to regulations at 36 CFR 800.11 and the Native American Grave Protection and Repatriation Act of 1990. New turnouts would be located on old borrow pits wherever possible. Equipment and material staging would also be located on previously disturbed sites such as borrow pits. Construction activities would be limited in areas and times when bears are numerous such as between the barge landing site and the road junction to Brooks Lake. All workers would receive training on appropriate behavior around bears. Topsoil would be removed from Moraine Pit and any other pits that may be used later for reclamation. Pit limits would be set back from the road or behind ridges and vegetation such that visual intrusions would be reduced. Fueling and fuel storage areas would be bermed and lined to contain potential spills. The handling of all hazardous materials would be according to all applicable state and federal regulations. Sediment traps, erosion check screens and filters would be used to reduce stream sediment loading caused by curve realignment. Disturbed areas not to be used in the future would be restored, including grading to natural contours, addition of topsoil, seeding and planting. All plant materials used for revegetation would be from genetic stocks indigenous to Katmai National Park. Reclaimed areas would be monitored to determine whether additional remediation would be needed.

A-3 Multiple Use

To the extent feasible and prudent, ports, piers, docks, terminals, cargo handling, storage, parking and other facilities shall be designed and utilized to minimize the need for duplicate facilities. Subsequent use of facilities for other than their original intent shall also be a consideration in the siting and design of such facilities.

Use of the rehabilitated Valley Road would be shared by the Concessionaire and the NPS.

A-5 Dredge and Fill Requirements

Projects that invoive dredging or filling in streams, rivers, wetlands, lakes or marine areas including esruaries and tidelands, shall be located, designed, constructed, operated, and maintained to:

a) avoid significant adverse impacts to important fish and wildlife habitats;

b) avoid significant interference with fish migration, spawning, and rearing as well as critical life history stages of wildlife;

d) minimize erosion and the potential for turbid waters and waterborne sediment to be transported away form the dredge or fill site....

The VTTS Road project is located above Margot Falls on tributaries to Margot Creek such that direct impacts to salmonids is avoided. This in turn minimizes adverse impacts to primary bear habitat. Proper erosion control techniques (see A-2 above) would be utilized to reduce waterborne sediments downstream of the stream crossings, particularly at ford number three where a berm would be removed from the stream channel.

B-2 Upland Habitats

To the extent feasible and prudent, upland habitats shall be managed to avoid excessive runoff which may cause accelerated erosion, and to retain natural drainage patterns, surface water quality, and natural groundwater recharge areas. Disturbance of natural vegetation in a manner which may adversely affect slope stability or productivity of important upland habitats shall be minimized.

The Valley Road Rehabilitation Project would mostly utilize the existing road corridor and borrow pits. Minor realignments of the road and additional turnouts would be constructed to remove unsafe turns and avoid steep grades and to provide for better visibility along the route.
Most borrow pits would be restored to natural contours and revegetated, which should help reduce erosion in the general area. A few larger borrow pits would be developed and managed, especially Moraine Pit, to minimize adverse effects to natural and cultural resources and provide borrow material for the entire road corridor.

B-5 Anadromous Fish Waters and Public Water Supplies

With the exception of approved transportation and utility crossings, water dependent structures, and uses involving the research, protection, or enhancement of anadromous fish and their habitats, no development activities, alteration of natural vegetation, excavation, placement of fill, or land clearing shall take place within a minimum distance of 100 feet from the ordinary high water mark of anadromous fish waters or public water supplies.

As noted above under 6 AAC 80.130 Habitats and A-2 Mitigation, the proposed road project is mostly located away from sensitive anadromous fish habitat, and proper control of sedimentation shall be employed at stream crossings. The road crew camp water supply would be developed at the borrow pit site for temporary use or trucked in from the Brooks Lake facilities. Non of these activities should have any effect on public water supplies.

B-13 Bank Stabilization

All stream or lake bank cuts, fills, or exposed earthwork adjacent to streams, wetlands, or marine waters shall be stabilized to prevent erosion or sedimentation into adjoining waters during construction, operation, and following abandonment of development activities.

At the third crossing, the approach ramp on the south side of the stream would be cut and/or filled to create a gradual slope. Only minor improvements to the first and second crossings would be made. The park would continue to regrade all three crossings to maintain passable conditions. None of the stream crossings exist in the coastal zone, but runoff from these sites could impact coastal zone waters downstream in Margot Creek. As noted in A-2 Mitigation above, sediment traps, check screens and filters would be used to reduce stream sediment loading. A Corps of Engineers, Section 404 permit would be obtained as well as any state environmental permits.

C-4 Environmental Protection Technology

To the extent feasible and prudent, equipment and procedures utilizing the most advanced and effective technology shall be required for limiting emissions and the discharge of effluent, and for the storage, handling, cleanup, and disposal of oil and hazardous materials for municipal, industrial, military, energy, and transportation facilities.

See A-2 Mitigation above. Preventative measures will be emphasized to minimize discharges of oil or other harmful materials to the environment. The Brooks Camp Spill Prevention, Control and Countermeasure (SPCC) Plan will be finalized before this project commences. If additional fuel storage is required for this project that requires an SPCC plan, then one shall be completed prior to the storage and handling of such materials.

C-7 Refuse Disposal

Within the Lake and Peninsula Borough, refuse disposal and sanitary landfill sites and operations shall comply with the requirements of local, state, and federal regulations...

A refuse handling site would be located in temporary crew camp area along the Valley Road, well beyond the minimum 1,500 feet from domestic water sources and 200 feet from any surface waters. Unburned residues would be transported out of the park to the borough landfill.

C-8 Sewage Disposal

Where feasible and prudent, sewage treatment ponds and discharge locations shall be set back a minimum of 1,500 feet from domestic water supplies and a minimum of 200 feet from any surface waters....

A temporary septic system would located at the road crew camp site in borrow pits one or two, which would be beyond minimum specified distances from domestic water supplies and surface waters. The NPS would acquire necessary ADEC permits for such a facility.

C-9 Siting of Petroleum Storage Facilities

To the extent feasible and prudent, new facilities, or existing facilities being re-permitted for the storage, processing or treatment of 5,000 gallons or more of petroleum or petroleum products shall be sited a minimum of 1,500 feet from domestic water supplies and a minimum of 200 feet from ordinary high water or MHW of any surface waters.

The project would either use existing fuel storage tanks, or designs for additional fuel storage systems would be completed at a future date. Temporary fuel storage facilities with the staging space available at borrow pits one or two would be able to meet requirements for minimum distances from water supplies and surface waters.

E-1 Stream Crossings

Bridges and culverts shall be designed, constructed, and maintained in accordance with Policy B-6 and fisheries conservation practices which minimize habitat disturbance and allow efficient fish passage up- and downstream.

One new culvert will be installed in addition to the three stream bed crossings. All of these crossings lie above the reach of anadromous fish runs that are blocked by Margot Falls. Therefore, the culvert need not meet design standards for fish passage.

E-2 Maintaining Traditional Public Access

Restrictions on traditional methods and means of public access through municipal, state, and federal land shall be minimized. Elements of public access include roads, waterways, trails, campsites, picnic sites, and marine anchorages,

As noted in A-2 Mitigation above, temporary delays in tour van or bus travel along the Valley Road would not exceed 15-20 minutes under normal circumstances. Visitors and tour operators would be forewarned of longer delays along the road corridor. After completion of the road rehabilitation project, travel conditions would be improved in terms of safety and visual quality.

E-4 Siting, Construction, and Operation

Transportation, pipeline, and utility facilities and corridors shall be sited, designed, and operated, using the following standards:

a) adverse impacts to habitats, biological resources, coastal resource uses, recreation, socio-economic characteristics, and traditional subsistence and personal use activities shall be minimized;

b) to the extent feasible and prudent, transportation corridors and facilities shall be consolidated.

The proposed rehabilitation project would consolidate borrow pit sites along the road and lead to the restoration of abandoned borrow pits. Removal of the materials berm from the third stream crossing would restore that tributary of Margot Creek to more natural hydrologic processes. Future gravel materials would be taken from primary borrow pits, not Margot Creek tributaries.

G-4 Erosion

To the extent feasible and prudent, development activities shall retain existing vegetative cover in erosion-prone areas. In cases where development necessitates removal of vegetation, erosion shall be minimized through revegetation or by other appropriate erosion control measures.

As noted in A-2 Mitigation above, erosion would be controlled by various erosion control measures, and vegetation would be restored with appropriate plant materials in areas that are abandoned or where vegetation is removed.

H-1 Protection of Recreation Values

Projects and activities on public lands and waters used for recreational activities, or on private lands and waters where the landowner has granted formal permission for recreational activities, shall be located, designed, constructed, and operated to minimize adverse impacts to recreation resources and activities, including access.

The proposed Valley Road Rehabilitation Project is located and designed to reduce adverse impacts to natural and cultural resources in the area, yet maintain a high standard of public access and enjoyment of the scenic, natural and cultural values. Access to the Valley of Ten Thousand Smokes by vehicle would be maintained. Recreational activities such as viewing of wilderness scenery and wildlife, sport fishing, hiking and backpacking would be maintained.

H-7 Planning Processes

Recreational planners for federal and state lands will provide an opportunity for the Lake and Peninsula Borough to participate in recreation planning in accordance with the procedures identified in Chapter 7.0, Implementation.

The NPS has provided the Borough with copies of all Brooks River Area DCP workbooks and documents, and hereby notifies the Borough of the NPS coastal consistency determination for the proposed Valley Road Rehabilitation Project.

I-1 Cultural and Historic Resource Areas

Assessment of potential impacts to cultural and historic resources, and the identification of appropriate mitigation, shall be the responsibility of the developer. The potential adverse impacts of development on known historic and archaeological values (state and federal historic resource registers) shall be evaluated early in a project's planning.

Archeological clearance would be conducted prior to any road rehabilitation. See A-2 Mitigation above.

K-1 Siting of Material Sources

To the extent feasible and prudent and environmentally responsible, sources of sand, gravel, rock and other construction materials shall be authorized in the following sequence:

a) existing approved gravel pits or quarries operated in compliance with and federal authorizations;
b) reuse of material from abandoned development areas, unless reuse could cause more environmental damage than non-use;
c) new upland sites;
d) beaches of low habitat values;
e) streams which do not provide fish habitat;
f) streams which provide fish habitat

The Valley Road presently has 55 material borrow sites, many of which have been abandoned are in advance stages of natural revegetation. After the implementation of the Sand, Rock, and Gravel Plan all but three sites would be reclaimed. The remaining three sites would be enlarged to address road maintenance needs over the long term. These sites were chosen because of their strategic locations and the potential to screen borrow sites from the road. The primary extraction site would be Moraine Pit at Milepost (MP) 4.23. The other long-term extraction sites would be Moose Antler Pit at MP 12.70 between the first and second stream crossings and Swan Pond Pit at MP 18.73 after the third crossing. The following extraction sites would be used for the road project only, then immediately reclaimed and closed: First Pit at MP 0.47, Second Pit at MP 2.00, Nine Mile Pit at MP 9.06, and the Third Crossing Restoration Site at MP 16.01. This project proposed to close the extraction site in the third crossing in favor of upland sites, which follows the Borough's priorities.

K-5 Overburden Disposal

Whenever feasible and prudent, overburden in upland areas shall be saved and replaced on the disturbed area to conform to the natural topography as part of the reclamation process. Overburden shall not be disposed on in lakes, within the mean annual floodplain of streams, in wetlands, or below the limit of mean high water in intertidal areas and estuaries.

As noted in the EA and the Sand, Rock and Gravel Plan, the primary extraction site would be Moraine Pit at which overburden and waste material would be stockpiled for contouring of the site. About 70% of the material would not be usable for road work, and this topsoil and undersized material would be used to recontour the site and provide soil and plant materials for revegetation. All extraction sites would be contoured to conform to the natural topography as part of the reclamation plans.

K-6 Reclamation and Restoration

Reclamation of all upland and floodplain mined sites shall be required unless such reclamation would cause greater adverse impact to the environment than leaving the area unreclaimed. At a minimum, reclamation shall include the following elements, as applicable:

a) Topsoil and overburden shall be segregated and stored separately above the 25-year floodplain of watercourses;

b) At the end of each mining season, all disturbed areas shall be regraded to stable slopes;

c) At the completion of mining activities or gravel extraction, all disturbed areas shall be stabilized and re-vegetated, as appropriate.

As noted in the Valley Road EA and the Sand, Rock and Gravel Plan, topsoil would be saved as would plant materials and unusable mined material. These materials would be used to regrade slopes to stable slopes and revegetate the surfaces. Some abandoned borrow sites would not be reclaimed because they are so old, and natural processes have advanced the stage of restoration. For those sites that would be reclaimed, reclamation plans are included in the Sand, Rock and Gravel Plan.

Based upon the above information, data and analysis the National Park Service finds that the preferred alternative in the EA for the Valley of 10,000 Smokes Road Rehabilitation Project in Katmai National Park and Preserve is consistent to the maximum extent practicable with the ACMP and Lake and Peninsula Borough CMP. The NPS will submit completed Coastal Project Questionnaires for the proposed project.

By this determination that the NPS "Valley of 10,000 Smokes Road Rehabilitation/Sand, Rock and Gravel Plan" is consistent to the maximum extent practicable with the ACMP, the State of Alaska is notified that it has 45 days (plus any appropriate extension under 15 C.F.R. § 930.41(b)) from the receipt of this letter in which to agree or disagree with the NPS determination. The agreement or disagreement of the State of Alaska with the NPS consistency determination shall be sent to:

Joan B. Darnell
National Park Service
Alaska System Support Office
2525 Gambell Street, Room 107
Anchorage, AK 99503-2892

GSA

GSA New England Region

January 25, 2002

Mr. George Stafford, Director
Division of Coastal Resources
New York State Department of State
41 State Street, Albany, NY 12231-0001

Re: Coastal Zone Management Act Consistency Determination
Light Attendant Station, Turkey Point, Saugerties County, Ulster, New York

Dear Mr. Stafford:

This document is submitted to the New York State Coastal Management Program by the Property Disposal Division of the General Services Administration (the "GSA") in conjunction with the National Park Service Lands to Parks Program (the "NPS"), as a consistency determination pursuant to section 307(c)(1) of the Coastal Zone Management Act and the regulations promulgated at 15 CFR 930 subpart C, for the conveyance of 8.2 acres of surplus property at Turkey Point, Saugerties County, Ulster, New York (the "Property") to the New York State Department of Environmental Conservation (the "Activity"). The information in this Consistency Determination is provided pursuant to 15 CFR 930.39.

The Property is approximately 8.2 acres of land in the town of Saugerties, Ulster County, New York. The Property is bounded to the East by the Hudson River, and to the North, West and South by the 132.8-acre Turkey Point State Forest, owned and operated by the New York State Department of Environmental Conservation. The Property is predominantly open space but includes a brick storage building, a concrete and metal piling wharf, a 30' steel navigational tower and a 10' buoy crane.

On August 15, 2001, the GSA issued a Notice of Surplus Determination for the Property. By letter dated September 27, 2001, the National Park Service (NPS) requested that the Property be made available for a public benefit conveyance for park and recreation use. According to the NPS, the New York State Department of Environmental Conservation (the "NYDEC") and the Town of Saugerties each expressed an interest in acquiring the Property for park use through the NPS Lands to Parks Program. The NPS identified the NYDEC as the most suitable recipient. As a result, the GSA intends to assign the Property to the NPS pursuant to 203(k)(2) of the Federal Property and Administrative Services Act of 1949, as amended [40 USC 484(k)(2)] and the NPS will in turn convey the Property to the NYDEC for park and recreational. The deed of the Property will

U.S. General Services Administration
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street
Boston, MA 02222
www.gsa.gov

contain covenants that require that the Property be used exclusively and in perpetuity for park and recreational purposes. In addition, the deed will contain covenants for the benefit the U.S. Coast Guard to allow for the continued use, operation and maintenance of aids to navigation on the Property.

We are familiar with the Unit Management Plan for the Turkey Point State Forest issued by the NYDEC (the "Plan") and the Application for Federal Surplus Property for Public Park or Recreational Purposes, submitted to the NPS on January 7, 2002 by the NYDEC (the "Application"). Although the Plan does not include reference for proposed management activities on the Property, the Application states that the NYDEC will incorporate the Property into the Plan once ownership has transferred. After reviewing the Plan and the Application, we have determined that the Activity will have an affect on the natural resources, land uses and water uses in the coastal zone.

New York's Coastal Management Program contains the following applicable enforceable policies:

Policy 7

Significant coastal fish and wildlife habitats will be protected, preserved, and where practical, restored so as to maintain their viability as habitats.

According to the Application, there are no rare or endangered species (animal or plant) on the Property.

Policy 9

Expand recreational use of fish and wildlife resources in coastal areas by increasing access to existing resources, supplementing existing stocks, and developing new resources.

According to the Application, the acquisition of the Property will enhance the recreational mission of the Turkey Point State Forest by providing direct access to the Hudson River for fishing.

Policy 19

Protect, maintain, and increase the level and types of access to public water-related recreation resources and facilities.

According to the Application, the acquisition of the Property will enhance the recreational mission of the Turkey Point State Forest by providing direct access to the Hudson River. Fishing, picnicking and environmental interpretation are envisioned by the NYDEC for the Property.

Policy 20

Access to the publicly owned foreshore and to lands immediately adjacent to the foreshore or the water's edge that are publicly owned shall be provided and it shall be provided in a manner compatible with adjoining uses.

The Application provides that once ownership has been transferred to the NYDEC, the Property will be assimilated into the Plan. A system of interconnected hiking trails and interpretive signage will be developed, as well as an interpretive kioskat the wharf providing information on the history of the site. The Plan identifies actions to be taken to secure the Property for handicapped access.

Policy 21

Water-dependent and water-enhanced recreation will be encouraged and facilitated, and will be given priority over non-water-related uses along the coast.

The Application provides that once ownership has been transferred to the NYDEC, the Property will be assimilated into the Plan. A system of interconnected hiking trails and interpretive signage will be developed, as well as interpretive kiosk at the wharf providing information on the history of the site

Policy 23

Protect, enhance and restore structures, districts, areas or sites that are of significance in the history, architecture, archaeology or culture of the state, its communities, or the nation

On September 12, 2001, the GSA sent a letter Bernadette Castro, the New York State Historic Preservation Officer and Commissioner of the New York State Office of Parks, Recreation and Historic Preservation stating that the Property is not listed or eligible for listing on the National Register of Historic Places. By letter dated October5, 2001, Ms. Castro stated that her office strongly supports the transfer to the State Department of Environmental Conservation.

Based on the comprehensive and thorough analysis provided in the Plan and the Application, and the restrictive covenants to be included in the deed from the NPS to the NYDEC, the GSA and the NPS have determined that the Activity will have a beneficial affect on the natural resources, land uses and water uses of the Hudson River and therefore is consistent to the maximum extent practicable with the applicable policies of the New York Coastal Management Plan.

Pursuant to 15 CFR 930.41, the New York Coastal Management Program has 60 days from receipt of this letter in which to concur or object to this consistency determination, or to request an extension of time to review the matter. The State's concurrence will be presumed if the GSA does not receive the State's response on the 60th day from receipt of this determination. The State's response should be sent to:

Saundra Robbins
Project Manager
GSA Office of Property Disposal
10 Causeway Street
Boston, MA 02222

Please do not hesitate to contact me at (617) 565-5710 or Carol Chirico, Assistant Regional Counsel at (617) 565-5890 if you have any questions about this determination.

Sincerely,

Saundra Robbins
Project Manager

cc: Elyse LaForest, NPS
David Kaiser, OCRM/NOAA

FEDERAL CONSISTENCY CERTIFICATION OUTLINE

This document is an outline for non-Federal applicants to use when making a consistency certification under the Coastal Zone Management Act section 307(c)(3)(A) and (d).

Coastal Zone Management Act (CZMA) Consistency Certification.

This document provides the [name of State] Coastal Management Program with the [name of Applicant's] Consistency Certification and necessary data and information under CZMA § 307(c)(3)(A), and 15 CFR part 930, subpart D, for the [name of activity].

Certification:

[name of applicant] certifies that the proposed activity complies with the enforceable policies of [name of State's] approved management program and will be conducted in a manner consistent with such program.

Necessary Data and Information:

1. [describe the Federal license or permit activity or reference relevant pages of the Federal application, any associated facilities, and coastal effects. Provide materials which will facilitate evaluation of coastal effects]

2. [provide additional information required by the State pursuant to 15 CFR § 930.58(a)(2)]

3. [provide an evaluation that includes a set of findings relating the probable coastal effects of the proposed project and its associated facilities to the relevant enforceable policies of the State's Coastal Management Program]

   [contact State agency to help determine relevant enforceable policies]

By this certification that the [project] is consistent with [name of State's] Coastal Management Program, [name of State] is notified that it has six months from the receipt of this letter and accompanying information in which to concur with or object to [applicant's name] certification. Pursuant to 15 CFR § 930.63(b), if [name of State] has not issued a decision within three months following commencement of State agency review, it shall notify [name of applicant] and the Federal agency of the status of the matter and the basis for further delay. The State's concurrence, objection, or notification of review status shall be sent to: [provide applicant and Federal agency's contact information].

STATE COASTAL MANAGEMENT PROGRAM
FEDERAL CONSISTENCY CONTACTS
May 2, 2002

STATE	PROGRAM MANAGER	FEDERAL CONSISTENCY CONTACT
ALABAMA	Mr. Phillip Hinesley, Program Manager Dept. of Conservation & Natural Resources 1208 Main Street Daphene, Alabama 36526 334.626.0042 Fax: 334.626.3503 phillip.hinesley@noaa.gov	Mr. Bradley W. Gane, Program Chief Dept. of Environmental Management Coastal Programs Office 4171 Commanders Drive Mobile, AL 36615 334.432.6533 Fax: 334.432.6598 bwg@adem.state.al.us
ALASKA	Ms. Kerry Howard, Coastal Program Coordinator Division of Governmental Coordination P.O. Box 110030 Juneau, AK 99811-0030 907.465.8794 Fax: 907.465.3075 kerry_howard@gov.state.ak.us	Ms. Kerry Howard
AMERICAN SAMOA	Ms. Gene Brighouse-Failauga, Program Manager Department of Commerce Government of American Samoa Pago Pago, American Samoa 96799 011.684.633.5155 Fax: 011. 684.633.4195 gene.brighouse@noaa.gov	Ms. Gene Brighouse-Failauga
CALIFORNIA	Ms. Rebecca K. Roth, Federal Programs Manager California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, CA 94105-2219 415.904.5200 Fax: 415.904.5400 rroth@coastal.ca.gov	Mr. Mark Delaplaine, Federal Consistency Manager California Coastal Commission 45 Fremont Street, Suite 2000 San Francisco, CA 94105-2219 415.904.5289 Fax: 415.904.5400 mdelaplaine@coastal.ca.gov
CALIFORNIA BCDC	Mr. William Travis, Executive Director San Francisco Bay Conservation and Development Commission 50 California Street, Suite 2600 San Francisco, CA 94111-4704 415.352.3600 Fax: 415.352.3606 travis@bcdc.ca.gov	Mr. Jonathan Smith San Francisco Bay Conservation and Development Commission 50 California Street, Suite 2600 San Francisco, CA 94111-4704 415.352.3655 Fax: 415.352.3606 jons@bcdc.ca.gov

STATE	PROGRAM MANAGER	FEDERAL CONSISTENCY CONTACT
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February 13, 2002

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State Lists of CZMA Federal Consistency Activities

February 13, 2002

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American Samoa
California
Connecticut
Delaware
Florida
Georgia
Guam
Hawaii
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
New Hampshire
New Jersey
New York
North Carolina
Northern Marianas Islands
Ohio
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
Texas
Virginia
Virgin Islands
Washington
Wisconsin

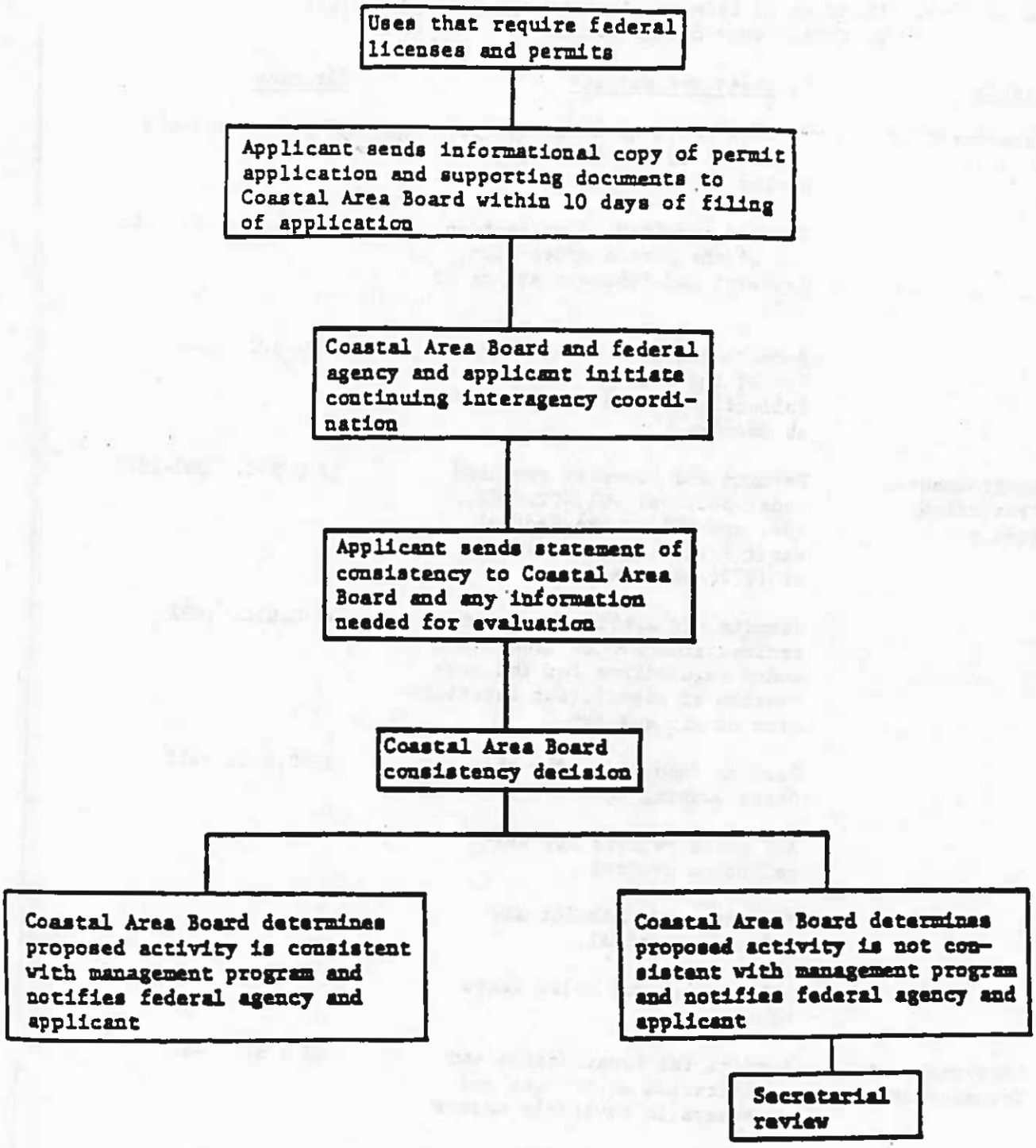


Figure IV-8 Review of federal licenses and permits for consistency

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Table IV-4. Examples of federal licenses and permits subject to consistency certification

Agency	Licenses and permits	Citation
Department of Defense	Permits required under section 10 and 11 of the River and Harbor Act of 1899.	33 U.S.C. 403-413
	Permits required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.	33 U.S.C. 1401-1444
	Permits required under Section 404 of the Federal Water Pollution Control Act of 1972, as amended	33 U.S.C. 1344
Environmental Protection Agency	Permits and licenses required under Sections 401,402, 403, 404, and 405 of the Federal Water Pollution Control Act of 1972, as amended	33 U.S.C. 1342-1345
	Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration of air quality	42 U.S.C. 1857
	Permits required under the Ocean Dumping Act	33 U.S.C. 1412
	All other permits for water pollution control	
	All other permits for air pollution control.	
	All permits for solid waste control.	
Department of Transportation	Permits for construction and modification of bridges and causeways in navigable waters	33 U.S.C. 401
	Permits for transporting hazardous substances and materials	

Table IV-4 (Continued)

Agency	Licenses and permits	Citation
Department of Transportation (continued)	Licenses for deep-water ports	15 C.F.R. 158 et. seq.
U.S. Nuclear Regulatory Commission	Permits and licenses required for siting and construction of nuclear power plants	
Federal Energy Regulatory Commission	Licenses required for non-federal hydroelectric projects and associated transmission lines under Sections 4(e) and 15 of the Federal Power Act	16 U.S.C. 797 (e) and 808
	Orders interconnection of electric transmission facilities under Section 202(b) of the Federal Power Act	16 U.S.C. 824a(b)
	Certificates required for the construction and operation of natural gas pipeline facilities, defined to include both interstate pipeline and terminal facilities under Section 7(c) of the Natural Gas Act	15 U.S.C. 717f(c)
	Permission and approval required for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act	15 U.S.C. 717f(b)
Department of the Interior	Permits and licenses required for all onshore activities related to mining and oil and gas operations.	30 U.S.C. 181 et. seq. 30 U.S.C. 351-359
	Permits and licenses required for geothermal operations	Geothermal Steam Act of 1970
Department of Agriculture	Permits for water easements and timbering activities on National U.S. Forest Service land.	43 U.S.C. 1716
	Permits and licenses for use and occupancy of land for hotels, resorts, summer homes, stores and facilities for industrial, commercial, educational or public use.	16 U.S.C. 497

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Table IV-4 (continued)

Agency	Licenses and permits	Citation
Department of Energy	Permits for the construction, operation, siting of energy facilities.	
Department of Commerce	Permits for research involving taking endangered species or marine mammals or for taking of marine mammals for public display or incidental to commercial fishing.	Endangered Species Act of 1972 Marine Mammal Act of 1972

shall describe in detail the information needed to make a response.

After completing all technical studies required by the federal agency, the applicant will provide the Coastal Area Board with a Certification of Consistency containing the statement that the proposed use complies with and will be conducted consistently with the management program. The Certification of Consistency shall not be considered complete until the Board has received the information reasonably necessary to support a Board decision.

Except as provided hereinabove, within six months of receipt of the Certification of Consistency, the Board shall do one of the following:

a. Concur with the Certification of Consistency, with or without special limitations, or
b. Object to the Certification of Consistency.

In the event that the Board objects to the Certification of Consistency, the reasons and supporting details for the objection will be provided to the agency and the applicant, along with any alternative means to conduct the use consistently with the management program. The applicant may appeal the objection to the Secretary of Commerce. Following the Board objection to the Certification of Consistency, the federal permit may not be issued unless the Secretary of Commerce overturns the Board decision.

The Board will work with federal agencies to develop memoranda of agreement where appropriate to facilitate and simplify the permitting of regulated uses within the Coastal Area.

3. Review of Activities Described in Outer Continental Shelf Lands Plans

Pursuant to 15 CFR Part 930, Subpart E, any person who submits to the United States Secretary of the Interior any plan for the exploration of, or development of, or production from any area leased under the Outer Continental Shelf (OCS) Lands Act shall certify that activities described in the plan which affect the Coastal Area will comply with and will be conducted consistently with the management program (Figure IV-9). The Board is given authority to concur with or object to the plan.

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5) DPDP responds in writing to the federal agency and the application informing them of its findings. In accordance with 15 CFR 930.63(b) and (c), DPDP responds at the earliest practicable time. If no decision has been reached within three months, DPDP reports on progress and the reason for delay. DPDP will make a finding within six months of initial receipt of the federal license or permit application and consistency certification, or the state may be presumed to have concurred with the certification.

6) In the event of a dispute, DPDP initiates negotiations between disagreeing state and federal agencies and, if necessary, the applicant. Mediation procedures will follow the process detailed in 15 CFR 930, Subpart G.

The federal licenses and permits that DPDP will review for consistency with the ACMP include:

Department of Agriculture, U.S. Forest Service

1) Permits for water easement of USFS lands.
2) Permits for construction on USFS lands.
3) Special use permits meeting the criteria of 15 CFR 930.21(b).

Department of Commerce, Office of Coastal Zone Management

1) Permits within Marine Sanctuaries under 33 USC 1401-1444.

Department of Defense, Army Corps of Engineers

1) Permits under Sections 9 and 10 of the Rivers and Harbors Act, authorizing the construction of bridges, causeways, dams and dikes, and the obstruction of navigable waters.

2) Permits under Section 4(F) of the Outer Continental Shelf Lands Act and amendment, authorizing artificial islands or fixed structures on the OCS.

3) Permits under Section 103 of the Marine Protection Research and Sanctuaries Act, authorizing ocean dumping outside the limits of the territorial sea.

4) Permits under Section 404 of the Federal Water Pollution Control Act, authorizing discharges into navigable waters (also subject to state certificate of reasonable assurance, FWPCA Section 401).

Department of Energy, Federal Energy Regulatory Commission

1) Licenses for the construction and operation of non-federal hydroelectric projects and associated transmission lines under sections 4 (e) and 15 of the Federal Power Act (16 U.S.C. 787(e) and 808).

2) Orders for interconnection of electric transmission facilities under section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)).

3) Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities under section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).

4) Permission and approval for the abandonment of natural gas pipeline facilities under section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

Environmental Protection Agency

1) Permits required under Section 402 (NPDES) of the 1972 Federal Water Pollution Control Act and amendments, authorizing discharge of pollutants into navigable waters. (also subject to state certificate of reasonable assurance, FWPCA Section 401).

2) Permits required under Section 405 (NPDES) of of the 1972 Federal Water Pollution Control Act and amendments, authorizing disposal of sewage sludge.

3) Permits for new sources or for modification of existing sources and waivers of compliance allowing extensions of time to meet air quality standards under Section 112(c)(1) of the 1972 Clean Air Act.

4) Exemptions granted under the Clean Air Act for stationary sources.

Department of the Interior

1) Permits and licenses for drilling and mining and related facilities on public lands (BLM).

2) Permits for pipeline rights-of-way on public lands and the Outer Continental Shelf.

3) Permits and licenses for rights-of-way on public lands.

4) Permits and licenses required for drilling and mining on OCS lands (USGS).

Nuclear Regulatory Commission

1) Permits and licenses for the siting, construction and operation of nuclear facilities.

Department of Transportation, U.S. Coast Guard

1) Permits for construction or modification of bridge structures and causeways across navigable

waters.

2) Permits for siting, construction and operation of deepwater ports.

General

1) Licenses and permits subject to 15 CFR 930.54.

More refined lists of federal licenses and permits subject to consistency review by the state will be worked out in agreements between DPDP and the federal agencies. These agreements will also specify timing and procedures where additional detail is needed. Any additions or deletions to the list of licenses and permits must be approved by the Assistant Administrator for Coastal Zone Management (NOAA) pursuant to 15 CFR 930.53.

OCS Activities

Section 307 (c)(3)(B) of the Coastal Zone Management Act states that each activity which is described in detail in a plan for the exploration or development of, or production from, any lands leased under the Outer Continental Shelf Lands Act (43 USC 1331, et seq.) will be carried out in a manner consistent with a state's approved management program. No federal official or agency may issue a license or permit for any activity described in detail in an OCS plan until the state concurs with the consistency certification of the plan describing such activities, or until the Secretary of Commerce finds that each activity described in detail is consistent with a state's program or is otherwise necessary in the interest of national security.

Pursuant to 30 CFR 250.34, a system was established between the U.S. Geological Survey and the State of Alaska for state agencies, including DPDP, to review OCS plans. USGS sends copies of reports it received for OCS lands lessees to affected state agencies, which in turn send comments through DPDP back to the USGS. This procedure may or may not change by virtue of the new amendments to the OCS Lands Act.

With the addition of a consistency certification for each activity described in detail in an OCS plan, DPDP will concur with or object

AMERICAN SAMOA

Department of Defense, Army of Corps of Engineers

1) Permits under Sections 9 and 10 of the Rivers and Harbors Act, authorizing the construction of bridges, causeways, dams and dikes, and the obstruction of navigable waters.

2) Permits under Section 4(F) of the Outer Continental Shelf Lands Act and amendments, authorizing artificial islands of fixed structures on the OCS.

3) Permits under Section 103 of the Marine Protection Research and Sanctuaries Act, authorizing ocean dumping outside the limits of the territorial sea.

4) Permits under Section 404 of the Federal Water Pollution Control Act, authorizing discharges into navigable waters (also subject to state certificate of reasonable assurance, FWPCA Section 401).

Department of Energy, Federal Energy Regulatory Commission

1) Licenses for the construction and operation of non-federal hydroelectric projects and associated transmission lines under sections 4(e) and 15 of the Federal Power Act (16 U.S.C. 797(e) and 808).

2) Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities under section 7(c) of the Natural Gas Act (15 U.S.C. 717(f)(b)).

Environmental Protection Agency

1) Permits required under Section 402 (NPDES) of the 1972 Federal Water Pollution Control Act and amendments, authorizing discharge of pollutants into navigable waters. (Also subject to state certificate of reasonable assurance, FWPCA Section 401.)

2) Permits required under Section 405 (NPDES) of the 1972 Federal Water Pollution Control Act and amendments, authorizing disposal of sewage sludge.

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3) Permits for new sources or for modification of existing sources and waivers of compliance allowing extensions of time to meet air quality standards under Section 112(c)(1) of the 1972 Clean Air Act.

4) Exemptions granted under the Clean Air Act for stationary sources.

Nuclear Regulatory Commission

1) Permits and licenses for the siting, construction and operation of nuclear facilities.

Department of Transportation, U.S. Coast Guard

1) Permits for construction or modification of bridge structures and causeways across navigable waters.

2) Permits for siting construction and operation of deepwater ports.

The ASCMP may add or subtract from this list in the future pursuant to 15 CFR 930.53.

DPO will monitor Federal licenses and permits in order to identify, on a case-by-case basis, additional Federal licenses or permit activities which DPO believes will affect the coastal zone. DPO will seek Federal approval to subject license and permit activities so identified to the consistency certification procedures described in this section (15 CFR 930.54).

No Federal license or permit included in the preceding list or receiving Federal approval on a case-by-case basis, as above, may be issued until DPO approves a consistency certification as described below. In the event of a serious disagreement between DPO and a Federal Agency regarding whether a listed or unlisted Federal license or permit activity is subject to a consistency review, either party may seek mediation (15 CFR 930.55).

2. Consistency Certification

Applicants for Federal licenses or permits shall provide both the involved Federal agency and DPO with a consistency certification in the form of:

> The proposed activity complies with the ASCMP and will be conducted in a manner consistent with such program. (15 CFR 930.57)

If a Federal agency does not choose to participate in the voluntary memorandum of understanding process, the Federal agency must utilize some other procedure (OMB A-95 project notifications, Environmental Impact Statements, etc.) supplemented as necessary pursuant to the requirements of the CZMA. Regardless of the alternative notification process used by a Federal agency, it must assure that the Coastal Commission is notified of all Federal activities including development projects in the coastal zone at the earliest practicable time in the planning process. The process must also provide adequate opportunity for the Coastal Commission to hold a public hearing and to determine the consistency of the proposed action with the CCMP. The notification must include a description of the activity, a discussion relating the coastal zone effects of the action to the relevant requirements of the management program, and sufficient supporting information for the Coastal Commission to review the Federal agency's consistency determination.

(ii) Consistency of Federal Activities Not Requiring Coastal Permits.

Memoranda of understanding will not be requested with regard to Federal activities including development projects which would not otherwise require coastal agency permits. However, such actions conducted by any Federal agency which will directly affect coastal zone resources will be expected to be undertaken in a manner consistent, to the maximum extent practicable, with California's coastal program as required by the CZMA. The Coastal Commission, with the assistance of local government representatives, will review Federal agency decisions to determine whether Federal actions directly affect the coastal zone, and if there is such an impact, whether the Federal action is consistent to the maximum extent practicable with the coastal program. This review process will include a timely notice and public hearing, with the Federal agency and local governments having jurisdiction over the affected area being invited to participate in the public hearing. Local government representatives will be afforded the opportunity to assist the Coastal Commission in its consideration of the Federal agency's consistency determination by presenting a determination of the consistency of the Federal activity or project with the certified local coastal programs for the affected jurisdictions. If the Coastal Commission finds that the Federal activity or development project directly affects the coastal zone and is not consistent with the management program, and the Federal agency disagrees and decides to go forward with the action, it will be expected to (a) advise the Coastal Commission in writing that the action is consistent, to the maximum extent practicable, with the coastal management program, and (b) set forth in detail the reasons for its decision. In the event the Coastal Commission seriously disagrees with the Federal agency's consistency determination, it may request that the Secretary of Commerce seek to mediate the serious disagreement as provided by Section 307(h) of the CZMA, or it may seek judicial review of the dispute.

(iii) State Monitoring and Review of Federal Activities Including Development Projects.

To assist in implementing the procedures set forth in paragraphs (i) and (ii) above, the Coastal Commission will monitor all Federal activities including development projects that may directly affect the coastal zone. This monitoring effort will rely upon existing inter-governmental coordination procedures - the A-95 notification and review process, review of environmental impact statements, and review of Corps of Engineers public notices - supplemented as necessary with special coordination with individual Federal agencies. The Coastal Commission will make every effort to notify Federal agencies of potential inconsistent Federal activities as early as possible in the Federal agencies' planning process. At the same time, it is expected that each Federal agency proposing to conduct Federal activities including development projects which may directly affect the coastal zone will notify the Coastal Commission at the earliest practicable time. These reciprocal efforts can assist the parties in identifying potential conflicts with the State's management program and, once identified, the Federal agency and the Coastal Commission can work towards early resolution of the problem.

(b) Federal Licenses and Permits Subject to Certification for Consistency.

(i) Federal License and Permit List.

The following Federal agency licenses and permits will be subject to the certification process for consistency with the management program, under Section 307(c)(3) of the CZMA, if the activity being licensed or permitted affects land or water uses in the coastal zone:

Department of Defense - U.S. Army Corps of Engineers:

- Permits and licenses required under Sections 9 and 10 of the Rivers and Harbors Act of 1899;
- Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972;
- Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments; and
- Permits for artificial islands and fixed structures located on the Outer Continental Shelf (Rivers and Harbors Act of 1899 as extended by 43 U.S.C. 1333(f)).

CA

Nuclear Regulatory Commission:

- Permits and licenses required for siting and operation of nuclear power plants.

Department of the Interior - Bureau of Land Management - U.S. Geological Survey:

- Permits and licenses required for drilling and mining on public lands (BLM).
- Permits for pipeline rights-of-way on the Outer Continental Shelf.
- Permits and licenses for rights-of-way on public lands.

Environmental Protection Agency:

- Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments.
- Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.

Department of Transportation - U.S. Coast Guard:

- Permits for construction of bridges under 33 USC 401, 491-507 and 525-534.
- Permits for deepwater ports under the Deepwater Port Act of 1974 (PL 93-627).

Department of Transportation - Federal Aviation Administration:

- Certificates for the operation of new airports. (Federal Aviation Regulations, Part 139)

Federal Power Commission:

- Licenses for construction and operation of hydroelectric generating projects including primary transmission lines.
- Certifications required for interstate gas pipelines.
- Permits and licenses for construction and operation of facilities needed to import, export, or transship natural gas or electrical energy.

This listing is intentionally limited to those Federal licenses and permits that may significantly affect coastal land and water uses. This is desirable to minimize the administrative burdens on the governmental entities as well as on the applicant. If it is found that the issuance of other Federal permits and licenses causes significant effects on coastal land and water uses, the consistency requirements will be applied to those permits or licenses through administrative addition to the list above.

(ii) License and Permit Activities Within the Coastal Zone.

Within the coastal zone, a Coastal Commission permit will be required from non-Federal applicants for the above activities. A memorandum of understanding will be requested from Federal agency applicants for the above activities. The issuance of a Coastal Commission permit* or agreement on a memorandum of understanding will be deemed to be a determination by the State that the proposed Federal license or permit activity is consistent with the management program, and no further certification will be required. In cases where no Coastal Commission permit has been applied for but where one is required, the Coastal Commission will process a certification of consistency concurrent with the permit application. The Coastal Commission will not review whether a Federal license or permit activity in the coastal zone is consistent with the management program except in connection with a Coastal Commission permit application if a permit is required.

To ensure that the national interest is adequately protected, where the State's primary management authority over the above activities has been delegated to a local government upon the certification of a local coastal program, the local decision will be automatically reviewed by the Coastal Commission. The Coastal Commission's decision on the appeal, or on the review of a local permit that was not or could not be appealed, will be deemed to be the State's determination of the consistency of the proposed activity with the California Coastal Management Program. Consequently, the Coastal Commission will have the lead role and during its deliberations it will consider the views of local governments with certified local coastal programs for the affected areas.

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*The issuance of a permit for an electric transmission line or a thermal power plant by the State Energy Resources Conservation and Development Commission pursuant to Section 30413 of the Coastal Act is considered a Coastal Commission permit for purposes of this section.

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(iii) License and Permit Activities Outside of the Coastal Zone.

Outside of the coastal zone (for example, on excluded Federal lands or on uplands beyond the coastal zone boundary), consistency certifications for the above licenses and permits will be required only in cases where the Coastal Commission determines that the activity being licensed or permitted could have a substantial effect on land and water uses in the coastal zone. This determination will be made on a case-by-case basis in the course of the monitoring program described in paragraph (a)(iii). It is not anticipated that many licenses and permits outside of the coastal zone will require certification. At the same time, those that do will probably be of considerable interest to the public because of the potential for substantial impact on the coast. Consequently, consistency certifications for Federal license or permit activities outside of the coastal zone will be processed as much as possible as if they were applications for Coastal Commission permits under the Coastal Act and its implementing regulations to allow for timely public notice and hearings. The local governments having jurisdiction over the area that would be affected by the proposed activity will be invited to participate in the public hearing. Local government representatives will be afforded the opportunity to participate in the Commission's deliberations and to present a determination of the consistency of the proposed activity with the certified local coastal programs for the affected jurisdictions.

(iv) Coastal Commission Objections to Federal License and Permit Activities.

If, in connection with the review of proposed Federal license or permit activities under paragraphs (ii) or (iii), the Coastal Commission determines that a non-Federal applicant's proposed license or permit activity is not consistent with the State's management program as required by Section 307(c)(3)(A) of the CZMA, the Federal agency may not issue the license or permit unless the Secretary of Commerce, on her own initiative or upon appeal by the applicant, finds, after providing an opportunity for comments from the Federal agency involved and from the Coastal Commission, that the activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security. If the Coastal Commission objects to the consistency of a Federal applicant's proposed license or permit activity, and the Federal agency decides to go forward with the activity, the Coastal Commission may use the mediation or judicial review dispute resolution procedures described in paragraph (a)(i). In its draft Section 307 regulations, NOAA has proposed to exclude Federal agencies from the license and permit certification requirements and the appeal provisions of the CZMA. While the Coastal Commission does not fully agree with this position, it will abide by NOAA's decision in the administration of the CCMP for purposes of the CZMP. The Coastal Commission, however, reserves the right to subject Federal agencies to the certification requirement in the event administrative, judicial, or legislative modification should occur.

(c) Federal Licenses and Permits Described in Detail in OCS Plans.

The following Federal agency licenses and permits will be subject to the certification process for consistency with the management program under Section 307(c)(3)(B) of the CZMA if the activity being licensed or permitted is described in detail in an OCS exploration or development plan and affects land or water uses in the coastal zone:

Department of the Interior - U.S. Geological Survey

Approval of offshore drilling operations.

Approval of design plans for the installation of platforms.

Approval of gathering and flow lines.

Any other OCS-related Federal license or permit activities described in paragraph (b)(i) (for example, BLM pipeline rights-of-way on the OCS) which U.S.G.S. determines should be described in detail in OCS plans.

In accordance with the CZMA, Federal license and permit activities described in detail within exploration or development plans for OCS areas adjacent to California waters that have been leased under the Outer Continental Shelf Lands Act, will be subject to certification and State review. This process will assure that Federal license and permit activities described in detail in such plans, and affecting land or water uses in the coastal zone, are consistent with the State's management program. Consistency certifications for OCS plans will be processed as much as possible as if they were applications for coastal permits under the Coastal Act and its implementing regulations to allow for timely public notice and hearings. Local governments having jurisdiction over areas affected by OCS activity will be invited to participate in the public hearing. Local government representatives will be afforded the opportunity to participate in the Coastal Commissions deliberations and to present determinations of the consistency of the proposed OCS activity with the certified local coastal programs for the affected jurisdictions.

BCDC

(3) Memoranda of understanding will not be requested with regard to Federal activities or developments ~~inside or outside the coastal zone~~ that would not otherwise require Commission permits. However, activities conducted or supported by any Federal agency which could directly affect land, water, air, and other coastal resources within the coastal zone, will be expected to conform to the BCDC management program to the maximum extent practicable as required by Section 307(c)(1). The determination as to whether a specific activity could "directly affect the uses of land, water, air, and other coastal resources" will be made by the Commission. The Commission will also determine whether the activity is, or is not, fully consistent with the BCDC management program. If the Commission determines that the activity is not fully consistent with the BCDC management program, and the Federal agency involved ~~will be expected~~ disagrees but, nevertheless, decides to go forward with the project or activity, ~~if at all, only after~~ it will be expected to (a) has advised the Commission, in writing, that the project or activity complies with the BCDC management program to the maximum extent practicable, and (b) has set forth, in detail, the reasons why this is so. In the event BCDC seriously disagrees with the Federal agency's determination that an activity or project complies with the management program to the maximum extent practicable, BCDC may request the Secretary of Commerce to mediate the serious disagreement as provided by Section 307(h) of the Act.

(4) Within the nine Bay Area counties, the following Federal agency licenses and permits ~~to conduct activities affecting land and water uses in the coastal zone~~ will be subject to the certification ~~by the Commission~~ process for consistency with the BCDC management program ~~under~~ contained in Section 307(c)(3) if the activity being licensed or permitted affects land or water uses in the coastal zone:

Department of Defense - U. S. Army Corps of Engineers

(a) Permits and licenses required under Sections 9, 10, and 11 of the Rivers and Harbors Act of 1899.

BCDC

(b) Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

(c) Permits and Licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments.

Nuclear Regulatory Commission

(a) Permits and licenses required for siting and operation of nuclear power plants.

Department of Interior - Bureau of Land Management; U. S. Geological Survey

(a) Permits and licenses required for drilling and mining on public lands (BLM).

(b) Permits and approvals for exploration and operating plans pertaining to the extraction of leasable minerals (U.S.G.S.).

Department of Transportation - U. S. Coast Guard

(a) Permits for construction of bridges under 33 U.S.C. 401, 491-507, and 525-534.

(b) Permits for deep water ports under the Deep Water Port Act of 1974 (PL 93-627).

Department of Transportation - Federal Aviation Administration

(a) Permits for operation of airports.

Federal Power Commission

~~(a) Permits and licenses required for power plant siting and transmission lines.~~

~~(b)~~ (a) ~~Permits and licenses~~ Certifications required for interstate pipelines.

~~(c)~~ (b) Permits and licenses for construction and operation of facilities needed to import, export, or tranship natural gas or electrical energy.

CONNECTICUT

Federal agencies shall determine which of their activities directly affect Connecticut's coastal area and shall consider all development projects within the coastal boundary to have a direct effect. In order to facilitate this determination, a listing of federal activities and development projects which are likely to directly affect the coastal area and, if so, would require a consistency determination under Section 307(c)(1) are provided below:

Federal Agency	Activity or Development Project
Army Corps of Engineers Department of Defense	- Proposed authorizations for dredging, channel improvements, other navigation works, beach replenishment, erosion control structures, dams or flood control works, maintenance dredging.
	- land acquisition for spoil disposal or other purposes
	- selection of open water disposal sites
Other Department of Defense Agencies	- location, design, acquisition of new or expanded defense installations (active or reserve status, including associated housing, transportation or other facil
	- plans, procedures and facilities for handling or storage of hardous material
	- establishment of impact, compatibility or restricted uses zones.
Department of Transportation	- location, design, construction or enlargement of Coast Guard stations.
	- location, placement or removal of air or sea navigation devices.
	- expansion, abandonment, designation of anchorages, lightering areas, shipping lanes or pilot areas.
Department of Energy	- prohibition orders
Department of Interior	- proposed land acquisition by the U.S. Fish and Wildlife Service or the National Park Service.
	- OCS lease sales and other actions taking place on the Outer Continental Shelf, including but not limited to operating orders, etc. (see number 2 on p. II-231)

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Federal Agency	Activity or Development Project
	- development of federal minerals ownership (FMO) rights
General Services Administration	- location and design of proposed federal government property or buildings whether leased or owned by the federal government
	- disposal of federal surplus lands and approval
National Marine Fisheries Service (and North Atlantic Fisheries Management Council)	- preparation and approval of plans and implementing mechanisms pursuant to management of fisheries within the 200 nautical mile extended jurisdiction
Amtrak, Conrail	- expansions, curtailments, new construction, upgradings, or abandonments of railroad facilities or services in or affecting the state, including actions regarding the Northeast Corridor Realignment

Generally, the following types of activities and development projects whether or not listed above are generally assumed to directly affect Connecticut and, therefore, are subject to a consistency determination.

1. Actions on Excluded Federal Lands

   - any activity which would cause a discharge which otherwise would be subject to Connecticut air, water or hazardous materials regulations.

   - any activity in a flood prone or erosion prone area which would lead to a significant change in drainage patterns, run-off coefficients, or sediment loadings.

   - any activity which would result in a significant change in land or water use/development patterns or which would require major new public investment.

2. Actions Outside the Coastal Management Area/State:

   - any activity or development project (landward or seaward of the management area) which would result in a significant change in air or water quality within the management area.

   - construction of a major federal facility in close proximity to Connecticut which could result in significant land or water use impacts, or require major public investment, or adversely affect the state's economy.

Notes

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(1) Activities and development projects listed above should be reviewed specifically with respect to their impacts on:

- Water quality
- Air quality
- Living resources, both terrestrial and marine
- Natural, scenic, historic and cultural areas
- Social and economic resources land use patterns
- Effect on public facility and service investment
- Plans and regulations of state and local governments
- Recreational and visual access to coastal waters

(2) The state recognizes the need to maintain flexibility in this process and acknowledges that a shorter review time or the development of consistency agreements and waivers may be necessary in the interests of national security or other overriding national interest.

(3) The state through negotiation with federal agencies may enter into agreements limiting the applicability of consistency review based upon the scope, size, location or other characteristics of the proposed action. (ref. Sec. 22a-96 of the Connecticut General Statutes)

Notification Process--Federal agencies must provide the Connecticut Coastal Management Unit with consistency determinations at the earliest practicable time in the planning of the activity, preferrably before the activity or project reaches a decision stage likely to restrict the evaluation of alternative approaches. In any case, the consistency determination must be provided to the Coastal Management Unit at least 90 days before final approval of the federal activity or project. Although use of existing notification procedures is not required, federal agencies are encouraged to provide consistency determinations through existing mechanisms such as OMB Circular A-95 and NEPA environmental impact statements.

The consistency determination must contain the following:

- a brief statement indicating whether or not the proposed activity or project will be undertaken in a manner consistent to the maximum extent practicable with the Connecticut Coastal Management Plan;
- an evaluation of the relevant provisions of the program, particularly the coastal policies contained in the Connecticut Coastal Management
- a detailed description of the activity or project, associated facilities, and related coastal area effects;

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Applicants for federal licenses or permits for activities affecting the coastal area or for renewals or amendments to such licenses or permits shall provide the Coastal Management Unit with a certification that the proposed activity is consistent with the Coastal Management Plan. Federal agencies may not issue a license or permit if the state objects to the applicant's consistency certification unless the U.S. Secretary of Commerce finds that a proposal is consistent with the purpose of the Federal CZMA or is necessary in the interest of national security.

Prior to or concurrent with the consistency review process, any appropriate state permit applications should be submitted to the Department of Environmental Protection. If the Coastal Management Unit receives a consistency certification for an activity which requires a state permit but for which no permit application has been submitted, the Coastal Management Unit will advise the agency or person proposing to conduct the activity that such a permit, or permits, is required.

Listed Licenses and Permits--All the licenses and permits listed below for activities occuring within Connecticut's coastal management boundary are considered as significantly affecting Connecticut's coastal zone and, therefore, are subject to consistency certifications and review.*

Federal Agency	License or Permit and Statutory Citation
Army Corps of Engineers Department of Defense	- Construction of dams, dikes or ditches across navigable waters, or obstruction or alteration of navigable waters required under Section 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403) - Establishment of harbor lines pursuant to Secion 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404,405) - Occupation of sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 406) - Approval of plans for improvements made at private expense under USACE supervision pursuant

(*) Mechanisms may be developed to allow for a waiver of certain steps in the State Review Process for projects covered by listed permits and licenses. Such waivers will be based on the size, scope, location and extent of State and local control of the proposed activity and shall be negotiated pursuant to Sec. 22a-96 of the Conn. General Statutes.

Federal Agency	License or Permit and Statutory Citation
Army Corps of Engineers Department of Defense	to the Rivers and Harbor Act of 1902 (33 U.S.C. 565) - Discharge of dredged spoils into the waters of the United States pursuant to the Clean Water Act, Section 404(33 U.S.C. 1344). - All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413) - Construction of artificial islands and fixed structures in Long Island Sound pursuant to Section 4(f) of the River and Harbors Act of 1912 (33 U.S.C.)
Coast Guard Department of Transportation	- Construction or modification of bridges, causeways or pipelines over navigable waters pursuant to 49 U.S.C. 1455 - Permits for Deepwater Ports pursuant to the Deepwater Ports Act of 1974 (33 U.S.C. 1501)
Environmental Protection Agency	- NPDES permits and other permits for federal installations, discharges in contiguous zones and ocean waters, sludge runoff permits and agriculture pursuant to Sections 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343 and 1328) - Permits pursuant to the Resources Recovery and Conservation Act of 1976 - Permits pursuant to the underground injectic control program under Section 1424 of the Safe Drinking Water Act (42 U.S.C. 300h-c) - Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857)
Nuclear Regulatory Commission	- Licensing and certification of the siting, construction and operation of nuclear power plants pursuant to Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.

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Federal Agency	License or Permit and Statutory Citation
Federal Energy Regulatory Commission	- licenses and permits ordering interconnection of electric transmission lines or issuing certificates of public convenience and necessity for interstate natural gas transmission, including approval of LNG sites pursuant to the Federal Power Act, the Energy Reorganization Act of 1974 and the Natural Gas Act
	- siting, construction and operation of non-nuclear power plants.
Department of Energy	- Regulation of gas pipelines, and licens of import or export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act of 1974.
	- exemptions from prohibition orders
U.S. Geological Survey Department of the Interior (*)	- permits to drill, rights of use and ments for construction and maintenanc pipelines, gathering and flow lines a associated structures pursuant to 43 1334, exploration and development pl
Bureau of Land Management (*) Department of the Interior	- permits required for pipelines crossi federal lands, including OCS lands, a associated activities pursuant to th OCS Lands Act (43 U.S.C. 1334) and 4 U.S.C. 931(c) and 20 U.S.C. 185.
Fish and Wildlife Service Department of the Interior	- endangered species permits pursuant t the Endangered Species Act (16 U.S.C 153(a)).

(*) These activities may be covered under review of OCS plans If the permits and licenses are part of such plan no separate review will be required

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DEPARTMENT OF AGRICULTURE

10.409 Irrigation, Drainage, and other Soil and Conservation Loans
10.414 Resource Conservation and Development Loans
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection Flood Prevention Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.424 Industrial Development Grants
10.901 Resource Conservation and Development (construction only)
10.904 Watershed Protection and Flood Prevention (construction only)

DEPARTMENT OF COMMERCE

11.300 Economic Development Grants and Loans for Public Works and Development Facilities
11.304 Economic Development-Public Works Impact Projects
11.310 Local Public Works Capital Development and Investment Act of 1976 Projects
11.407 Commercial Fisheries Research and Development
11.501 Development and Promotion of Ports and Intermodel Transportation

DEPARTMENT OF DEFENSE

12.101 Beach Erosion Control Projects
12.106 Flood Control Projects
12.107 Navigation Projects
12.108 Snagging and Clearing for Flood Control
12.109 Protection, Clearing and Straightening Channels

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

14.001 Flood Insurance
14.112 Mortgage Insurance-Construction or Rehabilitation of Condominium Projects
14.115 Mortgage Insurance-Development of Sales-Type Cooperative Projects
14.124 Mortgage Insurance-Investor Sponsored Cooperative Housing
14.125 Mortgage Insurance-Land Development and New communities
14.126 Mortgage Insurance-Management Type Cooperative Projects
14.127 Mortgage Insurance-Mobile Home Parks
14.128 Mortgage Insurance-Hospitals
14.129 Mortgage Insurance-Nursing Homes and Related Care Facilities
14.207 New Communities-Loan Guarantees
14.218 Community Development Block Grants/Entitlement Grants
14.219 Community Development Block Grants/Discretionary Grants
14.701 Disaster Assistance

DEPARTMENT OF THE INTERIOR

15.802 Minerals Discovery Loan Program
15.950 Additional Water Resources Research

CN

DEPARTMENT OF TRANSPORTATION

20.102 Airport Development Aid Program
20.205 Highway Research, Planning and Construction (construction only)
20.506 Urban Mass Transportation Demonstration Grants

ENVIRONMENTAL PROTECTION AGENCY

66.005 Air Pollution Control Survey and Demonstration Grants (construction projects only)
66.418 Construction Grants for Wastewater Treatment Works
66.452 Solid Waste Management Demonstration Grants
66.505 Water Pollution Control-Research, Development, and Demonstration (construction projects only)
66.506 Safe Drinking Water Research and Demonstration Grants (construction projects only)
——— Sole Source Aquifer Program Grants

Note: 1) Reference to Catalog of Federal Domestic Assistance, 1978.
2) DEP reserves the right to monitor proposed federal assistance projects other than those described above through the A-95 and other review processes. Where such monitoring indicates a significant impact on the State's coastal region and a subsequent need for a consistency determination DEP shall notify the statewide A-95 clearing house, relevant regional A-95 clearinghouse, the applicant agency, involved federal agencies, and the Assistant Administrator of NOAA of its intention to make such a determination.

Notification Process -- The Coastal Management Unit will use the A-95 Project Notification and Review Process to monitor proposed federal assistance projects in the coastal area. The Connecticut Office of Policy and Management, the state agency designated to administer the A-95 process, shall notify the Coastal Management Unit of proposed federal assistance projects in the coastal area.

If, pursuant to the A-95 process, the Coastal Management Unit identifies an application for federal assistance to conduct an activity which significantly affects the coastal area but which is outside the coastal boundary, the Coastal Management Unit shall provide notice to that effect to the federal agency, the applicant, the A-95 Clearinghouse and the Assistant Administrator of NOAA within the A-95 comment period.

State Review Process -- The A-95 distribution process generally requires that only a summary of a large scale grant application, and not the full application, be made available for A-95 review and comment. The Coastal Management Unit anticipates that a review of the full application for federal assistance to state and local governments for projects significantly affecting the coastal area will often be required before a consistency determination can be made. The short period of time available for comment and review under the A-95 process (thirty days less the time it takes for the notice to arrive from the A-95 Clearinghouse) and the fact that full applications are not generally submitted for A-95 review is likely to result in a large number of comments by the Coastal Management Unit to the A-95 Clearinghouse that additional information is required for a consistency review.

DELAWARE

(1) Federal Activities and Development Projects Subject to Consistency Determination

Many federal activites have little or no chance of directly affecting Delaware's coastal management area. Such activities incl normal administrative and office operations of federal agencies, operation and maintenance of air and sea navigation and radio transmission facilities, and processing of federal assistance or services to individual clients. Other activities and development projects, however, have the potential for a direct or significant impact. They may: cause a significant changes in the manner in which lands, waters or other coastal resources are used; significar limit the range of available uses of coastal resources; or cause significant changes in the quality of coastal resources.

The following types of Federal activities and development projects are generally assumed to directly affect Delaware and, therefore, are subject to a consistency determination.

(a) Actions on Excluded Federal Lands:

- any activity causing a discharge which if occurring on other than Federal property would be subject to Delaware air, water or hazardous materials regulations
- any activity likely to result in a significant non-point source of pollution affecting the State's coastal waters
- any activity in a flood prone or erosion prone area which could lead to a significant change in drainage patterns, run-off coefficients, or sediment loadings
- any activity which could result in a significant change in population or change in land or water use/development patterns which could require major new public investment

(b) Actions Within the Coastal Management Area/State:

- all development projects undertaken by a federal agency within the State of Delaware
- designation of any land or water area the purpose of which is to impose restrictive use covenants, requirements, or controls (for example, designation of aircraft hazard zones)

(c) Actions Outside the Coastal Management Area/State (i.e., in another state or outside Delaware's territorial boundary at sea)

- any activity or development project (landward or seaward of the management area) which could result in a significant change in air or water quality within the management area

- construction of a major federal facility in close proximity to Delaware which could result in significant land or water use impacts, or require significant State or local public investment, or adversely affect the State's economy

(2) Notification and State Review

Federal agencies must notify the Office of Management, Budget, and Planning (OMBP) at the earliest practicable time of existing or proposed federally conducted or supported activities directly affecting the coastal management area. Such notification must be received at least 90 days before the federal activity or development project reaches a decision stage likely to restrict the consideration of alternative approaches or measures.

The notification from the federal agency must contain:

(a) a brief statement indicating how the proposed action will be undertaken in a manner consistent with the Delaware Coastal Management Program;

(b) an evaluation of the relevant provisions of the Delaware CMP;

(c) a detailed description of the proposed action, its associated facilities and their combined coastal effects; and

(d) relevant data and information , including time schedules, sufficient to support the federal consistency determination (it is recognized that the degree of detail will be commensurate with the expected effects of the proposed activity.

In making their consistency determination federal agencies must ensure that their activities and development projects are consistent to the maximum extent practicable with the enforceable policies of the management program. Adequate consideration must be given to those aspects of the CMP which are of an encouragement nature. According to federal regulations, the "consistent to maximum extent practicable" test means capable of being done within the fullest degree permitted by existing federal law.

Table F-1

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Federal Licenses and Permits Subject to Consistency Review(1)

Federal Agency	(2) License or Permit and Statutory Cit
Army Corps of Engineers Department of Defense (To the extent a State permit for the same action is also necessary no federal consistency review is required - See note (1)	- Construction of dams or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403) - Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405) - Occupation of sea wall, bulkhead, jetty, dike, levee, wharf, pier or other work built by the United States pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408) - Approval of plans for improvements made at private expense under USACE supervision pursuant to the Rivers and Harbor Act of 1902 (33 U.S.C. 565) - Discharge of dredged spoils into the waters of the United States pursuant to the Federal Water Pollution Control Act of 1972, Section 404 (33 U.S.C. 1344) - All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413) - Construction of artificial islands and fixed structures on the Outer Continental Shelf pursuant to Section 4(f) or the Outer Continental Lands Acts (43 U.S.C.) not otherwise covered in an OCS Plan.

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Table F-1
(continued)

Federal Agency	License or Permit and Statutory Citation
Army Corps of Engineers (continued)	- Port Access Routes pursuant to 43 U.S.C. 1333(f)
Coast Guard Department of Transportation	- Construction or modification of bridges, causeways or pipelines over navigable waters pursuant to 49 U.S.C. 1455
	- Permits for Deepwater Ports pursuant to the Deepwater Ports Act of 1974 (33 U.S.C. 1501)
Environmental Protection Agency (To the extent that the issuance of any or all of listed EPA permits or licenses have been delegated to the State the consistency determination process shall not apply - CMP consistency will be satisfied pursuant to State Executive Order No. 61).	- NPDES permits and other permits for federal installations, discharges in contiguous zones and ocean waters, sludge runoff permits and agricultural waste disposal pursuant to Sections 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343 and 1328)
	- Permits pursuant to the Resources Recovery and Conservation Act of 1976
	- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857)
Nuclear Regulatory Commission	- Licensing and certification of the construction and operation of nuclear power plants and for possession and use of by-products, source and special nuclear material pursuant to Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.
Federal Energy Regulatory Commission	- Licenses and permits ordering interconnection of electric transmission lines; issuing certificates of public convenience and necessity for interstate natural gas transmission and terminals including approval of LNG sites; approvals for abandonment of natural gas pipelines; and licenses required for non-federal hydroelectric projects and associated transmission lines.

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Table F-1
(continued)

Federal Agency	License or Permit and Statutor Citation
Department of Energy	- Regulation of gas pipelines, and licensing of import or e of natural gas pursuant to the Natural Gas Act (15 U.S. 717) and the Energy Reorgani Act of 1974
	- siting, construction and ope of non-nuclear power plants.
U.S. Geological Survey Department of Interior	- permits to drill, construct, and maintain pipelines, gath ing and flow lines and assoc structures persuant to 43 US 1334 to the extent that thes are covered by an OCS plan.
Bureau of Land Management Department of Interior	- permits and rights of use a- easements for required for line corridors, and associat activities pursuant to the O Lands Act (43 U.S.C. 1334) a 43 U.S.C. 931(c) and 20 U.S. 185, to the extent these are covered by an OCS plan.

1) If the action covered by the listed federal license or permit is also covered by State regulatory authority, the federal consistenc determination requirements shall not apply. However, if the scope of the proposed action covered by the federal license or permi is broader than that covered by State permit the portion of the proj not covered by a State permit shall be subject to a consistency determination.

2) Mechanisms may be developed to allow for a waiver of certain steps in the State Review Process for projects covered by the listed permits and licenses. Such waivers will be based on the size, scope, location and extent of State and local control of the proposed activity. The intent of such waivers will be to avoid duplication, reduce permit review time, and facilitate consideration projects having adverse impacts.

existing review processes to the maximum extent, such as agreements between state and federal agencies, and the OMB Circular A-95, to expedite state responses. The DER also will be the repository of material documenting federal consistency decisions.

Where federal licenses, permits, activities, and assistance projects are subject to federal consistency review and are seaward of the jurisdiction of the state, or where there is no single state agency with jurisdiction, the Department of Environmental Regulation is responsible for consistency review and determination. The Department can not make a determination that the license, permit, activity, or project is consistent if any other state agency with significant analogous responsibility makes a determination of inconsistency. Conflicts between State agencies may be appealed to the Governor and Cabinet (380.23(2), F.S.).

To be consistent, the federal activities, licensing decisions, etc. must comply with the Florida laws which form the state's coastal management program - the existing state policies, statutes, and administrative rules selected and included in the Florida program (See: Part II, Section II, and the Appendix). Federal agencies, and applicants for federal licenses and permits and federal assistance, will use the state requirements to determine the consistency of their proposed actions. The DER will work with federal agencies toward the development of memoranda of understanding, general consistency determinations, and more specific procedures governing the processing of consistency determinations during the first year of program implementation.

FEDERAL DEVELOPMENT PROJECTS AND ACTIVITIES

The Federal Act requires that federal activities directly affecting the coastal zone and federal development projects which are located in or directly affecting the coastal area must be consistent "to the maximum extent practicable" with the FCMP. This requirement is reflected in the Florida Coastal Management Act which requires consistency review of federal development projects and activities "...which significantly affect the coastal waters and the adjacent shorelands of the state." (380.23(3)(a), F.S.). These projects and activities are reviewable on a statewide basis with no distinction between interior and coastal counties.

A federal agency proposing an action must determine whether its activity directly affects the coastal zone. The FCMP recommends that agencies consider potential impacts on the following resources and uses:

- Coastal waters: including water quality, quantity, flow rates, hydroperiod, seasonal fluctuations, circulation, and mixing of fresh and salt water.

- Air quality (in coastal areas).

- Coastal living resources: including productivity, diversity, dynamics, and important features such as

habitat, feeding grounds, nursery areas, spawning grounds, nesting sites, and migratory routes.

- Coastal uses: including recreation, aesthetics, water-dependent uses and patterns of use.

- Coastal socio-economic characteristics: including population growth and distribution, provision of services and facilities, employment, tax base, economic diversity, and energy use and conservation.

- The limitations the action would impose on future alternatives or options in the coastal area.

Certain federal activities and development projects are presumed to directly affect coastal waters and adjacent shorelands. Examples include:

Department of Defense	
Army Corps of Engineers	Proposed project authorization or dredging, spoil disposal, channel works, breakwaters, other navigation works, erosion control structures, reservoirs, dams, and beach nourishment.
Air Force, Army, and Navy	Location, acquisition, and design of new or enlarged defense installations. Actions conducted on federal excluded land which may have an impact on non-federal coastal lands and waters.
Department of Commerce	
National Marine Fisheries Service	Fisheries management programs.
Department of Interior	
Bureau of Land Management	Actions conducted on federal lands with a potential impact on non-federal coastal lands and waters.
National Park Service	National Park and Seashore management and acquisition.
Fish and Wildlife Service	National Wildlife Refuges acquisition and management.
Department of Transportation	
Coast Guard	Location, acquisition, design, construction, operation, and

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	abandonment of existing, expanded or new facilities.
Federal Highway Administration	Highway construction.
General Services Administration	Location, acquisition, design and disposal of federal government facilities, and disposal of surplus federal lands.

Consistency review should occur as early in the federal agency planning or development process as possible. After making the determination, the federal agency will inform the Department of Environmental Regulation (DER) of its review and conclusions. The agency should highlight problems it has identified, particularly any areas where it may not be feasible to be consistent. Federal agencies are encouraged to request a conference to advise the DER of an activity with consistency review problems. The request should be made to the

Federal Coordinator
Florida Department of Environmental Regulation
Division of Permitting
2600 Blair Stone Road
Tallahassee, Florida 32301

Florida will use established notification procedures, including the OMB Circular A-95 review, to monitor federal activities and development projects and to coordinate reviews of federal consistency determinations. Additional information may be required to determine whether projects will meet state requirements. The state agencies responsible for administering the state laws in the Florida coastal management program will conduct the consistency reviews. Each state agency will use the Florida procedures and standards under state law that it normally uses to evaluate permit applications, management programs, or applications for assistance.

The DER, using existing procedures as appropriate, will coordinate consistency reviews by other state agency(ies) and will notify the affected federal agency of the state response within 45 days after receipt of the consistency notification. The state may seek a 15 day extension (15 CFR 930.41, June 25, 1979). In some cases, federal agencies are already required by law to obtain permits from the state. These procedures will not change.

NON-FEDERAL ACTIVITIES WHICH REQUIRE FEDERAL LICENSES OR PERMITS

The federal consistency provisions of the CZMA require activities covered by federal licenses and permits to be certified by the applicant and approved by the state as consistent with its management program before the permits can be issued. The Florida Coastal Management Act lists federal permits and licenses which are subject to consistency certification (see Table 16). Licenses and permits which are listed are subject to a review for consistency only if they are for activities within, or seaward of, the jurisdiction of

TABLE 16

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FEDERAL PERMITS REQUIRING A
STATE CONSISTENCY DETERMINATION
(From: Florida Coastal Management Act)

1. Permits required under ss. 10 and 11 of the River and Harbor Act or 1899, as amended.

2. Permits required under s. 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

3. Permits required under ss. 201, 402, 403, 404, and 405 of the Federal Water Pollution Control Act of 1972, as amended, unless such permitting activities pursuant to such sections have been delegated to the state pursuant to said act.

4. Permits required under the Marine Protection, Research and Sanctuaries Act of 1972, as amended, 33 U.S.C., ss. 1401, 1402, 1411-1421, and 1441-1444.

5. Permits for the construction of bridges and causeways in navigable waters required pursuant to 33 U.S.C., s. 401, as amended.

6. Permits relating to the transportation of hazardous substance materials or transportation and dumping which are issued pursuant to the Hazardous Materials Transportation Act, 49 U.S.C., ss. 1801-1812, as amended, or 33 U.S.C., s. 419, as amended.

7. Permits and licenses required under 43 U.S.C., s. 717 for construction and operation of interstate gas pipelines and storage facilities.

8. Permits required under 15 U.S.C., s. 717, as amended, for construction and operation of facilities needed to import and export natural gas.

9. Permits and licenses required for the siting and construction of any new electrical power plants as defined in s. 403.503(7), as amended.

10. Permits and licenses required for drilling and mining on public lands.

11. Permits for areas leased under the OCS Lands Act, as amended, including leases and approvals under 43 U.S.C., s. 1331, as amended, of exploration, development, and production plans.

12. Permits for pipeline rights of way for oil and gas transmissions.

13. Permits and licenses required for deep-water ports under 33 U.S.C., s. 1503, as amended.

Georgia

SECTION III:
LIST OF FEDERAL ACTIONS SUBJECT TO FEDERAL CONSISTENCY

A. Direct Federal Activities and Development Projects

Department of Commerce, National Marine Fisheries Service:

- Fisheries Management Plans
- Endangered Species Act listings and Designation of Critical Habitat

Department of Defense, Army Corps of Engineers:

- Dredging, channel improvement, breakwaters, other navigational works, erosion control structures, beach replenishment, dams or flood control works, and activities and other projects with the potential to impact coastal lands and waters
- Land acquisition for spoil disposal or other purposes
- Selection of disposal sites for dredged material from federal harbors and navigation channels

Department of Defense: Air Force, Army, and Navy:

- Location, design, and acquisition of new or expanded defense installations (active or reserve status including associated housing, transportation, or other facilities)
- Plans, procedures, and facilities for handling storage use zones
- Establishment of impact, compatibility, or restricted use zones
- Disposal and reuse plans for military base closures

General Services Administration:

- Acquisition, location, and design of proposed federal government property or buildings, whether leased or owned by the federal government
- Disposal and disposition of federal surplus lands and structures

Department of Interior, Bureau of Land Management:

- Oil and gas leasing on federal lands

Department of Interior, Minerals Management Service:

- Oil and gas leasing on the Outer Continental Shelf
- Offshore sand mining leases
- Offshore mineral leases

Department of Interior, U.S. Fish and Wildlife Service:

- Management of National Wildlife Refuges; land acquisition

Department of Interior, National Park Service:

- National Park Service unit management; land acquisitions

Department of Transportation, Coast Guard:

- Location, design, construction, or enlargement of Coast Guard stations, bases, and lighthouses.
- Location, placement, or removal of navigation devices which are not part of the routine operations under the Aids to Navigation Program (ATON)
- Expansion, abandonment, designation of anchorages, lighting areas, or shipping lanes
- Area Contingency Plans developed under the Oil Pollution Control Act
- Designation and management of Regulated Navigation Areas and Limited Access Areas identified in 33 C.F.R. § 165

- Designation of Security and Safety Zones under the Port and Waterways Safety Act

Department of Transportation, Federal Aviation Administration:

- Location and design, construction, maintenance, and demolition of federal aids to air navigation

Department of Transportation, Amtrak, Conrail:

- Expansions, curtailments, new construction, upgradings or abandonments of railroad facilities or services, in or affecting the State's coastal area

Department of Transportation, Federal Highway Administration:

- Highway construction

Department of the Treasury, Federal Law Enforcement Training Center:

- Location and design, construction, upgradings, demolition, or abandonment of facilities or projects associated with the Federal Law Enforcement Training Center

Environmental Protection Agency

- Ocean dump site designations

Federal Energy Regulatory Commission

- Licensing federal hydroelectric projects.

B. Federal Licenses or Permits Subject to Consistency with The Georgia Coastal Management Program

Department of Defense, Army Corps of Engineers:

- Approval of plans for improvements made at private expense under U.S.A.C.E. supervision pursuant to the Rivers and Harbors Act (33 U.S.C. 565)[1]
- Disposal of dredged spoils into the waters of the U.S. pursuant to the Clean Water Act, Section 404 (33 U.S.C. 1344)[1]
- Other provisions of Section 404 of the Clean Water Act, including permits[1]
- All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1413)[1]

Federal Energy Regulatory Commission:

- Licenses for non-federal hydroelectric projects and primary transmission lines under Sections 3 (11), 4 (e), and 15 of the Federal Power Act (16 U.S.C. 796 (11), 797 (11), and 808)[1]
- Orders for interconnection of electric transmission facilities under Section 202 (b) of the Federal Power Act (15 U.S.C. 824 a (b))[1]
- Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities under Section 7 (c) of the Natural Gas Act (15 U.S.C. 717 f (c))[1]
- Permission and approval for the abandonment of natural gas pipeline facilities under Section 7 (b) of the Natural Gas Act (15 U.S.C. 717 f (b))[1]
- Regulation of gas pipelines, and licensing of import and export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act[1]

Environmental Protection Agency

- National Pollutant Discharge Elimination System (NPDES) permits and other permits for federal installations discharges in contiguous zones and ocean waters, sludge runoff and aquaculture permits pursuant to Sections 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act (33 U.S.C. 1341, 1342, 1343, and 1328)[1]

- Permits pursuant to the Resources Conservation and Recovery Act[1]
- Permits pursuant to the underground injection control program under Section 1424 of the Safe Drinking Water Act (42 U.S.C. 300 h-c)[1]
- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857)[1]
- Permits pursuant to the Marine Protection, Research, and Sanctuaries Act (16 U.S.C. 1431)[1]

Department of Interior, U.S. Fish and Wildlife Service:

- Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. 153 (a))[1]
- Permits pursuant to the Migratory Bird Treaty Act (U.S.C. 703)[1]

Nuclear Regulatory Commission:

- Licensing and certification of the siting, construction, and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act, Title II of the Energy Reorganization and the National Environmental Policy Act[1]

Department of Transportation, Coast Guard:

- Construction or modification of bridges, causeways, or pipelines over navigable waters pursuant to 49 U.S.C. 1455[1]
- Transport and transfer of hazardous substances and materials (33 U.S.C. §419)[1]
- Marine Event Permits[1]

Department of Transportation, Federal Aviation Administration:

- Permits, licenses, and other approvals for construction, operation, or alteration of airports[1]

U.S. Department of Interior:

- Outer Continental Shelf (OCS) activities (including pipeline activities) described in detail in OCS plans that affect coastal resource areas[2]
- OCS lease sales in the Atlantic Ocean under 43 U.S.C.A. § 1337[2]

1 = A corresponding Georgia State permit exists.
2 = This activity is subject to the provisions for OCS permits or licenses.

This list of federal licenses and permits may be revised by the State following consultation with the federal agency and approval by the Office of Ocean and Coastal Resource Management. The Coastal Resources Division may also review federal license and permit activities outside Georgia's eleven-county coastal area that affect the coastal area. This review requires prior consultation with federal agencies and approval by the Office of Ocean and Coastal Resource Management.

D. Federal Assistance Programs Applicable to the Consistency Process

(Note: Code Numbers refer to the Catalog of Federal Domestic Assistance Programs.)

Department of Agriculture

10.414	Resource Conservation and Development Loans
10.416	Soil and Water Loans
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans
10.901	Resource Conservation and Development
10.904	Watershed Protection and Flood Prevention
10.906	River Basin Surveys and Investigations

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10.999 U.S. Department of Agriculture -- Miscellaneous
1. Irrigation and Drainage Loans
36.455 U.S. Department of Agriculture -- Environmental Impact Assessment/Statement

Department of Commerce
11.405 Anadromous & Great Lakes Fisheries Conservation
11.407 Interjurisdictional Fisheries Act of 1986
11.419 Coastal Zone Management Program Administration
11.420 Coastal Zone Management Estuarine Research Reserves
11.427 Fisheries Development and Utilization Research/Development Grants/Coop Agreements
11.433 Marine Fisheries Research Initiative (MARFIN) Projects
11.434 Cooperative Fisheries Statistics Program
11.441 South Atlantic Fishery Management Council Projects
11.474 Atlantic Coastal Fisheries Cooperative Management Act Projects
36.450 U.S. Department of Commerce -- Environmental Impact Assessment/Statement

Department of Defense
12.101 Beach Erosion Control Projects
12.104 Flood Plain Management Services
12.106 Flood Control Projects
12.107 Navigation Projects
12.109 Protection, Clearing and Straightening Channels
12.610 Joint Military/Community Comprehensive Land Use Plans
36.421 U.S. Department of Defense -- Environmental Impact Assessment/Statement
36.422 U.S. Department of the Army -- Environmental Impact Assessment/Statement
36.423 U.S. Department of the Navy -- Environmental Impact Assessment/Statement
36.424 U.S. Department of the Air Force -- Environmental Impact Assessment/Statement

Department of Health and Human Services (HHS)
35.460 HHS -- Direct Federal Development Project
36.460 HHS -- Environmental Impact Assessment/Statement

Department of Housing and Urban Development (HUD)
36.465 HUD -- Environmental Impact Assessment/Statement

Department of the Interior (DOI)
15.600 Anadromous Fish Conservation
15.605 Sport Fish Restoration
15.611 Wildlife Restoration
15.612 Endangered Species Conservation
15.614 North American Wetlands Conservation
15.616 Clean Vessel Act
15.904 Historic Preservation Fund Grants -- In-Aid
15.910 National Natural Landmarks Program
15.916 Outdoor Recreation -- Acquisition, Development, and Planning
35.440 DOI -- Direct Federal Development Project
36.440 DOI -- Environmental Impact Assessment/Statement -- Clean Vessel Act Grants

Department of Justice
35.430 U.S. Department of Justice -- Direct Federal Development Project
36.430 U.S. Department of Justice -- Environmental Impact Assessment/Statement

Department of Transportation

20.205 Highway Planning and Construction
20.219 National Recreational Trails Program
20.801 Development and Promotion of Ports and Intermodal Transportation
36.470 U.S. Department of Transportation -- Environmental Impact Assessment/Statement

General Services Administration
39.002 Disposal of Federal Surplus Real Property
35.600 General Services Administration -- Direct Federal Development Project
36.600 General Services Administration -- Environmental Impact Assessment/Statement

National Aeronautics and Space Administration (NASA)
35.631 NASA -- Direct Federal Development Project
36.631 NASA -- Environmental Impact Assessment/Statement

Environmental Protection Agency (EPA)
66.001 Air Pollution Control Program Support
66.418 Construction Grants for Wastewater Treatment Works
66.419 Water Pollution Control -- State and Interstate Program Support
66.433 State Underground Water Source Protection
66.435 Water Pollution Control -- Lake Restoration Cooperative Agreements
66.454 Water Quality Management Planning
66.456 National Estuary Program
66.459 Nonpoint Source (NPS) Reservation
66.461 State Wetland Protection Development Grants
66.500 Environmental Protection -- Consolidated Research
66.501 Air Pollution Control Research
66.502 Pesticides Control Research
66.504 Solid Waste Disposal Research
66.505 Water Pollution Control -- Research, Development, and Demonstration
66.506 Safe Drinking Water Research and Demonstration
66.507 Toxic Substances Research
66.600 Environmental Protection Consolidated Grants -- Program Support
66.700 Pesticides Enforcement Program
66.701 Toxic Substances Compliance Monitoring Cooperative Agreements
66.704 Pesticides Certification Program
66.801 Hazardous Waste Management State Program Support
66.802 Hazardous Substance Response Trust Fund
66.804 State Underground Storage Tanks Program
66.805 Underground Storage Tank Trust Fund
66.807 Superfund Innovative Technology Evaluation Program (SITE)
66.808 Hazardous Waste; Integrated Training and Technical Assistance -- Interstate
66.999 EPA -- Miscellaneous
1. State Inventories of Uncontrolled Hazardous Waste Sites
2. Water Pollution Control State and Local Manpower Program Development
3. State and Local Innovative Waste Management Activities
4. Special Studies, Investigations, and Surveys
5. Source Reduction and Recycling Technical Assistance

35.552 EPA -- Direct Federal Development Projects
1. Real Property Acquisition or Disposition, including obtaining major Leases or Easements
2. Construction of New EPA Facilities
3. EPA Issued Plans and Permits which do not impact Interstate Areas

36.552 EPA -- Environmental Impact Assessment/Statement

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Department of Energy

81.049 Basic Energy Sciences, High Energy or Nuclear Physics, Magnetic Fusion Energy, Health and Environmental Research, Pro gramAnalysis and Field Operations Management

81.999 U.S. Department of Energy -- Miscellaneous

1. Loans for Wind Energy Systems and Small Hydroelectric Power Projects
2. Loan Guarantees for Alternative Fuel Demonstration Facilities

36.471 U.S. Department of Energy -- Environmental Impact Assessment/Sta tement

Federal Emergency Management Agency (FEMA)

83.503 Civil Defense -- State and Local Emergency Management Ass istance

83.513 State and Local Warning and Communication Systems

83.516 Disaster Assistance

35.237 FEMA -- Direct Federal Development Project

36.237 FEMA -- Environmental Impact Assessment/Statement

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The Federal licenses and permits that BP will review for consistency with the GCMP are as follows:

Federal Agency	Permit Description	Citation
DEPARTMENT OF COMMERCE		
National Marine Fisheries Service	taking of marine mammals	Marine Mammal Protection Act, 16 U.S.C. 1361-1407
DEPT. OF DEFENSE		
U.S. Army Corps of Engineers	construction of dams or ditches across navigable waters	River and Harbor Act of 1899: Section 9, 33 U.S.C. 401
	obstruction or alteration of navigable waters	Id. Section 10, 33 U.S.C. 403
	establishment of harbor lines	Id. Section 11, 33 U.S.C. 404, 405
	temporary occupation of sea wall, bulkhead, jetty, dike, level, wharf, pier or other work built by the U.S.	Id. Section 14, 33 U.S.C. 408
	discharge of dredged spoil into waters of the U.S.	Federal Water Pollution Control Act of 1972: Section 404, 33 U.S.C. 1344
	approval of plans for improvements made under Corps supervision at private expense	River and Harbor Act of 1902: 33 U.S.C. 565
	transportation of dredged spoil for the purpose of dumping it in ocean waters	Marine Protection, Research, and Sanctuaries Act of 1972 Section 103, 33 U.S.C. 1413
DEPT. OF ENERGY	prohibition and construction orders	Energy Supply and Environmental Coordination Act
DEPT. OF THE INTERIOR		
Fish and Wildlife Service	endangered species permits	Endangered Species Act 16 U.S.C. 153a
National Park Service	construction of visitor centers on National Park Service land	16 U.S.C. 3
	construction of electric and communication lines across National Park Service	16 U.S.C. 5

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Federal Agency	Permit Description	Citation
U.S. DEPT. OF TRANSPORTATION		
U.S. Coast Guard	permits for private aids to navigation	14 U.S.C. 83
	permits for construction or modification of bridges or causeways in navigable waters	33 U.S.C. 401, 491, 525
	authorization for handling of dangerous cargo by vessels in U.S. ports	46 U.S.C. 170
	authorization for handling of flammable or combustable liquids by bulk in U.S. ports	46 U.S.C. 391(a)
	deepwater port permits	Deepwater Ports Act of 1974 33 U.S.C. 1501
Federal Aviation Administration	approval of airport development project applications	49 U.S.C. 1716
ENVIRONMENTAL PROTECTION AGENCY	permits for underground injection	Safe Drinking Water Act Section 1421(c)(1), 42 U.S.C. 300h
	permit to operate underground injection wells in designated areas	Resources Recovery and Conservation Act of 1976 42 U.S.C. 300h-3
	permits for handling and disposal of hazardous substances	Resources Recovery and Conservation Act of 1976 42 U.S.C. 3257
	approvals under prevention of significant deterioration (PSD) regulations	Clean Air Act of 1976 Section 110, 42 U.S.C. 1857c-5
	new source construction/operations permits	Id. Section 111, 42 U.S.C. 1857-6
	approvals under National Emission Standards for Hazardous Air Pollutants (NESHAPS) Regulations	Id. Section 112, 42 U.S.C. 1857c-7
	NPDES permits for federal installations	Federal Water Pollution Control Act of 1972, Sections 401, 402, 33 U.S.C. 1341, 1342
	NPDES permits for discharges into the contigous zone and ocean waters	Id. Section 402, 403 33 U.S.C. 1342, 1343
	sludge runoff permits	Id. Section 405, 33 U.S.C. 1342, 1343

GUAM

Federal grant programs subject to review include:

Department of Agriculture

Federal Catalog No.	
10.405	Farm Labor Housing Loans and Grants
10.409	Irrigation, Drainage, and Other Soil and Water Conservation Loans (exception: loans to grazing associations to develop additional pasturage and loans for purchase of equipment)
10.410	Low to Moderate Income Housing Loans
10.411	Rural Housing Site Loans
10.414	Resource Conservation and Development Loans
10.415	Rural Rental Housing Loans
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans
10.422	Business and Industrial Development Loans (Exception: loans to rural small businesses having no significant impact outside community in which located.)
10.423	Community Facilities Loans
10.424	Industrial Development Grants
10.658	Cooperative Forest Insect and Disease Control
10.901	Resources Conservation and Development (Exception: small projects costing under $7500 for erosion and sediment control and land stabilization and for rehabilitation and consolidation of existing irrigation systems.)
10.904	Watershed Protection and Flood Prevention

Department of Commerce

11.300	Economic Development-Grants and Loans for Public Works and Development Facilities
11.303	Economic Development-Technical Assistance
11.304	Economic Development-Public Works Impact Projects (Procedural variation)
11.305	Economic Development-State and Local Economic Development Planning
11.306	Economic Development-District Operation Assistance
11.307	Economic Development-Special Economic Development and Adjustment Assistance Program
11.308	Grants to States for Supplemental and Basic Funding of Title I, II, and IV Activities (Basic grants only)
11.407	Commercial Fisheries Research and Development
11.417	Sea Grant Support
11.419	Coastal Zone Management Program Administration
11.420	Coastal Management - Estuarine Sanctuaries
11.421-424	Coastal Energy Impact Program

GUAM

Department of Health, Education and Welfare

Federal Catalog No.	
13.237	Mental Health-Hospital Improvement Grants
13.240	Mental Health-Community Mental Health Centers
13.261	Family Health Centers
13.286	Limitation on Federal Participation for Capital Expenditures
13.340	Health Professions Teaching Facilities-Construction Grants
13.369	Nursing School Construction - Loan Guarantees and Interest Subsidies
13.378	Health Professions Teaching Facilities - Loan Guarantees and Interest Subsidies
13.392	Cancer-Construction
13.408	School Assistance in Federally Affected Areas-Construction
P.L. 93-318	(Section 161) Construction of Academic Facilities
P.L. 93-641	(Section 1516) Planning Grants to Health Agencies; (Section 1601 et seq, Title XVI Public Health Service Act) Assistance for moderation, construction or conversion of medical facilities. These programs will replace Catalog 13.206, 13.220, 13.249, and 13.253.

Department of Housing and Urban Development

14.001	Flood Insurance (applications for community eligibility)
14.146	Public Housing-Programs (New construction and acquisition)
14.203	Comprehensive Planning Assistance
14.207	New Communities-Loan Guarantees
14.218	Community Development Block Grants-Entitlement Grants
14.219	Community Development Block Grants-Discretionary Grants
14.702	State Disaster Preparedness Grants

Department of the Interior

15.400	Outdoor Recreation-Acquisition, Development and Planning
15.501	Irrigation Distribution System Loans
15.503	Small Reclamation Projects
15.605	Fish Restoration
15.611	Wildlife Restoration
15.904	Historic Preservation

Department of Transportation

20.102	Airport Development Aid Program
20.103	Airport Planning Grant Program
20.205	Highway Beautification-Control of Outdoor Advertising, Control of Junkyards, Landscaping and Scenic Enhancement
20.500	Urban Mass Transportation Capital Improvement Loans (planning and construction only)
20.505	Urban Mass Transportation Capital Improvement Loans (planning and construction only)

20.505	Urban Mass Transportation Technical Studies Grants (planning and construction only)
20.506	Urban Mass Transportation Demonstration Grants
20.507	Urban Mass Transportation Capital and Operating Assistance Formula Grants

Water Resources Council

Federal Catalog No.	
65.001	Water Resources Planning

Environmental Protection Agency

66.001	Air Pollution Control Program Grants
66.005	Air Pollution Survey and Demonstration Grants
66.027	Solid Waste Planning Grants
66.418	Construction Grants for Wastewater Treatment Works
66.419	Water Pollution Control-State and Interstate Program Grants
66.426	Water Pollution Control-Areawide Waste Treatment Management Planning Grants
66.432	Grants for State Public Water System Subdivision Programs
66.433	Grants for Underground Injection Control Programs
66.505	Water Pollution Control Demonstration Grants
66.506	Safe Drinking Water Research and Demonstration Grants (demonstration only)
66.600	Environmental Protection-Consolidated Program Grants
66.602	Environmental Protection-Consolidated Special Purpose Grants.

State of Hawaii CZMP and FEIS

HAWAII

FEDERAL LICENSES AND PERMITS SUBJECT TO CERTIFICATION FOR CONSISTENCY

Within the State of Hawaii, the following Federal agency licenses and permits will be subject to the certification process for consistency with the management program under Section 306(c)(3), if the activity being licensed or permitted affects land or water uses in the coastal zone:

Department of Defense - U. S. Army Corps of Engineers:

- Permits and licenses required under Sections 9, 10, and 11 of the Rivers and Harbors Act of 1899.
- Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.
- Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments.

Environmental Protection Agency:

- Permits and licenses required under Sections 402 and 405 of the Federal Water Pollution Control Act of 1972 and amendments.
- Permits and applications under the Clean Air Act of 1970 as amended.

Department of Transportation - U. S. Coast Guard:

- Permits for construction of bridges under 33 USC 401, 491-507 and 525-534.
- Permits for deepwater ports under the Deepwater Port Act of 1974 (P.L. 93-627).

Department of Transportation - Federal Aviation Administration:

- Permits for construction and operation of airports.

Department of Agriculture:

- Permits for water plants, dams, canals, etc., under 16 USC 497.

Department of Commerce - Office of Ocean Management and National Marine Fisheries Service:

- Permits within Marine Sanctuaries under 33 USC 1401-1444.
- Permits for taking or importing marine mammals under 16 USC 1374.
- Permits, licenses, and approvals issues pursuant to the Fishery Conservation and Management Act of 1976.

Department of the Interior - Bureau of Land Management - U. S. Geological Survey:

- Permits and licenses required for drilling and mining on Outer Continental Shelf Lands (BLM).
- Permits and approvals of exploration and operating plans pertaining to the extraction of leasable minerals (USGS).
- Permits, licenses, and approvals relating to viable coral communities pursuant to 43 CFR 6224.

Department of Energy - Federal Energy Regulatory Commission:

- Licenses required for non-Federal hydroelectric projects and associated transmission lines under Section 4(e) of the Federal Power Act (16 USC 797(e)).
- Certificates required for the construction and operation of natural gas pipeline facilities, defined to include both interstate pipeline and terminal facilities under Section 7(c) of the Natural Gas Act (15 USC 717(c)).
- The permission and approval required for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 USC 717f(b)).

Department of Energy - Economic Regulatory Administration:

- Opinion and order for permission for delivery of imported liquified natural gas.

Nuclear Regulatory Commission:

- Permits and licenses for construction and operation of nuclear facilities.

Federal Actions Outside the Coastal Zone but Requiring a Federal Consistency Determination:

* Federal actions in forest reserves which disturb land and water resources.
* Federal actions in the archipelagic waters of the Hawaiian Islands which involve the placement of any material in or on such areas, or which involve the taking or removal of any material from such areas.

This listing has been intentionally limited to those permits where the Federal license or permit may significantly affect coastal land and water uses. This is desirable to minimize the administrative burdens on the governmental entities as well as the applicant. If it is found that the issuance of other Federal permits and licenses causes significant effects on coastal land and water uses, the consistency requirements will be applied to those permits or licenses through administrative addition to the above list.

FEDERAL FINANCIAL ASSISTANCE PROGRAMS[1]

Federal Grants, Loans and Guarantees in the Coastal Zone[2]

1. Grants for Planning and Management

AGRICULTURE

*	Rural development planning grants

COMMERCE

11.302	EDA planning assistance
11.418	NOAA CEIP grants

DEFENSE

12.600	Community economic adjustment

HOUSING & URBAN DEVELOPMENT

14.203	Comprehensive planning assistance
14.702	State disaster plans and programs

INTERIOR

15.401	Outdoor recreation State planning
15.904	Historic preservation

TRANSPORTATION

20.103	Airport planning grants
20.205	Highway research, planning and construction
20.505	Urban mass transportation studies grants

WATER RESOURCES COUNCIL

65.001	Water resources planning

ENVIRONMENTAL PROTECTION AGENCY

66.001	Air pollution control program grants (planning)
66.005	Air pollution survey and demonstration
66.302	Solid waste planning grants
*	Areawide waste treatment planning and water quality implementation plans (Sec. 208)
	Statewide continuing planning process for water pollution control

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[1] Source: Modification of information from a report by Harold F. Wise, et.al., A Handbook For The Coastal States (Washington: OCZM, 1975).

[2] Reference numbers are from OMB classification. An asterisk means that a number has not been assigned yet.

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2. Grants for State, Local and Private Development

AGRICULTURE

10.409	Irrigation, Drainage, and Other Soil and Water and Conservation Loans
10.414	Resource conservation and development loans
10.418	Water and waste disposal systems for rural communities
10.419	Watershed protection and flood prevention loans
10.901	Resource conservation and development
10.904	Watershed protection and flood prevention (Exception: small projects costing under $7,500 for erosion and sediment control and land stabilization and for rehabilitation and consolidation of existing irrigation systems.)
	Rural Development Act of 1972 — loans and grants for essential rural community facilities (Sec. 104), rural industrialization assistance (Sec. 118), watershed protection and flood prevention (Sec. 201 e, f, g), water storage facilities (Sec. 301)

COMMERCE

11.300	EDA grants and loans for public works and development facilities
11.304	EDA public works impact projects
11.407	NOAA commercial fisheries research and development
11.411	NOAA fishery cooperative service
*	NOAA grants to purchase and operate estuarine sanctuaries under Coastal Zone Management Act of 1972
11.501	Maritime development and promotion of ports and intermodal transport systems
11.508	Maritime capital construction fund

DEFENSE

12.101	Corps beach erosion control projects
12.102	Corps flood control works and Federally-authorized coastal protection works, rehabilitation
12.105	Corps protection of essential highways, highway bridge approaches and public works
12.106	Corps flood control projects
12.107	Corps navigation projects
12.108	Corps snagging and clearing for flood control
12.109	Corps snagging and clearing for navigation

HOUSING AND URBAN DEVELOPMENT

14.207	New communities--loan guarantees
14.211	Surplus land for community development
14.307	Urban renewal projects
14.607	Public housing--modernization of projects
14.701	Disaster assistance

INTERIOR

15.400	Outdoor recreation--acquisition and development
15.501	Irrigation distribution system loans
15.503	Small reclamation projects
15.600	Anadromous fish conservation
15.602	Conservation law enforcement training assistance
15.603	Farm fish pond management
15.604	Fishery research-information
15.605	Fish restoration
15.608	Sport fish management
15.609	Wildlife enhancement
15.610	Wildlife research information
15.611	Wildlife restoration
15.904	Historic preservation

TRANSPORTATION

20.102	Airport development aid program
20.201	Forest highways
20.204	Highway beautification-landscaping and scenic enhancement
20.209	Public lands highway
20.500	Urban mass transportation capital improvement grants
20.501	Urban mass transportation capital improvement loans

TREASURY

*	General revenue sharing

ENVIRONMENTAL PROTECTION AGENCY

66.001	Air pollution control program grants
66.015	Construction grants for wastewater treatment works
66.017	Water pollution control-State and interstate program grants
66.504	Solid waste research grants
66.505	Water pollution control demonstrations
66.000	Environmental protection-consolidated program grants
*	Programs under Federal Water Pollution Control Act Amendments of 1972

3. Operational, Service and Research Grants

AGRICULTURE

10.902	SCS soil and water conservation
10.903	SCS soil surveys
10.906	River basin surveys and investigations

COMMERCE

11.303	EPA technical assistance
11.417	NOAA sea grant
11.400	NOAA geodetic control surveys
11.401	Nautical charts and related data (NOAA)

DEFENSE

12.100	Corps aquatic plant control
12.104	Corps flood plain management service

HOUSING AND URBAN DEVELOPMENT

14.214	Urban systems engineering demonstration grants
14.216	Governmental management--technical assistance and information services

INTERIOR

15.802	USGS minerals discovery loan program
15.804	USGS water resources investigations
15.950	OWRR additional water resources research
15.951	OWRR water resources research-assistance to States for institutes
15.952	OWRR water resources research-matching grants to State institutes
15.953	OWRR water resources scientific information center

NATIONAL SCIENCE FOUNDATION

47.036	Intergovernmental science and research utilization
*	Research applied to national needs (RANN) program

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Federal Grants, Loans, and Guarantees Outside the Coastal Zone Subject to Federal Consistency Determination

1. Federal financial assistance programs on lands outside the coastal zone which have a potential for disturbing land and water resources.

2. Federal financial assistance programs for actions in the archipelagic waters of the Hawaiian Islands (Kure Atoll to the Island of Hawai'i) which disturb land and water resources.

Louisiana UKP and FETS . 1980

LOUISIANA

4) Federal Activities Including Development Projects, Sections 307(c)(1) and (2)

Section 307(c)(1), and (2) of the CZMA requires that federal activities, including development projects, directly affecting the coastal zone 'shall be conducted in a manner which is, to the maximum extent practicable, consistent with approved state management programs.'

The following activities and projects generally can be considered as directly affecting the coastal zone. These activities include:

- Federal agency coastal activities subject to state licenses and permits;
- Development projects in the coastal zone;
- Outer continental shelf activities adjacent to the coastal zone which are not subject to consistency review under other provisions of Section 307 of the CZMA;
- Activities affecting or altering surface runoff quality or quantity in the coastal watershed, and the coastal zone;
- Dredge, fill, development, construction, or waste discharge in or into coastal waters;
- Any other activity which would, if carried on by a private party, require a state or local coastal use permit or in lieu permit under Act 361.
- Acquisition/disposal of federal property in the coastal zone.

In the case of federal lands excluded from the coastal zone, federal activities on these lands that have an impact on the coastal zone beyond the boundaries of the federal properties are deemed likely to directly affect the coastal zone. Federal agencies themselves must determine whether or not other activities or projects will directly affect the coastal zone and whether or not they are consistent, to the maximum extent practicable, with the LCRP. The federal agency must notify the State of Louisiana of such proposed actions and provide consistency determinations. Certain categories of federal actions can generally be considered not to directly affect the coastal zone. These include:

- Radio transmission and maintenance of navigation aids placed or authorized by the U. S. Coast Guard; and
- Any action for which the agency's environmental documentation procedures, established pursuant to the National Environmental Policy Act of 1969 and the regulations of the Council of Environmental Quality, do not require issuance of an Environmental Impact Statement or environmental assessment.

To save time and funds, and to avoid conflicts involving substantial commitments or resources, consistency should be assessed at the earliest possible time. Preferably, this should occur as an integral part of planning and budgetary decisions.

The Secretary of DNR is responsible for reviewing federal agency determinations that their activities and projects are consistent with the LCRP. Each federal agency must provide DNR with direct notification of such activities and projects which directly effect the Louisiana coastal zone.

5) Federal Licenses And Permits (Section 307(c)(3)(A))

Section 307(c)(3)(A) of the CZMA provides that any applicant for a federal license or permit to conduct an activity affecting land or water uses in the coastal zone must certify that the proposed activity complies with, and will be conducted in a manner consistent with, the management program, and submit all necessary information and data to the state. This certification will read as follows: "The proposed activity complies with Louisiana's approved coastal management program and will be conducted in a manner consistent with the program". The certification must be accompanied by sufficient information to support the applicant's consistency certification. Such information shall consist of, at a minimum, copies of all applications for relevant federal, state and local permits or clearances, a detailed description of the proposed activities and its associated facilities, and appropriate maps, diagrams and technical data necessary for this description. Such information shall not be needed if a coastal use permit is also required.

The Secretary of DNR will then review the information and certification provided by the applicant, and the federal application, and at the earliest possible time notify the applicant and the federal agency of his concurrence or objection. The CZMA requires that, "No license or permit shall be granted by the federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act (within six months) the concurrence is conclusively presumed...." The Secretary of DNR will normally make his consistency decision within three months or notify the applicant or federal agency of the basis for further delay. If not given within four months and the Secretary of DNR has not notified the federal agency of a delay in processing the application, federal agencies and applicants may consider the proposal activity as being consistent with the Coastal Resource Program. Table 10 lists the kinds of federal licenses and permits which may affect the coastal zone, and which the state wishes to review for consistency with the LCRP. If unlisted activities are frequently determined to affect the coastal zone, the list may be expanded through appropriate OCZM procedures for changes to the LCRP.

The federal license or permit may not be issued by the federal agency if the Secretary of DNR objects to the applicant's certification statement, unless the objection is overturned on an appeal to the Secretary of Commerce because the activity is consistent with the objectives of the CZMA,

or is necessary in the interest of national security (Section 307(c)(3)(A)). The issuance of a coastal use permit by DNR will indicate compliance with the program. If an applicant to a federal agency has a valid coastal use permit issued by DNR, it will also constitute consistency with the state program.

If it is found that the issuance of federal permits and licenses not included in Table 10 would affect the coastal zone, the state will inform the applicable federal agency and applicant within 30 days from notice of the license or permit application of its intent to review the activity for consistency. Otherwise, the state will have waived its right to review the unlisted activity. The state will also notify OCZM, which will then approve or disapprove the state's decision to review. The federal agency may not issue the license or permit until the state completes its consistency review, unless OCZM disapproves the state's decision to review the activity.

TABLE 10
FEDERAL LICENSES AND PERMITS SUBJECT TO CERTIFICATION OF CONSISTENCY

Types of Federal Licenses or Permits

Department of Agriculture:

Permits for waterplants, dams, etc. under 16 USC 497.

Permits for construction of hotels, etc. on National Forest Service lands under 16 USC 497.

Department of Commerce:

Permits for activities within Marine Sanctuaries under 33 USC 1401-1444.

Department of Defense - U. S. Army Corps of Engineers:

Permits and licenses required under Sections 9, 10, 11, and 14 of the River and Harbor Act of 1899...

Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1912 (Ocean Dumping)...

Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972, as amended (33 USC 1344).

Permits and/or licenses for construction of artificial islands and fixed structures on the Outer Continental Shelf pursuant to Section 4(f) of the OCS Lands Act (43 USC 1334) not otherwise covered in an OCS plan.

LA

TABLE 10 (Continued)
FEDERAL LICENSES AND PERMITS SUBJECT TO CERTIFICATION OF CONSISTENCY

Types of Federal Licenses or Permits

Permits and/or licenses for Port Access Routes pursuant to 43 USC 1333(2).

Nuclear Regulatory Commission:

Permits and licenses required for siting, construction and operation of nuclear power plants, fuel processing and disposal of nuclear wastes....

Environmental Protection Agency:

Permits and licenses required under Section 402 and 404 of the Clean Water Act of 1977, as amended.

Permits and applications under the Clean Air Act of 1974 as amended...

Permits under the Marine Protection, Research and Sanctuaries Act of 1972.

Permits pursuant to the Resource Recovery and Conservation Act of 1976.

Department of the Interior:

Permits for activities within national parks (National Park Service)

Permits for activities within other lands managed by the Department of the Interior...

Endangered Species permits pursuant to the Endangered Species Act (16 USC 153(a) (Fish and Wildlife Service).

Department of Interior - Bureau of Land Management:

Permits required for offshore drilling, pipeline corridors, and associated activities pursuant to the OCS Lands Act (43 USC 1334) and 43 USC 931(c) and 20 USC 185.

Department of the Interior - U. S. Geological Survey:

Plans for exploration, development, and production of OCS gas and oil (Review pursuant to Section 307(c)(3)(B) of the CZMA).

Permits to drill, rights of use and easements for construction and maintenance of pipeline gathering and flow lines and associated structures under 43 USC 1334.

TABLE 10 (Continued)
FEDERAL LICENSES AND PERMITS SUBJECT TO CERTIFICATION OF CONSISTENCY

LA

Types of Federal Licenses or Permits

Department of Transportation - U. S. Coast Guard:

Permits for construction or modification of bridges, causeways or pipelines over navigable waters pursuant to 49 USC 1455.

Permits for deepwater ports under the Deepwater Port Act of 1974 (33 USC 1501).

Department of Transportation - Federal Aviation Administration:

Approval of airport location or alteration.

Department of Transportation - Materials Transportation Bureau, Office Of Pipeline Safety Operations:

Permits for the transportation of liquids (other than petroleum products) by pipeline (Section 195.6 of the regulations for transportation of liquids by pipeline).

Department of Energy - Economic Regulatory Administration:

Authorizations for the import or export natural gas.

Exemptions for conversion orders issued under the Powerplant and Industrial Fuel Use Act.

Construction orders for power plants and major fuel burning installations under 15 U.S.C. 791 et seq. and 15 U.S.C. 761 et seq.

Department of Energy - Federal Energy Regulatory Commission:

Licenses required for non-Federal hydroelectric projects and associated transmission lines under Sections 3(11), 4(e), and 15 of the Federal Power Act (16 U.S.C. 796(11), 797(e), and 808).

Orders for interconnection of electric transmission facilities under Section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)).

Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipelines and terminal facilities under Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).

Permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

Maine's Coastal Program and FEIS. August 1978

FEDERAL CONSISTENCY — MAINE

The Federal consistency provisions of the Coastal Zone Management Act provide a signifi cant opportunity to insure that Federal activities significantly affecting the coastal area are consistent with Maine's Coastal Program. The State intends to utilize these provision without creating burdensome or unnecessary administrative responsibilities for Federal agencies or for applicants for Federal licenses, permits or assistance.

The Federal consistency regulations establish four types of activities that must be evaluat for consistency with Maine's Coastal Program; in other words they must be found to compl with the laws that have been adopted as the core of the State's 306 management program. The four types are:

1. Federal activities (including development projects) that significantly affect the coastal area;

2. Non-Federal activities which significantly affect land and water uses in the coastal area, that require Federal licenses or permits;

3. Planned exploration, development, or production activities proposed pursuant to the O.C.S. Lands Act that require Federal licenses or permits and that significantly affect land and water uses in the coastal area; and

4. State and local government activities involving Federal assistance that significantly affect the coastal area.

The following sections describe, for each of the four types of activities identified above how the activity is identified; how the state is notified of a consistency determination; what the state's role will be in developing its consistency review; how the state will respond; and what procedures are available for dispute settlement.

I. FEDERAL ACTIVITIES THAT SIGNIFICANTLY AFFECT THE COASTAL AREA

Federal agencies are responsible for determining whether federal activities have a signi cant effect on the coastal area and whether they are consistent, to the maximum extent practicable, with Maine's Coastal Program. Federal activities outside of the coastal are (on excluded federal lands, on the outer continental shelf, landward of the coastal area) are subject to federal agency review to determine whether they significantly affect the coastal area.

Consistency determinations, including the necessary information outlined in the NOAA Federal Consistency regulations, will be submitted to the State Planning Office as the designated coastal agency. The following federal activities will require federal consistency determinations by Federal agencies and review by the State.

ME

- Army Corps of Engineers:
  - proposed project authorization for dredging, channel works, breakwaters, other navigation works, erosion control structures, beach replenishment, dams;
  - proposed acquisitions.
- Department of Commerce:
  - fisheries management proposals.
- Department of the Interior:
  - proposed National Park Service acquisitions;
  - proposed U.S. Fisheries and Wildlife acquisitions.
- Department of Defense:
  - location and design of new or enlarged defense installations.
- Department of Transportation:
  - location and design of new or enlarged Coast Guard stations, bases, and lighthouses;
  - location and design of aviation communication and air navigation facilities.
- General Services Administration:
  - location and design of proposed Federal government property acquisition and building construction;
  - disposal of surplus Federal lands

Those federal activities which do not appear on the above list will be monitored through the A-95 process by the State agencies for consistency with the core laws of the Coastal Program. In cases where a consistency determination and review for unlisted federal activities is desirable, the State Planning Office will notify the federal agency.

Review Procedures

The review for consistency shall be performed by the governmental organizations responsible for administering the respective core laws. These agencies will make consistency findings by using the same procedures and standards as they use to evaluate permit and license applications or management programs under the core laws and accompanying regulations.

ME

The State Planning Office will notify the federal agency of the State's agreement or disagreement with the federal agency's consistency determination at the earliest practicable time. Notification of the State's consistency evaluation will be forwarded to the appropriate federal agency within 45 days of receipt of their consistency determination. Where it deems it appropriate the State may seek a 15 day extension.

State Agency Disagreement

In the event the State disagrees with the Federal agency determination, the State shall accompany the response with the reasons for the disagreement and supporting information. If the State's disagreement is based upon a finding that the Federal agency has not submitted sufficient information for a consistency evaluation, the State Planning Office will inform the federal agency of the information needed for an adequate consistency review. A copy of the State's response will be forwarded to the Assistant Administrator.

If the State disagrees with the federal agency consistency determination, resolution may be sought through negotiations; if agreement cannot be reached, mediation attempts by the Secretary of Commerce in cooperation with the Executive Office of the President may be undertaken. The State reserves the right to seek judicial resolution of disagreements, if appropriate and necessary."

2. ACTIVITIES WHICH REQUIRE FEDERAL LICENSES OR PERMITS

Activities, whether occuring inside or outside of Maine coastal area, which have a significant effect on that area are subject to this section of the federal consistency provisions. Activities in this grouping shall be divided into two categories 1) listed activities requiring a federal license or permit, and 2) unlisted activities requiring a federal license or permit. The way that Maine deals with these two categories is described below.

Listed Activities

The State will review all activities listed below which occur within the coastal area, or which are located outside of the coastal area but which have a significant affect on the area. This will include activities on excluded federal lands or which occur in the area of the Gulf of Maine including George's Banks.

- U.S. Army Corps of Engineers

  Section 404, Federal Water Pollution Control Act, permit discharges of dredged or fill materials in waters of the U.S. and their adjacent wetlands.

  Section 10, Rivers and Harbor Act of 1899 permit for structures or work in or affecting navigable waters of the United States.

Section 103, Marine Protection, Research, and Sanctuaries Act, permit for transportation of dredged material for the purpose of dumping in ocean waters. ME

- U.S. Coast Guard:

  Permit for construction or modification of bridge structures across navigable waters of the United States.

  Deepwater Port License

- Environmental Protection Agency:

  National Pollution Discharge Elimination System (NPDES) permit.

  Ocean Dumping permit (authority exercised jointly with Army Corps of Engineers).

- Department of the Interior:

  Permits for pipeline rights of way for oil or gas transmission on Outer Continental Shelf.

- Department of Energy - Federal Energy Regulatory Commission:

  Licenses required for non-federal hydro-electric projects and associated transmission lines under Section 4(e) of the Federal Power Act.

  Certificates authorizing construction, extension, acquisition or operation of pipelines, terminals or facilities for transportation or storage of natural gas for interstate commerce.

  Permission and approval for the abandonment of natural gas pipeline facilities under Sec. 7(b) of the Natural Gas Act.

- Department of Energy - Economic Regulatory Administration:

  Opinions and orders for permission for the delivery of imported liquified natural gas.

- Nuclear Regulatory Commission:

  License for construction and operation of a nuclear power plant.

- Acquisition or disposition of land, and

- Conducting inventories and making designations of lands for the National Landmark Program to the National Historic Register.

- Aquatic Plant Control

Actions Outside (Landward) of the Coastal Zone:

Relatively few actions outside the coastal zone would have significant impacts on the coastal zone. Some projects, however, would have such an impact if they involved or would lead to:

- a significant change in the quality, quantity, or temporal pattern of fresh water entering the coastal zone, (e.g., dams on major tributaries to tidal waters), or

- a major facility in close proximity to the coastal zone which could result in significant impact on land or water use patterns or air quality in the coastal zone, and/or cause the construction of other new facilities within the coastal zone.

Actions Seaward of the Coastal Zone:

-Outer Continental Shelf leases and pre-lease activities[1]
-Designations of Marine Sanctuaries pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972
-Fisheries Management Plans

Actions in the Coastal Zone:

- All development projects, fncluding, but not limited to construction of buildings, reclamation projects, channel dredging, beach erosion control, flood control projects, and navigation projects

- Major research projects, management studies, or inventories conducted by the federal agency, that will be used in management decisions concerning Maryland's coastal resources.

- Actions which may significantly alter use patterns and the Chesapeake Bay or ocean tidal waters, (e.g. designations of special anchorage areas by the Coast Guard),

[1]Whether or not Outer Continental Shelf leases are actions subject to federal consistency is still under consideration by NOAA. Maryland reserves the right to review OCS leases and prelease activities if NOAA determines that these actions are subject to consistency.

Table VI-5 Federal Licenses and Permit Subject to Consistency Review

Federal Agency	Permit Description	Citation	State Agency to Assist CZM
DEPARTMENT OF DEFENSE U.S. Army Corps of Engineers	construction of dams or ditches across navigable waters	River and Harbor Act of 1899: Section 9, 33 U.S.C. 401	WRA
	obstruction or alteration of navigable waters (including structures of the OCS)[1]	Id. Section 10, 33 U.S.C. 403	WRA
	establishment of harbor lines	Id. Section 11, 33 U.S.C. 404, 405	WRA and MPA
	temporary occupation of sea wall, bulkhead, jetty, dike, level, wharf, pier or other work built by the U.S.	Id. Section 14, 33 U.S.C. 408	WRA
	discharge of dredged spoil into waters of the U.S.[1]	Federal Water Pollution Control Act of 1972: Section 404, 33 U.S.C. 1344	WRA

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Federal Agency	Permit Description	Citation	Assist SCP
U.S. DEPARTMENT OF DEFENSE CONT'D	approval of plans for improvements made under Corps supervision at private expense	River and Harbor Act of 1902: 33 U.S.C. 565	WRA
	transportation of dredged spoil for the purpose of dumping it in ocean waters[1]	Marine Protection, Research, and Sanctuaries Act of 1972 Section 103, 33 U.S.C. 1413	WRA
	permit for artificial islands and fixed structures on the OCS[1]	Outer Continental Lands Act Section 4(f), 43 U.S.C.	MGS
U.S. DEPARTMENT OF ENERGY Economic Regulatory Administration	licensing import or export of natural gas	Natural Gas Act: 15 U.S.C. 717, Natural Gas Act: 15 U.S.C. 717b, Department of Energy Organization Act	E&CZA (EPO), PSC
Federal Energy Regulatory Commission	Orders interconnection of electric transmission facilities	Federal Power Act, Section 202(b), (16 U.S.C. 824a(b)	PSC, E&CZA (PPSP)
	Licenses for non-Federal hydroelectric projects and associated transmission lines	Federal Power Act, Sections 4(e) and 15, (16 U.S.C. 797(e) and 808)	PSC, E&CZA (PPSP)
	Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities	Natural Gas Act, Section 7(c) (15 U.S.C. 717f(c))	MGS, PSC
	Permission and approval for the abandonment of natural gas pipeline facilities	Natural Gas Act, Section 7(b) (15 U.S.C. 7175(b))	MGS, PSC

Federal Agency	Permit Description	Citation	State Agency to Assist CZU
U.S. DEPARTMENT OF INTERIOR	the granting of any easement, right-of-way or rights-of-use across federal lands for any use not intergrally related to the federal use of that land.		dependent on area involved
Bureau of Land Management	approval of OCS pipeline corridor rights-of-way[1]	43 U.S.C. 931(c), 20 U.S.C 185, also OCS Lands Act Section 5, 43 U.S.C. 1334	MGS
Geological Survey	permit to drill[1]	43 U.S.C. 1334	MGS
	rights-of-use and easements for construction and maintenance of pipeliner and associated structures[1]	Id.	MGS
	rights-of-use and easements for construction and maintenance of gathering and flow lines[1]	Id.	MGS
National Park Service	construction of electric and communication lines across National Park Service land	16 U.S.C. 5	E&CZA (PPSP)

Federal Agency	Permit Description	Citation	State Agency to Assist CZC
U.S. DEPARTMENT OF TRANSPORTATION	permits for private aids to navigation	14 USC 83	WRA/MP
U.S. Coast Guard	permits for construction or modification of bridges or causeways in navigable waters	33 U.S.C. 401,491,525	WRA
	deepwater port permits	Deepwater Ports Act of 1974 33 U.S.C. 1501	MDOT
Federal Aviation Administration	approval of airport development project applications	49 U.S.C. 1716	MDOT
ENVIRONMENTAL PROTECTION AGENCY	permits for underground injection[2]	Safe Drinking Water Act Section 1421(c)(1), 42 U.S.C. 300h	WRA
	permit to operate underground injection wells in designated areas[2]	Resources Recovery and Conservation Act of 1976 42 U.S.C. 300h-3	WRA
	permits for handling and disposal of hazardous substances[2]	Resources Recovery and Conservation Act of 1976 42 U.S.C. 3257	WRA (parallel State permit)
	approvals under prevention of significant deterioration PSD regulations[2]	Clear Air Act of 1976 42 U.S.C. 1857c-5	EHA
	new source construction/operations permits[1,2]	Id. Section 111 42 U.S.C. 1857-6	EHA

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Federal Agency	Permit Description	Citation	State Agency to Assist CZM
ENVIRONMENTAL PROTECTION AGENCY (CONT'D.)	approvals under National Emission Standards for Hazardous Air Pollutants (NESHAPS) Regulations	Id. Section 112 42 U.S.C. 1857c-7	EHA
	NPDES permits for discharges into the contigous zone and ocean waters[1]	Federal Water Pollution Control Act of 1972 Section 402, 403 33 U.S.C. 1342, 1343	WRA
	sludge runoff permits	Id. Section 405 33 U.S.C. 1342, 1343	WRA
	aquaculture	Id. Section 318 33 U.S.C. 1328	MFA
NUCLEAR REGULATORY COMMISSION	permits and licenses for the construction and operation of nuclear facilities	Atomic Energy Act of 1954, Sections 6, 7, 8 and 10 42 U.S.C. 2133, 5841	E&CZA (PPSP)

[1]If reviewed as part of, or in conjunction with, a plan for exploration, development or production of petroleum resources on the Outer Continental Shelf (OCS), further consistency review will not be necessary.

[2]Delegation of permit authority to the State is anticipated. When the State assumes primacy, federal consistency review provisions will no longer apply to individual permit applications.

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Table VI-6

Federal Assistance Programs

Subject to Consistency

DEPARTMENT OF AGRICULTURE

10.409 Irrigation, Drainage, and Other Soil and Water Conservation Loans
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection Flood Prevention Loans
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.424 Industrial Development Grants
10.655 Assistance to States for Tree Planting and Reforestation
10.657 Cooperation in Forest Management and Processing
10.658 Cooperative Forest Insect and Disease Management
10.659 Cooperative Production and Distribution of Forest Tree Planting Stock
10.660 General Forestry Assistance
10.901 Resource Conservation and Development
10.904 Watershed Protection and Flood Prevention

DEPARTMENT OF COMMERCE

11.300 Economic Development-Grants and Loans for Public Works and Development Facilities
11.303 Economic Development-Technical Assistance
11.304 Economic Development-Public Works Impact Projects
11.305 Economic Development-State and Local Economic Development Planning
11.308 Grants to States for Supplemental and Basic Funding of Titles I, II, and IV Activities
11.405 Anadromous and Great Lakes Fisheries Conservation
11.406 Commercial Fisheries Disaster Assistance
11.407 Commercial Fisheries Research and Development
11.417 Sea Grant Support
11.500 Construction-Differential Subsidies

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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14.001 Flood Insurance
14.112 Mortgage Insurance-Construction or Rehabilitation of Condominium Proj
14.115 Mortgage Insurance-Development of Sales-Type Cooperative Projects
14.124 Mortgage Insurance-Investor Sponsored Cooperative Housing
14.125 Mortgage Insurance-Land Development and New Communities
14.126 Mortgage Insurance-Management Type Cooperative Projects
14.127 Mortgage Insurance-Mobile Home Parks
14.128 Mortgage Insurance-Nursing Homes and Related Care Facilities
14.129 Mortgage Insurance-Hospitals
14.203 Comprehensive Planning Assistance
14.207 New Communities-Loan Guarantees
14.218 Community Development Block Grants/Entitlement Grants
14.219 Community Development Block Grants/Discretionary Grants
14.701 Disaster Assistance

U.S. DEPARTMENT OF THE INTERIOR

15.400 Outdoor Recreation-Acquisition, Development and Planning
15.600 Anadromous Fish Conservation
15.605 Fish Restoration
15.611 Wildlife Restoration
15.612 Rare and Endangered Species Conservation
15.904 Historic Preservation
15.950 Additional Water Resources Research

U.S. DEPARTMENT OF TRANSPORTATION[1]

20.004 Boating Safety-Financial Assistance
20.102 Airport Development Aid Program
20.205 Highway Research, Planning and Construction
20.214 Highway Beautification-Control of Outdoor Advertising, Control of Junk yards, Landscaping and scenic enhancement
20.306 Rail Property Acquisition and Modernization Grant Assistance
20.505 Urban Mass Transportation Technical Studies Grants
20.506 Urban Mass Transportation Demonstration Grants
20.600 State and Community Highway Safety
20.700 Gas Pipeline Safety

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[1]The necessity for making consistency determinations or federally funded transportation projects will be further defined in the Memorandum of Understanding between the Department of Natural Resources and the Maryland Department of Transportation. Projects of a minor nature will generally not require consistency decisions the MOU will spell out precisely the review method for each type of project.

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ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

80.041 Grants to States for Energy Conservation Plans
80.043 Supplemental State Energy Conservation Grant Program

NATIONAL SCIENCE FOUNDATION

47.036 Intergovernmental Program

WATER RESOURCES COUNCIL

65.001 Water Resources Planning

ENVIRONMENTAL PROTECTION AGENCY

66.001 Air Pollution Control Program Grants
66.005 Air Pollution Control Survey and Demonstration Grants
66.027 Solid Waste Disposal Planning Grants
66.028 Solid Waste Disposal Demonstration Grants
66.418 Construction Grants for Wastewater Treatment Works
66.419 Water Pollution Control-State and Interstate Program Grants
66.426 Water Pollution Control-Areawide Waste Treatment Management Planning Grants
66.433 Underground Water Source Protection-Consolidated Research Grants
66.500 Environmental Protection-Consolidated Research Grants
66.501 Air Pollution Control Research Grants
66.502 Pesticides Control Research Grants
66.504 Solid Waste Disposal Research Grants
66.505 Water Pollution Control-Research, Development, and Demonstration Grants
66.506 Safe Drinking Water Research and Demonstration Grants
66.600 Environmental Protection Consolidated Grants-Program Support
66.602 Environmental Protection Consolidated Grants-Special Purpose

5) Where MCZM disagrees with an agency determination of consistency, it shall indicate the nature of its objection with specific reference to applicable CZM policies. It shall further recommend alternatives to or modifications of the proposed action that would render it consistent with said applicable provisions. A copy of such notification shall be forwarded to the Associate Administrator for Coastal Zone Management. If MCZM does not respond to the federal agencies notification within 45 days, except where additional time is requested, the project is presumed to be consistent.

FEDERAL ASSISTANCE PROGRAMS TO STATE AND LOCAL GOVERNMENTS

CZM will work with coastal communities and federal funding agencies to assure that projects and programs meeting the policies of the CZM program are given priority consideration for federal funding. Occasionally, however, some state and local government applications for federal assistance will contravene CZM enforceable policies (e.g. federally subsidized housing to be located in a salt marsh or assistance to dredge new deepwater channels outside existing port areas). In these instances, CZM will deem the application for federal assistance as inconsistent with CZM policies. Policies for which federal consistency is required are: 1-13, 15, 17,19,24,26.

The process is as follows:

(1) Applications for federal assistance by units of state or local government and/or related public entities to plan for, design, build, alter or expand physical development projects in the following areas or of the following types shall be routinely forwarded to MCZM by the Project Clearinghouse (A-95) for certification of consistency with applicable provisions of the MCZMP.

a. Areas where Certification will be required:
   1. All tidal waters.
   2. Intertidal Areas
   3. Land areas above mean high water extending to 100' inland of the 100 year floodplain.

b. Projects requiring Certification regardless of their location within the coastal zone.
   1. Power generating and designation plants.
   2. Minerals extraction facilities
   3. Wastewater treatment and collection facilities
   4. Transportation facilities

(2) MCZM, however, reserves the right to monitor proposed federal assistance projects other than those described above through the A-95 and NEPA review processes and other similar avenues. Where such monitoring indicates a significant impact on the state's coastal region and a subsequent need for a consistency determination MCZM shall notify the applicant agency, involved federal agencies, and the Associate Administrator for Coastal Zone Management of its intention to make such a determination.

(3) MCZM shall notify in writing, the applicant, the federal license or permitting agencies, the Secretary of Interior and the Secretary of Commerce of its concurrence or objection within a period not to exceed six months after receipt of the OCS plan, consistency certification and supporting information. For amended OCS plans, state concurrence shall be issued in three months.

(4) Where MCZM has previously objected in whole or part to an OCS Plan consistency certification, it shall review amended or new OCS plans, consistency certifications and/or supporting data and information in the manner set forth under (5) above. Such new or amended material shall meet all standards of content and detail required for original submissions as described under (1) - (3) above. Within a period not to exceed three months from receipt of such new or amended material, MCZM shall notify all parties of its concurrence or objection.

FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS

CZM requests federal consistency determinations for all applicable federal activities directly affecting the coastal zone, including:

Army Corps of Engineers:	Applicable MCZM Policies
--proposed project authorization for dredging, channel works, breakwaters, other navigation works, erosion control structures, beach replenishment and dams within the coastal zone and or in rivers directly discharging into coastal waters.	Policies 1,2,4,5,7,10-13, 17,19.
--proposed acquisitions within the coastal zone.	Policies 2,24
Department of Interior:	
--Massachusetts CZM reserves the right to review proposed Bureau of Land Management OCS Lease sales, at such time as the question of whether or not lease sales are eligible for consistency review has been resolved.	Policy 9 and other policies referenced therein.
--proposed National Park Service acquisition within the coastal zone.	Policies 2,24
--proposed U.S. Fisheries and Wildlife acquisitions within the coastal zone.	Policies 2,24
Department of Defense:	
--location and design of new or enlarged defense installations within the coastal zone.	Policies 1-7, 10-13

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Department of Transportation:

--location and design of new or enlarged Coast Guard stations, bases and lighthouse within the coastal zone.	Policies 1-7, 10-13
--location and design of aviation communication and air navigation facilities within the coastal zone.	Policies 1-7, 10-13

General Services Administration:

--location and design of proposed federal government property acquisition and building construction within the coastal zone.	Policies 1-7, 10-13
--disposal of surplus federal lands within the coastal zone.	Policies 1-7, 10-13, 24

Amtrak, Conrail:

--railroad, expansions, new construction, or abandonments within or affecting the coastal zone.	Policy 26

(1) Federal agencies shall provide the MCZM office routine and timely notification of all proposed activities and development projects to be located in the Massachusetts Coastal Zone.

(2) MCZM and Federal agencies will develop additional lists of projects that are likely to directly affect the coastal zone but are not actually located in the state's coastal region.

(3) Notification shall:
   a. be in writing and submitted at the earliest practicable time, at a minimum, 90 days to final approval.
   b. be submitted directly to the MCZM office.
   c. indicate the involved agency's assessment of its consistency with policies of the MCZMP.
   d. describe the proposed action or project in sufficient detail, including, as appropriate, facility development plans, maps, engineering drawings, or other data and information, so that the council may independently evaluate its consistency with specific MCZM policies.

(4) The MCZM office shall notify in writing federal agencies proposing activities and development projects, of its agreement or disagreement with their consistency determination within 45 days of receiving said determination and supporting documentation as described under (3), c and d, above; provided that MCZM may, where necessary, request an additional 15 days to evaluate and respond to federal agency determinations pursuant to NOAA regulations.

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(3) Within the time limits provided for A-95 review, MCZM shall notify the Statewide Clearinghouses, appropriate federal agencies and applicant of its objections, if any, to proposed projects. Such objections will describe how the proposed project is inconsistent with specific MCZM policies and shall recommend alternative measures (if they exist) which would render the project consistent with the MCZMP. Notification shall further appraise the applicant agency of the appeal procedures set forth under Subpart H of NOAA regulations.

Summary of Federal Consistency Requirements for

Federal Licenses and Permits

Federal Licenses or Permits U.S. Army Corps of Engineers	CZM Policy Requirements	Scope of State and Federal Regulatory Jurisdiction
Section 404, Federal Water Pollution Control Act, permit for discharge of dredged or fill materials in navigable waters.	When salt marshes, shellfish beds, dunes, barrier beaches and salt ponds restricted under the Coastal Wetlands Restriction Act, prohibit all dredging, filling, construction and discharge of pollutants except: construction of piers on pilings, catwalks, boathouses, boat channels for single family use, maintenance dredging, expansion dredging in port areas, expansion of existing harbor channels where necessary and impacts on shellfish beds are minimized beach replenishment, boat launching ramps, utility lines, driveways, maintenance or reconstruction of existing roads, and shoreline protection works. In unrestricted wetlands, condition alterations and construction so as to protect the seven interests of the Wetlands Protection Act. (Policy 1). Prohibit mining, dumping, and permanent structures on seabed as required by Ocean Sanctuaries Acts; condition other mining or open ocean construction works to minimize adverse effects on water quality, recreational beaches, fish and wildlife (Policies 6 and 9). Condition construction of solid fill piers, bulkheads, shoreline protection works, and other works in coastal waters so as to prevent disruption of circulation patterns, minimize adverse effects on littoral processes and flushing rates, and allow for anadromous fish passage (Policy 4). Condition location and treatment of municipal outfalls so as to minimize impacts on water quality, shellfish and recreation (Policy 3). Restrict new shipping channel development of 20 foot depth or more in non-designated port areas (Policy 7). Prohibit exclusions of maritime-dependent industrial uses in designated ports (Policy 7) Minimize adverse effects on marine productivity, dredging and dredged material disposal (Policy 5). Prohibit dredge material disposal in areas for preservation or restoration/areas of Critical Environmental Concern and prevent damage to characteristics cited in the designation of the area. (Policy 2).	Similar to Waterways Program (MGLA ch. 91) and Wetlands Program (MGLA ch. 131, S. 40).
Section 10, River and Harbor Act of 1899, permit for obsevation of alteration in navigable waters of the United States.	--same as above--	--same as above--
Section 103, Marine Protection, Research, and Sanctuaries Act, permit for transportation of dredged material.	For dredging, filling and construction and discharge of pollutants into saltmarshes, beaches, shellfish beds, dunes, and barrier beaches, see above summary of Policy 1. Prohibit dredged material disposal in APRs/ACECs. (Policy 2). Minimize impacts of dredged material disposal (Policy 5).	State lacks jurisdiction beyond three-mile limit of coastal waters, but permit applications will be reviewed to ensure consistency with CZM policies, especially with respect to spillover effects on the coastal zone.

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Section 4f, OCS Lands Act, permit for artificial islands or fixed structure on outer continental shelf.	Condition mining or construction works in the open ocean so as to minimize to the extent practicable, adverse effects on water quality, recreational beaches, fish and wildlife (Policy 9).	Same as above
U.S. Coast Guard		
Permit for construction or modifications of bridge structures across navigable waters of the United States.	For dredging, filling, construction and discharge of pollutants in salt marshes, beaches, shellfish beds, dunes and barrier beaches, see above summary of Policy 1. Prevent damage to characteristics cited in designation of APRs/ACECs (Policy 2). Condition construction of solid fill piers, bulkheads and other works in coastal waters so as to prevent disruption of circulation patterns, minimize adverse effects on littoral processes and flushing rates and allow for anadromous fish passage (Policy 4). Prohibit exclusions of maritime-dependent industrial uses in designated port areas (Policy 7).	Federal jurisdiction concurrent with that of Waterways Program (PGLA, Ch. 91).
Deepwater Port License	Energy Facilities Siting Council (EFSC) to consider alternative coastal sites and assess need, impact on port operations, changes in environmental impacts over existing oil delivery systems, and other factors. Based on considerations of these alternatives and assessments and the balancing of supplying energy needs, protection of the environment, and lowest cost to the consumer, the EFSC will approve, deny, or condition deepwater ports in the coastal waters of Massachusetts (Policy 8).	State lacks jurisdiction beyond the three-mile limit, however Deepwater Port Act explicitly gives authority to Governor of contiguous state to approve or deny Deepwater Port licenses.
Environmental Protection Agency		
National Pollution Discharge Elimination System (NPDES) permit. (Section 402, PL 92-500).	For dredging, filling, construction, and discharge of pollutants in salt marshes, beaches, shellfish beds, dunes, and barrier beaches, see above summary of Policy 1. Prohibit dredged material disposal, siting of new sewerage treatment facilities, and new industrial discharges in APRs/ACECs (Policy 2). Condition the location and treatment of discharges so as to minimize adverse effects on water quality, shellfish, and recreation (Policy 3). Prohibit exclusion of maritime-dependent industrial uses in ports (Policy 7). Ensure consistency with Areawide Wastewater Management (208) Plans (Policy 3). Minimize impacts on marine environment from OCS related activities (Policy 9).	EPA and the Massachusetts Division of Water Pollution Control share responsibility for issuance of this permit. Federal Consistency will be used to ensure that EPA's responsibility for NPDES permits are consistent with CZM policies.
Ocean Dumping permit (authority exercised jointly with Army Corps of Engineers).	--see Army Corps of Engineers Section 103 permit above--	State lacks jurisdiction beyond three-mile limit of coastal waters, but permit applications will be reviewed to ensure consistency with CZM policies, especially with respect to spillover effects on the coastal zone.

Department of Interior		
Permits for Pipeline Rights of Way for oil or gas transmission on Outer Continental Shelf.	Condition off shore energy resource extraction or development and construction of related off-shore facilities so as to minimize adverse impacts on the marine environment, especially with respect to fisheries, water quality, fisheries, and wildlife (Policy 9).	--same as above--
OCS exploration and development plans which describe in detail federal license and permit activities (drilling, platform installation, gathering lines, etc).	---see above----	---see above---
Federal Energy Regulatory Comm.		
Permits and licenses for planning, construction, and operation of non-federal hydroelectric power developments.	Ultimate state approval for siting of major energy facilities rests with the Energy Facility Siting Council (EFSC). The Council has agreed to consider the CZM program as an expression of state environmental policy. The EFSC also agreed to incorporate into its own regulations a requirement that utilities provide to the Council an alternative coastal site, and in the case of non-coastal dependent energy facilities in alternative inland site. Additional assessment factors will also be incorporated into EFSC regulations. An application for an FPC or NRC permit or license will be deemed consistent with the CZM program if the facility and site have secured EFSC approval. Other federal permits or licenses for construction of an energy facility will be deemed consistent with the CZM program if they meet pertinent CZM policy requirements or if the EFSC overrides the condition or denial of a counterpart state permit by issuing a Certificate of Environmental Impact and Public Need. (see Policies 8 and 9 for further details).	FERC jurisdiction similar to that of Energy Facility Siting Council, except that FERC expressly mandated to require for water power projects, the conservation and development of land and water associated natural resources at the project, such as fish, wildlife and outdoor recreation and the preservation of historic, scenic and other aesthetic values of project areas. Applicant's Consistency Statement will be approved, if the facility and site are approved by EFSC.
Certificates authorizing natural gas pipelines to construct, extend, acquire or operate transportation and storage facilities for transport of natural gas in interstate commerce.	---see above---	Energy Facility Siting Council also has jurisdiction over gas facilities; applicants consistency statement will be approved if the facility and site have been approved by EFSC.
Authorization for import or export of natural gas.	----see above----	--same as above--

Nuclear Regulatory Comm. **License for construction and operation of nuclear power plant .**	**--same as preceding page --**	Energy Facility Siting Council (EFSC) has jurisdiction over power plant siting, applicant's consistency statement will be approved if the facility and all technical issues approved by EFSC .

applications to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with Michigan's Coastal Management Program. At the same time, the applicants shall furnish the Michigan Coastal Management Program Unit a copy of the certification. This consistency determination will be especially facilitated where state and federal agencies have coordinated permit processes, such as the process for coordinated review of permits issued under Act No. 247 of the Public Acts of 1955 and Section 404 of the Federal Water Pollution Control Act.

In cases where state permits are not required of applicants for activities requiring federal licenses or permits, the applicant is responsible for certifying in its application to the federal agency that the proposed action is consistent with the Coastal Management Program. The applicant must also furnish the state with a copy of the consistency certification. Federal agencies may deny a permit or license pursuant to their statutory responsibilities notwithstanding state concurrence.

The list below indicates what federal permits have received program attention to date due to their regulation of important coastal resources, uses or impacts. Michigan proposes to review proposals submitted through these permit programs for consistency during program implementation. Other permits may, of course, be added as further needs are indicated.

A maximum six month time period will exist for acting on a federal license or permit consistency certification after which time consistency will be conclusively presumed. Alterations in permit and licensing criteria will be effectuated through federal agency consultation and approval by the United States Department of Commerce.

Department of Agriculture	
43 USC 1716	Permits for water easements on National U.S. Forest Service lands (Forest Service) Use and occupancy of land for hotels, resorts, summer homes, stores and facilities for industrial, commercial, educational or public use
16 USC 497	Use and occupancy of land for hotels, resorts, summer homes, stores and facilities for industrial, commercial, educational or public use.
17 USC 661-667	Fish and Wildlife Coordination Act
Department of Interior	
16 USC 3	Construction of visitor facilities on National Park Service lands (NPS)
16 USC 5	Rights-of-way for electrical transmission lines on National Park Service land (NPS) Reclamation permits at dam sites and recreation areas

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Environmental Protection Agency	
33 USC 1251	Water pollution control (state permit required)
33 USC 1857	Clean air (state permit required)
Department of Housing and Urban Development	
-----	Flood insurance permits (state permits required)
-----	Interstate land sales registration (state permit may be required)
Nuclear Regulatory Commission	
-----	Licenses for nuclear generating stations, fuel storage and processing centers
-----	Siting and operation of nuclear power plants (state permits required)
Federal Energy Regulatory Commission	
16 USC 797(e)	Licenses required for nonfederal hydroelectric projects and associated transmission lines
15 USC 717(f)(c)	Certificates required for the construction and operation of natural gas pipeline facilities, defined to include both interstate pipeline and terminal facilities
15 USC 717(f)(b)	Permission and approval required for the abandonment of natural gas pipeline facilities
Department of Defense — Army Corps of Engineers	
33 USC 401-403	Excavation and fill permits, construction in navigable waters (state permit also required)
33 USC 1344	Discharge of dredge and fill material
33 USC 419	Hazardous substances and materials (state permit required)
Department of Transportation	
33 USC 401	Construction and modification of bridges, causeways in navigable waters (US Coast Guard) (state permit also required)
----	Construction of airports (state permits may be required)

Figure VI-C illustrates the process used to review these permits for consistency.

Minnesota

Federal Activities, Licenses, Permits and Assistance Programs Subject to Federal Consistency Requirements

I. Direct Federal Activities and Development Projects

If a direct federal activity is not addressed in an agreement with the state, and the activity meets or exceeds the "mandatory EAW categories", a federal agency must provide the DNR Waters and appropriate state agency(s) with a consistency determination for any activity affecting any land or water use or natural resources within Minnesota's coastal boundary. The following list is provided to highlight those activities most likely to affect the coastal area.

Department of Agriculture, Forest Service

-- Harvest of timber, reforestation, road and trail building and maintenance, fish and wildlife enhancement, shoreline erosion control/bank stabilization, construction and operation of campgrounds and wilderness access points, construction and maintenance of water access sites, exchange and acquisition of federal land, design and construction of administrative site, and site cleanup under RCRA or CERCLA.

Department of Defense, Army Corps of Engineers

-- Dredging, channel improvement, breakwaters, other navigational works, erosion control structures, beach replenishment, dams or flood control works, ice management practices and activities and other projects with the potential to impact coastal lands and waters.

-- Land acquisition or disposal for spoil disposal or other purposes.

-- Habitat creation (islands, marshes, etc. created by dredge material).

-- Selection of disposal sites for dredged material from federal harbors and navigation channels.

Department of Defense, Air Force, Army, and Navy

-- Location, design, and acquisition of new or expanded defense installations (active or reserve status including associated housing, transportation or other facilities).

-- Plans, procedures and facilities for handling storage use zones.

-- Establishment of impact, compatibility or restricted use zones.

-- Disposal of defense property.

Department of Energy

-- Prohibition orders.

Department of Interior, Bureau of Indian Affairs

-- Indian trust (reservation) land acquisitions (25 C.F.R. 151)

-- Development of trust lands
Realty actions: leases, rights of way
Environmental review in compliance with tribal/federal mandates

-- Inventorying, monitoring and protection of trust resources
(Includes adjudicated ceded territory resources in 1854 Authority)
Forest management and sales
Fish, wildlife & wild rice habitat management/restoration
Integrated Resource Management Plans (IRMPs)
Solid and hazardous waste compliance (dump caps, USTs, etc.)
Natural Resources Damage Assessments (CERCLA, CWA, OPA 90)

Department of Interior, Fish and Wildlife Service

-- Management of Natural Wildlife Refuges; land acquisition.

Department of Interior, National Park Service

-- National Park Service unit management; land acquisitions.

-- Location, design, and acquisition of new or expanded facilities.

Department of Justice, U.S. Marshals Service

-- Disposition of property acquired by the Marshals Service.

Department of Transportation, Coast Guard

-- Location and design, construction, or enlargement of Coast Guard stations, bases, and lighthouses.

-- Location, placement, or removal of navigation devices which are not part of the routine operations under the Aids to Navigation Program (ATON).

-- Expansion, abandonment, designation of anchorages, lighting areas or shipping lanes and ice management practices and activities.

-- Ice breaking

-- Oil and hazardous material pollution response planning and response activities

Department of Transportation, Federal Aviation Administration

-- Location and design, construction, maintenance, and demolition of federal aids to air navigation.

Department of Transportation, Amtrak, Conrail

-- Expansions, curtailments, new construction, upgrades or abandonments of railroad facilities or services, in or affecting the state's coastal area.

Department of Transportation, Federal Highway Administration

-- Highway construction.

Department of Transportation, Maritime Administration

-- Port planning

Environmental Protection Agency

-- Activities conducted under the Resource Conservation and Recovery Act (RCRA) of 1976.

-- Activities conducted under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980.

Federal Energy Regulatory Commission

-- Construction to develop new supplies or to reinforce existing transportation systems

General Services Administration

-- Acquisition, location and design of proposed federal government property or buildings, whether leased or owned by the federal government.

-- Disposition of federal surplus lands and structures.

Nuclear Regulatory Commission

-- The siting, construction and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974.

II. Federal Licenses and Permits

Department of Agriculture, Forest Service

-- Road/trail access across federal land to nonfederal land to provide access to nonfederal land or to allow development of state, county or township roads and highways (36 C.F.R. 251.110).

-- Minerals or energy development (includes mineral exploration, mine development and operation, gravel extraction and quarry stone extraction) (36 C.F.R. 228).

-- Recreational uses (shoreline resorts, shoreline homes) (36 C.F.R. 251.50).

-- Special events (36 C.F.R. 251.50).

-- Utility corridors (power line and pipelines across federal land) (36 C.F.R. 251.50).

-- Protection of archeological resources (36 C.F.R. 296).

Department of Defense, Army Corps of Engineers

-- Construction of dams, dikes, or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

-- Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405).

-- Occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).

-- Approval of plans for improvement made at private expense under USACE supervision pursuant to the Rivers and Harbors Act of 1902 (33 U.S.C. 565).

-- Disposal of dredged or fill material into the waters of the U.S. pursuant to the Clean Water Act, Section 404 (33 U.S.C. 1344).

-- All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

Department of Interior, Bureau of Indian Affairs

-- Archaeological Resources Protection Act Permits for trust lands (25 C.F.R. 262).

Department of Interior, Fish and Wildlife Service

-- Fish and Wildlife coordination (17 U.S.C. 661-667).

-- Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. 153 (a)).

Department of Transportation, Coast Guard

-- Construction or modification of bridges, causeways, or pipelines over navigable waters pursuant to 49 U.S.C. 1455.

-- Hazardous substances and materials (33 U.S.C. 419).

-- Marine event permits (46 U.S.C. 454, 33 C.F.R. 100.15).

Department of Transportation, Federal Aviation Administration

-- Permits and licenses for construction, operation, or alteration of airports (F.A.R. Part 157).

Environmental Protection Agency

-- NPDES permits and other permits for federal installations, sludge runoff and aquaculture permits and all other permits pursuant to §401, 402, 403, 405, and 318 of the federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343, and 1328).

-- Permits pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976.

-- Permits pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980.

-- Permits pursuant to the underground injection control program under Section 1424 of the Safe Water Drinking Water Act (42 U.S.C. 300 h-c).

-- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

Federal Energy Regulatory Commission

-- Licenses, renewals, or amendments to licenses for nonfederal hydroelectric projects and primary transmission lines under Section 3(11), 4(e), and 15 of the federal Power Act (16 U.S.C. 796 (11), 797 (11), and (808)).

-- Orders for interconnection of electric transmission facilities under Section 202 (b) of the federal Power Act (15 U.S.C. 824 a (b)).

-- Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities under §7 (c) of the Natural Gas Act (15 U.S.C. 717 f (c)).

-- Permission and approval for the abandonment of natural gas pipeline facilities under §7 (b) of the Natural Gas Act (15 U.S.C. 717 f (b)).

-- Regulation of gas pipelines, and licensing of import and export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act of 1974.

-- Exemptions from prohibition orders (15 U.S.C. 791).

Nuclear Regulatory Commission

-- Licensing and determination of the siting, construction and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1974.

Surface Transportation Board

-- Authority to abandon railway lines (to the extent that the abandonment involves removal of trackage and disposition of right-of-way); authority to construct railroads; authority to construct coal slurry pipelines (49 U.S.C. 10901 @ seq.).

III. Federal Assistance

(NOTE: Numbers refer to the Catalog of federal Domestic Assistance Programs.)

Department of Agriculture

10.025 Plant and Animal Disease and Pest Control
10.405 Farm Labor Housing Loans and Grants
10.411 Rural Housing Site Loans
10.414 Resource Conservation and Development Loans
10.415 Rural Rental Housing Loans
10.418 Water and Waste Disposal Systems for Rural Communities
10.419 Watershed Protection and Flood Prevention Loans
10.420 Rural Self-Help Housing Technical Assistance
10.422 Business and Industrial Loans
10.423 Community Facilities Loans
10.424 Industrial Development Grants
10.433 Rural Housing Preservation Grants
10.760 Water and Waste Disposal Systems Loans and Grants
10.762 Solid Waste Management Grants
10.763 Emergency Community Water Assistance Grants
10.764 Resource Conservation and Development Loans
10.765 Watershed Protection and Flood Prevention Loans
10.766 Community Facilities Loans
10.767 Intermediary Relending Program
10.768 Business and Industrial Loans
10.769 Rural Business Enterprise Grant Program
10.850 Rural Electrification Loans and Guarantees
10.851 Rural Telephone Loans and Guarantees
10.852 Rural Telephone Bank Loans

10.854 Rural Economic Development Loan and Grant Program
10.901 Resource Conservation and Development
10.904 Watershed Protection and Flood Prevention
10.906 River Basin Surveys and Investigations

Department of Commerce
11.300 Economic Development - Grants and Loans for Public Works and Development Facilities
11.302 Economic Development - Support for Planning Organizations
11.303 Economic Development - Technical Assistance
11.304 Economic Development - Public Works Impact Projects
11.305 Economic Development - State and Urban Area Economic Development Planning
11.307 Special Economic Development and Adjustment Assistance, Sudden and Severe Economic Dislocation (SSED) and Long-Term Deterioration (LTED)
11.405 Anadromous and Great Lakes Fisheries Conservation
11.407 Interjurisdictional Fisheries Act of 1986
11.417 Sea Grant Support
11.419 Coastal Zone Management Program Administration
11.420 Coastal Zone Management Estuarine Research Reserves
11.427 Fisheries Development and Utilization Research/Development Grants/Coop Agreements
11.550 Public Telecommunications Facilities - Construction and Planning

Department of Defense
12.101 Beach Erosion Control Projects
12.104 Flood Plain Management Services
12.105 Protection of Essential Highways, Highway Bridge Approaches, and Public Works
12.106 Flood Control Projects
12.107 Navigation Projects
12.108 Snagging and Clearing for Flood Control
12.109 Protection, Clearing and Straightening Channels
12.110 Planning Assistance to States
12.610 Joint Military/Community Comprehensive Land Use Plans

Department of Housing and Urban Development
14.170 Congregate Housing Services Program
14.174 Housing Development Grants (HoDAG)
14.218 Community Development Block Grants/Entitlement Grants
14.219 Community Development Block Grants/Small Cities Grants

Department of the Interior
15.600 Anadromous Fish Conservation
15.605 Sport Fish Restoration
15.611 Wildlife Restoration
15.612 Endangered Species Conservation
15.614 North American Wetlands Conservation

15.616 Clean Vessel Act
15.904 Historic Preservation Fund Grants-In-Aid
15.910 National Natural Landmarks Program
15.916 Outdoor Recreation - Acquisition, Development and Planning

Department of Transportation
20.005 Boating Safety Financial Assistance
20.106 Airport Improvement Program
20.205 Highway Planning and Construction (Including Intermodal Surface Transportation Efficiency Act Programs)
20.219 Symms National Recreation Trails Fund Act - Grants for Motorized and Non-motorized Trails
20.308 Local Rail Service Assistance Program
20.500 Urban Mass Transportation Capital Improvement Grants
20.509 Public Transportation for Nonurbanized Areas
20.801 Development and Promotion of Ports and Intermodal Transportation
20.998 Transportation Improvement Program

General Services Administration
39.002 Disposal of Federal Surplus Real Property

National Foundation of the Arts and the Humanities
45.007 Promotion of the Arts - State Programs
45.023 Promotion of the Arts - Local Programs

Department of Veteran Affairs
64.005 Grants to States for Construction of State Home Facilities

Environmental Protection Agency
66.001 Air Pollution Control Program Support
66.419 Water Pollution Control - State and Interstate Program Support
66.432 State Public Water System Supervision
66.433 State Underground Water Source Protection
66.435 Water Pollution Control - Lake Restoration Cooperative Agreements
66.438 Construction Management Assistance
66.454 Water Quality Management Planning
66.456 National Estuary Program
66.458 Capitalization Grants for State Revolving Funds
66.500 Environmental Protection - Consolidated Research
66.501 Air Pollution Control Research
66.502 Pesticides Control Research
66.504 Solid Waste Disposal Research
66.505 Water Pollution Control - Research, Development, and Demonstration
66.506 Safe Drinking Water Research and Demonstration
66.507 Toxic Substances Research

66.600 Environmental Protection Consolidated Grants - Program Support
66.700 Pesticides Enforcement Program
66.701 Toxic Substances Compliance Monitoring Cooperative Agreements
66.702 Asbestos Hazards Abatement (Schools) Assistance
66.801 Hazardous Waste Management State Program Support
66.802 Hazardous Substance Response Trust Fund
66.804 State Underground Storage Tanks Program
66.805 Underground Storage Tank Trust Fund
66.807 Superfund Innovative Technology Evaluation Program (SITE)
66.808 Hazardous Waste; Integrated Training and Technical Assistance - Interstate

Department of Energy
81.041 State Energy Conservation
81.049 Basic Energy Sciences, High Energy or Nuclear Physics, Magnetic Fusion Energy, Health and Environmental Research, Program Analysis and Field Operations Management

Federal Emergency Management Agency
83.503 Civil Defense - State and Local Emergency Management Assistance
83.513 State and Local Warning and Communication Systems
83.516 Disaster Assistance

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Table 61. **Summary of Federal Consistency Provisions**

	Direct Federal Actions & Development Projects	Federal License or Permit Activities	Federal Assistance to State and Local Governments
CZMA Section 307	(c)(1) & (2)	(c)(3)(A)	(d)
Activity subject to review, if it...	Affects any land or water use or natural resource of the coastal zone	Affects any land or water use or natural resource of the coastal zone	Affects any land or water use or natural resource of the coastal zone
Consistency requirement	Consistent to the maximum extent practicable with state CMP	Consistent with state CMP	Consistent with state CMP
Who decides?	Federal agency	State CMP and networked state agency(s)	State CMP and networked state agency(s)
Time limit	45 days, plus 15 day extension	30 days; state may extend	30 days state may extend
Impact of State Objection	Federal agency may proceed. Must cite legal authority as to why it must proceed despite inconsistency	Federal agency may not issue permit, license, or other approval	Federal agency may not grant assistance
Administrative conflict resolution	Mediation by the Secretary of Commerce (voluntary, non-binding)	Appeal to the Secretary to override state objection	Appeal to the Secretary to override state objection

SECTION 4, PART V.

MISSISSIPPI

A. DIRECT FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS

1. U. S. Army Corps of Engineers

   a. Dredging, channel works, breakwaters, other navigation works, erosion control structures, flood protection, beach replenishment and dams within the coastal area and on or in major coastal rivers and streams.

   b. Proposed federal acquisitions within the coastal area.

2. Department of the Interior

   a. Proposed Bureau of Land Management OCS lease sales, including pre-lease sale activities.

   b. Proposed National Park Service acquisitions within the coastal area.

   c. Proposed U. S. Fish and Wildlife Service activities.

3. Department of Defense

   a. Location and design of new or enlarged defense installations within the coastal area.

4. Department of Transportation

   a. Location and design of new or enlarged Coast Guard stations, bases and lighthouses within the coastal area.

   b. Location and design of aviation communication and air navigation facilities within the coastal area.

   c. Railroad expansions, new construction, abandonments or establishment of new routes within or affecting the coastal area.

5. General Services

   a. Proposed federal government property acquisition and building construction within the coastal area.

   b. Disposal of surplus federal lands within the coastal area.

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SECTION 4, PART V.A.

6. National Marine Fisheries Service (and Gulf of Mexico Fisheries Management Council)

   Preparation and approval of plans and implementing mechanisms pursuant to management of fisheries within 200 nautical miles jurisdiction.

7. Department of Energy

   Fossil fuel power plant conversion orders.

B. FEDERAL LICENSES AND PERMITS

1. Environmental Protection Agency

   a. Permits and licenses required under Sections 402 and 404 of the Federal Water Pollution Control Act of 1972 and Amendments.

   b. Permits and applications for reclassification of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.

2. U. S. Army Corps of Engineers

   a. Permits and licenses required under Section 9 and 10 of the Rivers and Harbors Act of 1899.

   b. Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (Ocean Dumping).

   c. Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and Amendments.

3. Nuclear Regulatory Commission

   Permits and licenses required for siting construction and operation of nuclear power plants, fuel processing, and disposal of nuclear wastes.

4. Bureau of Land Management

   a. Permits and licenses required for mining of public lands and for pipeline corridors pursuant to the OCS Lands Act, if such permits and licenses have not been previously reviewed under an OCS plan.

   b. Grants of authority for activities on federal lands or with respect to federal mineral ownership in the coastal area.

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5. Geological Survey

   a. Permits and licenses under the Mineral Leasing Act of 1920, as amended and supplemented acquired Lands Mineral Leasing Act of 1947 Geothermal Steam Act of 1970.

   b. Permits to drill, rights of use and easements for construction and maintenance of pipelines, gathering and flow lines and associated structures, described in detail in OCS plans.

6. U. S. Coast Guard

   a. Permits for construction of bridges under 33 USC 401, 4591-507, and 525-534.

   b. Permits for deepwater ports (33 CFR 158 et sel.).

7. Federal Energy Regulatory Commission

   a. Licenses for non-federal hydroelectric projects and primary transmission lines under the Federal Power Act, including projects in the coastal area and on major coastal rivers and streams in Pearl River, George, and Stone Counties.

   b. Orders for interconnection of electric transmission facilities under the Federal Power Act.

   c. Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipelines and LNG terminal facilities under the Natural Gas Act.

8. Department of Energy

   Authorization for import or export of natural gas.

9. Fish and Wildlife Service

   Endangered species permits pursuant to the Endangered Species Act.

C. FEDERAL ASSISTANCE

All projects involving federal financial assistance to state and local governments in the coastal area through grants or contractual agreements, loans, subsidies, guarantees, insurance, or other forms of financial aid except federal revenue sharing shall be subject to policy coordination under this section.

NH Coastal Program Ocean and Harbor Segment • FEIS
April 1982

NEW HAMPSHIRE

FIGURE 8-2

FEDERAL ACTIVITIES SUBJECT TO CONSISTENCY REVIEW
UNDER THE NEW HAMPSHIRE COASTAL PROGRAM

PART I. FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS LIKELY TO DIRECTLY AFFECT THE COASTAL ZONE

Department of Commerce/National Marine Fisheries Service

- Fisheries management proposals

Department of Defense/Army Corps of Engineers

- Proposed projects, authorizations for dredging, channel works, breakwaters, other navigation works, erosion control structures, reservoirs, dams, beach nourishment, and other public works projects.

Department of Defense/Air Force, Army and Navy

- Location, acquisition, and design of new or enlarged defense installations. Actions conducted on federal lands with potential impact on non-federal coastal land and water including construction or expansion of buildings or acquisition of land.

Department of the Interior/Bureau of Land Management

- * OCS -lease sale activities -- selection of tracts, lease sale stipulations.

Department of the Interior/Fish and Wildlife Services

- Acquisition and management including master plans of National Wildlife Refuges.

Department of the Interior/National Park Service

- Acquisition and management including master plans of national parks and seashores.

Department of Transportation/Coast Guard

- Location, design, and acquisition of new or enlarged installations.

Department of Transportation/Federal Aviation Administration

- Construction, maintenance, and demolition of federal aids to navigation.

General Services Administration

- Disposal of surplus federal land, property acquisition and building construction.

PART II. FEDERALLY LICENSED AND PERMITTED ACTIVITIES

Department of Defense/Army Corps of Engineers

- Section 10 permit; Rivers and Harbors Act of 1899

*New Hampshire will review proposed BLM OCS Lease Sales to determine whether or not such lease sales directly affect its coastal zone and thereby require consistency review.

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FIGURE 8-2 (CONTINUED)

PART II. FEDERALLY LICENSED AND PERMITTED ACTIVITIES (CONTINUED)

Department of Defense/Army Corps of Engineers (Continued)

- Section 9 & 10 permits; Rivers and Harbors Act of 1899
- Section 404 permit; Clean Water Act and amendments
- Section 103 permit, Marine Protection Research and Sanctuaries Act of 1972.

Department of Energy/Federal Energy Regulatory Commission

- License for non-federal hydroelectric projects; Section 4(e), Federal Power Act.
- Abandonment of gas pipeline; Section 7, Natural Gas Act.
- Certificates authorizing construction, or operation of or facilities for transportation or storage of natural gas; Section 7, Natural Gas Act.

Department of Energy/Economic Regulatory Administration

- Options and orders for permission for delivery of imported LNG.

Department of the Interior/Bureau of Land Management and Mineral Management Service

- Permit for pipeline rights-of-way for oil and gas transmission on Outer Continental Shelf.

Department of Transportation/Coast Guard

- License for the construction and operation of deepwater ports; Deepwater Port Act of 1974.
- Permit for construction or modification of bridge structures across navigable waters of the Unites States.

Department of Transportation/Federal Aviation Administration

- Permit and license for the construction, operation, or alteration of airports.

Environmental Protection Agency

- National Pollution Discharge Elimination System (NPDES) permit; Section 402 & 403, Federal Water Pollution Control Act.
- Ocean dumping permit (exercised jointly with Army Corps of Engineers)

Nuclear Regulatory Commission

- Permit and license required for the construction and operation of nuclear plant.

DEP will work with each Federal agency to provide joint written notices and public hearings on proposals whenever possible.

Both DEP and the New Jersey Department of Energy (DOE) will participate in the decision of the State of New Jersey to issue a determination of consistency on coastal energy facilities. As required by federal regulations (15 CFR 930.18), DEP shall receive, and forward promptly to DOE, all materials necessary for a consistency determination on coastal energy facilities. In the event of a disagreement, the Energy Facility Review Board will be convened to make a recommendation to the Governor, who shall make the final determination within the applicable time limits as required by the federal consistency determination to the appropriate federal agency.

Preliminary Conferences

The Federal consistency regulations encourage early consultation and coordination between state and Federal agencies or applicants. An agency or applicant may request a preliminary conference in writing or by telephone, advising DEP that the agency has identified an activity as one requiring, or possibly requiring, a consistency review that it wishes to discuss. This request should come at the earliest possible time and should be addressed to the Federal Coordinator, Bureau of Coastal Planning and Development, Division of Coastal Resources.

Below are lists of federal activities and development projects, federally licensed and permitted activities, federally licensed and permitted activities described in OCS Plans, and federal programs providing assistance to state and local governments likely to occur in, or affect, New Jersey's coastal zone.

Direct Federal Activities and Development Projects

Federal activities and development projects which are located in or directly affect the coastal zone must be consistent to the maximum extent practicable with the New Jersey Coastal Management Program. New Jersey will consider an activity consistent to the maximum extent practicable if it does not conflict with the Coastal Resource and Development Policies, unless compliance with New Jersey's program is prohibited based on existing law applicable to the Federal agency's operations.

Agencies and Activities Covered By This Section

Direct activities and development projects include the planning, construction, modification, or removal of Federally owned public works, facilities, or structures, including military facilities; the acquisition, utilization or disposal of land and water resources; Federal agency activities requiring a Federal permit; and Federal assistance to entities other than state and local governments.

Examples of activities in New Jersey's coastal zone that were not previously subject to State review are the housing units presently under construction by the Coast Guard on federally-owned land in Cape May (because of their potential spillover impacts) and the proposed expansion of the Naval Weapons Station, Colts Neck, New Jersey.

The following Federal activities and development projects, when conducted in whole or in part within the coastal zone, are likely to directly affect the coastal zone, and shall be reviewed for consistency.

GENERAL SERVICES ADMINISTRATION - Location and design of proposed government property acquisition and building construction.

- Disposal and transfer of surplus Federal lands.

DEPARTMENT OF DEFENSE

Army Corps of Engineers - Proposed projects authorization for dredging, channelworks, breakwaters, other navigation works, erosion control structures, reservoirs, dams, beach nourishment, and other public works projects in the coastal zone or with the potential to impact coastal lands and waters.

Air Force, Army and Navy - Location, acquisition and design of new or enlarged defense installations. Actions conducted on Federal lands with potential impact on non-Federal coastal lands and waters.

DEPARTMENT OF ENERGY - Management of Coal Conversion Program.

Federal Energy Regulatory Commission - Approval of construction and operation of an interstate natural gas transmission pipeline.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management - OCS Leases and pre-leasing activities.

Fish and Wildlife Service - Management of national wildlife refuges and proposed acquisition.

National Park Service - National Park and seashore management and proposed acquisition.

DEPARTMENT OF TRANSPORTATION

Coast Guard - Location, acquisition and design of new or enlarged installations.

Materials Transportation Bureau - Formation and enforcement of minimal federal safety standards for transportation of oil, gas and pipeline facilities.

Federal Highway Administration - Highway construction.

Federally Licensed and Permitted Activities

Applicants for Federal licenses or permits for activities directly affecting the coastal zone or for renewals or amendments to such licenses or permits shall provide DEP with a certification that the proposed activity is consistent with the coastal policies. DEP shall make a determination that the activity is or is not consistent with Coastal Policies within six months of receipt of the certifcation. Should DEP fail to make a determination within six months, the State's

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concurrence with the certification shall be conclusively presumed. Federal agencies may not issue a license or permit if the State objects unless the U.S. Secretary of Commerce finds that a proposal is consistent with the purpose of the Federal CZMA or is necessary in the interest of national security.

New Jersey will consider an activity consistent if it does not conflict with the Coastal Resource and Development Policies.

In approving the New Jersey Coastal Management Program - Bay and Ocean Shore Segment, the Assistant Administrator for Coastal Zone Management, NOAA, made the following finding:

> "With respect to any Federal license or permit, the State's review of the application for that license or permit, for Federal consistency purposes, will be limited to the scope of the review of that application as established under State and Federal law."*

In order to comply with this finding, DEP examined the legislation and regulations governing the Federal regulatory programs listed in this section and found that Federal agencies are required to examine the potential environmental impacts of their actions, regardless of the scope of review established for the particular permit or license involved. These requirements stem from the National Environmental Policy Act of 1969 (NEPA), the Environmental Quality Improvement Act of 1970, the Fish and Wildlife Coordination Act of 1966, Executive Order 11514 (Protection and Enhancement of Environmental Quality), Executive Order 11990 (Wetlands), and Executive Order 11988 (Floodplains).

The fact that every Federal action is assessed for the significance of its impacts on the environment within the meaning of NEPA (including NPDES permits for new point source discharges), and for its impact on floodplains, wetlands, fish, and wildlife means that the issuance of Federal licenses and permits listed in this section, with two exceptions, will be reviewed with reference to the full range of coastal policies contained in Chapter Four. The two exceptions are NPDES permits for existing point source discharges, which are subject only to Resource Policy 7:7E-8.4 (Water Quality); and decisions under prevention of significant deterioration (PSD) regulations of the Clean Air Act, which are subject only to Resource Policy 7:7E-8.11 (Air Quality).

Licenses and Permits Covered by this Section

Licenses and permits include any authorization, certification, approval, or other form of permission which a Federal agency is empowered to issue to an applicant, including amendments to or renewals of such permits.

Activities under the following Federal permits and licenses, when conducted by an applicant in whole or in part within the coastal zone, are likely to significantly affect the coastal zone and will be subject to a consistency review:

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*Findings of Robert W. Knecht, Assistant Administrator for Coastal Zone Management. Approval of the New Jersey Coastal Management Program - Bay and Ocean Shore Segment, September 29, 1978, p. 47.

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Army Corps of Engineers

Permits to regulate construction of any dam or dike across any navigable water of the U.S. under Section 9 of the Rivers and Harbor Act of 1899.

Permits to regulate the obstruction or alteration of, the construction of any structure in or over, and the excavation from or depositing of material in any navigable water of the U.S. under Section 10 of the Rivers and Harbor Act of 1899. (Exception: placement of bulkheads and other retaining structures, construction of docks, piers and boat ramps, or excavation from or depositing material within a man-made lagoon).

Permits and licenses to regulate transportation of dredged material for the purpose of dumping it in ocean waters under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

Permits and licenses for the discharge of dredged or fill materials into the waters and adjacent wetlands of the United States at specified disposal sites under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments unless such permitting activity has been delegated to the State.

Federal Energy Regulatory Commission

Licenses required for non-Federal hydroelectric projects and primary transmission lines under sections 3(11), 4(e), and 15 of the Federal Power Act (16 U.S.C. 796(11), 797(e), and 808).

Orders for interconnection of electric transmission facilities under section 202(b) of the Federal Power Act (16 U.S.C. 824a(b)).

Certificates of public convenience and necessity for the construction and operation of natural gas pipeline facilities including both interstate pipelines and LNG termianl facilities under Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).

Permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

U. S. Coast Guard

Permits for construction and operation of deepwater ports under the Deepwater Port Act of 1974.

Permits for construction of bridges under 33 USC 401, 491, 525.

Federal Aviation Administration

Permits and licenses for the construction, operation, or alteration of airports.

Environmental Protection Agency

National Pollutant Discharge Elimination System (NPDES) permits under the Federal Water Pollution Control Act of 1972, unless such permitting authority is delegated to the State.

Decisions under Prevention of Significant Deterioration (PSD) regulations under the Clean Air Act of 1976.

Nuclear Regulatory Commission

Permits and licenses required for the construction and operation of nuclear facilities under the Atomic Energy Act of 1954, Sections 6, 7, 8 and 10.

Economic Regulatory Administration

Opinions and orders for permission for delivery of imported LNG.

Licensed and Permitted Activities Described in OCS Plans

The 1976 Amendments to the Federal Coastal Zone Management Act added Section 307 (c)(3)(B), stating in part that:

"...any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from any area which has been leased under the Outer Continental Shelf Lands Act ... and regulations under such Act shall attach to such plan a certification that each activity which is described in detail in the plan complies with such state's approved management program and will be carried out in a manner consistent with such program".

The Department of the Interior must supply DEP with a detailed description of all proposed Federally licensed or permitted activities and facilities for OCS activities which significantly affect the coastal zone.

Federal Agencies may not issue a license or permit if the state objects, unless the U.S. Secretary of Commerce finds the proposal meets the objectives of the Federal CZMA or is necessary in the interest of national security.

New Jersey will consider an activity consistent if it does not conflict with the Coastal Resource and Development Policies.

Permits and Licenses Covered by this Section

Any Federally licensed or permitted activity described in any OCS plan for all lease sales on the Outer Continental Shelf of the United States under which New Jersey is identified as an "affected state".

Federal Assistance to State and Local Governments

Federal assistance to state and local governments for projects directly affecting the coastal zone may not be granted until DEP certifies that the activity will be consistent with the New Jersey Coastal Management Program unless the Secretary of Commerce finds that the proposal meets the objectives of the Federal

CZMA or is necessary in the interest of national security. DEP will use the A-95 Project Notification and Review Process to monitor proposed Federal assistance projects in the coastal zone. The State also reserves the right to comment on other Federal assistance projects brought to its attention through the media and other avenues.

New Jersey will consider an activity consistent if it does not conflict with the Coastal Resource and Development Policies.

Activities and Agencies Covered by this Section

The term Federal assistance includes grants, contractual arrangements, loans, subsidies, guarantees, insurance, or other forms of financial aid. The term "state or local government" includes public entities such as special purpose districts.

(Note: It is not clear at this time whether Community Development Block Grant and Urban Development Action Grant Program applications fall within the coverage of this section. Such applications often do not provide, nor are they required to provide, a level of detail adequate to enable a consistency determination to be made. DEP, therefore, shall review such applications, but it shall not issue a negative determination for lack of information for these two categories of grant programs. It shall, by letter and by A-95 comment, assess the applicant's consistency with the Coastal Management Program to the fullest extent possible.)

DEP will monitor state and local Federal assistance applications affecting the coastal zone including, but not limited to the following programs (Reference numbers are those used by the Federal Office of Management and Budget). Activities under these grant programs, when conducted in whole or in part in the coastal zone, are likely to significantly affect the coastal zone, and will be reviewed for consistency.

Federal Regulations (15 CFR 930.94) requires that states list the specific Federal assistance programs subject to consistency review in their coastal management programs.

Department of Agriculture

Irrigation, Drainage, and Other Soil and Water Conservation Loans (10.409)

Resource Conservation and Development Loans (10.414)
(Exception: small projects costing under $7500 for erosion and sediment control and land stabilization for rehabilitation and coordination of existing irrigation systems).

Water and Waste Disposal Systems for Rural Communities (10.418)

Watershed Protection and Flood Prevention Loans (10.419)

Community Facilities Loans (10.423)

Department of Commerce

Economic Development: Grants and Loans for Public Works and Development Facilities (11.300)

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Economic Development: Public Works Impact Projects (11.304)

Grants to States for Supplemental and Basic Funding of Title I, II, and IV Activities (basic grants only) (11.308)

National Oceanic and Atmospheric Administration - Se Grants

Department of Energy

State Energy Conservation Program

Department of the Interior

Heritage Conservation and Recreation Service

Outdoor Recreation - Acquisition, Development, and Planning Grants (15.400)

U. S. Fish and Wildlife Service

Rare and Endangered Species Conservation (15.612)

Department of Transportation

Federal Aviation Adminstration

Airport Development Aid Program (20.102)

Federal Highway Administration

Highway Research, Planning, and Construction (20.205)

Urban Mass Transportation Administration

Urban Mass Transportation Capital Improvement Grants (planning and construction only) (20.500)

Urban Mass Transportation Capital Improvement Loans (planning and construction only) (20.501)

Urban Mass Transportation Demonstration Grants (50.506)

Urban Mass Transportation Capital and Operating Assistance Formula Grants (20.507)

Environmental Protection Agency

Construction Grants for Wastewater Treatment Works (66.418)
(Note: Public water treatment facilities in the Bay and Ocean Shore Segment are subject to CAFRA).

State of NY CMP and FEIS August 1982

TABLE 2 NEW YORK

FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS
LIKELY TO DIRECTLY AFFECT NEW YORK STATE'S COASTAL AREA

I. Direct Federal Activities and Development Projects

Department of Commerce, National Marine Fisheries Service:

-- Fisheries Management Plans

Department of Defense, Army Corps of Engineers:

-- Proposed authorizations for dredging, channel improvement, breakwaters, other navigational works, erosion control structures, beach replenishment, dams or flood control works, ice management practices and activities, and other projects with the potential to impact coastal lands and waters.

-- Land acquisition for spoil disposal or other purposes.

-- Selection of open water disposal sites.

Department of Defense, Air Force, Army and Navy:

-- Location, design, and acquisition of new or expanded defense installations (active or reserve status, including associated housing, transportation or other facilities).

-- Plans, procedures and facilities for handling or storage use zones.

-- Establishment of impact, compatability or restricted use zones.

Department of Energy:

-- Prohibition orders.

General Services Administration:

-- Acquisition, location and design of proposed Federal government property or buildings, whether leased or owned by the Federal government.

-- Disposition of Federal surplus lands and structures.

Department of Interior, Fish and Wildlife Service:

-- Management of National Wildlife refuges and proposed acquisitions.

Department of Interior, National Park Service:

-- National Park and Seashore management and proposed acquisitions.

Department of Interior, Minerals Management Service:

-- OCS lease sale activities including tract selection, lease sale stipulations, etc.

Department of Transportation, Coast Guard:

-- Location and design, construction or enlargement of Coast Guard stations, bases, and lighthouses.

-- Location, placement or removal of navigation devices which are not part of the routine operations under the Aids to Navigation Program (ATON).

-- Expansion, abandonment, designation or anchorages, lightering areas or shipping lanes and ice management practices and activities.

Department of Transportation, Federal Aviation Administration:

-- Location and design, construction, maintenance, and demolition of Federal aids to air navigation.

Department of Transportation, Amtrak, Conrail:

-- Expansions, curtailments, new construction, upgradings or abandonments of railroad facilities or services, in or affecting the State's coastal area.

Department of Transportation, St. Lawrence Seaway Development Corporation:

-- Acquisition, location, design, improvement and construction of new and existing facilities for the operation of the Seaway, including traffic safety, traffic control and length of navigation season.

Department of Transportation, Federal Highway Administration:

-- Highway construction

II. Federal Licenses and Permits

Department of Defense, Army Corps of Engineers:

-- Construction of dams, dikes or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

-- Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405).

-- Occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).

-- Approval of plans for improvements made at private expense under USACE supervision pursuant to the Rivers and Harbors Act of 1902 (33 U.S.C. 565).

-- Disposal of dredged spoils into the waters of the U.S., pursuant to the Clean Water Act, Section 404 (33 U.S.C. 1344).

-- All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972(33 U.S.C. 1413).

-- Construction of artifical islands and fixed structures in Long Island Sound pursuant to Section 4 (f) of the River and Harbors Act of 1912 (33 U.S.C.).

Department of Energy, Federal Energy Regulatory Commission:

-- Licenses for non-Federal hydroelectric projects and primary transmission lines under Sections 3 (11), 4 (e) and 15 of the Federal Power Act (16 U.S.C. 796 (11), 797 (11) and 808).

-- Orders for interconnection of electric transmission facilities under Section 202 (b) of the Federal Power Act (15 U.S.C. 824 a (b)).

-- Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities under Section 7 (c) of the Natural Gas Act (15 U.S.C 717 f (c)).

-- Permission and approval for the abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717 f (b)).

Department of Energy, Economic Regulatory Commission:

-- Regulation of gas pipelines, and licensing of import or export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act of 1974.

-- Exemptions from prohibition orders.

Environmental Protection Agency:

-- NPDES permits and other permits for Federal installations, discharges in contiguous zones and ocean waters, sludge runoff and aquaculture permits pursuant to Sections 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343, and 1328).

-- Permits pursuant to the Resources Recovery and Conservation Act of 1976.

-- Permits pursuant to the underground injection Control program under Section 1424 of the Safe Water Drinking Water Act (42 U.S.C. 300 h-c).

-- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

Department of Interior, Fish and Wildlife Services:

-- Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. 153 (a)).

Department of Interior, Mineral Management Service:

-- Permits to drill, rights of use and easements for construction and maintenance of pipelines, gathering and flow lines and associated structures pursuant to 43 U.S.C. 1334, exploration and development plans, and any other permits or authorizations granted for activities described in detail in OCS exploration, development, and production plans;

-- Permits required for pipelines crossing federal lands, including OCS lands, and associated activities pursuant to the OCS Lands Act (43 U.S.C. 1334) and 43 U.S.C. 931 (c) and 20 U.S.C. 185.

Interstate Commerce Commission:

-- Authority to abandon railway lines (to the extent that the abandonment involves removal of trackage and disposition of right-of-way); authority to construct railroads; authority to construct coal slurry pipelines.

Nuclear Regulatory Commission:

-- Licensing and certification of the siting, construction and operation of nuclear power plants pursuant to Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.

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Department of Transportation, Coast Guard:

-- Construction or modification of bridges, causeways or pipelines over navigable waters pursuant to 49 U.S.C. 1455.

-- Permits for Deepwater Ports pursuant to the Deepwater Ports Act of 1974 (33 U.S.C. 1501).

Department of Transportation, Federal Aviation Administration:

-- Permits and licenses for construction, operation or alteration of airports.

III. Federal Assistance

Department of Agriculture

10.068	Rural Clean Water Program
10.409	Irrigation, Drainage, and Other Soil and Water Conservation Loans
10.410	Low to Moderate Income Housing Loans
10.411	Rural Housing Site Loans
10.413	Recreation Facility Loans
10.414	Resource Conservation and Development Loans
10.415	Rural Rental Housing Loans
10.416	Soil and Water Loans
10.418	Water and Waste Disposal Systems for Rural Communities
10.419	Watershed Protection and Flood Prevention Loans
10.422	Business and Industrial Loans
10.423	Community Facilities Loans
10.424	Industrial Development Grants
10.426	Area Development Assistance Planning Grants
10.429	Above Moderate Income Housing Loans
10.430	Energy Impacted Area Development Assistance Program
10.901	Resource Conservation and Development
10.902	Soil and Water Conservation
10.904	Watershed Protection and Flood Prevention
10.906	River Basin Surveys and Investigations

Department of Commerce

11.300	Economic Development - Grants and Loans for Public Works and Development Facilities
11.301	Economic Development - Business Development Assistance
11.302	Economic Development - Support for Planning Organizations
11.304	Economic Development - State and Local Economic Development Planning
11.305	Economic Development - State and Local Economic Development Planning

11.307	Special Economic Development and Adjustment Assistance Program - Long Term Economic Deterioration
11.308	Grants to States for Supplemental and Basic Funding of Titles I, II,III, IV, and V Activities
11.405	Anadromous and Great Lakes Fisheries Conservation
11.407	Commerical Fisheries Research and Development
11.417	Sea Grant Support
11.427	Fisheries Development and Utilization - Research and Demonstration Grants and Cooperative Agreements Program
11.501	Development and Promotion of Ports and Intermodal Transportation
11.509	Development and Promotion of Domestic Waterborne Transport Systems

Department of Housing and Urban Development

14.112	Mortgage Insurance - Construction or Substantial Rehabilitation of Condominium Projects
14.115	Mortgage Insurance - Development of Sales Type Cooperative Projects
14.117	Mortgage Insurance - Homes
14.124	Mortgage Insurance - Investor Sponsored Cooperative Housing
14.125	Mortgage Insurance - Land Development and New Communities
14.126	Mortgage Insurance - Management Type Cooperative Projects
14.127	Mortgage Insurance - Mobile Home Parks
14.218	Community Development Block Grants/Entitlement Grants
14.219	Community Development Block Grants/Small Cities Program
14.221	Urban Development Action Grants
14.223	Indian Community Development Block Grant Program

Department of the Interior

15.400	Outdoor Recreation - Acquisition, Development and Planning
15.402	Outdoor Recreation - Technical Assistance
15.403	Disposal of Federal Surplus Real Property for Parks, Recreation, and Historic Monuments
14.411	Historic Preservation Grants-In-Aid
15.417	Urban Park and Recreation Recovery Program
15.600	Anadromous Fish Conservation
15.605	Fish Restoration
15.611	Wildlife Restoration
15.613	Marine Mammal Grant Program
15.802	Minerals Discovery Loan Program

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15.950	National Water Research and Development Program
15.951	Water Resources Research and Technology - Assistance to State Institutes
15.592	Water Research and Technology-Matching Funds to State Institutes

Department of Transportation

20.102	Airport Development Aid Program
20.103	Airport Planning Grant Program
20.205	Highway Research, Planning, and Construction
20.309	Railroad Rehabilitation and Improvement - Guarantee of Obligations
20.310	Railroad Rehabilitation and Improvement - Redeemable Preference Shares
20.506	Urban Mass Transportation Demonstration Grants
20.509	Public Transportation for Rural and Small Urban Areas

General Services Administration

39.002	Disposal of Federal Surplus Real Property

Community Services Administration

49.002	Community Action
49.011	Community Economic Development
49.013	State Economic Opportunity Offices
49.017	Rural Development Loan Fund
49.018	Housing and Community Development (Rural Housing)

Small Business Administration

59.012	Small Business Loans
59.013	State and Local Development Company Loans
59.024	Water Pollution Control Loans
59.025	Air Pollution Control Loans
59.031	Small Business Pollution Control Financing Guarantee

Environmental Protection Agency

66.001	Air Pollution Control Program Grants
66.418	Construction Grants for Wastewater Treatment Works
66.426	Water Pollution Control - State and Areawide Water Quality Management Planning Agency

66.451	Solid and Hazardous Waste Management Program Support Grants
66.452	Solid Waste Management Demonstration Grants
66.600	Environmental Protection Consolidated Grants Program Support
	Comprehensive Environmental Response, Compensation and Liability (Super fund)

Note: Numbers refer to the Catalog of Federal Domestic Assistance Programs, 1980 and its two subsequent updates.

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NORTH CAROLINA

Federal Licenses and Permits

Agency	Licenses and Permits
Army Corps of Engineers Department of Defense	-Permits required under Sections 9 & 10 of the Rivers and Harbors Act of 1899 -Permits required under Section 103 of Marine Protection, Research & Sanctuaries Act of 1972 -Permits required under Section 404 of the Federal Water Pollution Control Act of 1972
Coast Guard Department of Transportation	-Permits for bridges, cause-ways, pipelines over navigable waters required under the General Bridge Act of 1946; Rivers and Harbors Act of 1894, 1899 and 1906; 33 CFR 114, 115, 117 -"Deep-water ports" permits
Department of Interior Geological Survey Bureau of Land Management	-Permits required for off-shore drilling -Approval of OCS pipeline corridor rights-of-way
Nuclear Regulatory Commission	-Licenses for siting, construction and operation of nuclear power plants, required under the Atomic Energy Act of 1954, and Title II of the Energy Reorganization Act of 1974
Federal Energy Regulatory Commission	-Permits for construction, operation and mantenance of interstate pipelines facilities required under the Natural Gas Act of 1938

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	-Permission required for abandonment of natural gas pipelines and associated facilities under Section 7(b) of the Natural Gas Act of 1938
	-Licenses for construction and operation of non-Federal hydroelectric projects and associated transmission lines under Section 7(c) of the Natural Gas Act of 1938
Economic Regulatory Administration (DOE)	-Permits for construction and operation of facilities needed to import or export natural gas

An applicant for a Federal license or permit is responsible for supplying a consistency determination to the Federal agency before the Federal license or permit can be granted. (It should be noted that the applicant will still apply directly to the Federal agency for the required Federal permit.)

When an application is made for a Federal license or permit, the North Carolina Office of Coastal Management should be notified in writing. This notification should include all corresponding material needed for a State consistency determination to be made on the application. Any necessary State permit required will have to be obtained prior to a State consistency determination being made by DNRCD's Office of Coastal Management. Once a State consistency determination has been made, the application will supply this to the Federal agency in order to complete his application for the Federal license or permit.

In those cases where a major development AEC permit is required in addition to the Federal license or permit, the issuance of the AEC major development permit will serve as the State's consistency certification as well. In those cases where a minor development AEC permit is required, the issuance of this permit by a local government will not serve as the State's consistency determination.

The DNRCD's Office of Coastal Management retains the responsibility for issueing consistency determinations for activities requiring minor development AEC or other State permits.

DIRECT FEDERAL ACTIVITY

The following Federal activities will be reviewed by the State coastal management program for consistency:

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- All actions occurring within or adjacent to areas of environmental concern (AECs occur within the coastal zone).
- All purchases, sales or leases of Federal real property above 20 acres in size (within the coastal zone).
- Constructin of major facilities (20 acres disturbed or 60,000 square feet) significantly affecting the coastal zone.
- Federal development projects occurring in or significantly affecting the coastal zone (e.g., Erosion Control, Flood Control ad Navigation Projects).
- All actions of regional or interstate significance.
- Activities on Federal property that result in significant impacts on the coastal zone.*

Federal agencies are required to provide a consistency determination to the DNRCD stating whether or not the proposed Federal activity is consistent with the State's coastal management plan to the maximum extent practicable. Notice of direct Federal activities, including development projects significantly affecting the coastal zone, must be provided to the State by the Federal agency proposing the action 90 days before final approval of the Federal action. Federal agencies may use the State A-95 clearinghouse for this notification. A review period of 90 days will follow, starting from receipt of the notice by the State clearinghouse, resulting in one of the following actions:

- concurrence with the Federal agency determination
- disagreement with the determination;
- no response--presumed concurrence.

FEDERAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

The following is a list of Federal assistance activities which the State will use for consistency purposes. As with those direct Federal activities and licenses and permits previously listed, Noth Carolina welcomes the opportunity to refine this list through our continuing consultation with Federal agencies.

*Projects with probable significant impact should be identified through criteria arrived at by the State and Federal agency mutually in the process of consultation.

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Federal Assistance to State and Local Governments

Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
10.409	Dept. of Agriculture	Irrigation, Drainage, and Other Soil and Water Conservation Loans (Exceptions: Loans to grazing associations to develop additional pasturage and loans for purchase of equipment)
10.414	Dept. of Agriculture	Resource Conservation and Development Loans
10.415	Dept. of Agriculture	Rural Rental Housing Loans
10.418	Dept. of Agriculture	Water and Waste Disposal Systems for Rural Communities
10.419	Dept. of Agriculture	Watershed Protection and Flood Prevention Loans
10.422	Dept. of Agriculture	Business and Industrial Development Loans (Exception: Loans to rural small businesses having no significant impact outside community in which located)
10.423	Dept. of Agriculture	Community Facilities Loans
10.424	Dept. of Agriculture	Industrial Development Grants
10.901	Dept. of Agriculture	Resources Conservation and Development (Exception: small projects costing under $7500 for erosion and sediment control and land stabilization and for rehabilitation and consolidation of existing irrigation systems)
10.904	Dept. of Agriculture	Watershed Protection and Flood Prevention
11.300	Dept. of Commerce	Economic Development - Grants and Loans for Public Works and Development Facilities
11.310	Dept. of Commerce	Local Public Works Capital Development and Investment Act of 1976 Projects
11.407	Dept. of Commerce	Commercial Fisheries Research Development

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Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
13.408	Dept. of HEW	Construction of Public Libraries
13.477	Dept. of HEW	School Assistance in Federally Affected Areas - Construction
13.887	Dept. of HEW	Medical Facilities Construction
14.001	Dept. of Housing and Urban Development	Flood Insurance (Applications for Community Eligibility)
14.203	Dept. of Housing and Urban Development	Comprehensive Planning Assistance
14.218	Dept. of Housing and Urban Development	Community Development Block Grants - Entitlement Grants
14.219	Dept. of Housing and Urban Development	Community Development Block Grants - Discretionary Grants
15.400	Dept. of the Interior	Outdoor Recreation - Acquisition, Development and Planning
15.600	Dept. of the Interior	Anadromous Fish Conservation
15.605	Dept. of the Interior	Fish Restoration
15.611	Dept. of the Interior	Wildlife Restoration
15.904	Dept. of the Interior	Historic Preservation Construction
20.102	Dept. of Transportation	Airport Development Aid Program
20.103	Dept. of Transportation	Airport Planning Grant Program
20.205	Dept. of Transportation	Highway Research, Planning, and
20.500	Dept. of Transportation	Urban Mass Transportation Capital Improvement Grants (Planning and Construction only)
20.501	Dept. of Transportation	Urban Mass Transportation Capital Improvement Loans (Planning and Construction only)
20.505	Dept. of Transportation	Urban Mass Transportation Demonstration Grants
20.506	Dept. of Transportation	Urban Mass Transportation Demonstration Grants
20.507	Dept. of Transportation	Urban Mass Transportation Capital and Operating Assistance Formula Grants
28.002	Coastal Plains Regional Commission	Coastal Plains Technical and Planning Assistance - Construction only

NC

Citation from 1975 Catalog of Federal Domestic Assistance	Department or Agency	Title of Program
49.002	Community Services Administration	Community Action
49.011	Community Services Administration	Community Economic Development
66.001	Environmental Protection Agency	Air Pollution Control Program Grants
66.027	Environmental Protection Agency	Solid Waste Planning Grants
66.418	Environmental Protection Agency	Construction Grants for Wastewater Treatment Works
66.419	Environmental Protection Agency	Water Pollution Control - State and Interstate Program Grants
66.426	Environmental Protection Agency	Water Pollution Control - Areawide Waste Treatment Management Planning Grants
66.432	Environmental Protection Agency	Grants for State Public Water System Subdivision Programs
66.433	Environmental Protection Agency	Grants for Underground Injection Control Programs

Applications for Federal assistance (as listed above) by agencies, local governments or related public entities will be routinely forwarded by the statewide A-95 clearinghouse to DNRCD's Office of Coastal Management for consistency determination. In addition, the Office of Coastal Management will periodically monitor assistance activities not listed above in order to update the list and discover unlisted activities of significance. Within the time frame for A-95 review, DNRCD shall notify the clearinghouse as to whether the project is consistent with the State's Coastal Management program. The statewide clearinghouse will forwad these findings to the appropriate Federal agency.

A review period of 90 days will follow, starting from receipt of the notice by the State clearinghouse resulting from one of the following actions:

- o concurrence with the Federal agency determination;
- o disagreement with the determination;
- o no response--presumed concurrence.

NORTHERN MARIANAS

Although Federal lands in the Northern Marianas are excluded from the coastal zone pursuant to Section 304(1) of the CZMA, federal activities occuring on federal lands which result in spillover impacts which directly effect the Commonwealth's coastal zone must be consistent, to the maximum extent practicable, with the CRMP. (See figures XI and XII)

Federal Licenses and Permits

Section 307(c)(3) of the CZMA provides that any Federal agency issuing licenses or permits to non-federal applicants for proposed activities affecting the coastal zone, do so only when it can be demonstrated that such activities will be conducted in a manner consistent with the Commonwealth's management program. The applicant's consistency certification statement, which will be then reviewed along with the application by the CRMO, and must be accompanied by sufficient information to support the applicant's consistency determination. Within six months after the date of receipt, the CRMO will notify the issuing Federal agency of its concurrence or objection. If the CRMO fails to respond within the prescribed period of time, the Commonwealth's concurrence with the finding will be presumed.

A Federal license or permit may not be issued by the Federal agency if CRMO objects to the applicant's certification statement, provided that the objection is not resolved through mediation pursuant to 15 CFR 930.55 or overturned on appeal to the Secretary of Commerce under the provisions of Section 307(c)(3)(B)(iii) of the CZMA.

The issuance or denial of a Commonwealth coastal permit, as provided for by joint regulations, will indicate consistency or lack of consistency with the CRMP and the CRMO shall notify the federal agency of the permitting decision for its use in its federal permitting decision.

The federal licenses and permits that the CRMO will review for consistency with the CRMP include:

Federal Agency	License or Permit	Citation
DEPARTMENT OF COMMERCE		
National Marine Fisheries Service	taking or importing marine mammals	16 U.S.C. 1374
	endangered species permit for marine species	16 U.S.C. 1538-43
DEPARTMENT OF DEFENSE		
U.S. Army Corps of Engineers	construction of dams or ditches across navigable waters	River and Harbor Act of 1899: Section 9, 33 U.S.C. 401

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	obstruction or alteration of navigable waters	Id. Section 33 U.S.C. 40
	establishment of harbor lines	Id. Section 11, 33 U.S.C. 405
	temporary occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier or other work built by U.S.	Id. Section 14, 33 U.S.C. 408
	discharge of dredge spoil into waters of the U.S.	Federal Water Pollution Control Act of 1972: Section 404, 33 U.S.C. 1344
	approval of plans for improvements made under Corps supervision at private expense	River and Harbor Act of 1902: 33 U.S.C. 565
	transportation of dredged spoil for the purpose of open ocean dumping	Marine Protection, Research, and Sanctuaries Act of 1972: Section 103, 33 U.S.C. 1413
DEPARTMENT OF ENERGY	prohibition and construction orders	Energy Supply and Environmental Coordination Act: 15 U.S.C. 791-798; 42 U.S.C. 1857b-1-1857L
DEPARTMENT OF THE INTERIOR		
Fish and Wildlife Service	endangered species permit terrestrial species	Endangered Species Act: 16 U.S.C. 1538-1543
National Park Service	construction of visitor centers on National Park Service land	16 U.S.C. 3
	construction of electric and communication lines across National Park Service land	16 U.S.C. 5

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DEPARTMENT OF TRANSPORTATION		
U.S. Coast Guard	private aids to navigation	14 U.S.C. 83
	construction or modification of bridges or causeways in navigable waters	33 U.S.C. 401, 491, 525
	authorization for handling combustible or flammable liquids by bulk in U.S. ports	46 U.S.C. 391(a)
	deepwater port permits	Deepwater Ports Act of 1974: 33 U.S.C. 1501
Federal Aviation Administration	airport development projects	49 U.S.C. 1716
ENVIRONMENTAL PROTECTION AGENCY	underground injection	Safe Drinking Water Act: Section 1421(c)(1) 42 U.S.C. 300h
	operation of underground injection wells in designated areas	Resources Recovery Conservation Act of 1976: 42 U.S.C. 300h-3
	handling and disposal of hazardous substances	Id. 42 U.S.C. 3257
	prevention of significant deterioration (PSD)	Clean Air Act of 1976: Section 110, 42 U.S.C. 74-10
	new source construction/ operation	Id. Section 111, 42 U.S.C. 74-11
	National Emission Standards for Hazardous Air Pollutants (NESHAPS)	Id. Section 112, 42 U.S.C. 74-12
	NPDES permits for federal installations	Federal Water Pollution Control Act of 1972: Sections 401, 403 33 U.S.C. 1341-13

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NPDES permits for discharges into the contiguous zone and ocean water	Id. Section 402, 33 U.S.C. 1342-1343
sludge runoff permits	Id. Section 405 33U.S.C. 1345

If in the future it is found that the issuance of other kinds of Federal permits and licenses causes direct and significant impact on coastal land and water resources, the above list will be expanded as necessary.

Federal Assistance

Section 307 (d) of the CZMA establishes consistency requirements for federal program assistance to the Commonwealth which includes grants, loans, contracts, subsidies, guarantees, insurances, or other forms of financial aid for coastal zone activities. Applications for such assistance for activities affecting the coastal zone must include a certification of consistency with the CRMP. Applications submitted to the Planning and Budget Affairs Office for federal assistance for activities affecting the coastal zone must go through the A-95 notification and review process to ensure the CRMO an opportunity to review the proposed action for consistency with the CRMP. If the CRMO finds that the proposed federal assistance is not consistent with the CRMP, the application cannot be approved unless the CRMO's finding is resolved through mediation pursuant to 15 CFR 930.99 or is overturned on appeal by the Secretary of Commerce.

Among the federal assistance programs subject to review for consistency are all those listed in the Catalog of Federal Domestic Assistance (see CRMP Regulations Section VII(d)(2)) in addition to applications to the Office of Coastal Zone Management for CEIP grants (see §930.90 comment).

Federal Activities And Development Projects;
Licenses And Permits; And Assistance
Subject to Federal Consistency Requirements

I. Direct Federal Activities and Development Projects

A federal agency must provide ODNR with a consistency determination for any activity affecting any land or water use or natural resource of Ohio's coastal area whether or not the activity is on this list. The following list is provided to highlight those activities reasonably likely to affect the coastal area.

Department of Defense, Army Corps of Engineers

- Dredging, channel improvement, breakwaters, other navigational works, erosion control structures, beach replenishment, dams or flood control works, ice management practices and activities and other projects with the potential to impact coastal lands and waters.
- Land acquisition or disposal for spoil disposal or other purposes.
- Selection of disposal sites for dredged material from federal harbors and navigation channels.

Department of Defense, Air Force, Army, and Navy

- Location, design, and acquisition of new or expanded defense installations (active or reserve status including associated housing, transportation or other facilities).
- Plans, procedures and facilities for handling storage use zones.
- Establishment of impact, compatibility or restricted use zones.
- Disposal of Defense property.

Department of Energy

- Prohibition orders.

Environmental Protection Agency

- Activities conducted under the Resource Conservation and Recovery Act (RCRA) of 1976.
- Activities conducted under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980.

General Services Administration

- Acquisition, location and design of proposed federal government property or buildings, whether leased or owned by the federal government.

- Disposition of federal surplus lands and structures.

Department of the Interior, Bureau of Land Management

- Oil and gas leasing on federal lands.

Department of the Interior, Fish and Wildlife Service

- Management of National Wildlife Refuges; land acquisition.

Department of the Interior, National Park Service

- National Park Service unit management; land acquisitions

Department of Justice, U.S. Marshals Service

- Disposition of property acquired by the Marshals Service.

Department of Transportation, Coast Guard

- Location and design, construction or enlargement of Coast Guard stations, bases and lighthouses.

- Location, placement or removal of navigation devices that are not part of the routine operations under the Aids to Navigation Program (ATON).

- Expansion, abandonment, designation of anchorages, lighting areas or shipping lanes and ice management practices and activities.

Department of Transportation, Federal Aviation Administration

- Location and design, construction, maintenance and demolition of federal aids to air navigation.

Department of Transportation, Amtrak, Conrail

- Expansions, curtailments, new construction, upgradings or abandonments of railroad facilities or services, in or affecting the state's coastal area.

Department of Transportation, Federal Highway Administration

- Highway construction.

II. Federal Licenses and Permits

Department of Defense, Army Corps of Engineers

- Construction of dams, dikes, or ditches across navigable waters, or obstruction or alteration of navigable waters required under Sections 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401, 403).

- Establishment of harbor lines pursuant to Section 11 of the Rivers and Harbors Act of 1899 (33 U.S.C. 404, 405).

- Occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier or other work built by the U.S. pursuant to Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408).

- Approval of plans for improvements made at private expense under USACE supervision pursuant to the Rivers and Harbors Act of 1902 (33 U.S.C. 565).

- Disposal of dredged or fill material into the waters of the U.S. pursuant to the Clean Water Act, Section 404 (33 U.S.C. 1344).

- All actions for which permits are required pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

Federal Energy Regulatory Commission

- Licenses, renewals or amendments to licenses for nonfederal hydroelectric projects and primary transmission lines under Sections 3(11), 4(e), and 15 of the Federal Power Act (16 U.S.C. 796 (11), 797 (11), and 808).

- Orders for interconnection of electric transmission facilities under Section 202(b) of the Federal Power Act (15 U.S.C. 824 a (b)).

- Certificates for the construction and operation of interstate natural gas pipeline facilities, including both pipelines and terminal facilities under Section 7 © of the Natural Gas Act (15 U.S.C. 717 f (c)).

- Permission and approval for the abandonment of natural gas pipeline facilities under Section 7 (b) of the Natural Gas Act (15 U.S.C. 717 f(b)).

- Regulation of gas pipelines, and licensing of import and export of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717) and the Energy Reorganization Act of 1974.

- Exemptions from prohibition orders.

Environmental Protection Agency

- NPDES permits and other permits for federal installations, sludge runoff and aquaculture permits and all other permits pursuant to Sections 401, 402, 403, 405, and 318 of the Federal Water Pollution Control Act of 1972 (33 U.S.C. 1341, 1342, 1343, and 1328).

- Permits pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976.

- Permits pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980.

- Permits pursuant to the underground injection control program under Section 1424 of the Safe Water Drinking Water Act (42 U.S.C. 300 h-c).

- Permits pursuant to the Clean Air Act of 1976 (42 U.S.C. 1857).

Department of the Interior, Fish and Wildlife Service

- Fish and wildlife coordination (17 U.S.C. 661-667).

- Endangered species permits pursuant to the Endangered Species Act (16 U.S.C. 153 (a)).

Interstate Commerce Commission

- Authority to abandon railway lines (to the extent that the abandonment involves removal of trackage and disposition of right-of-way); authority to construct railroads; authority to construct coal slurry pipelines.

Nuclear Regulatory Commission

- Licensing and determination of the siting, construction and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act of 1954, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.

Department of Transportation, Coast Guard

- Construction of modification of bridges, causeways or pipelines over navigable waters pursuant to 49 U.S.C. 1455.
- Hazardous substances and materials (33 U.S.C. 419).
- Marine event permits (46 U.S.C. 454, 33 C.F.R. 100.15).

Department of Transportation, Federal Aviation Administration

- Permits and licenses for construction, operation or alteration of airports.

III. Federal Assistance

(NOTE: Numbers refer to the Catalog of Federal Domestic Assistance Programs.)

Department of Agriculture

- 10.025 Plant and Animal Disease and Pest Control
- 10.405 Farm Labor Housing Loans and Grants
- 10.414 Resource Conservation and Development Loans
- 10.415 Rural Rental Housing Loans
- 10.418 Water and Waste Disposal Systems for Rural Communities
- 10.419 Watershed Protection and Flood Prevention Loans
- 10.420 Rural Self-Help Housing Technical Assistance
- 10.422 Business and Industrial Loans
- 10.423 Community Facilities Loans
- 10.424 Industrial Development Grants
- 10.433 Rural Housing Preservation Grants
- 10.854 Rural Economic Development Loan and Grant Program
- 10.901 Resource Conservation and Development
- 10.904 Watershed Protection and Flood Prevention
- 10.906 River Basin Surveys and Investigations

Department of Commerce

- 11.300 Economic Development – Grants and Loans for Public Works and Development Facilities
- 11.302 Economic Development – Support for Planning Organizations
- 11.303 Economic Development – Technical Assistance
- 11.304 Economic Development – Public Works Impact Projects
- 11.305 Economic Development – State and Urban Area Economic Development Planning

- 11.307 Special Economic Development and Adjustment Assistance, Sudden and Severe Economic Dislocation (SSED) and Long-Term Deterioration (LTED)
- 11.405 Anadromous and Great Lakes Fisheries Conservation
- 11.407 Interjurisdictional Fisheries Act of 1986
- 11.417 Sea Grant Support
- 11.419 Coastal Zone Management Program Administration
- 11.420 Coastal Zone Management Estuarine Research Reserves
- 11.427 Fisheries Development and Utilization Research/Development Grants/Coop Agreements
- 11.550 Public Telecommunications Facilities - Construction and Planning

Department of Defense

- 12.101 Beach Erosion Control Projects
- 12.104 Flood Plain Management Services
- 12.105 Protection of Essential Highways, Highway Bridge Approaches, and Public Works
- 12.106 Flood Control Projects
- 12.107 Navigation Projects
- 12.108 Snagging and Clearing for Flood Control
- 12.109 Protection, Clearing and Straightening Channels
- 12.110 Planning Assistance to States
- 12.610 Joint Military/Community Comprehensive Land Use Plans

Department of Housing and Urban Development

- 14.170 Congregate Housing Services Program
- 14.174 Housing Development Grants
- 14.218 Community Development Block Grants/Entitlement Grants
- 14.219 Community Development Block Grants/Small Cities Grants

Department of the Interior

- 15.600 Anadromous Fish Conservation
- 15.605 Sport Fish Restoration
- 15.611 Wildlife Restoration
- 15.612 Endangered Species Conservation
- 15.614 North American Wetlands Conservation
- 15.616 Clean Vessel Act
- 15.904 Historic Preservation Fund Grants-In-Aid
- 15.910 National Natural Landmarks Program
- 15.916 Outdoor Recreation – Acquisition, Development and Planning

Department of Transportation

- 20.005 Boating Safety Financial Assistance
- 20.106 Airport Improvement Program
- 20.205 Highway Planning and Construction (Including Intermodal Surface Transportation Efficiency Act Programs)
- 20.219 National Recreation Trails Program
- 20.308 Local Rail Service Assistance Program
- 20.500 Urban Mass Transportation Capital Improvement Grants
- 20.509 Public Transportation for Nonurbanized Areas
- 20.801 Development and Promotion of Ports and Intermodal Transportation
- 20.998 Transportation Improvement Program

General Services Administration

- 39.002 Disposal of Federal Surplus Real Property

National Foundation on the Arts and the Humanities

- 45.007 Promotion of the Arts – State Programs
- 45.023 Promotion of the Arts – Local Programs

Department of Veterans Affairs

- 64.005 Grants to States for Construction of State Home Facilities

Environmental Protection Agency

- 66.001 Air Pollution Control Program Support
- 66.419 Water Pollution Control – State and Interstate Program Support
- 66.432 State Public Water System Supervision
- 66.433 State Underground Water Source Protection
- 66.435 Water Pollution Control – Lake Restoration Cooperative Agreements
- 66.438 Construction Management Assistance
- 66.454 Water Quality Management Planning
- 66.456 National Estuary Program
- 66.458 Capitalization Grants for State Revolving Funds
- 66.500 Environmental Protection – Consolidated Research
- 66.501 Air Pollution Control Research
- 66.502 Pesticides Control Research
- 66.504 Solid Waste Disposal Research
- 66.505 Water Pollution Control – Research, Development, and Demonstration
- 66.506 Safe Drinking Water Research and Demonstration

- 66.507 Toxic Substances Research
- 66.600 Environmental Protection Consolidated Grants – Program Support
- 66.700 Pesticides Enforcement Program
- 66.701 Toxic Substances Compliance Monitoring Cooperative Agreements
- 66.702 Asbestos Hazards Abatement (Schools) Assistance
- 66.801 Hazardous Waste Management State Program Support
- 66.802 Hazardous Substance Response Trust Fund
- 66.804 State Underground Storage Tanks Program
- 66.805 Underground Storage Tank Trust Fund
- 66.807 Superfund Innovative Technology Evaluation Program (SITE)
- 66.808 Hazardous Waste, Integrated Training and Technical Assistance – Interstate

Department of Energy

- 81.041 State Energy Conservation
- 81.049 Basic Energy Sciences, High Energy or Nuclear Physics, Magnetic Fusion Energy, Health and Environmental Research, Program Analysis and Field Operations Management

Federal Emergency Management Agency

- 83.503 Civil Defense – State and Local Emergency Management Assistance
- 83.513 State and Local Warning and Communication Systems
- 83.516 Disaster Assistance

Oregon Coastal Management Program (Revised)

TABLE 7 OREGON

FEDERAL ACTIVITIES, LICENSES AND PERMITS WHICH MUST BE CERTIFIED FOR CONSISTENCY WITH THE OREGON COASTAL MANAGEMENT PROGRAM*

Environmental Protection Agency:

A) Permits and licenses required under Sections 402 and 405 of the Clean Water Act as amended.

B) Permits and applications for reclassifications of land areas under regulations for the prevention of significant deterioration (PSD) of air quality.

C) Permits and licenses required under Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972.

D) Permits for at-sea incineration of chemical or toxic wastes.[1]

Department of Defense—U.S. Army Corps of Engineers:

A) Permits and licenses required under Sections 10 and 11 of the River and Harbor Act of 1899.

B) Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (Ocean Dumping of Dredging Spoils).

C) Permits and licenses required under Section 404 of the Clean Water Act as amended.

Nuclear Regulatory Commission:

A) Permits and licenses required for siting and operation of nuclear power plants.

Department of Interior—Minerals Management Service:

A) Permits for geological and geophysical exploration in the Outer Continental Shelf approved under Section 1340(a) of the OCSLA (43 USC 1340) and regulated pursuant to 30 CFR 251.[2]

B) Plans for the exploration, development, and production in areas leased under OCS Lands Act (43 USC 1331 et seq.).

C) Permits and licenses required for offshore drilling, mining, and development.

Department of the Interior—U.S. Fish and Wildlife Service

A) Permits for taking of endangered species or acts affecting endangered species issued under Section 1539 (1) of the Endangered Species Act (16 USC 1539), except for permits for taking for scientific research purposes.

Department of Transportation—U.S. Coast Guard:

A) Permits for construction of bridges under 33 USC 401, 4591-507, and 525-534.

B) Permits for deep-water ports (33 CFR 158 et seq.).

Federal Energy Regulatory Commission:

A) Permits and licenses required for power plant siting and transmission lines.

B) Permits and licenses required for interstate pipelines.

C) Licenses and exemptions for construction and operation of facilities needed to import or export natural gas.

Interstate Commerce Commission:

A) Certificates for Rail Line Abandonments to the extent abandonment involves removal of trackage or disposition of right of way.[3]

* A consistency certification is required if the activities allowed by the license or permit would affect land or water uses in the coastal zone.

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[1] The geographic area included extends from the territorial sea to 128°W and from 48°N to 40°30'N.

[2] The geographic area included extends from the territorial sea to 125°W and from 46°15'N to 42°N. Permits covered by the Memorandum of Agreement between OLCD, Oregon Department of Fish and Wildlife and Minerals Management Service dated June 15, 1983 will be reviewed against the standards in the state's federally approved coastal management program. Review will occur within the timelines set forth in the MOA as approved or as subsequently agreed to by the parties.

[3] Rail line abandonments included are the Burlington Northern Branch line from Portland to Astoria, the Southern Pacific Branch line from Portland to Tillamook, the Southern Pacific Branch line from Corvallis to Toledo, and the Southern Pacific Branch line from Eugene to Myrtle Point.

The state notice of a federal project using or involving federal assistance programs that affect the coastal zone specifically requests reviewing agencies to comment on whether the proposal is consistent with Oregon's Coastal Management Program. As with licenses and permits, the criteria for determining consistency with the OCMP are compatible with acknowledged comprehensive plans and compliance with the statewide planning goals and any applicable state statutes. Applicants should consult closely with affected local governments and state agencies while developing their proposals.

DLCD reviews notices for conformance with relevant elements of the OCMP. If DLCD does not identify any conflicts with program policies, and if DLCD receives no comments suggesting that a project is inconsistent, IRD's review states that the project is consistent with the OCMP. However, if DLCD does receive comments suggesting that a project is inconsistent, IRD convenes a conflict resolution meeting which includes concerned parties and DLCD. The meeting attempts, through negotiations, to modify the proposal to remove any inconsistencies. If the conflict cannot be resolved to the mutual satisfaction of all reviewers, LCDC reviews all comments and makes a determination of consistency or lack of consistency on behalf of the state.

Federal Activities and Development Projects

Section 307(c)(1) and (2) of the consistency provisions of the CZMA require that federal development projects in the activities directly affecting the coastal zone "shall be conducted in a manner which is, to the maximum extent practicable, consistent with approved state management programs" (Section 307 (c)(1), (2)). Federal activities on lands which have been excluded from the coastal zone solely by reason of federal ownership, but which directly affect private and public lands and water resources within the coastal zone are subject to this provision, as are federal activities beyond the landward and seaward boundaries of the coastal zone which directly affect these resources. (As a result of the U.S. Supreme Court decision in Secretary of the Interior v. California (464 US.312, 104 S.Ct. 656, 78 LEd 2d 496 (1984)), OCS oil and gas lease sale activities are not subject to the consistency requirements of Section 307(c)(1).).

As with the other consistency provisions, the review and consistency determination for federal activities and development projects depends on the good faith efforts of all parties, early and full involvement and assessment, sharing of information, and sincere negotiations. Although the CZMA provides for mediation by the Secretary of Commerce in the case of an irreconcilable conflict between the state and a federal agency over the consistency of a proposed action or a development project, the state believes that it is in the best interest of all parties to resolve differences before they reach that point. Should a serious disagreement between LCDC and a federal agency not be resolved, the agency may proceed with its proposed activity without state concurrence. However, LCDC is authorized to seek appropriate injunctive relief in federal court.

Certain categories of federal actions generally can be considered as not directly affecting the coastal zone—for example, actions involved in normal office procedures, radio transmission and maintenance of navigational aids. However, other kinds of activities generally can be considered as directly affecting the coastal zone. Examples of these activities include:

- Road construction in the coastal watershed.
- Waste discharge in the coastal watershed.
- Activities affecting or altering surface runoff quantity, or hydro-period, in the coastal watershed.
- Timber harvest and other silvicultural activities near Class 1 or 2 coastal streams, according to the USFW stream classification system.
- Dredge, fill, development, or construction in all coastal waters.
- Activities resulting in alteration of visual qualities (scenic resources) visible from outside the federal land.
- Land acquisition, disposal, or exchange in the coastal zone.
- Management of anadromous fish species and other living marine resources which migrate between the coastal zone and the Exclusive Economic Zone.
- Outer continental shelf activities (except oil and gas lease sale activities).

OR

Some other activities may have a direct effect on coastal resources depending on their magnitude, location, cumulative effects, or the manner in which they are undertaken. These activities would include the construction of buildings or facilities and the application of fertilizers, pesticides or herbicides on forest lands in a manner less protective than the criteria in Oregon's Forest Practices Act (ORS 527). They need to be reviewed only if they directly affect the coastal zone, including the air, water, scenic, living, economic, cultural and/or mineral resources of the coastal zone. The key issues in determining whether a consistency review is necessary are

a. In the case of federal activities, whether the activity directly affects the coastal zone; or

b. In the case of federal development projects, whether the project is in the coastal zone.

Circumstances in which individual activities or development projects directly affecting the coastal zone would *not* have to be reviewed for consistency are:

a. If during the development of a comprehensive plan prepared pursuant to ORS 197, the federal agency specifically identified activities or development projects, and they are addressed in and coordinated with the acknowledged comprehensive plan;

b. If the federal agency has prepared a comprehensive plan for its own lands and resources, and if the plan has been reviewed by and fully coordinated with LCDC, affected local governments, and appropriate state agencies and is consistent with the mandatory policies of the OCMP as expressed in state statutes, acknowledged plans and the statewide planning goals; or

c. If a federal agency chooses to use this approach, it must provide a consistency determination to LCDC with its plan and supporting information. LCDC's concurrence will identify the specific federal actions which are consistent with the OCMP and which may be carried out without further consistency review. Activities which the federal plan does not describe in sufficient detail to assess consistency with the OCMP will require subsequent review. Subsequent review may occur through a plan revision, a more detailed implementing plan or through site or project review. If the federal agency has prepared a general consistency determination for a class of repetitive activities which cumulatively directly affect the coastal zone, subsequent consistency determinations for each individual activity of the class are not required.

In all cases, only activities which are not anticipated or addressed in the plan or general consistency determination, or which are not in compliance with the plan or general consistency determination, are subject to separate consistency review.

Federal agencies should notify DLCD at the earliest possible time of a decision or pending decision that any proposed activity would not directly affect the coastal zone. This way DLCD can provide an expeditious review of the project and concur, object to the federal agencies' decision or request additional information about the effects of a project on the coastal zone. DLCD will solicit comments on effects of such projects from the affected local government and interested state agencies. DLCD and LCDC will also work with the federal agency. If LCDC ultimately disagrees with a federal agency's determination that an activity does not directly affect the coastal zone, it shall adopt an order outlining the state's reasons for disagreement and shall seek secretarial mediation of the disagreement as provided for in federal regulations (Procedures for secretarial mediation are set forth in 15 CFR 930.110-116).

In order to save time and funds and to avoid conflicts involving substantial commitments of resources, consistency should be addressed at the earliest possible time—preferably, as an integral part of the earliest planning and budgetary decisions. The initial assessment and determination of consistency is the responsibility of the federal agency responsible for the project or action. The federal agency should notify LCDC of its review and determination at least 90 days before it is to begin the activity proposed in its consistency determination. With the participation of local governments, state agencies and other interested parties, LCDC then reviews the notice and responds to the federal agency. The LCDC must inform the federal agency of its agreement with the federal agency's consistency determination within 45 days of receipt of the consistency determination. The LCDC may request a 15 day extension, if necessary, to complete the review.

The 45 day state clearinghouse review and negative declaration processes (as provided for by the National Environmental Policy Act) are used as specific opportunities for state review of consistency determinations.

OR

However, federal agencies are required by federal law to involve LCDC, any affected local governments, appropriate state agencies in consistency determinations at least 45 days prior to the preparation and distribution of such notification. Delay could greatly increase the difficulty and cost of resolving significant conflicts.

If LCDC certifies any activity or project in the coastal zone which it considers inconsistent with the OCMP, it meets with the federal agency and attempts to resolve conflicts though negotiation. Other state agencies, local governments and individuals can assist LCDC by identifying inconsistent or potentially inconsistent activities and projects. If an inconsistency cannot be resolved through mutual negotiation, it can be referred to the United States Secretary of Commerce for mediation pursuant to Section 307(h) of the CZMA. Should the affected federal agency be unwilling to enter into mediation, or should the Secretary of Commerce choose not to mediate the dispute, LCDC may appeal to the federal courts for appropriate relief.

AREAS OF CRITICAL STATE CONCERN

As indicated earlier, the Land Conservation and Development Commission may recommend the designation of Areas of Critical State Concern. The overall purpose behind a critical area designation is to prevent loss of damage of an area having historical, natural, statewide and/or national importance.

The reasons cited in designating a critical area may vary widely, but in every case, designation must indicate that the area in question cannot be managed adequately under the appropriate comprehensive plan(s) and requires a higher or broader degree of control and management.

When recommending such a designation to the state legislature, LCDC is required to submit a report. This report must include:

- A boundary description of the area;
- A summary of the existing programs and regulations of state and local agencies applicable to the area; and
- The reason for implementing additional state regulations for the area.

This report also must include a management plan for the area; permissible use limitations for all or part of the area; and permissible use standards for all or part of the area or standards for the issuance or denial of designated state or local permits regulating specified uses of lands in the area.

JUDICIAL REVIEW OF LAND USE DECISIONS

The successful administration of the coastal management program requires that the state develop an effective way to resolve serious disagreements about interpretation or application of program policies. The process for appeal coastal management decisions has been carefully evaluated and refined as the program has been implemented.

Background

Prior to 1973, land use decisions were subject to challenge only through local circuit courts. Standing for appeals was limited, standards for review where unclear, and delay in deciding cases was typical. Until the Fasano v. Washington County decision, local land use decisions were remanded or overturned only if they were arbitrary or capricious. These factors frustrated the public, elected officials, developers, and environmentalists interested in an effective way of resolving land use disputes.

With the *Fasano* case, new procedural rules were established for the review of land use decisions. Quasi-judicial decisions of local governments, such as decisions about conditional use permits and zone changes, had to be based on substantial evidence, and basic procedural requirements of notice, hearing, presentation and rebuttal of evidence, and preparation of findings were required. ***Fasano*** also established a demonstration of public need.

OR

Department of Land Conservation and Development

1175 COURT STREET NE. SALEM, OREGON 97310-0590 PHONE (503) 378-4926

MEMORANDUM

January 15, 1988

TO: Interested Persons

FROM: James F. Ross, Director

SUBJECT: ERRATA - OREGON COASTAL MANAGEMENT PROGRAM DOCUMENT

Please note the following correction to the listing of federal licenses and permits in Table 7 on page 53. The listing of permits for Geological and Geophysical Exploration Permits issued by the Minerals Management Service (MMS) in the printed document is in error. This listing and the accompanying footnote should be deleted. Geological and geophysical exploration permits are not subject to state consistency review pursuant to CZMA at this time.

The state does participate in a limited review of geological and geophysical exploration permits under the terms of a Memorandum of Agreement with MMS. If you have any questions about this correction or the MOA review procedure, please contact Patricia Snow, the Department's Coastal Permit Review Coordinator.

JFR:BC
OCMP.G&GX

Pennsylvania

Pennsylvania

...ltistate regional commissions. In Pennsylvania, because of the ...paration of the coastal zones, two such commissions (the Great ...kes Basin Commission and the Delaware River Basin Commission) ...ill be utilized. Since representatives of Federal agencies and adjacent states including Pennsylvania are participants in these multipurpose commissions, a forum for increased coordination and representative decision-making is provided that can be effectively utilized to further coastal zone management interests and accomplishment of recommendations. In addition, the Coastal Zone Management Program will provide ongoing consultation with U.S. Fish & Wildlife Service on the impacts of any proposed actions by the program on the Federal endangered or threatened species lists as maintained by the U.S. Department of the Interior.

Federal Consistency

The Federal Coastal Zone Management Act requires that Federal agency activities including development projects directly affecting the coastal zone must be consistent with approved state coastal zone management programs to the maximum extent practicable. Federally licensed and permitted activities, including those described in detail in Outer Continental Shelf (OCS) plans, and Federal assistance programs to state and local governments, which affect the coastal zone, must be consistent ...th the Pennsylvania Coastal Zone Management Program.

...ne Coastal Zone Management Branch, in the Office of Resources Management of Pennsylvania's Department of Environmental Resources, will be responsible for coordinating Federal consistency review of these activities and concurring with or objecting to the consistency determinations of Federal agencies and consistency certifications of applicants for Federal licenses or permits, or Federal assistance.

The following Federal activities or development projects, Federal activities requiring a Federal license or permit, OCS pre-lease sale, exploration, development and production activities, and Federal assistance to State and local governments, will be subject to consistency procedures.

1. U.S. Department of the Interior

   a. Proposed Bureau of Land Management OCS pre-lease activities.

   b. Proposed National Park Service acquisition in or directly affecting the coastal zones.

   c. HCRS assistance for historic preservation, waterfront redevelopment and state outdoor recreation planning and development in or directly affecting the coastal zones.

d. Proposed U.S. Fish and Wildlife acquisitions in or directly affecting the coastal zones.

e. Licenses and permits described in detail in OCS plans.

2. U.S. Department of Defense

a. U.S. Army Corps of Engineers dredge and fill permits, channel works, breakwaters, erosion control.

b. Structures, beach replenishment and dams in or directly affecting the coastal zones and on or in rivers directly discharging into coastal waters.

c. Licenses and permits described in detail in OCS plans.

3. Federal Energy Regulatory Commission

a. All pertinent FERC licenses and certificates as presented on Page II-5-8.

4. Environmental Protection Agency

a. Construction grants for wastewater treatment works in the coastal zones.

b. Water pollution control and areawide waste treatment program grants.

c. Water pollution control state and interstate program grants.

d. Air quality maintenance planning

5. General Services Administration

a. Location and design of proposed Federal government property, acquisition and building construction in or directly affecting the coastal zones.

b. Disposal of surplus Federal lands in or directly affecting the coastal zones.

6. Department of Housing and Urban Development

a. "701 Planning" comprehensive planning assistance in or affecting the coastal zones.

PA

b. Housing and Community Development Act (block grants)

c. Public housing - acquisition and construction in or directly affecting the coastal zones.

d. Mortgage Insurance and mobile home parks

7. U.S. Department of Transportation

a. Federal aviation administration airport planning program and airport development aid program for projects in or directly affecting the coastal zones.

b. Federal highway administration highway research planning and construction activities in or directly affecting the coastal zones.

c. Federal railroad administration, activities affecting railroad expansions, new construction or abandonments in or directly affecting the coastal zones.

d. U.S. Coast Guard changes in regulations affecting port and waterway safety, designation of anchorage grounds and issuance of permits for the construction and modification of bridges or causeways in navigable waters, and the location of new or enlarged Coast Guard Stations, bases and lighthouses within the coastal zones.

8. U.S. Department of Commerce

a. Proposed activities relating to port development and promotion and intermodel planning grants.

b. Proposed port expansion planning assistance for new terminals and harbors.

c. Grants and loans for public works and development facilities in or directly affecting the coastal zones.

d. Planning and technical assistance projects in or directly affecting the coastal zones.

e. Public works impact program projects in or directly affecting the coastal zones.

f. Emergency port planning program projects in or directly affecting the coastal zones.

Puerto Rico CMP and FEIS.

PUERTO RICO

2. The following additional policies and criteria:

   - Policy on special protection for mangrove wetlands (Chapter 3, section on Mangrover Wetlands),
   - Policy on appropriate access to Federal beaches hereafter declared surplus (Chapter 3, section on Beaches, part A),
   - Policy on public access to beaches (Chapter 3, section on Beaches, part B),
   - Criteria for diking, filling, dredging, and deposit of dredged sediments (Chapter 3, section on Coastal Waters, part D), and
   - Policy on sites for coastal-dependent development (Chapter 3, section on Coastal-Dependent Industry).

3. The water quality standards adopted by the Puerto Rico Environmental Quality Board (Chapter 3, section on Coastal Waters, part A);

4. Any additional policies, regulations, and plans, including plans for Special Planning Areas and Natural Reserves, that are incorporated into the Program in the future.

ederal agencies administering authority within the Puerto Rico coastal zone boundary are required o minister said authority in conformance with Section 307 of the CZMA and NOAA implementing regulations.

(b) Commonwealth Agency Responsible for Consistency Review

The Planning Board is the single agency designed to receive and review consistency certifications and determinations. The Planning Board acts as a clearinghouse. However, the Planning Board and DNR have divided the responsibility prior to the official certification. All official informacion, notice, etc, will go to the Planning Board (and will come from the Planning Board).

(c) Federal Activities and Development Projects (Section 307(c)(1) and (2))

Section 307(c)(1) and (2) of the CZMA require that Federal activity, including development projects significantly affecting the coastal zone "shall be conducted in a manner which is, to the maximum extent practicable, consistent with approved state management programs."

In the case of excluded Federal lands, activities on these lands that have an impact on the coastal zone beyond the boundaries of the Federal properties will be subject to this provision, as will activities beyond the boundary of the coastal zone that significantly affect the coast. Federal agencies themselves determine whether or not an activity or project will significantly affect the coastal zone and whether or not it is consistent, to the maximum extent practicable, with the Coastal Management Program. The Federal agency must, however, notify Puerto Rico of its proposed action and its consistency determination.

Certain categories of Federal action can generally be acknowledged as not affecting the coastal zone. These include:

- Radio transmission and maintenance of navigation aids placed or authorized by the U.S. Coast Guard; and
- Any action for which the agencies' environmental impact procedures, established pursuant to the National Environmental Policy Act of 1969, do not require issuance of an Environmental Impact Statement or negative declaration.

Other activites and projects generally can be considered as significantly affecting the coastal zone. These activities include:

- Federal agencies applying for licenses and permits,
- Development projects in the coastal zone,
- Land acquisition in the coastal zone,
- Road construction in the coastal watershed,
- Waste discharge in the coastal watershed,
- Activities affecting or altering surface runoff quality or quantity in the coastal watershed, and
- Dredge, fill, development, construction, or waste discharge in coastal waters.

To save time and funds, and to avoid conflicts involving substantial commitments of resources, consistency should be assessed at the earliest possible time. Preferably, this should occur as an integral part of the earliest planning and budgetary decisions.

The Puerto Rico Planning Board is the single Commonwealth agency responsible for reviewing Federal agency determinations that their projects and activites are (or are not) consistent with the PRCMP. The Board's A-95 project notification process will be used (and, as necessary, extended) to provide specific opportunity for review of consistency determinations. If a Federal consistency determination is under review, an item will be added to the A-95 notification requesting reviewing agencies to comment whether the project or activity is consistent with the Coastal Management Program. The Department of Natural Resource's Coastal Management Unit will be among the recipients of A-95 notifications in such cases.

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(d) Federal Licenses and Permits (Section 307(c)(3)(A & B))

Section 307 (c)(3) of the CZMA provides that any applicant for a Federal license or permit to conduct an activity significantly affecting land or water uses in the coastal zone, must certify that the proposed activity complies with, and will be conducted in a manner consistent with, the Commonwealth's Coastal Management Program. At the same time, the applicant must supply a copy of such certification to the Commonwealth, along with all necessary information and data. The Commonwealth will then review the application, and at the earliest possible time, but within 6 months, notify the Federal agency of its concurrence or objection. The CZMA requires that: "No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act within 6 months, the concurrence is conclusively presumed..."

Table B-1 lists the kinds of Federal licenses and permits which may significantly affect the coastal zone, which the Commonwealth wishes to review for consistency with the Coastal Management Program. Such review is desired only for those licenses and permits that authorize activities within the boundaries of the coastal zone. If it is found that the issuance of other kinds of Federal permits and licenses causes significant effects on coastal land and water uses, the list will be expanded through appropriate OCZM procedures for changes to the PRCMP.

Table B-1 designates the single Commonwealth agency (the Planning Board in some cases, the Department of Natural Resources in others) that is responsible for consistency review of each listed type of Federal license and permit. If the same Commonwealth agency is responsible both for consistency review and for review under another Federal or Commonwealth law or regulation, the two types of review will be combined. In all cases, the review process will include notifications of the type required for A-95 clearance. Reviewing agencies will be requested to comment whether the license or permit is consistent with the Coastal Management Program. The Department of Natural Resource's Coastal Management Unit will be among the recipients of notifications.

(e) Federal Assistance (Section 307(d))

Section 307 (d) of the CZMA establishes consistency requirements for Federal financial assistance to the Commonwealth and to local governments. Federal assistance includes any grant, loan, contract, subsidy, guarantee, insurance, or other form of financial aid. If any such aid "affects the coastal zone," it must be consistent with the Coastal Management Program.

The Puerto Rico Planning Board is the single Commonwealth agency responsible for determining that Federal assistance significantly affecting the coastal zone is consistent with the Coastal Management Program. The Board's A-95 notification process will be used to review financial aid applications to assure consistency with the Coastal Management

PR

Program. In cases in which Federal assistance may affect the coastal zone, an item will be added to the A-95 notification, requesting reviewing agencies to comment whether the assistance is consistent with the Coastal Management Program. The Department of Natural Resource's Coastal Management Unit will be among the receipients of A-95 notifications in such cases.

TABLE B-1

FEDERAL LICENSES AND PERMITS WHICH MUST BE CERTIFIED FOR CONSISTENCY WITH THE PUERTO RICO COASTAL MANAGEMENT PROGRAM

Type of Federal license or permit	Commonwealth agency responsible for preliminary consistency review*
Department of Defense - U.S. Army Corp of Engineers:	
- Permits and licenses required under Sections 9 and 10 of the River and Harbor Act of 1899	DNR
- Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (Ocean Dumping)	DNR
- Permits and licenses required under Section 404 of the Federal Water Pollution Control Act of 1972 and amendments	DNR
Nuclear Regulatory Commission:	
- Permits and licenses required for siting and operation of nuclear power plants	Planning Board
Department of Interior - Bureau of Land Management:	
- Permits for pipeline rights-of-way	DNR
Department of Transportation - U.S. Coast Guard:	
- Permits for construction of bridges under 33 USC 401, 4591-507, and 525-534	Planning Board
- Permits for deep-water ports (33 CFR 158 et seq.)	Planning Board
Department of Energy/FERC	
- Permits for construction and operation of natural gas pipelines and terminal facilities	Planning Board
Department of Interior - U.S. Geological Survey (Section 307(c)(3)(B)):	
- OCS plans that describe in detail Federal license and permit activities (Review pursuant to Section 307(c)(3)(B) of the CZMA	DNR

*Final consistency review is the responsibility of the Planning Board.

3. The Council may object to the proposed project based either on a failure to comply with the enforceable policies of the RICRMP or on a failure to provide information necessary to assess the proposed activity in spite of the Council's request to do so. In cases where the Council's objection is based on a failure to comply with the enforceable policies of the RICRMP, the Council will provide the applicant with a description of how the proposed activity is inconsistent and alternative measures, if they exist, which would render the proposed project consistent. In cases where the objection is based on a lack of sufficient information, the Council will describe the information necessary for its review. The Council will notify the applicant agency, the federal agency and OCRM of its objection.

D. Conflict Resolution

1. In cases where the Council objects to a proposed project, the Council will make every effort to work with the relevant federal agency and the agency seeking federal assistance to reach an agreement which would allow the activity to be conducted in a manner consistent with the RICRMP.

2. If the conflict persists, the federal agency or the Council may request mediation through the Secretary of Commerce as provided for in 15 CFR part 930, subpart G or informal negotiation through NOAA's Office of Ocean and Coastal Resource Management.

3. In no case shall the federal agency grant assistance for a proposed project to which the Council has objected unless the applicant appeals the Council's objection to the Secretary of Commerce and the Secretary overrides the Council's objection.

Table 1
Direct Federal Activities

The Council has determined that the following activities are reasonably likely to affect coastal uses or resources. Federal agencies or contractors undertaking these activities on behalf of a federal agency are required to submit a negative determination or a consistency determination to the CRMC if the federal agency determines that the activity is reasonably to affect any coastal use or resource. This list is not exhaustive and does not obviate the responsibility of federal agencies to submit a consistency determination to the CRMC for any direct activity which is reasonably likely to affect any coastal use or resource.

Activities taking place within any coastal community

- Filling, removing, or grading of shoreline features
- Residential, commercial, industrial, and recreational structures
- Recreational boating facilities
- Mooring and anchoring of houseboats and floating businesses
- Treatment of sewage and stormwater
- Construction of shoreline protection facilities
- Energy-related activities and structures
- Dredging and dredge material disposal
- Filling in tidal waters
- Aquaculture

- Mosquito Ditching
- Construction of public roadways, bridges, parking lots, railroad lines and airports
- Maintenance of structures
- Alterations to freshwater flows to tidal waters and water bodies and coastal ponds

Activities taking place anywhere within the state

- Power generating plants (excluding facilities of less than a 40-megawatt capacity)
- Petroleum storage facilities (excluding storage facilities of less than 2,400-barrel capacity)
- Chemical or petroleum processing facilities
- Minerals extraction
- Sewage treatment and disposal facilities (excluding individual sewage disposal systems)
- Solid waste disposal facilities
- Desalination plants

Management Plans

- Fisheries Management Plans developed under the Magnuson Fisheries Conservation and Management Act
- Oil Spill Response Plans

Miscellaneous Direct Federal Activities

- Land acquisition, transfer and disposal
- Site selection plans for ocean disposal of dredged materials
- Revisions to Flood Insurance Study and National Flood Insurance maps

Table 2
Federal License or Permit Activities

The Council has determined that activities requiring the following federal licenses or permits are reasonably likely to affect coastal uses or resources. Applicants for any of these licenses or permits are required to submit a certification of consistency to the licensing or permitting federal agency and the CRMC. This list is not exhaustive and does not obviate the responsibility of applicants for federal approvals to submit a consistency certification for any activity reasonably likely to affect any coastal use or resource to the CRMC.

Department of Defense - Army Corp of Engineers

- Permits and licenses for the discharge of dredged or fill material into the waters and adjacent wetlands of the U.S. pursuant to Sec. 404 of the Federal Water Pollution Act of 1972, as amended

- Permits to regulate the obstruction or alteration of, the construction of any structure in or over, and the excavation from or depositing of material in any navigable waters of the U.S. pursuant to sections 9 and 10 of the Rivers and Harbors Act of 1899

- Permits and licenses to regulate transportation of dredged material for the purpose of dumping it in navigable waters pursuant to Sec. 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

- Permits authorizing artificial islands or fixed structures on the outer continental shelf pursuant to section 4(F) of the Outer Continental Shelf Lands Act and amendment

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- Permits authorizing the temporary occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S. pursuant to section 14 of the Rivers and Harbors Act of 1899

- Approvals of plans for improvements made at private expense under Army Corps of Engineers supervision pursuant to the Rivers and Harbors Act of 1899

Department of Transportation - U.S. Coast Guard

- Approval of plans for the construction and modification of bridges, causeways, and pipelines over navigable waters pursuant to 33 USC 401, 491 - 507 and 525 - 534;

- Licenses for the construction and operation of deepwater ports pursuant to the Deepwater Port Act of 1974 (33 USC 150).

- Approvals of private aids to navigation pursuant to 14 USC 83

- Permits and authorizations for the handling of dangerous cargo by vessels in U.S. ports pursuant to 46 USC 170

- Permits for the handling of flammable or combustible liquids in U.S. ports pursuant to 46 USC 391(a)

Environmental Protection Agency

- Permits authorizing the discharges pursuant to section 402 of the Federal Water Pollution Control Act of 1972, as amended (the National Pollution Discharge Elimination System)

- Permits authorizing any discharge, including sewage sludge, into navigable waters pursuant to sections 401, 402 (33 USC 1341 1342)

- Permits and authorization for underground injections pursuant to section 1421 of the Safe Drinking Water Act (42 USC Chapter 82)

- Permit sources and waivers of compliance allowing extensions of time to meet air quality standards under section 112(c)(1) of the Clean Air Act of 1972, as amended

- Exemptions granted under the Clean Air Act for stationary sources

- Permits required under the Resource Conservation and Recovery Act of 1980 and its amendments for facilities that store, treat or dispose hazardous wastes

- Permits required pursuant to section 405 of Clean Air Act of 1972, as amended

- Permits for the transportation of dumping material other than dredged material in navigable waters pursuant to Sec 102 of the Marine Protection, Research and Sanctuaries Act of 1972

- Aquaculture pursuant to Section 318 of the Marine Protection, Research and Sanctuaries Act of 1972

Department of the Interior

- Permits and licenses for drilling and mining and related facilities on public lands

- Permits for pipeline rights-of-way on public lands and the outer continental shelf

- Permits and licenses for rights-of -way on public lands

- Endangered species permits pursuant to the Endangered Species Act (16 USC 1539)

- Permits related to the taking of marine mammals pursuant to the Marine Mammals Protection Act (16 USC 1361-1407)

- Permits for the granting of outer continental shelf corridor rights-of-way (43 USC 931(c))

RI

Department of Energy

- Permits related the regulation of gas pipelines, licensing of import or export of gas pursuant to the Natural Gas Act (15 USC 717, 717(b))

- permits and approvals related to the construction and operation of LNG import/export marine terminals pursuant to the Natural Gas Act (15 USC 717f(c))

- Permission and approval required for the abandonment of natural gas pipeline facilities under section 7(b) of the Natural Gas Act (15 USC 717f(b))

Nuclear Regulatory Commission

- Permits and approvals related to the construction and operation of commercial nuclear reactors pursuant to the Atomic Energy Act of 1954 (including delicensing activities).

Table 3
Federal Assistance to States and Territories and Local Governments

The Council has determined that the following federal assistance programs may support activities which are reasonably likely to affect any land or water use or natural resource of the coastal zone. The Council monitors these federal assistance programs through the Intergovernmental Review Process established under E.O. 12372 and E.O. 83-11. When a unit of state, territorial or local government applies for federal assistance to support an activity which is reasonably likely to affect any land or water use or natural resource of the coastal zone, the state, territorial or local government unit must provide the Council with a certification of consistency. This list is not exhaustive and does not obviate the responsibility of any unit of state, territorial or local government to submit a consistency certification to the CRMC for any federally supported activity reasonably likely to affect any land or water use or natural resource of the coastal zone.

Resource Conservation and Development Loans
Soil and Water Loans
Water and Waste Disposal Systems for Rural Communities
Watershed Protection and Flood Prevention Loans
Industrial Development Grants
Rural Economic Development Loans and Grants
Resource Conservation and Development
Watershed Protection and Flood Prevention
Grants for Public Works and development Facilities
Support for Planning Organizations
Technical Assistance
Public Works Impact Projects
Sudden and Severe Economic Dislocation and Long-term Deterioration
Interjurisdictional Fisheries Act of 1986
Coastal Zone Management Program Administrative Grants
Coastal Zone Management Estuarine Research Reserves
Fisheries Research and Development Grants/Cooperative Agreements
Public Telecommunications Facilities - Construction and Planning
Aquatic Plant Control
Beach Erosion Control
Emergency Rehab of Flood Control, Federally Authorized Coastal Protection Works
Flood Plain Management Services
Protection of Essential Highways, Highway-Bridge Approaches, and Public Works
Flood Control Projects
Navigation Projects
Snagging and Clearing for Flood Control

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Protecting, Clearing and Straightening Channels
Planning Assistance to States
Emergency Advanced Measures for Flood Prevention
Joint Military/Community Comprehensive Land Use Plans
Housing Development Grants
Anadromous Fish Conservation
Sport Fish Restoration
Wildlife Restoration
Endangered Species Conservation
National Water Resources Research Program
Historic Preservation Fund Grants-in-Aid
Outdoor Recreation - Acquisition, development and Planning
Disposal of Federal Surplus Real Estate Property for Parks, Recreation and Historic Monuments
Airport Improvement Program
Highway Planning and Construction
Development and Promotion of Ports and Intermodal Transportation
Construction Grants for Wastewater Treatment Works
Water Pollution Control - State and Interstate Program Support
Water Quality Management Planning
Business and Industrial Loans
Emergency Community Water Assistance Grants
Cooperative Forestry Assistance
State and Local Economic Development Planning
Mortgage Insurance, Rental and Cooperative Housing for Moderate Income and Elderly, Market Interest Rate
Mortgage Insurance, Rental Housing for the Elderly, Urban Renewal Areas
Public Indian Housing
Public Indian Housing, Comprehensive Improvement Assistance Program
Urban Mass Transportation Capital Improvement Grants, Capital and Operating Assistance Formula Grants
Public Transportation for Nonurbanized Areas
State Underground Water Source Protection
Water Pollution Control, Lake Restoration Cooperative Agreements
Environmental Protection Consolidated Grants-Program Support
Consolidated Pesticides Compliance Monitoring and Program Cooperative Agreement
Toxic Substance Compliance Monitoring Program
Hazardous Waste Management State Program Support
State Underground Storage Tanks Program
Underground Storage Tanks Trust
Solid Waste Management Assistance
Pollution Prevention Incentives for States
Conservation Reserve Program
Cooperative Extension Service
Sea Grant Support
Marine Sanctuary Program
Military Construction, Army National Guard
Military Base Re-Use Studies and Community Planning
Surplus Property Utilization
Community Development Block Grants/Entitlement Grants and State's Program
Rental Housing Rehabilitation
Indian Loans and Grants-Economic Development
Environmental Contaminants
Boating Safety Financial Assistance
Disposal of Federal Surplus Real Estate Property
Priorities and Allocations for Energy Programs and Projects
Nuclear Waste Disposal Siting
Environmental Restoration

State of SC CMP and FEIS. June 1979.

SOUTH CAROLINA

II. Federal Activities/Development Projects Determined by the South Carolina Coastal Council as Likely to Have a Direct Effect on the Coastal Zone of South Carolina.

The South Carolina Coastal Council has determined that the following Federal activities directly affect the South Carolina coastal zone. The Coast . Council reserves the right to make additions or deletions to this list after consultation with the pertinent Federal agency(ies).

The South Carolina Coastal Council also reserves the right to review for consistency Federal activities/development projects proposed for or occurring in areas outside the coastal zone which may have "spill-over" effects and thus would directly affect the State's coastal zone.

NOTE:
"Federal agencies shall consider all development projects within the coastal zone to be activities directly affecting the coastal zone. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they directly affect the coastal zone." (Section 930.33(b), **Federal Register**, Vol. 44, No. 123, June 25, 1979.)
"Federal activities outside of the coastal zone (e.g., on excluded Federal lands, on the Outer Continental Shelf, or landward of the coastal zone) are subject to Federal agency review to determine whether they directly affect the coastal zone." (Section 930.33(c), **Federal Register**, Vol. 44, No. 123, June 25, 1979.)

Federal agencies may apply the four criteria below to the following list of activities/development projects to assist them, where needed, in more narrowly defining or identifying their activities which are of concern to South Carolina's coastal management program.

The S.C. Coastal Council considers an activity to have a direct effect on the coastal zone and therefore is subject to the consistency requirements if it meets one or more of the following criteria:

1. is located in one or more of the four critical areas (coastal waters, wetlands, beaches and primary ocean-front sand dunes);
2. has a detrimental environmental impact upon a critical area (for example, water pollution upstream from an inland source which would then reach and result in degradation of the estuarine system);
3. has adverse effects on the quality or quantity of coastal resources - natural, economic, social or historical;
4. disrupts access to a public coastal resource.

DEPARTMENT OF DEFENSE (Army Corps of Engineers, Air Force, Army and Navy)

1. Navigation projects (including all ongoing maintenance and ancillary activities that are reviewed on a one-time basis as part of the project as a whole.)
2. Maintenance dredging (including all ongoing maintenance and ancillary activities that are reviewed on a one-time basis as part of the project as a whole.)
3. Shoreline protection projects.
4. Beach nourishment.
5. Other public works projects with the potential to impact coastal lands and waters.
6. Construction of docks, piers, bulkheads, mooring dolphins, etc.
7. Construction or maintenance of sewage or drainage ditches or canals located in coastal waters or wetlands.
8. Location, acquisition and design of new or enlarged defense installations.
9. Actions conducted on Federal lands with potential impact on coastal lands and waters.

DEPARTMENT OF THE INTERIOR

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U.S. Fish & Wildlife Service

1. Construction and/or maintenance of waterfowl impoundments.
2. Construction and/or maintenance of docking facilities and navigation approaches.
3. Construction and/or maintenance of shoreline protection projects.
4. All other activities which are proposed on refuge lands that normally (i.e. within the coastal zone) would require a State or Federal permit or which would result in any direct impact on coastal waters.
5. Proposed acquisition of wildlife refuges.

National Park Service

1. Proposed acquisition of national parks and seashores and national park and seashore management activities which normally (i.e. within the coastal zone) would require a State or Federal permit or which would result in any direct impact on coastal waters.
2. Preservation of historic and cultural sites.

Bureau of Land Management

1. OCS Pre-lease sale activities (e.g. tract selection, stipulations) (The S.C. Coastal Council reserves the right to review proposed OCS Lease Sales when the question of whether lease sales are eligible for consistency has been resolved.)

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

1. Construction of roads, bridges or rights-of-way in the coastal zone. (Because of their limited scope and absence of a direct effect on the coastal zone, the following activities are exempted from the Federal consistency requirements of this section.)

Category 1: Modernization of an existing highway section including (but not limited to) such improvements as:

a) resurfacing, restoring and rehabilitation.
b) widening by less than a single lane width, unless in a wetland are
c) adding shoulders and/or sidewalks, unless in a wetland area.
d) adding auxiliary lanes for localized purposes to provide weavin speed changes and turn storage.
e) making intersection improvements that do not change existing traff patterns.
f) improving railroad grade crossings, unless in a wetland area.

Category 2: Installation of lighting, signing, pavement marking, signalizatio freeway surveillance and control systems, and railroad protecti devices.

Category 3: Safety improvement projects such as pavement grooving, glare screen safety barriers, energy attenuators , etc.

Category 4: Unless a wetland is impacted, improvement to existing crossroad

SC

railroad separations and stream crossings such as replacement of bridge decks and parapets, and closing open medians between dual bridges; grade-separated crossings of highways by railroads or by highways which do not require extensive approach relocations.

Category 5: Unless a wetland area is impacted, highway landscaping, safety rest areas, scenic overlooks, truck weigh stations, bus shelters and bays and fencing.

Category 6: Alterations to existing buildings to provide for noise attenuation and installation of noise barriers, berms, or any combination of devices.

Category 7: Temporary emergency replacement of a highway facility which is commenced immediately after the occurrence of a natural disaster or catastrophic failure. This work is usually required to restore the highway for the health, welfare, and safety of the public and does not involve work of the nature and extent which causes it to come under the purview of NEPA.

Category 8: Unless a wetland area is impacted, utility installations along or across a highway.

U.S. Coast Guard

1. Construction of docking facilities and navigation approaches with the exception of Coast Guard maintained or authorized aids to navigation.
2. Construction of Coast Guard bases, facilities and installations.
3. Any activity related to oil spill or other clean-up operations which involves permanent alteration of a critical area.

DEPARTMENT OF AGRICULTURE

Forest Service

1. Construction or silvicultural activities which normally (i.e. within the coastal zone) would require a State or Federal permit or which would result in any direct impact on coastal waters.

Soil Conservation Service

1. Planning and management activities that require either a State or Federal permit or which would result in any direct impact on coastal waters.

GENERAL SERVICES ADMINISTRATION

1. Location and design of proposed Federal government property acquisition and building construction.
2. Disposal of surplus Federal lands.

DEPARTMENT OF ENERGY

1. Demonstration projects for the production of energy.
2. The underwriting of the conversion of existing dams to small-scale hydroelectric projects.

III. **Consistency Determination**

A. **Decision Making Agency** — The Federal agency makes the consistency determination.

B. **Responsibilities of Federal Agency**

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(NOTE: The operational guidelines below, which pertain to Federal Licenses and Permits, explain the procedure by which Federal consistency requirements will be met.)

Operational Guidelines
(Federal Licenses and Permits)

I. Definitions

A. **Federal Licenses and Permits** — A Federal license or permit includes any authorization, certification, approval, or other form of permission which any Federal agency is empowered to issue to an applicant. All Federal leases except those issued pursuant to the Outer Continental Shelf Lands Act are included within this definition as are renewals and major amendments which cause coastal zone effects. (See Section 930.51, **Federal Register**, Vol. 44, No. 123, June 25, 1979.)

B. **Applicant** — An applicant includes any individual, public or private corporation, partnership, association or other entity organized or existing under the laws of any state, or any state, regional, or local government, who, following management program approval, files an application for a Federal license or permit to conduct an activity affecting the coastal zone of South Carolina. The term "applicant" does not include Federal agencies applying for Federal licenses or permits. Federal agency "activities" requiring Federal licenses or permits are subject to the consistency requirements of the section on Direct Federal Activities/Development Projects, beginnings on page V-16.

II. Federal License and Permit Activities Likely to Affect South Carolina's Coastal Zone

The following is a list of Federal license and permit activities which are likely to affect the coastal zone of South Carolina. The S.C. Coastal Council reserves the right to make additions or deletions to this list after consultation with the pertinent Federal agency(ies). All such license or permit activities must be reviewed by the S.C. Coastal Council for consistency with the State's coastal management program.

When application is made for one of the permits or licenses listed below, the Federal agency will direct the applicant to consult with the S. C. Coastal Council in determining the consistency of the application. No Federal license or permit described in this list shall be issued until the requirements of this section (Federal Licenses and Permits) have been satisfied.

The South Carolina Coastal Council also reserves the right to review for consistency Federal license and permit activities proposed for areas outside the coastal zone which may have "spill-over" effects and thus would affect the State's coastal zone.

DEPARTMENT OF DEFENSE

Army Corps of Engineers — permits and/or licenses for:

1. Discharge of dredged or fill material in navigable waters pursuant to Section 404 of the Federal Clean Water Act as amended;
2. Obstructions or alterations in navigable waters pursuant to Sections 9, 10, 11 and 14 of the Rivers and Harbors Act of 1899.
3. Transportation of dredged material in navigable water pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

DEPARTMENT OF ENERGY — certificates, permits and licenses for:

1. Siting and operation of nuclear and fossil fuel power plants and transmission lines;
2. Construction and operation of facilities needed to import or export natural gas;
3. Construction and operation of facilities used in interstate gas transportation;
4. Construction and operation of interstate gas pipelines, both onshore and offshore;
5. Construction and operation of LNG import/export marine terminals pursuant to the Natural Gas Act;

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6. Construction and opertion of natural gas pipelines, transportation and storage facilities pursuant to the Natural Gas Act;
7. Construction and operation of non-federal hydroelectric power projects.

Federal Energy Regulatory Commission - certificates, permits and licenses for:

1. Non-Federal hydroelectric projects and associated transmission lines under Sections 4(e) and 15 of the Federal Power Act (16 U.S.C. 797(e) and 808).
2. Interconnection of electric transmission facilities under Section 202(b) of the Federal Power Act (16 U.S.C. 824 a (b)).
3. Construction and operation of natural gas pipeline facilities, defined to include both interstate pipeline and terminal facilities under Section 7(c) of the Natural Gas Act (15 U.S.C. 717f(c)).
4. Abandonment of natural gas pipeline facilities under Section 7(b) of the Natural Gas Act (15 U.S.C. 717f(b)).

DEPARTMENT OF TRANSPORTATION

U.S. Coast Guard — permits for:

1. Construction and operation of deepwater ports under the Deepwater Port Act of 1972 (PL 93-627);
2. Construction of bridges under USC 401, 491-507 and 525-534.

Federal Aviation Administration — permits and/or licenses for:

1. Construction or alteration of airports.

Materials Transportation Bureau (Office of Pipeline Safety Operations) — permits for:

1. Transportation of liquids (other than petroleum products) by pipeline (Section 195.6 of the regulations for transportation of liquids by pipeline).

ENVIRONMENTAL PROTECTION AGENCY — permits for:

1. Dumping material other than dredged material in navigable waters pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972.

NUCLEAR REGULATORY COMMISSION — permits and licenses for:

1. Construction and operation of nuclear facilities and the possession and use of byproduct, source and special nuclear material pursuant to the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974 and the National Environmental Policy Act of 1969.

THE FOLLOWING PERMITS ASSOCIATED WITH OCS ACTIVITIES

1. Permits related to geological and geophysical exploration;
2. Permits related to the siting, design and construction of common carrier pipelines required respectively by the Bureau of Land Management in the Department of Interior and the Materials Transportation Bureau in the Department of Transportation;
3. Permits related to drilling and the siting, design and construction of flow and gathering

applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

B. **Applicant Agency**
The term "applicant agency" means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for Federal assistance.

II. **Types of Federal Assistance Programs Subject to Consistency Review**

The S.C. Coastal Council has identified the following as being subject to consistency review within coastal zone of South Carolina. The South Carolina Coastal Council reserves the right to make additions or de tions to this list after consultation with the pertinent Federal agency(ies). The Coastal Council also reserves right to review for consistency Federal assistance activities proposed for areas outside the coastal zone which m have "spill-over" effects and thus would affect the State's coastal zone.

Federal Assistance for the Construction of:

1. Power generating plants;
2. Desalination plants;
3. Chemical processing, transfer or storage facilities;
4. Petroleum processing, transfer or storage facilities;
5. Mineral extraction facilities;
6. Sewage treatment and disposal facilities;
7. Solid waste disposal facilities;
8. Water control structures or waterway easements serving agricultural lands;
9. Federal financing of public or subsidized housing units, or private residential development
10. Transportation facilities (including airports, highways and railroads).

In addition, the S. C. Coastal Council will monitor Federal assistance applications affecting the coast zone, including but not limited to the following programs.

DEPARTMENT OF AGRICULTURE
Soil Conservation Service — Watershed protection and flood protection.

DEPARTMENT OF COMMERCE
Economic Development Administration — Economic Development Planning Grants; Econom Development Grants for Public Works and Development Facilities.

DEPARTMENT OF ENERGY — State Energy Conservation Program.

DEPARTMENT OF HOUSING & URBAN DEVELOPMENT/FHA — Housing Assistance, Mortgag Insurance, Community Development Block Grants, and Section 701 Planning Assistance Grants.

DEPARTMENT OF THE INTERIOR
Heritage Conservation and Recreation Service — Land and Water Conservation Fund.
Fish & Wildlife Service — Endangered Species Act of 1973.

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration — Airport Development Aid Program.
Federal Highway Administration — Federal Aid Highway Program. (Exemptions p. V-17 apply here.)
Urban Mass Transportation Administration — Urban Mass Transportation Grants.

ENVIRONMENTAL PROTECTION AGENCY — Air Pollution Control Program Grants, Construct

TEXAS FEDERAL CONSISTENCY LIST

Interagency coordination group--For purposes of the general agreement in §506.28 of this title (relating to General Consistency Agreements), a group established to review proposed federal development projects and whose duties include, among other things, advising on the consistency determination. Voting members of the group shall include, at a minimum, representatives of the local project sponsor and federal and state natural resource and regulatory agencies with jurisdiction over the project. The group shall seek and promote broad participation by local governments and coastal citizen groups.

Outer continental shelf (OCS) plan--A plan for the exploration or development of, or production from, an area leased under the Outer Continental Shelf Lands Act (43 United States Code Annotated, §§1331-1356) and the rules adopted under that Act that is submitted to the secretary of the United States Department of the Interior after federal approval of the CMP.

State single point of contact--The state single point of contact for the Texas Review and Comment System as defined by 1 TAC §5.194 (concerning Definitions).

§506.12 Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program

(a) For purposes of this section, the following federal actions within the CMP boundary may adversely affect coastal natural resource areas (CNRAs):

(1) Federal Agency Activities and Development Projects:

(A) United States Department of the Interior. Modifications to the boundaries of the Coastal Barrier Resource System under 16 United States Code Annotated, §3503(c);

(B) United States Environmental Protection Agency. Selection of remedial actions under 42 United States Code Annotated, §9604(c);

(C) United States Army Corps of Engineers:

(i) small river and harbor improvement projects under 33 United States Code Annotated, §577;

(ii) water resources development projects under 42 United States Code Annotated, §1962d-5;

(iii) small flood control projects under 33 United States Code Annotated, §701s;

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(iv) small beach erosion control projects under 33 United States Code Annotated, §426g;

(v) operation and maintenance of civil works projects under the Code of Federal Regulations, Title 33, Parts 335 and 338;

(vi) dredging projects under the Code of Federal Regulations, Title 33, Part 336;

(vii) approval for projects for the prevention or mitigation of damages to shore areas attributable to federal navigation projects pursuant to 33 United States Code Annotated, §426i; and

(viii) approval for projects for the placement on state beaches of beach-quality sand dredged from federal navigation projects pursuant to 33 United States Code Annotated, §426j;

(D) Federal Emergency Management Agency:

(i) model floodplain ordinances; and

(ii) approval or suspension of a community's eligibility to sell flood insurance under the Code of Federal Regulations, Title 44, Part 59, Subpart B;

(E) General Services Administration:

(i) acquisitions under 40 United States Code Annotated, §602 and §603; and

(ii) construction under 40 United States Code Annotated, §605;

(F) All federal agencies. All other development projects.

(2) Federal Agency Actions.

(A) Environmental Protection Agency:

(i) National Pollution Discharge Elimination System (NPDES) permits under 33 United States Code Annotated §1342;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412;

(iii) approvals under 42 United States Code Annotated, §6924(d); and

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(iv) approvals of National Estuary Program Comprehensive Conservation Management Plans under 33 United States Code Annotated, §1330f;

(B) United States Army Corps of Engineers:

(i) ocean dumping permits under 33 United States Code Annotated, §1413;

(ii) dredge and fill permits under 33 United States Code Annotated, §1344;

(iii) permits under 33 United States Code Annotated, §401;

(iv) permits under 33 United States Code Annotated, §403; and

(v) Memoranda of Agreement for mitigation banking;

(C) United States Department of Transportation:

(i) approvals under 23 United States Code Annotated, §106; and

(ii) approvals under 33 United States Code Annotated, §525;

(D) Federal Aviation Administration. Certificates under 49 United States Code Annotated, §1432;

(E) Federal Energy Regulatory Commission:

(i) certificates under 15 United States Code Annotated, §717f;

(ii) licenses under 16 United States Code Annotated, §797(e); and

(iii) exemptions under 16 United States Code Annotated, §2705(d);

(F) Nuclear Regulatory Commission. Licenses under 42 United States Code Annotated, §2133.

(3) State and Local Government Applications for Federal Assistance. Federal assistance for state and local government activities that may adversely affect CNRAs. Federal assistance does not include applications from local governments and subdivisions to the Texas Water Development Board for financial assistance through

the State Water Pollution Control Revolving Fund or the Colonia Wastewater Treatment Assistance Program.

(b) For purposes of this section, the following are federal actions outside the CMP boundary but within OCS waters, or on excluded federal land located within the coastal zone, that may adversely affect CNRAs.

(1) Federal Activities and Development Projects: All federal agencies. Activities in OCS waters or within the coastal zone occurring within federal lands excluded from the CMP boundary but which may adversely affect CNRAs.

(2) Federal Agency Actions:

(A) United States Department of the Interior:

(i) permits under 43 United States Code Annotated, §1340, in OCS waters; and

(ii) rights-of-way under 43 United States Code Annotated, §1334(e), in OCS waters;

(B) Environmental Protection Agency:

(i) NPDES permits under 33 United States Code Annotated, §1342, in OCS waters;

(ii) ocean dumping permits under 33 United States Code Annotated, §1412, in OCS waters;

(C) United States Army Corps of Engineers. Ocean dumping permits under 33 United States Code Annotated, §1413, in OCS waters;

(D) United States Department of Transportation: Deep water port licenses under 33 United States Code Annotated, §1503, in OCS waters.

(3) OCS Exploration, Development, and Production Activities. United States Department of the Interior:

(A) Federal agency actions described in detail in OCS plans, including pipeline activities, that may adversely affect CNRAs;

(B) OCS lease sales within the western and central Gulf of Mexico under 43 United States Code Annotated, §1337.

(c) In the event that a proposed activity requiring a state agency or subdivision action that falls below thresholds for referral approved under Chapter 505, Subchapter B of this title

(relating to Council Certification of State Agency Rules and Approval of Thresholds for Referral) requires an equivalent federal permit or license under this chapter, the council may only determine the state agency or subdivision action's consistency by using the process provided in Chapter 505 of this title (relating to Council Procedure for State Consistency with Coastal Management Program Goals and Policies). The council's determination regarding the consistency of an action under this subsection constitutes the state's determination regarding consistency of the equivalent federal action.

(d) If an activity requiring a state agency or subdivision action above thresholds requires an equivalent federal permit or license, the council may determine the consistency of the state agency or subdivision action or the federal license or permit, but not both.

(e) The determinations regarding the consistency of an action made by the council under subsections (c) and (d) of this section constitute the state's determination regarding consistency of the equivalent agency or subdivision action or federal action.

(f) On a one-time basis, and subject to the provisions of paragraph (1) of this subsection and federal law, the council may elect to review a proposed federal license or permit action of a type that is not listed in §506.12(a)(2) of this title or a state or local government application for federal assistance of a type that is not listed in §506.12(a)(3) of this title.

(1) Once the council has reviewed a proposed federal license or permit action of a type that is not listed in §506.12(a)(2) of this title, the council may not review any other proposed federal license or permit action of that type unless the council amends §506.12(a)(2) of this title to add the federal license or permit action to the list of such actions in §506.12(a)(2) of this title. Once the council has reviewed a state or local government application for federal assistance of a type that is not specifically listed in §506.12(a)(3) of this title, the council may not review any other state or local government application for federal assistance of that type unless the council amends §506.12(a)(3) of this title to add that specific type of action to the list of actions in §506.12(a)(3) of this title.

(2) Except as provided in this subsection, the list of federal actions described in §506.12(a)(2) and (3) of this title is an exclusive list of federal licenses and permits and state and local government applications for federal assistance that are subject to council review. The council may amend the list of actions described in §506.12(a)(2) and (3) of this title from time to time, and any federal actions described in such amended lists shall be subject to council review.

TX

(g) If the council determines a federal agency action or application for federal assistance to be consistent with the CMP goals and policies, subsequent actions taken by state agencies or subdivisions or federal agencies to implement the activity described in the application shall not be subject to review by the council if the application for the federal agency action or federal assistance describes the activity in sufficient detail to determine consistency of the completed activity.

§506.20 Consistency Determinations for Federal Agency Activities and Development Projects

(a) At the earliest practicable time, but in no event later than 90 days prior to final approval, a federal agency considering the approval of a federal agency activity or development project listed in §506.12 of this title (relating to Federal Agency Actions, Federal Agency Activities, Outer Continental Shelf Plans and Development Plans Subject to the Coastal Management Program) shall provide the council secretary with a consistency determination that includes the following information:

(1) a brief statement, based upon an evaluation of the relevant CMP provisions, indicating whether or not the proposed activity or development project will be undertaken in a manner consistent with the CMP, to the maximum extent practicable; and

(2) a detailed description of the proposed activity or development project and its associated facilities which is adequate to permit an assessment of their probable effects on CNRAs, and comprehensive data and information sufficient to support the federal agency's consistency statement. The amount of detail in the statement evaluation, activity description, and supporting information shall be commensurate with the expected effects of the activity or development project on CNRAs. While federal agencies must be consistent to the maximum extent practicable with the enforceable, mandatory policies of the CMP, the agencies need only demonstrate adequate consideration of policies which are in the nature of recommendations. Federal agencies need not evaluate effects for which the CMP does not contain mandatory or recommended policies.

(b) The chair or any three members of the council may request the federal agency to provide additional information as provided by federal regulations.

§506.21 Notification of Negative Determinations

(a) If a federal agency determines that a proposed activity development project listed in §506.12 of this title (relating Federal Actions Subject to the Coastal Management Program) will

VIRGINIA

FEDERAL ACTIVITIES SUBJECT TO CONSISTENCY REVIEW UNDER THE VIRGINIA COASTAL PROGRAM

PART I. FEDERAL ACTIVITIES AND DEVELOPMENT PROJECTS LIKELY TO DIRECTLY AFFECT THE COASTAL ZONE

Department of Commerce/National Marine Fisheries Service

- Fisheries management plans.

Department of Defense/Army Corps of Engineers

- Proposed projects, authorizations for dredging, channel work, breakwaters, other navigation works, erosion control structures, reservoirs, dams, beach nourishment, and other public works projects.

Department of Defense/Air Force, Army and Navy

- Location, acquisition, and design of new or enlarged defense installations. Actions conducted on federal lands with potential impact on non-federal coastal land and water including construction, expansion or surplusing of buildings or acquisition of land.

Department of the Interior/Fish and Wildlife Services

- Acquisition and management including master plans of National Wildlife Refuges.

Department of the Interior/National Park Service

- Acquisition and management including master plans of national parks and seashores.

Department of Transportation/Coast Guard

- Location, design, and acquisition of new or enlarged installations as well as closure of existing facilities.

Department of Transportation/Federal Aviation Administration

- Construction, maintenance, and demolition of federal aids to navigation.

General Services Administration

- Disposal of surplus federal land, property acquisition and building construction.

PART II. FEDERALLY LICENSED AND PERMITTED ACTIVITIES

Department of Defense/Army Corps of Engineers

- Section 9 and 10 permits, Rivers and Harbors Act of 1899.

- Section 404 permit; Clean Water Act and amendments.

- Section 103 permit, Marine Protection Research and Sanctuaries Act of 1972.

Department of Energy/Federal Energy Regulatory Commission

- License for non-federal hydroelectric projects; Section 4(e), Federal Power Act.

- Abandonment of gas pipeline; Section 7, Natural Gas Act.

- Certificates authorizing construction, or operation of or facilities for transportation or storage of natural gas; Section 7, Natural Gas Act.

Department of Energy/Economic Regulatory Administration

- Options and orders for permission for delivery of imported LNG.

Department of the Interior/Bureau of Land Management and Mineral Mangement Service

- Permit for pipeline rights-of-way for oil and gas transmission on Outer Continental Shelf.

Department of Transportation/Coast Guard

- License for the construction and operation of deepwater ports Deepwater Port Act of 1974.

- Permit for construction or modification of bridge structures across navigable waters of the United States.

Department of Transportation/Federal Aviation Administration

- Permit and license for the construction, operation, or alteration of airports.

Environmental Protection Agency

- National Pollution Discharge Elimination System (NPDES) permit; Section 402 & 403, Federal Water Pollution Control Act.

VA

- Ocean dumping permit (exercised jointly with Army Corps of Engineers).

- Section 102 permit, Marine Protection Research and Sanctuaries Act of 1972. Designation of Ocean Dumping and Incineration sites (including at sea incineration).

Nuclear Regulatory Commission

- Permit and license required for the construction and operation of nuclear plant.

Interstate Commerce Commission

- Abandonment of rail lines.

National Park Service

- Land and Water Conservation Fund

- National Historic Preservation Fund

The VI CMP and FEIS March 1979.

VIRGIN ISLANDS

Table 10.3 FEDERAL LICENSES AND PERMITS SUBJECT TO CERTIFICATION OF CONSISTENCY

Type of Federal licenses or permit

Department of Agriculture

Permits for waterplants, dams etc. under 16 USC 497

Permits for construction of hotels etc. on National Forest Service lands under 16 USC 497,

Department of Commerce

Permits for activities within Marine Sanctuaries under 33 USC 1401-1444

Department of Defense - U.S. Army Corps of Engineers:

Permits and licenses required under Sections 9 and 10 of the River and Harbor Act of 1899. .

(dams; obstruction or alteration of, and excavation and depositing of material in navigable waters of the United States)

Permits and licenses required under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1912 (Ocean Dumping). . .

Permits and licenses required under Section 404 of the Federal Water Pollution Control for

(discharge of dredged or fill material into waters of the United States)

Nuclear Regulatory Commission:

Permits and licenses required for siting and operation of nuclear power plants.

Environmental Protection Agency:

Permits and licenses required under Section 402 and 405 of the FWPCA of 1972, as amended

Permits and applications under the Clean Air Act of 1974 as amended. . .

Department of Interior - Bureau of Land Management:

Permits for pipeline rights-of-way

Department of Transportation - U.S. Coast Guard:

Permits for construction of bridges under 33 USC 401, 491-50/ and 525-534. . .

Permits for deep-water ports (33 CFR 158 et seq.). . .

Department of Transportation - Federal Aviation Administration

Permits for operation of airports

Federal Energy Regulatory Commission

Permits for construction and operation of facilities needed to import or export natural gas under Section 7(c) of the Natural Gas Act (15 U.S.C. 717 f(b)).

OCS production plans

Department of Interior - U.S. Geological Survey

Plans for exploration, production, and development of OCS gas and oil

(Review pursuant to Section (307(c)(3)(B) of the CZMA)

WASHINGTON

II. FEDERAL ACTIVITIES

The Department of Ecology wishes to review the following federal activities for consistency with the Washington State coastal program:

1. Resource use and development plans (ex. Regional Economic Development Plan by the Pacific Northwest Regional Commission).

2. Planning, construction, modification, or removal of public works, facilities, or other structures (ex., Corps dredging projects).

3. Acquisition, utilization, or disposal of land or water resources (ex., purchase of a refuge by the Fish and Wildlife Service).

4. Federal agency activities requiring a federal license or permit from another federal agency.

5. Regulations or guidelines affecting the priority, siting, placement, design, or permissibility of uses.

6. Operation or conduct of new or existing uses when such operation would result in physical changes in the coastal zone such as air and water pollution, covering of water surface, removal of vegetation or new construction (ex., timber harvest and related activities on federal forest lands).

7. Federal assistance to entities other than state or local governments, such as Indian tribes and individuals proposing activities in the coastal zone.

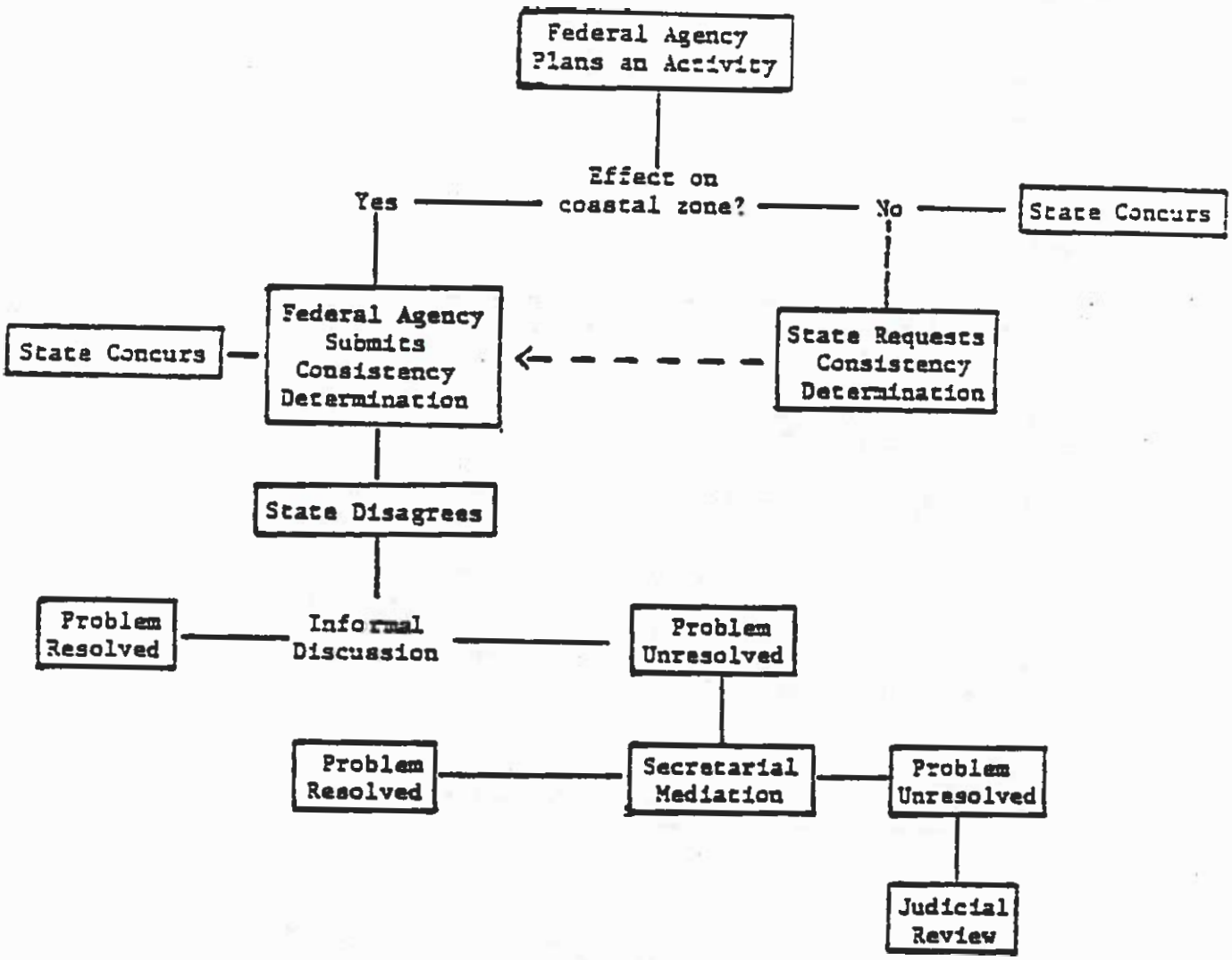
8. DOI pre-lease sale activities for OCS exploration and development.

In addition, the department wishes to review any of the above activities outside of the coastal zone, but west of the crest of the Cascade Range, which create spillover effects directly affecting the coastal zone. This would include federal activities on all federal excluded lands including Indian lands held in trust by the federal government, military reservations, federal research facilities, federal leaseholds, etc. (see 15CFR 930.53(b)).

The notification and review process is described in the 307 regulations and OCZM's "Simplified Guidance..." paper, and is summarized by the following chart:

WA

II - Federal Activities (cont'd)



Content of Determination

Federal agency determinations will be based on the state's approved coastal authorities. The source for guidance on shoreline program requirements will differ, however, according to the location of the proposed activity.

For proposed federal activities on excluded federal lands, or for activities with coastalwide implications, the Shoreline Management Act and the Final Guidelines would be the primary sources.

WA

II. Federal Activities (cont'd)

For federal activities in the coastal zone (not on excluded lands), the primary source will be local shoreline master programs.

Memoranda of Agreement

For routine, ongoing activities of a minor nature, the state and a federal agency may wish to develop memoranda of agreement for exempting such activities from the requirement for consistency determinations. If MOU's are desired, they will be developed in cooperation with the State Clearinghouse (Office of Financial Management).

III. FEDERAL LICENSES AND PERMITS

The Department of Ecology wishes to review the following federal licenses and permits for consistency with the coastal program:

1. U.S. Army Corps of Engineers

   a. Permits under sections 10 and 11 of the River and Harbor Act of 1899.

   b. Permits for discharge of dredged or fill material under section 404 of the Federal Water Pollution Control Act.

   c. Permits for ocean dumping of dredged material under section 103 of the Marine Protection, Research and Sanctuaries Act of 1972.

   d. Approvals of artificial islands and fixed structures on the OCS under section 4(f) of the Outer Continental Shelf Lands Act.

2. U.S. Coast Guard

   a. Permits establishing the location and clearances for construction of bridges and causeways over navigable waters under the Ports and Waterways Safety Act.

   b. Permits under section 1503 of the Deepwater Port Act of 1974 for the location, ownership, construction, and operation of deepwater ports.

   c. Nominations for anchorages, including layups, under the Ports and Waterways Safety Act.

3. Federal Aviation Administration

   Cartification for operation of airports

4. Nuclear Regulatory Commission

   Licenses for the siting, construction and operation of nuclear power plants; the production, transfer, import, and export of fissionable materials; and the disposal of radioactive waste.

WA

III. FEDERAL LICENSES AND PERMITS (cont'd)

5. Federal Energy Regulatory Commission

   a. Permits for the construction and operation of interstate gas pipelines and storage facilities under section 717 (f) of the Natural Gas Act.

   b. Permits for the construction and operation of power facilities and transmission lines required under section 4(e) of the Federal Power Act.

   c. Permits for the abandonment of natural gas pipeline facilities under section 717 (f) of the Natural Gas Act.

6. Economic Regulatory Administration permits which are required to develop facilities for the import and export of petroleum products, which are mainly for LNG facilities.

7. Environmental Protection Agency

   a. Permits for ocean dumping of material (except dredged material) under the Ocean Dumping Act.

   b. NPDES permits issued under the Federal Water Pollution Control Act unless NPDES administration remains delegated to the state.

   c. Waivers from compliance, allowing an extension of the time for meeting the national primary and secondary ambient air quality standards, under the Clean Air Act.

   d. Exemptions for stationary sources under the Clean Air Act.

   e. Waivers from compliance from secondary treatment requirements under the Federal Water Pollution Control Act.

8. Office of Coastal Zone Management

   Certification that all activities in marine sanctuaries are consistent with the Marine Protection, Research and Sanctuaries Act of 1972.

9. National Marine Fisheries Service

   Permits for the taking or importing of marine mammals except for walruses, sea otters and polar bears under the Marine Mammal Protection Act of 1972.

WA

III. FEDERAL LICENSES AND PERMITS (cont'd)

10. Bureau of Land Management

    a. Approvals for rights of way for oil and natural gas pipelines, and pumping plant sites.

    b. All federal land leases, with the exception of leases issued pursuant to the Outer Continental Shelf Lands Act.

    c. Approvals for OCS pipeline rights of way.

11. U.S. Geological Survey

    a. Plans for exploration, development and production of the OCS which describe in detail federal licenses and permits and which affect the coastal zone.

    b. Permits and licenses for mining on public lands.

12. U.S. Fish and Wildlife Service

    a. Permits for taking or importing sea otters, walruses, polar bears under the Marine Mammal Protection Act.

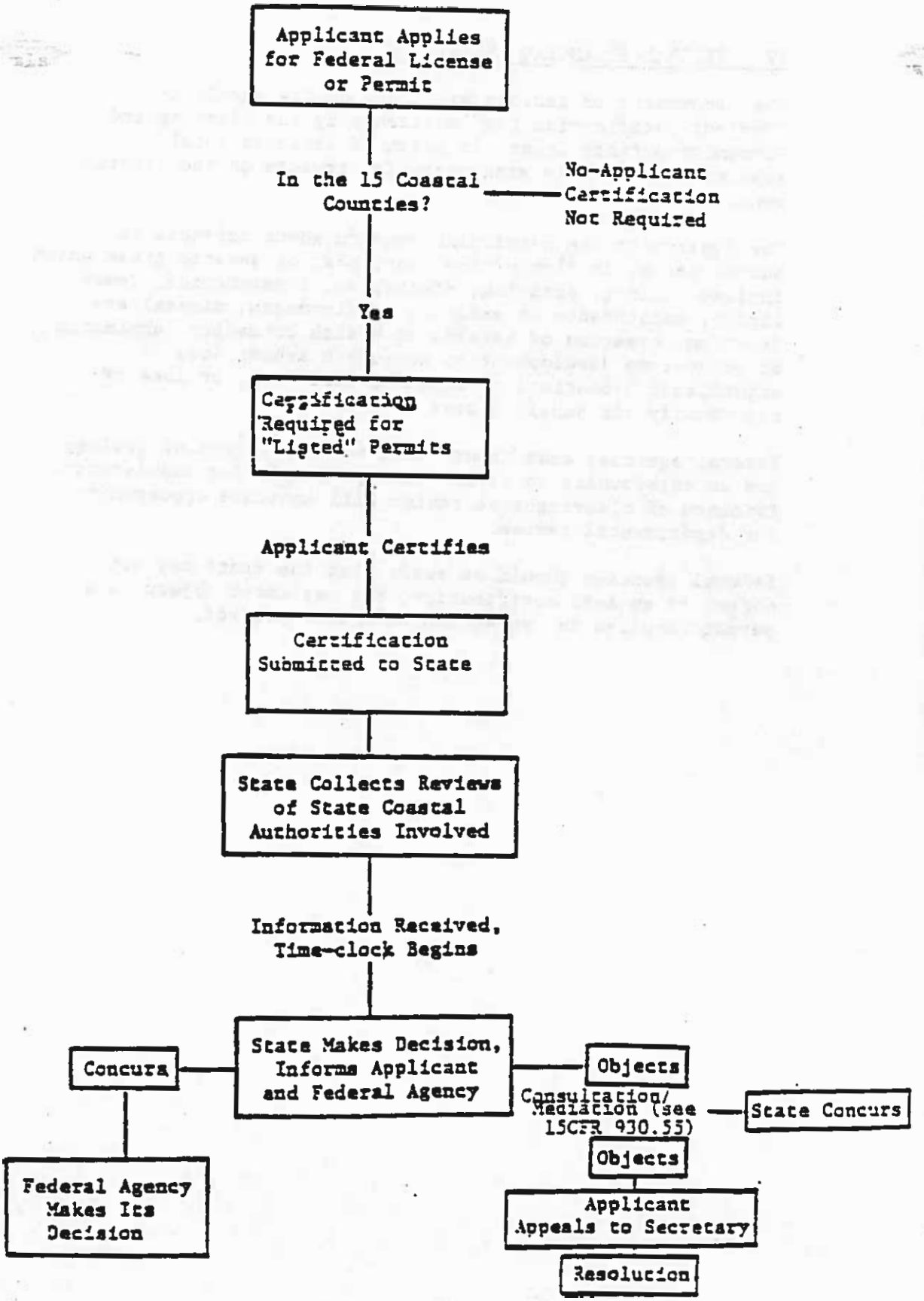
The notification and review process is described in the 307 regulations and OCZM's "Simplified Guidance..." paper.

In connection with these licenses and permits, the state will require applicant certification. (In some cases, the objective of state review can be accomplished without certification being routinely required. In these cases, alternative procedures may be set up by the Department of Ecology in cooperation with a federal agency and the state clearinghouse, the Office of Financial Management.)

The state will supply federal agencies with sheets giving guidance to applicants required to certify.

The procedure for handling federal licenses and permits is summarized in the following chart:

WA


Applicant Applies for Federal License or Permit
In the 15 Coastal Counties?
No-Applicant Certification Not Required
Yes
Certification Required for "Listed" Permits
Applicant Certifies
Certification Submitted to State
State Collects Reviews of State Coastal Authorities Involved
Information Received, Time-clock Begins
State Makes Decision, Informs Applicant and Federal Agency
Concurs
Objects
Consultation/ Mediation (see 15CFR 930.55)
State Concurs
Objects
Federal Agency Makes Its Decision
Applicant Appeals to Secretary
Resolution

WA

IV. FEDERAL FINANCIAL ASSISTANCE

The Department of Ecology will rely on the weekly A-95 "Project Notification Log" published by the Planning and Community Affairs Agency to learn of state or local government proposals with potential impacts on the coastal zone.

The department has particular concern about projects on shorelines or in floodplains, wetlands, or aquatic areas which include filling, dredging, discharges, construction, demolition, maintenance of existing developments, mineral extraction, creation of hazards to health or safety, expansion of urban-type development to non-urban areas, loss of significant biological or cultural resources, or loss of opportunity for public access or recreation.

Federal agencies must insure that the Department of Ecology has an opportunity to review such proposals for consistency. Evidence of clearinghouse review will indicate opportunity for departmental review.

Federal agencies should be aware that the state may not object to an A-95 notification, but may later object to a permit required in connection with that project.

VII. 20 Wisconsin

WISCONSIN

Army Corps of Engineers. Permits for excavation, fill and construction in navigable waters (33 USC 403-404)*; and permits for discharge of dredged or fill material in navigable waters (33 USC 1344)*.

Federal Energy Regulatory Commission. Licenses for nonfederal hydroelectric projects and associated transmission lines (16 USC 797(e); certificates for construction and operation of natural gas pipeline facilities, both interstate pipeline and terminal facilities (15 USC 717f(c)); permission for the abandonment of natural gas pipeline facilities (15 USC 717f(b)).

Department of Agriculture. Permits for water easements on Forest Service lands (43 USC 1716); and permission for construction of hotels, resorts, homes, stores and facilities on Forest Service lands (16 USC 497).

Department of the Interior. Permission for construction of visitor facilities on National Park Service land (16 USC 3); and rights-of-way for electrical transmission lines on National Park Service land (16 USC 5).

Interstate Commerce Commission. Permission for railroad and service abandonment (49 USC 1 (18-26))*.

Nuclear Regulatory Commission. Permits and licenses for the construction and operation of nuclear facilities (42 USC 5841(f))*.

Department of Transportation. Permit for construction and modification of bridges and causeways in navigable water (33 USC 401)*; and permit for airport construction*.

2. Content of the consistency certification

The applicant's consistency certification must contain the following statement: "The proposed activity complies with the policies of Wisconsin's approved Coastal Management Program and will be conducted in a manner consistent with such policies." The applicant must also provide supporting information. If the project requires a federal and state permit (i.e., those in 1 above with an asterisk), this includes documentation of application for the state permit. If the project requires a federal permit, but not a state permit (i.e., those in 1 above without an asterisk), the supporting information includes: a detailed description of the project; an assessment of the probable coastal zone effects; and findings indicating that the proposed project, its associated facilities, and their effects, are consistent with Wisconsin's approved coastal management policies. The supporting information should be sufficient in a majority of cases, but the CMS will require the applicant to furnish additional information, such as NEPA documentation, if necessary.

FEDERAL CONSISTENCY BULLETIN

Office of Ocean and Coastal Resource Management

Issue No. 1
January 1993

The Federal Consistency Bulletin is intended to keep states, federal agencies, and other interested parties abreast of current federal consistency issues. The federal consistency provisions, section 307, of the Coastal Zone Management Act of 1972, as amended (CZMA) require that activities performed by the federal government, that affect any land or water use or natural resource of a state's coastal zone, must be consistent, to the maximum extent practicable, with the enforceable policies of a state's federally approved coastal management program. Federally permitted and funded activities must be consistent with the enforceable policies of a state's coastal management program. The Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, administers the CZMA and federal consistency at the national level.

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The Federal Consistency Bulletin is published periodically by OCRM. Please send comments or questions or information to be included in future Bulletins to David W. Kaiser, Federal Consistency Coordinator, OCRM, 1825 Connecticut Ave., N.W., Washington, D.C. 20235. (202) 606-4181, FAX: (202) 606-4329

Significant State Issues

Lake Gaston Consistency Appeal -- Interstate Consistency Dealt a Setback

On December 3, 1992, the Secretary of Commerce terminated an appeal, in appellant's favor, by finding that section 307 of the CZMA did not require the appellant to submit a consistency certification and that the objection was improperly lodged because the state coastal management program lacked the authority to object to the appellant's project. The appeal was brought by the Virginia Electric and Power Company (VEPCO) to override North Carolina's objection to VEPCO's consistency certification for an application to amend its Federal Energy Regulatory Commission hydroelectric license. The amended license would allow the withdrawal of up to 60 million gallons of water per day from Lake Gaston. Lake Gaston, which is bisected by the North Carolina and Virginia border, is a dammed portion of the Roanoke River, which flows from Virginia into North Carolina's coastal zone. The water intake structures would be just over the border in Virginia. The water withdrawal would be made for the benefit of the City of Virginia Beach, Virginia. North Carolina objected to the water withdrawal because of downstream effects on important fisheries, wetlands, and the hydrology of the Roanoke River and Albemarle-Pamlico Sound, one of the largest estuaries in the country.

The Secretary, for this particular appeal, deferred to the legal opinion of the Department of Justice (Justice) that the CZMA does not authorize one state to object to a project located wholly within another state, regardless of the effects of that project on the coastal zone. In addition, the Secretary found that the proposed activity occurs wholly in another state (Virginia). This consistency appeal decision, and Justice's opinion, is contrary to previous NOAA General Counsel opinions on interstate consistency, see e.g. Hooker Opinion (May 2, 1989), and the view of OCRM that the CZMA, particularly as clarified in the Coastal Zone Act Reauthorization Amendments of 1990, authorizes states to review an activity that

affects the coastal zone, regardless of the activity's location. However, the decision in this case is consistent with previous views expressed by the Environment and Natural Resources Division of Justice.

For additional information from North Carolina contact Alan S. Hirsch, Special Deputy Attorney General, North Carolina Department of Justice, (919) 733-5725. To discuss broader policy implications contact David Kaiser, OCRM Federal Consistency Coordinator, (202) 606-4181.

Pennsylvania, the Corps, & Nationwide Permits

The Pennsylvania Department of Environmental Resources (DER), and the U.S. Army Corps of Engineers (Corps) have agreed to a settlement in Pennsylvania's legal challenges to the Corps' Clean Water Act section 404 nationwide permit (NWP) regulations. Pennsylvania had disagreed with the Corps' consistency determination for the NWP regulations, after the Corps treated proposed State NWP conditions as a denial of State water quality and CZMA consistency certification. Pennsylvania, on March 20, 1992, then brought suit against the Corps' promulgation of the final NWP regulations. Pennsylvania asserted that the Corps had no authority to treat the State conditions as a denial (precluding the use of regional conditions for NWPs issued in Pennsylvania), the Corps had exceeded its authority in determining what is a reasonable period of time for a state to review the NWPs, and the Corps regulations would impermissibly override State authority to review an individual application for a NWP, which the State had previously found to be inconsistent.

However, Pennsylvania and the Corps have agreed that the State has six months to review an applicant's CZMA consistency certification, as provided for in NOAA's federal consistency regulations. Further, the State may establish conditions for Pennsylvania's concurrence with an applicant's consistency certification. The consistency regulations provide for state objections and the suggestion of consistent alternatives. See 15 C.F.R. § 930.64(b). The Corps will include such conditions in any applicable permit authorization. If the Corps does not include the conditions, the Corps will consider the State's conditioned concurrence as an objection and will not authorize the activity unless the permittee chooses to comply voluntarily with all conditions in the conditioned concurrence or the State withdraws the conditions considered to have been objected to by the Corps. For additional information call M. Dukes Pepper, Jr., Office of Chief Counsel, PA DER, (717) 787-7060.

New York and GSA/ U.S. Marshals Service Land Disposal

The General Services Administration (GSA) is disposing of a parcel of land that was seized by the U.S. Marshals Service. The State of New York requested to review the land sale for consistency with the New York Coastal Management Program. GSA asserts that GSA's "broker" activities for the disposal of the land is exempted from CZMA consistency requirements by federal drug statutes, that acting as a "broker" is not a federal activity under 15 C.F.R. § 930.31(a), and that a consistency determination is unnecessary when selling federal surplus real property.

The 8+ acre parcel of land is along the Hudson River where the State has prepared a major Greenways plan. The State asserts that various land or water uses involving recreation, public access, and greenways, for which the state has enforceable policies, would be affected by the land sale. The State proposes that an easement be granted to the State for a passive public access trail along the river's edge, linking it with an existing park. After several discussions among the State, OCRM, and GSA, the State and OCRM informed GSA that based on all information provided this sale of federal property is an activity subject to the federal consistency provisions of the CZMA and its implementing regulations, and that the sale should not be finalized until the consistency requirements have been met.

OCRM informed GSA that first, there does not appear to be language in the federal drug statutes that would exempt the disposal of property forfeited to the U.S. Marshals Service under the federal drug statutes from the consistency requirements of the CZMA. Second, OCRM believes that GSA is acting within its statutory responsibilities to dispose of federally owned land and is performing a federal activity in the exercise of its own statutory responsibilities, or on behalf of the U.S. Attorney General. In either case, the activity is subject to federal consistency. Third, the relevant issue is not whether the U.S. Marshals Service or GSA is imposing any land use requirements along with the disposal of land, but whether the liquidation itself affects any land or water use or natural resource of New York's coastal zone, such as public access uses, which are covered by enforceable policies of the New York Coastal Management Program. Finally, the State of New York has, since the approval of its CMP by the Secretary of Commerce in 1982, listed GSA disposition of Federal surplus lands and structures as an activity likely to affect the coastal zone which requires a consistency determination.

However, GSA was still not convinced that it should comply with the federal consistency provisions of the CZMA. Therefore, the State prepared to file for a temporary restraining order and permanent injunction against the sale of the property, but the U.S. Attorney's Office for the Northern District of New York expressed an interest in working the issue out. At this time, the U.S. Department of Justice still maintains that a consistency determination is not required in this instance because the sale of property is "environmentally neutral." The State has contacted the property owner directly and is attempting to negotiate an easement. OCRM is preparing a response to GSA's latest letter to New York on the applicability of consistency to certain federal land acquisitions and disposals.

For additional information call Bill Barton, N.Y. Dept. of State, (518) 474-3643, or Bryan Cullen, (518) 474-6740.

Hawaii, American Samoa, and Guam and Japanese Plutonium Shipments

Beginning in November 1992, Japan began shipping plutonium to Japan from Europe through the Pacific Ocean (the plutonium is fuel from U.S. reactors that has been processed in France for further use). Japan will use the plutonium in an experimental "breeder" reactor, a new type of nuclear power plant that produces additional plutonium while generating power. Because the plutonium originated in the United States, a plutonium transportation plan was approved by the U.S. Department of State (DOS), under the Implementing Agreement of the Agreement for Cooperation between the United States and Japan Concerning Peaceful Uses of Nuclear Energy. In June, 1992, Hawaii, American Samoa, and Guam requested that DOS provide the states with a consistency determination for DOS activities related to the transportation plan and the shipment. The states maintained that U.S. involvement is a federal activity under the CZMA section 307(c)(1). The states are concerned that adequate safeguards are not in place to protect the coastal and ocean environment.

DOS requested OCRM review of DOS's response to the states' request for a consistency determination. OCRM confirmed that Japan is responsible for the plutonium shipment, Japan is responsible for establishing and executing the transportation plan, and that the shipment and plan are not being undertaken by or on behalf of the United States. Therefore, OCRM concurred with DOS that DOS involvement was not a direct federal activity under CZMA section 307(c)(1). OCRM also found that DOS's approval of the transportation plan was a federally licensed or permitted activity. However, because of the governmental character of Japan's actions in this case, Japan is not an entity "existing under the laws of any state," and is therefore not an applicant for such approval pursuant to 15 C.F.R. § 930.52. OCRM also advised DOS to work with the State and territories to resolve the coastal programs' substantive concerns.

Following the DOS response that a consistency determination was not required, Hawaii requested Secretarial mediation on the applicability of consistency. However, NOAA informed Hawaii that, in this case, Secretarial mediation is unavailable because the DOS decision regarding the applicability of the CZMA consistency provisions was largely the result of OCRM's determination that the DOS involvement is not reviewable under consistency (thus, as to the applicability of consistency there was nothing to mediate). NOAA did offer to facilitate informal discussions on Hawaii's substantive concerns with the plutonium shipments.

Hawaii also requested that the Nuclear Regulatory Commission (NRC) and the U.S. Coast Guard submit consistency determinations for possible actions related to the plutonium shipment. The NRC replied that there were no proposed NRC activities or approvals related to Japan's plutonium shipment. (Further, if an NRC approval was necessary, Japan would not be considered an applicant, in this case, under 15 C.F.R. § 930.52.)

Hawaii was also concerned with Coast Guard responsibilities related to its "force majeure" emergency actions ("force majeure" refers to accidents caused outside of human control and which could not be avoided by the exercise of due care, i.e., "acts of God"). The Coast Guard requested OCRM assistance on the applicability of federal consistency to its emergency actions. OCRM informed the Coast Guard that the CZMA and NOAA regulations do not specifically address emergency actions such as "force majeure," but that consistency did apply, and that any Coast Guard actions should be consistent to the maximum extent practicable. OCRM suggested that the Coast Guard's response to Hawaii discuss the following:

1. A consistency determination is not required at this time because there is no proposed activity (if true) by the Coast Guard related to the entry of Japan's plutonium carrier into Hawaiian waters.

2. If an emergency does arise and the vessel requests entry into U.S. or Hawaiian waters, then any direct action taken by the Coast Guard under "force majeure" that affects any land or water use or natural resource of the coastal zone must be consistent to the maximum extent practicable with enforceable policies of Hawaii's coastal management program, in accordance with 15 C.F.R. § 930.32(b) (a federal agency may deviate from full consistency with an approved management program when such deviation is justified because unforeseen circumstances arising after program approval which present the federal agency with a substantial obstacle that prevents complete adherence to the state's program).

3. A description of Coast Guard procedures in a "force majeure" emergency action under the Port and Waterways Safety Act.

4. The Coast Guard should request from the State a description of the specific effects to the coastal zone that the State is concerned about and the enforceable policies that the State believes are applicable to this situation.

5. Inviting the State to work with the Coast Guard in developing possible contingency plans.

However, OCRM's suggestions were not followed and the Coast Guard merely informed Hawaii that "force majeure" entry of a foreign flag vessel into United States waters is not a federal activity within the scope of the CZMA. For additional information contact Doug Tom, Hawaii Office of State Planning, (808) 587-2875.

Louisiana and Consistency User Fees

On September 9, 1992, the State of Louisiana submitted to OCRM a draft request to incorporate Act 1075 into the Louisiana Coastal Resources Program (LCRP) as a routine program implementation (RPI). The Act was passed during the 1992 legislative session and requires that fees be charged for the processing of consistency determinations and certifications.

After careful review, OCRM advised the State that, in OCRM's opinion, the fee established by the Act constitutes an impermissible tax/assessment on federal agencies and would not be approved by OCRM in its present form. Specifically, certain State and federal entities were exempt from paying the fee. OCRM's finding is based on the holdings of several recent federal cases that set forth principles for determining when a fee constitutes an impermissible tax. See section under OCRM Policy Decisions, Guidance, and Projects in this Bulletin for more information on charging user fees to federal agencies.

The State and OCRM have identified and discussed the potential legal problems with incorporating Act 1075 into the LCRP, but have yet to resolve these issues. The Louisiana legislature directed the Coastal Management Division to begin collecting the consistency fees on October 1, 1992. Each federal agency must make its own determination as to whether the fee is an allowable expense. For additional information contact Terry Howey, Louisiana Coastal Management Program, (504) 342-7591.

California and the Transportation Corridor Agencies

The Transportation Corridor Agencies (TCA), a consortium of local governments, proposed to build several new public toll roads in Orange County, California. One of the proposed toll roads, the San Joaquin Hills project, is located both within and outside of California's coastal zone.

The major issues raised by this project were the applicability of federal consistency to projects outside of the coastal zone and the applicability of the geographic scope requirements found at 15 C.F.R. § 930.53. Both issues were raised in terms of section 404 permits required by the project. Section 404 permits are included in California's list of federal permits and licenses required by 15 C.F.R. § 930.53(a). The listing does not include a general description of the geographic area outside of the coastal zone where the state would review section 404 permits as required by 15 C.F.R. § 930.53(b).

In January 1992, California Coastal Commission (CCC) staff notified TCA and OCRM that they had determined that the portions of the project outside of the coastal zone that required a section 404 permit would affect the coastal zone. CCC staff was particularly concerned with impacts to riparian habitat and the habitat of several threatened or endangered species.

TCA argued that federal consistency did not apply to those portions of the project outside of the coastal zone because of language in the California Coastal Act, and because of the geographic scope requirements found at 15 C.F.R. § 930.53(b).

Both the Corps and TCA requested OCRM's opinion on the federal consistency requirements for the project. OCRM reiterated its position that the applicability of federal consistency is based on effects, not location. Furthermore, OCRM stated that interpretation of state statutes is more appropriately left to the states. Finally, OCRM found that while California had not specifically identified the geographic area, it had met the intent of 15 C.F.R. § 930.53(b) by providing actual notice to the applicant that their activities outside the coastal zone would likely affect the coastal zone. See section on OCRM Policy Decisions, Guidance, and Projects in this Bulletin for further information on the geographic scope issue.

Following its review of the project, the CCC voted to concur with the applicant's certification that the project was consistent with the California Coastal Management Program. For additional information contact Mark Delaplaine, Federal Consistency Supervisor, CCC, (415) 904-5200.

Massachusetts, EPA and Ocean Dump Site Designation

Three recent major projects, one in federal waters outside the state's "three mile" limit, a second in the territorial waters of another state, and the third on land proposed for acquisition and development by a federal agency that would otherwise have proceeded without any Massachusetts environmental review, have undergone the federal consistency review process. Through the consistency process and early consultation with relevant federal agencies and other parties, the State was able to concur with all three projects and agree with the federal agencies on significant project improvements.

The first is the review of the Massachusetts Bay Disposal Site (MBDS), twenty-two nautical miles off Boston and southeast of the new Stellwagen Bank National Marine Sanctuary.

The Ocean Dumping Act of 1972 requires that the U.S. Environmental Protection Agency (EPA) formally designate federally-operated marine disposal sites. The MBDS, formerly known as the Foul Area Disposal Site, has been used for disposal of dredged materials for several decades and received an interim designation until the completion and acceptance of the Environmental Impact Statement (EIS). After several years of study by the U.S. Army Corps of Engineers (Corps) and EPA, a Draft EIS was released in September 1989, a Supplemental EIS in July 1990, and a Final EIS in July 1992.

The Massachusetts Coastal Zone Management Program (MCZMP) worked closely with EPA during the preparation of the EIS and concurred that the list of criteria for site designation was appropriate. The site has been used for disposal of low-level radioactive wastes (discontinued in late 1972), and disposal of contaminated dredged materials. However, recent permits have not permitted projects to dispose of contaminated sediments at the MBDS (e.g., the Third Harbor Tunnel sediments which have been disposed at upland sites).

The site is relatively deep, about 300 feet, which would probably be too deep for adequate and risk-free capping (capping entails depositing contaminated sediments and then covering them with a layer of clean material which isolates the contaminants from the marine environment).

Although the FEIS did not support "managing" disposal of contaminated sediments at the site by capping, it would have allowed this possibility if the technology were to be proven feasible. The MCZMP disagreed, noting that capping has not been adequately demonstrated as feasible at 300 feet (although some use of this technique has been made in much shallower areas, e.g., 150 feet, in Long Island Sound).

The MCZMP negotiated a written agreement with EPA requiring that only clean materials would be deposited at the MBDS. EPA has consented to preparing a record of decision that states that the designation allows only marine dredged materials deemed clean by toxicological testing.

The MCZMP has also stressed that this federal consistency approval is only for the site selection and stipulates the deposition of only clean material. Any and all uses of the site will also be subject to individual federal consistency review, which should assure that only clean material is being deposited there. For additional information contact Steve Bliven, Assistant Director, MCZMP (617) 727-9530 (ext. 420).

Massachusetts, New Hampshire and Interstate Consistency

The second important review involved a project wholly within another state, but potentially affecting Massachusetts' coastal resources and uses. In September 1992, the MCZMP concurred with a federal consistency certification for the proposed Seabrook, New Hampshire wastewater treatment facility, ending a two year effort to secure the right to review a project in an adjacent state. (This issue was settled prior to the Lake Gaston decision regarding interstate consistency. See first article in this Bulletin.)

The facility's discharge pipe will run through the town's heavily developed barrier beach and discharge approximately 2,100 feet offshore in 30 feet of water (low tide). All construction activities will occur on the New Hampshire side of the line, with the pipe discharging approximately 1,000 feet north of the border. Prevailing currents flow southeast towards the Massachusetts town of Salisbury and the popular Salisbury Beach recreation area.

The MCZMP raised the issue of Massachusetts' right to undertake a federal consistency review before any permits from the Corps or EPA were granted. The State argued that, as direct abutter, Salisbury, MA citizens' concerns on potential effects of the discharge on water quality, recreation, and property values should be addressed.

The Town of Seabrook and the Corps objected to a Massachusetts review. However, EPA supported the MCZMP's efforts and informed Seabrook officials that no discharge permit would be issued for the outfall without concurrence from the Massachusetts coastal program. With OCRM's backing, the MCZMP moved forward with the review and the Corps agreed to delay issuing its authorizations until after a decision was made on issuance of an EPA discharge.

In reviewing the project, the MCZMP determined it had no jurisdiction on the facility siting and construction (even though the proposed location in a productive saltmarsh area raised serious concerns), but did have authority to address potential water quality impacts. The focal point for the review became definition of the mandatory closure line for shellfish harvesting to be drawn around the point of discharge. The MCZMP contended that any permanent closing of shellfishing grounds in Commonwealth waters would result in a denial of consistency.

With significant cooperation from EPA staff, two matters were resolved that made it possible for the MCZMP to issue a finding of consistency for the project: 1) consensus was reached on a closure line around the outfall incorporating only shellfish beds in New Hampshire waters: and 2) the Town of Seabrook was required to put into place an expanded regime of outfall monitoring and an elaborate notification system for alerting Salisbury officials and residents if failure occurs in any aspect of plant operation such that shellfish harvesting or swimmers would be temporarily at risk.

EPA has committed to the MCZMP that if monitoring indicated that the closure zone needs to be extended into Massachusetts waters, they will reopen the permit and require relocation of the outfall. For additional information contact Steve Bliven, Assistant Director, MCZMP (617) 727-9530 (ext. 420).

Massachusetts and GSA Land Acquisition

The third Massachusetts consistency review involved concurrence with a project on federally owned land. At the end of November 1992, just days before the expiration of a Purchase and Sale Agreement signed a year and a half earlier, the federal General Services Administration (GSA) acquired a 4.56 acre portion of the prized Fan Pier site on Boston's waterfront, for the purpose of developing a new Federal

Courthouse. Clearing the way for this federal action was a decision by the MCZMP, on November 23, 1992 to concur with a determination by GSA that both the proposed acquisition and development of the land were consistent with the enforceable policies of the MCZMP. Such consolidation of consistency determinations made sense in this case because it involved the preparation of an Environmental Impact Statement (EIS) for the project site plan and building design and then evaluated the extent of conformance with relevant state and local standards for waterfront development, especially those embodied in the tidelands licensing regulations under the state's Public Waterfront Act.

In terms of promoting federal accountability to state coastal management plans, this "one-stop" approach is clearly desirable in that it allows all potential effects of the project to be identified before the federal government invests substantial funds. It also allowed GSA to adhere to a relatively tight schedule in two important ways. First, it averted a time-consuming legal clash that would have ensued if GSA had refused to make a determination of consistency on the land transfer per se, which both MCZMP and OCRM regulations identify as a separate action that must undergo consistency review. Second, it avoided the potential for unnecessary delay and duplication of effort which can occur when related reviews take place in sequence rather than simultaneously.

Ensuring the MCZMP's desire to maximize adherence to the progressive and newly-codified principles of the tidelands program, while not jeopardizing accommodation of a major civic institution of the kind that can establish an urban waterfront as a truly special public place, the State and GSA agreed that the formal description of the proposed project would be revised, incorporating a specific set of "enhancement parameters" as the framework for subsequent planning work on the project's public spaces and water-dependent uses. To oversee the application of this framework, moreover, the agreement established a special Task Force with representation of a full range of constituencies, to be co-chaired by the Secretary of the State Executive Office of Environment Affairs (of which the MCZM Office is a part) and by the chair of a community advisory group. The Task Force also is charged with developing funding strategies as may be needed to implement recommended project improvements that cannot be paid for under the present Congressional budget for the project. Finally, recognizing that professional support will be critical to the success of this advisory effort, the agreement provides the Task Force with reasonable access to the planning and design resources that GSA has dedicated to the Courthouse development. For additional information contact Steve Bliven, MCZMP (617) 727-9530 (ext. 420).

OCRM Coordination with Other Federal Agencies

In addition to the interaction with other federal agencies involving specific state issues noted above, OCRM recently met with the Department of the Interior's Minerals Management Service (MMS) and the U.S. Coast Guard to discuss federal consistency.

Minerals Management Service

On November 19, 1992 OCRM and NOAA General Counsel for Ocean Services met with representatives from MMS's Office of Program Development and Coordination, and Solicitor-Offshore Minerals. MMS requested the meeting to discuss MMS concerns with: (1) states treating MMS' outer continental shelf lease sales as federally permitted activities (MMS as an "applicant") under CZMA section 307(c)(3)(A) instead of as direct federal activities under CZMA section 307(c)(1), (2) state comments submitted after the 60 day review period allowed under the regulations, (3) states issuing "conditional concurrences" to MMS consistency determinations, and (4) states imposing processing fees for consistency determination reviews.

OCRM informed MMS that as long as a state's consistency review, public notification, and/or appeal procedure complies with NOAA's consistency regulations applicable to direct federal activities, then the state may use its permit procedures. See the section on Policy Decisions, Guidance, and Projects for further information on the state permit requirement issue. MMS and the State of Alaska, under the section 309 enhancement grant program, are developing a memorandum of understanding (MOU) to clarify consultation procedures between the State and MMS on outer continental shelf (OCS) lease sales and review of OCS lease sale consistency determinations. The MOU, in the spirit of the federal consistency regulations, will emphasize early consultation, before a consistency determination is submitted to the State.

As to "draft" consistency findings by a state or state comments received after the consistency review period, OCRM affirmed that a federal agency is not required to address or adhere to state comments on, or a state's disagreement with, a consistency determination received after the appropriate review period. States must agree or disagree with a federal agency's consistency determination within 45 days or agreement is presumed. The federal agency must grant one 15-day extension if the state requests the extension during the 45-day review period. Further extensions may be requested by the state, but are at the discretion of the federal agency. Moreover, states and MMS should consult early in the lease sale process in order to avoid last minute consistency objections to the lease sales. Where state concerns are raised during the 45-day consistency review period, to avoid receiving a state objection at the end of

the review period, MMS should consider granting further extensions.

Further, states must either agree or disagree with a federal agency's consistency determination. A state may issue a concurrence which includes agreements worked out with the federal agency which allows the state to concur. A state can, however, disagree with a consistency determination, but then note alternatives that would allow agreement. In fact, OCRM regulations require states to do so when they find an activity inconsistent. The state should also describe how an activity is inconsistent with the enforceable policies of its coastal management program. MMS suggests that the best time for the states to provide substantive comments and offer conditions is during the Outer Continental Shelf Lands Act section 19, Governor's comment, stage. However, where a state does not consult with MMS early in the OCS lease sale process, OCRM encouraged MMS to take the initiative to consult with the state, ask what the state's concerns are, what are the expected impacts to coastal resources, and request that the state supply MMS with the state's enforceable coastal management policies that are relevant to the activity under review.

The final issue discussed was state processing or user fees, for review of consistency determinations. OCRM believes that the federal agency assessed a state fee must decide whether or not it is authorized to pay a processing fee for state consistency reviews. See "User Fees" discussed below under OCRM Policy Decisions, Guidance, and Projects.

U.S. Coast Guard

Several NOAA staff (from OCRM and General Counsel for Ocean Services) met with representatives from the U.S. Coast Guard (Coast Guard) on November 5, 1992. The Coast Guard requested the meeting to learn more about federal consistency. In addition to general questions about consistency, the Coast Guard asked about their responsibilities to comply with state coastal management programs regarding activities such as granting licenses to merchant mariners, siting foghorns, and cleaning up oil spills. With regard to licenses to merchant mariners, NOAA indicated that coastal programs must have this license listed in their approved programs or request permission to review an unlisted activity before the Coast Guard is required to comply. NOAA also emphasized the importance of early coordination with state coastal management programs to minimize problems later in the decision-making stage.

OCRM plans to meet with many other federal agencies on a proactive basis. As OCRM completes its compilation of federal agency contacts, we will set up additional meetings.

OCRM Policy Decisions, Guidance, and Projects

State Permit Requirements for Federal Agencies

OCRM clarified its position on the requirement for federal agencies to obtain state permits for federal activities affecting the coastal zone as part of a federal agency's determination of consistency with the coastal management program of an affected state as required by the CZMA. See memorandum from Trudy Coxe, Director, OCRM, to State Coastal Program Managers, Federal Agencies, and Interested Parties (Oct. 8, 1992). OCRM made two general policy statements:

1. Federal agencies are required to obtain state permits and to include state permit applications in federal consistency determinations when (1) state permits for certain activities are required by other federal law; (2) the federal activity, whether within or outside the coastal zone, can be reasonably expected to affect any land or water use or natural resource of the coastal zone; and (3) the permit is a federally approved enforceable component of the state's coastal management program (CMP).

2. Even if a federal agency is not required to obtain a state permit under federal law, the federal agency conducting an activity that affects any land or water use or natural resource of the coastal zone must still be consistent to the maximum extent practicable with the state's enforceable policies. For permit requirements in state CMPs that are not required of federal agencies by other federal law, the federal agency may submit the necessary information in any manner it chooses so long as the requirements of 15 C.F.R. Part 930, Subpart C (federal consistency regulations for direct federal activities) are satisfied.

Charging User Fees for Federal Agency Consistency Determinations

Recently states have proposed to assess or have assessed federal agencies user, or processing fees for the state's review of a federal agency's consistency determination. OCRM was asked for its determination as to whether such fees are allowable. While OCRM may provide its views in a particular case, the assessed federal agency is in the best position to interpret its laws and regulations as to whether a particular fee is an allowable expense. As such, OCRM strongly recommends that for states assessing a processing fee, if a federal agency has submitted a consistency determination in accordance with NOAA regulations, but has not paid the fee, that a state initiate its review of the consistency determination when received and complete its review within the 45-day review period. Otherwise the state risks waiving its right to object to the activity under federal consistency.

OCRM will examine a state's processing fee scheme if submitted to OCRM for incorporation into the state's coastal management program. OCRM will examine whether the fee is non-discriminatory (the fee must apply to all similar private and government agency activities alike or it will be viewed as an impermissible tax). The fee must be a fair approximation of the costs of the benefits the federal agency receives from the state agency. Finally, the revenues produced by the fees must not exceed the total cost to the state of the benefits to be supplied. Of course Congress, by statute, can waive the government's immunity and require federal agencies to pay certain fees.

Review of Activities Outside the Coastal Zone: Unlisted Activities and Geographic Scope

The CZMA expressly provides for state consistency review of federal activities in or outside of the coastal zone, affecting any land or water use or natural resource of a state's coastal zone. The regulations implementing CZMA § 307(c)(3)(A) establish procedures for routine state review of classes of activities listed in a state's coastal management plan, as well as for state review of individual activities not covered by the scope of a listing. See 15 C.F.R. §§ 930.53 and 930.54. If a state chooses to routinely review federally licensed and permitted activities occurring outside of the coastal zone but likely to affect the coastal zone, it must generally describe the geographic location of such activities. 15 C.F.R. § 930.53(b). In addition, a state may review activities not covered by the scope of a listing if such activities can be reasonably expected to affect the state's coastal zone. 15 C.F.R. § 930.54(c)(unlisted activities). The regulations do not, however, expressly indicate how a state may review listed activities occurring outside of the coastal zone for which a state has not generally described the geographic scope of review.

The most effective way for a state to review listed activities outside the coastal zone is to describe the geographic scope of a state's review. OCRM strongly encourages states to modify their programs to include a description of the geographic location for listed activities to be routinely reviewed for consistency outside of the coastal zone.

However, in order to facilitate state review of listed activities occurring outside of the coastal zone absent a geographic scope description, OCRM is providing the following clarification of the review procedure a state should follow. In the past, OCRM has allowed states to review such activities subject to two alternative requirements. First, states have reviewed such activities upon fulfillment of certain notice requirements. Second, states have reviewed such activities upon fulfillment of the conditions for review of unlisted activities. It is OCRM's view that this second method of state consistency review of such activities is preferred because it ensures that the activity at issue is likely to affect the state's coastal zone. OCRM therefore advises states, in reviewing listed activities outside of the coastal zone absent a geographic scope description, to follow the unlisted review procedure for such activities. See 15 C.F.R. § 930.54.

Federal Consistency Manual

Preliminary work continues on the Federal Consistency Manual (a revised version of the old "Consistency in a Nutshell"). The Manual will explain existing regulations in light of the Coastal Zone Act Reauthorization Amendments of 1990, as well as clarify OCRM's interpretation of the consistency regulations. The Manual should clarify many issues and will be used for consistency technical assistance training for the states and the federal agencies. OCRM will solicit comments once we complete a draft document.

Federal Agency Contact List

OCRM is developing a master list of federal agency addresses to ensure that states and OCRM have the correct contact of relevant federal agencies, both headquarters and regional offices, for program change and consistency purposes. To help us in this effort it would be useful for state coastal management programs to send OCRM their current federal agency contact/mailing list.

Until this list is completed, states should check their lists to make sure that the list includes the regional office of all "relevant" federal agencies noted in 15 C.F.R. § 923.2(d)(2). These agencies are the Departments (and appropriate components thereof) of Agriculture; Commerce; Defense; Energy; Health, Education, and Welfare; Housing and Urban Development; Interior; Transportation; and the Environmental Protection Agency; Federal Energy Regulatory Commission; General Services Administration; and the Nuclear Regulatory Commission. The mailing lists should also include the Interstate Commerce Commission and the Federal Emergency Management Agency. Finally, when states are amending their list of licenses and permits subject to consistency review, they should also notify the head of the affected federal agency. See memorandum from James P. Burgess, Chief, Coastal Programs Division, to State Coastal Program Managers (Nov. 18, 1991).

Secretarial Appeal Decisions

1992 and 1993 CZMA Consistency Appeal Decisions to Date

Under CZMA § 307(c)(3), a state's consistency objection precludes a federal agency from issuing a permit for an activity at issue unless, upon appeal by the appellant, the Secretary of Commerce finds that the activity is either consistent with the objectives of the CZMA (Ground I) or necessary in the interest

of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must override the state's objection. In 1992 and 1993, the Secretary has issued the following consistency appeal decisions to date.

Florida - Appeal of Chevron, (Chevron Destin Dome Decision), January 8, 1993.

Chevron U.S.A., Inc. and others acquired an interest in Destin Dome Block 97 in 1985 as a result of a successful bid in Outer Continental Shelf (OCS) Lease Sale 94. Chevron is the operator of the lease, which is located about 29 miles from Perdido Key, Florida. In November of 1990, Chevron submitted a Plan of Exploration (POE) for Block 97 to the Minerals Management Service of the Department of the Interior. Chevron proposes to drill an exploratory well to assess natural gas reserves, using water-based drilling fluids. The State of Florida objected to Chevron's POE to conduct drilling activities on Destin Dome Block 97, citing in its objection, among other things, the state's coastal management plan (CMP) policies protecting and preserving potentially affected coastal resources. On appeal, the Secretary of Commerce found that the Appellant's proposed project satisfied all four elements of 15 C.F.R. § 930.121 and was therefore consistent with the objectives or purposes of the CZMA. Although inconsistent with the state's CMP, Chevron's proposed exploration may be permitted by federal agencies.

Florida - Appeal of Mobil, (Mobil Pulley Ridge Decision), January 7, 1993.

Mobil Exploration & Producing U.S. Inc. is the operator of Pulley Ridge Block 799, acquired in Outer Continental Shelf (OCS) Lease Sale 79, and located about 59 miles northwest of the Dry Tortugas islands, 75 miles from the nearest Florida mainland (near Cape Romano), and 120 miles west-northwest of Key West, Florida. In May of 1988, Mobil submitted a Plan of Exploration (POE) for Block 799 to the Minerals Management Service of the Department of the Interior. Mobil proposes to drill four exploratory wells to assess the hydrocarbon potential of the lease block. The State of Florida objected to Mobil's POE to conduct drilling activities on Pulley Ridge Block 799, citing in its objection, among other things, the state's coastal management plan (CMP) policies protecting and preserving potentially affected coastal habitats and resources. Florida also stated that Mobil failed to provide sufficient information and analyses to demonstrate that all of its proposed activities, associated facilities and effects are consistent with the provisions of the state's coastal management plan. On appeal, the Secretary of Commerce found that Mobil failed to satisfy Ground I in that the proposed POE's adverse effects on the coastal zone outweigh its national interest benefits. The Secretary also found that there will be no significant impairment to a national defense or other national security interest if Mobil's project is not allowed to go forward as proposed. Because Mobil's proposed project did not meet the requirements of either Ground I or Ground II, the Secretary declined to override the state's objection.

Florida - Appeal of Unocal, (Unocal Pulley Ridge Decision), January 7, 1993.

Union Exploration Partners, LTD., with Texaco Inc., acquired an interest in Pulley Ridge Blocks 629 and 630 as a result of a successful bid in Outer Continental Shelf (OCS) Lease Sale 79. The lease blocks are located about 170 miles south west of Tampa Bay, 135 miles southwest of Fort Myers, and about 44 miles northwest of the Dry Tortugas, Florida. In February of 1988, Union submitted a Plan of Exploration (POE) for Blocks 629 and 630 to the Minerals Management Service of the Department of the Interior. Union proposes to drill up to three exploratory wells to assess the hydrocarbon potential of the two lease blocks. The State of Florida objected to Union's POE to conduct drilling activities on Pulley Ridge Blocks 629 and 630, citing in its objection, among other things, the state's coastal management plan (CMP) policies protecting and preserving potentially affected coastal habitats and resources. On appeal, the Secretary of Commerce found that Union failed to satisfy Ground I in that the proposed POE's adverse effects on the coastal zone outweigh its national interest benefits. The Secretary also found that there will be no significant impairment to a national defense or other national security interest if Union's project is not allowed to go forward as proposed. Because Union's proposed project did not meet the requirements of either Ground I or Ground II, the Secretary declined to override the state's objection.

South Carolina - Appeal of Henry Crosby, (Crosby Decision), December 29, 1992.

In February of 1989, Mr. Henry Crosby (Appellant) applied to the U.S. Army Corps of Engineers for a permit to place fill material in a wetland for the purpose of constructing an impoundment and installing a water control structure. The South Carolina Coastal Council objected to the Appellant's proposed project on the ground that it is inconsistent with the state's coastal management plan (CMP) policies providing for the protection of wildlife and fisheries resources from significant negative impacts and for the protection of freshwater wetlands from significant permanent alteration. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(b). The proposed project would permanently alter wetlands, thus causing loss of normal functions and values, while contributing minimally to the national interest. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

New York - Appeal of Robert E. Harris, (Harris Decision), December 2, 1992.

In January of 1990, Robert Harris (Appellant) applied to the U.S. Army Corps of Engineers for a permit to construct a dock, including a floating pier with 18 slips, extending into the

Hudson River in Rensselaer, New York. The New York State Department of State objected to the Appellant's proposed project on the ground that it is inconsistent with, among other things, the state's CMP policies of facilitating the siting of water dependent uses and facilities on or adjacent to coastal waters, and CMP policies on activities in historic areas. In its objection letter, the state identified an alternative of constructing a small dock with eight slips. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(d) in that the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

South Carolina - Appeal of A. Elwood Chestnut, (Chestnut Decision), November 4, 1992.

Mr. A. Elwood Chestnut (Appellant) owns farmland and adjacent freshwater wetlands near the town of Longs, Horry County, South Carolina. The Appellant applied to the U.S. Army Corps of Engineers for a permit to fill 0.7 acres of his wetland property and to impound another eight acres of his wetland property in order to create a livestock watering and irrigation pond. The South Carolina Coastal Council objected to the Appellant's proposed project on the ground that it is inconsistent with the state's coastal management plan (CMP) policies providing for the protection of wildlife and fisheries resources from significant negative impacts and for the protection of freshwater wetlands from significant permanent alteration. In its objection letter, the state identified an alternative of constructing a pond on the Appellant's upland property. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(d) in that the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

New York - Appeal of Claire Pappas, (Pappas Decision), October 26, 1992.

In June of 1989, Claire Pappas (Appellant) applied to the U.S. Army Corps of Engineers for a permit to construct a wood deck structure for dining over a canal as an addition to her seafood restaurant in Hemstead, New York. The New York State Department of State objected to the Appellant's proposed project on the ground that it is inconsistent with the state's CMP policies of facilitating the siting of water dependent uses and facilities on or adjacent to coastal waters. In its objection letter, the state identified alternatives of relocating the proposed deck to an upland area, making more efficient use of existing restaurant floor space, or adding space onto the existing restaurant structure. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(d) in that the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

North Carolina - Appeal of Roger W. Fuller, (Fuller Decision), October 2, 1992.

Roger W. Fuller (Appellant) owns an unimproved lot bordering one of the Boiling Spring Lakes, in Brunswick County, North Carolina. Historically, the lot has been subject to erosion and flooding. In March of 1989, the Appellant applied to the U.S. Army Corps of Engineers for a permit to dredge submerged fill adjacent to the property and fill a section of the property bordering the lake. The North Carolina Department of Natural Resources and Community Development objected to the Appellant's proposed project on the ground that it is inconsistent with the state's CMP policies of protecting areas classified as conservation areas and discouraging projects which require the filling or significant permanent alteration of productive freshwater marsh. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(b). The proposed project would eliminate emergent wetlands and associated wildlife habitat, while contributing minimally to the national interest. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

South Carolina - Appeal of Yeamans Hall Club, (Yeamans Hall Decision), August 1, 1992.

In May of 1990, Yeamans Hall Club (Appellant) applied to the U.S. Army Corps of Engineers for a permit to place 5,200 cubic yards of fill into 0.23 acres of freshwater wetlands to create a dam across a small stream for the purpose of creating a six-acre pond on the Appellant's property in Hanihan, South Carolina. The construction of the dam would result in the flooding of an additional 2.5 acres of freshwater wetlands. The South Carolina Coastal Council objected to the Appellant's proposed project on the ground that it is inconsistent with the state's CMP policies of discouraging projects which require the filling or significant permanent alteration of productive freshwater marsh. In its objection letter, the state identified an alternative of constructing a lake on the Appellant's upland property. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(d) in that the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

South Carolina - Appeal of Davis Heniford, (Heniford Decision), May 21, 1992.

Davis Heniford (Appellant) applied to the U.S. Army Corps of Engineers for a permit to place about 7,000 cubic yards of fill into 2.5 acres of freshwater wetlands to construct a Food Lion

grocery store, strip mall and adjacent parking lot, located in the town of Loris, Horry County, South Carolina. The South Carolina Coastal Council objected to the Appellant's proposed project on the ground that it is inconsistent with the state's CMP policies of discouraging such projects when there are other feasible alternatives. In its objection letter, the state identified an alternative of using the available uplands on the Appellant's property. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121(b) and (d). The proposed project would eliminate wetlands and associated wildlife habitat, while contributing minimally to the national interest. Furthermore, the state had identified a reasonable, available alternative that would be consistent with the state's CMP. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override the state's objection.

Puerto Rico - Appeal of the Asociación de Propietarios de Los Indios, (Los Indios Decision), February 19, 1992.

The Asociación de Propietarios de Los Indios (Appellant), a committee of landowners located in the Los Indios Sector, Las Mareas Ward, Salinas, Puerto Rico, applied to the U.S. Army Corps of Engineers for after-the-fact permits to authorize already-completed or nearly-completed residential structures, landfills, piers and bulkheads, and to maintain a private road on their properties. The Puerto Rico Planning Board (PRPB) objected to the Appellant's project on the ground that it is in inconsistent with the PRPB's CMP policies of discouraging lateral expansion along the coast, discouraging utilization of lands with important natural resources for urban uses, and prohibiting land development and construction in areas affected by floods and wave surge. On appeal, the Secretary of Commerce found that the Appellant's project failed to satisfy 15 C.F.R. § 930.121(a) in that the project does not further one or more of the competing national objectives or purposes contained in CZMA §§ 302 or 303. The Secretary also found that the project is not necessary in the interest of national security. Because the Appellant failed to satisfy either Ground I or Ground II, the Secretary declined to override the PRPB's objection.

Pending Consistency Appeals

(As of January 15, 1993)

Appellant	Activity	State
Jorge L. Guerrero-Calderon	Construction of a dock	PR
Mobil (Manteo)	NPDES discharges	NC
Mobil (Manteo)	OCS exploration plan	NC
Carlos Cruz-Colon	Construction of a dock or boardwalk	PR
Rushton/ Codd	Construction of private home in Chesapeake Bay critical area	MD
ERA, S.E. Inc.	Reconstruction of dock	PR
Mobil (Pensacola)	OCS exploration plan	FL
Staten Island Railway	Railway abandonment	NY
Olga Vélez-Lugo	Construction of a dock and placement of fill	PR

All Consistency Appeal Decisions

For the first Federal Consistency Bulletin we thought it would be useful to list all consistency appeal decisions decided by the Secretary of Commerce to date.

FL Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc., (Chevron Destin Dome Decision), January 8, 1993.

FL Decision and Findings in the Consistency Appeal of Mobil Exploration & Producing U.S., Inc., (Mobil Pulley Ridge Decision), January 7, 1993.

FL Decision and Findings in the Consistency Appeal of Unocal Exploration Partners, Ltd, (Unocal Pulley Ridge Decision), January 7, 1993.

SC Decision and Findings in the Consistency Appeal of Henry Crosby, (Crosby Decision), December 29, 1992.

NY Decision and Findings in the Consistency Appeal of Robert E. Harris, (Harris Decision), December 2, 1992.

SC Decision and Findings in the Consistency Appeal of A. Elwood Chestnut, (Chestnut Decision), November 4, 1992.

NY Decision and Findings in the Consistency Appeal of Claire Pappas, (Pappas Decision), October 26, 1992.

NC Decision and Findings in the Consistency Appeal of Roger W. Fuller, (Fuller Decision), October 2, 1992.

SC Decision and Findings in the Consistency Appeal of Yeamans Hall Club, (Yeamans Hall Decision), August

1, 1992.

SC Decision and Findings in the Consistency Appeal of Davis Heniford, (Heniford Decision), May 21, 1992.

PR Decision and Findings in the Consistency Appeal of the Asociación de Propietarios de Los Indios, (Los Indios Decision), February 19, 1992.

PR Decision and Findings in the Consistency Appeal of José Pérez-Villamil, (Villamil Decision), November 20, 1991.

PR Decision and Findings in the Consistency Appeal of Sucesión Alberto Bachman, (Bachman Decision), October 10, 1991.

SC Decision and Findings in the Consistency Appeal of Shickrey Anton, (Anton Decision), May 21, 1991.

CA Decision and Findings in the Consistency Appeal of Chevron U.S.A., Inc., (Chevron Decision), October 29, 1990.

NY Decision and Findings in the Consistency Appeal of Michael P. Galgano, (Galgano Decision), October 29, 1990.

AK Decision and Findings in the Consistency Appeal of Amoco Production Company, (Amoco Decision), July 20, 1990.

NJ Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A., (Exxon Decision), June 14, 1989.

CA Decision and Findings in the Consistency Appeal of Texaco, Inc., (Texaco Decision), May 19, 1989.

NY Decision and Findings in the Consistency Appeal of John Bianchi, (Bianchi Decision), January 25, 1989.

CA Decision and Findings in the Consistency Appeal of Korea Drilling Company, Ltd., (Korea Drilling Decision), January 19, 1989.

NY Decision and Findings in the Consistency Appeal of John K. DeLyser, (DeLyser Decision), February 26, 1988.

NY Decision and Findings in the Consistency Appeal of Long Island Lighting Company, (LILCO Decision), February 26, 1988.

CA Decision and Findings in the Consistency Appeal of Gulf Oil Corporation, (Gulf Oil Decision), December 23, 1985.

CA Decision and Findings in the Consistency Appeal of Southern Pacific Transportation Company, (Southern Pacific Decision), September 24, 1985.

CA Decision and Findings in the Consistency Appeal of Exxon Company, U.S.A., (Exxon SRU Decision), November 14, 1984.

CA Decision and Findings in the Consistency Appeal of Union Oil Company of California (Union Oil Decision), November 9, 1984.

NC Decision and Findings in the Consistency Appeal of Ford S. Worthy, Jr., (Worthy Decision), May 9, 1984.

CA Decision and Findings in the Matter of the Appeal by Exxon Company, U.S.A., (Exxon SYU Decision), February 18, 1984.

For further information on appeals call Roger Eckert, NOAA Office of General Counsel for Ocean Services, (202) 606-4200.

Upcoming Events

Coastal States Organization annual meeting, February 24-26, 1993, Washington, D.C.

Watershed '93, March 21-24, 1993, Alexandria, VA. (a national conference that brings together people involved or interested in natural resource use, management, pollution prevention and control, and planning and development for public and private sectors).

OCRM annual State Coastal Program Manager's meeting, tentatively scheduled for May 5-6, 1993, Washington, D.C.

Coastal Zone '93, July 19-23, 1993, New Orleans, LA.

Consistency Personals

Consistency Personals provide states, OCRM, and other parties the opportunity to alert states as to various issues, request information from other states on a federal consistency issue, transfer ideas, etc. Consistency Personals may also present the lighter side of federal consistency (if it exists).

OCRM is assisting the State of Maine in their efforts to negotiate with the Corps on the Corps providing mitigation for local government projects. OCRM and Maine would like to know if the Corps includes mitigation costs for local government projects in other states. Please contact David Kaiser, OCRM, (202) 606-4181, or Bill Laflamme, Maine CZM, (207) 287-2111.

The Oregon Coastal Management Program (OCMP) is currently reviewing consistency determinations from the Bureau of Land Management (BLM) on regional ten-year resource management plans/Environmental Impact Statements. These plans identify six possible management alternatives for several hundred thousand acres of federal forest lands for the next ten years. OCMP is interested in hearing from other states that have dealt with consistency determinations on similar, large management plans. What is the state's goal in reviewing such consistency determinations? How have other states handled such reviews? What is the level of documentation required of the federal agency to demonstrate consistency? How can conflicts be resolved in comments from state agencies with different missions (e.g., those with an economic development orientation vs. those with an environmental quality orientation)? Please contact Emily Toby, Oregon Department of Land Conservation and Development, 1175 Court St. NE, Salem, OR. 97310-0590. Phone: (503) 373-0096, FAX: (503) 362-6705.

FEDERAL CONSISTENCY BULLETIN

Office of Ocean and Coastal Resource Management

Issue No. 2
August 1993

The Federal Consistency Bulletin is intended to keep states, federal agencies, and other interested parties abreast of current federal consistency issues. The federal consistency provision, section 307, of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires that activities performed by the federal government, that affect any land or water use or natural resource of a state's coastal zone, must be consistent, to the maximum extent practicable, with the enforceable policies of a state's federally approved coastal management program. Federally permitted and funded activities must be consistent with the enforceable policies of a state's coastal management program. The Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, administers the CZMA and federal consistency at the national level.

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Significant State Issues

Lake Gaston Consistency Appeal Decision and Interstate Consistency Update

As reported in the Federal Consistency Bulletin, Issue No. 1, January 1993, the City of Virginia Beach, Virginia, is seeking to withdraw up to 60 million gallons of water per day from Lake Gaston, which straddles the North Carolina - Virginia border. Lake Gaston was created by a dam operated by the Virginia Electric Power Company (VEPCO). In September 1991, North Carolina formally objected to the proposed water withdrawal which requires amendment of VEPCO's Federal Energy Regulatory Commission license. VEPCO requested the Secretary of Commerce to override North Carolina's objection. On December 3, 1992, former Secretary Franklin issued a decision, based on advice from the Department of Justice (Justice), that one state may not object to a federally permitted activity which occurs entirely within another state. On February 3, 1993, the State of North Carolina and Congressmen from North Carolina and Virginia requested that Secretary Brown reconsider former Secretary Franklin's decision. On February 10, 1993, Virginia Beach and other Virginia Congressmen requested that Secretary Brown let the previous decision stand.

Because the Justice opinion on interstate consistency has such important implications for the reach of the CZMA, Department of Commerce General Counsel, on April 12, 1993, requested that Justice review its opinion. On June 29, 1993, Justice informed Secretary Brown that its position has not changed. The Secretary, on July 30, 1993, informed all parties that, based on Justice's review, the Secretary declines to reconsider Secretary Franklin's decision.

Thus, at the present time, OCRM will not be able to support states' consistency reviews of projects located totally in another state.

For additional information contact David Kaiser, OCRM Federal Consistency Coordinator, (301) 713-3098.

New York and GSA/ U.S. Marshals Service Land Disposal Update - Court Denies New York's Request for a Preliminary Injunction

As discussed in the last Bulletin, the General Services Administration (GSA) and the U.S. Marshals Service were disposing of a parcel of land that was seized by the U.S. Marshals Service. The State of New York requested to review the land sale for consistency with the New York Coastal Management Program. GSA asserts that GSA's "broker" activities for the disposal of the land is exempted from CZMA consistency requirements by federal drug statutes, that acting as a "broker" is not a federal activity under 15 C.F.R. § 930.31(a), and that a consistency determination is unnecessary when selling federal surplus real property where the sale is "environmentally neutral."

The State prepared to file for a temporary restraining order and permanent injunction against the sale of the property, but the U.S. Attorney's Office for the Northern District of New York expressed an interest in working the issue out. However, negotiations between the State and buyer regarding a public access easement failed to produce an acceptable agreement. On February 5, 1993, OCRM responded to a GSA letter to New York on the applicability of consistency to certain federal land acquisitions and disposals. OCRM's letter maintained that consistency is applicable to such land transfers. On March 8, 1993 the State sued to enjoin GSA from finalizing the sale on the grounds that GSA failed to comply with federal consistency.

On April 5, 1993 the United States District Court, Northern District New York, denied preliminary injunctive relief, finding in part that the State's injury would not be irreparable because the State's policies may still be enforced against the private landowner through the State's police power and eminent domain. While the Court confirmed that GSA activities are subject to consistency, the Court found that the State did not show how GSA's failure to observe procedural dictates of the CZMA damaged coastal environs since there was no change in the present use of the land. The Court also determined that the State would probably not succeed on the merits and that the balance of hardships, if injunctive relief were granted, would favor the property purchaser, not the State. The property was conveyed by GSA and the Marshals Service to the new property owner in mid-April 1993.

The State is currently weighing its options. For additional information call Bill Barton, N.Y. Dept. of State, (518) 474-3643, or Bryan Cullen, (518) 474-6740.

Delaware, EPA, and Superfund

The activities at the DuPont-Newport Superfund site in Delaware have prompted the Delaware Coastal Management Program (DCMP) to begin communications with EPA regarding federal consistency requirements for the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA Region III questioned whether CZMA federal consistency is applicable to "on-site" activities for Superfund sites. OCRM discussed the matter with the Region and EPA Headquarters. EPA indicated that its CERCLA guidance defines whether administrative, substantive or both types of requirements of other laws apply to on-site and off-site activities. EPA guidance defines on-site activities as the areal extent of contamination and suitable areas in very close proximity to contamination. EPA asserts that on-site activities need only meet the substantive requirements of other federal law before a final EPA decision is issued. This means that for on-site activities EPA will make a determination of consistency, but will not submit the determination under federal consistency review procedures and timeframes. OCRM disagreed with this position finding no language in CERCLA that would supersede any CZMA requirements, substantive or administrative. Further the 1990 changes to the CZMA make it clear that no federal activity is exempt from the consistency requirements. OCRM expects to meet with EPA in the near future to further discuss this issue.

EPA Region III did submit, to the DCMP, a consistency determination for on-site activities at the DuPont-Newport site. They based their submission on their determination that the CZMA was a relevant and appropriate requirement for this particular site. The DCMP responded with several concerns and requested that EPA revise their consistency determination to address these concerns and additional DCMP policies. DCMP is also requesting the standard federal consistency review period. For additional information from Delaware contact Miriam Lynam, DCMP, (302) 739-4411.

Connecticut, the Coast Guard, and Security Zones

In the Spring of 1992, while investigating recent enforcement actions against Connecticut fishermen by security personnel of General Dynamics Electric Boat Division, the State discovered that the Coast Guard never submitted a consistency determination for Security Zone B, New London Harbor (established in July 1973 and expanded in 1984). The Coast Guard should have provided a consistency determination for the 1973 action, under 15 C.F.R. § 930.38(a)(for ongoing activities initiated prior to management program approval, for which the federal agency retains discretionary authority), and the 1984 expansion under regular consistency procedures, if the activities would have affected the coastal zone.

After several discussions and the exchange of correspondence among the State, Coast Guard, and OCRM, OCRM informed the Coast Guard and the State that the establishment of such security zones is not exempt from consistency, but that the consistency regulations do not provide for after-the-fact consistency determinations. OCRM recommended that the State and the Coast Guard attempt to come to an agreement regarding the current dispute outside of consistency mechanisms, and that the Coast Guard provide consistency determinations for future security zones or changes to security zones.

However, the Coast Guard's response to Connecticut's inquiry into the establishment and modification of this zone implies that the establishment of such security zones may be exempted, at the Coast Guard's discretion, from the consistency requirements. OCRM informed the Coast Guard that such an

interpretation is incorrect given the plain language of the CZMA that all federal activities are subject to consistency if they affect any land or water use or natural resource of a state's coastal zone.

For additional information from the State contact Joan Hoelzel, Connecticut CMP, (203) 566-7404.

New Jersey and OCS Policies

New Jersey proposed to amend its outer continental shelf policies (OCS) to "discourage" OCS development until a federal energy plan including viable alternative energy sources have been developed. The State's present policy generally encourages rapid OCS development. OCRM had several concerns. First, OCRM wanted to be certain that the policies could not be construed as prohibiting OCS leasing and development in such a way that they would conflict with CZMA requirements that state CMPs provide adequate consideration of the national interest in energy facility siting, and that such potential regulation of activities on the OCS is within the state's jurisdiction. Second, this policy did not adequately link OCS activities to impacts on New Jersey's coastal uses and resources within the state's jurisdiction (there are, however, numerous other specific New Jersey CMP policies that the State uses to review OCS activities). Under CZMA section 307 states may review for consistency activities seaward of the coastal zone to the extent that those activities affect any land or water use or natural resource of the coastal zone. While the rationale provided in the proposed policies briefly mentioned social, economic, and environmental impacts of OCS activities, the focus was on the benefits to New Jersey's coastal resources through limiting OCS activities, rather than on demonstrating the impacts of the actual activities.

After several discussions among OCRM and the State, the State clarified that the present policy is an advisory policy and that the changes will also be advisory. For additional information from the State contact Steven Whitney, Assistant Administrator, Office of Land and Water Planning, New Jersey Department of Environmental Protection and Energy (609) 292-1875.

New Jersey and Ocean Disposal of Dredged Material Containing Dioxin

On May 26, 1993, after three years of negotiations between Federal agencies, commercial port and shipping interests and environmental groups, the Army Corps of Engineers (Corps) approved a controversial permit for the Port Authority of New York and New Jersey to dredge 450,000 cubic yards of dioxin-tainted sediment near a former Agent Orange factory, and dump them six miles off Sandy Hook, New Jersey, in what is called the "Mud Dump." The portion of the Passaic River, in New Jersey, where the dredging will occur has been listed as a Superfund site on the National Priorities List. The Mud Dump is located near an important commercial and recreational fishing area, which also hosts three endangered species each of whales and sea turtles. The permit is the first of an anticipated 40 Corps permits for dredging in the New York/New Jersey harbor. While not all of the future dredge spoils will contain as high a level of dioxin contamination, issuance of this permit and the states' response set an important precedent.

In January, 1993 New Jersey issued a Waterfront Development Permit and Section 401 Water Quality Certification for the maintenance dredging project, and found the dredging project to be consistent with New Jersey's Coastal Management Program (NJCMP). The State's concurrence for the dumping activity at the Mud Dump was presumed. Both states are under pressure from the environmental community and NOAA to address dumping of dioxin-contaminated dredge materials through federal consistency reviews on dredging and dumping activities off the coast of New Jersey.

Addressing dioxin-tainted sediment dumping has proven difficult for states in part due to the lack of federally approved standards for ocean disposal of dioxin contaminated sediment. At the time section 401 certification for the dumping was requested by the Port Authority, dioxin guidelines were not available. For the purposes of this project, the Corps and EPA reached an agreement on proposed interim guidelines for a dioxin management approach for the sediments to be disposed of at the Mud Dump. In a letter to these two agencies, the Commissioner of the New Jersey Department of Environmental Protection and Energy (DEPE), which houses the NJCMP, wrote, "I am...concerned that the (Corps) appears to be setting standards for dioxin through its permit decisions, rather than through more accepted procedures of promulgating standards that include peer review and the opportunity for public input."

In an effort to make federal and state agencies address environmental concerns regarding ocean disposal of dioxin contaminated dredge materials, a coalition of environmental groups, including the Coastal Alliance, Clean Ocean Action, the National Resources Defense Council, the Environmental Defense Fund, and others sent a letter to Rep. Gerry Studds, Chair of the House Merchant Marine and Fisheries Committee chastising New Jersey and New York for not using the federal consistency provision as a means to review the dumping. The letter states,

> (I)t is with great concern that we have observed the unwillingness of the states of New Jersey and New York to use this hard-won provision in an issue of direct threat to their coasts and coastal resources...New Jersey and New York's refusal to use the power to carefully assess, through a consistency review, the likely impacts of this activity on their state's resources is of great concern to the environmental community.

The letter goes on to request the Merchant Marine and Fisheries Committee hold an oversight hearing on the proposed permit, including examining the states' failure to conduct consistency reviews, the impacts of the dioxin dumping on fish species, and the effect on the food chain. The environmental groups would like Congress and EPA to examine alternatives to ocean dumping for dioxin-contaminated dredge materials.

Dredging was temporarily halted by an injunction sought by Clean Ocean Action. However, on June 7, 1993, a U.S. District judge in New Jersey ruled that the project could proceed, but that the Port Authority was required within 15 days to establish that "the permit was lawfully issued." In the meantime, New Jersey has placed a "no barge overflow" restriction on the activity, and is requiring a strict research and monitoring protocol. In addition, the Commissioner of the DEPE has stated that New Jersey will insist that the federal government reconvene a special Dioxin Task Force

specifically for establishing scientific-based standards for disposing of dredge material contaminated with dioxin. The State plans to block ocean dumping of such sediments after December 31, 1995 if the Federal government does not adopt such standards. In addition, subsequent to the Port Authority dredging permit, the NJCMP has successfully negotiated a Navy dredging project using federal consistency as a tool to require additional testing for dioxin levels.

For additional information from New Jersey contact Richard Sinding, Assistant Commissioner, New Jersey Department of Environmental Protection and Energy (609) 292-1875. For additional information from New York call Bill Barton, N.Y. Dept. of State, (518) 474-3643.

Maine, the Corps, and Mitigation

The State of Maine has several Corps projects requiring mitigation under Maine's CMP. The Corps District, instead of complying with the State CMP policies, has informed the State that such mitigation requirements are a local or State responsibility, and that if the State requires the Corps to provide the mitigation, then the Corps cannot do the project. The Maine CMP, the Governor, and the State's Congressional delegation have all discussed the issue with the Corps. However, at this time, the State and local governments must pay mitigation costs.

OCRM discussed the issue with Corps Headquarters in Washington, and the Corps indicated that its policy is to mitigate all damages to the extent justified and allowed under its regulations and appropriations law. However, if a state wishes to impose mitigation requirements that go beyond Corps requirements, or Congress has not otherwise authorized the Corps to fund the mitigation, then the Corps cannot do the project. If there are important interstate or national defense issues, the Corps may do the project regardless of state concerns or objections. For additional information from Maine contact Bill LaFlamme, Maine CMP, (207) 287-2111.

California and the Closure of Fort Ord

The Corps is in the process of closing Fort Ord and reviewing alternatives for re-use of the site. Fort Ord is a large military base adjacent to Monterey Bay. The Corps issued a draft environmental impact statement (DEIS), which contained a draft consistency determination. The Corps District also informed the State that the record of decision (ROD) would be issued prior to submitting a final consistency determination stating that the ROD was not the final agency action. California notified the Corps prior and subsequent to the issuance of the DEIS of the need to make a final consistency determination before publishing the ROD, or the State would treat the draft consistency determination as final. In addition, the Corps intended to release the ROD before the State's 45 day review period (on the draft determination) was completed. As a result of the State's letters and coordination between OCRM and Corps headquarters, the Corps District office has delayed issuance of the ROD and will submit a final consistency determination.

On a general note, it is OCRM's position that a ROD is a federal agency action. Therefore, if a federal activity will affect a state's coastal uses and resources a consistency determination must be submitted to the state no later than 90 days before issuance of the ROD. If there will be other federal action decisions related to the project after the issuance of the ROD, then another consistency determination may be required. See 15 C.F.R. § 930.37(c)(phased federal projects)

California also requested information from OCRM on consistency determinations for other base closures. OCRM informed the State that the disposal and plans for re-use of military bases are subject to consistency, to the extent they affect any land or water use and natural resource of the coastal zone. There have been few instances of consistency determinations and base closures The General Services Administration (GSA) submitted a consistency determination for the disposal of the Montauk Air Force Base to the New York CMP in 1983. New York disagreed with the determination and subsequently sued GSA. GSA eventually assigned the property to the Department of the Interior which conveyed the property to the State of New York In two other instances, Pease Air Force Base in New Hampshire and Fort Meade in Maryland, federal consistency was not asserted by the states. However, both states negotiated for and agreed with the final disposition for both bases. For Pease Air Force Base, New Hampshire did not assert consistency because the base was, for the most part, not in the coastal zone and impacts were expected to be minimal. Negotiations between the State and the U.S. Fish and Wildlife Service for the one strip of land in the coastal zone, resulted in the designation of a national wildlife refuge.

Given the large number of proposed base closings, states and federal agencies should be aware of consistency responsibilities for such activities.

For additional information from California on Fort Ord contact David Loomis, California Coastal Commission, (408) 427-4863.

The Mass. Bay Disposal Site

Recently EPA designated the Mass. Bay Disposal Site, under the Marine Protection, Research and Sanctuaries Act (MPRSA) section 102, after EPA included provisions that Massachusetts asserted were necessary in order to be consistent with the Massachusetts CMP. The Corps district questioned EPA's approval. The Corps asserted the record of decision (ROD) was not noticed properly and apparently EPA will re-notice the ROD. The Corps is also questioning EPA's authority to agree, at the site designation stage, to state requested and EPA approved provisions regarding use of the site. The Corps maintains that use of a site can only be authorized by the Corps under the MPRSA section 103 and that the Corps strongly objects to the section 103 type conditions agreed to by the State and EPA under the section 102 process. The Corps does agree that a state has the right, under consistency provisions, to raise those type of issues when a disposal is proposed under section 103. OCRM discussed the issue with Corps headquarters and expressed concern with the Corps view since the 1990 amendments to the CZMA allow a state to review future reasonably foreseeable cumulative effects of activities at an initial stage of an activity.

This issue is ongoing and will undoubtedly involve further discussions among the State, EPA, Corps, and OCRM. For additional information from the State contact Steve Bliven, Massachusetts CMP, (617) 727-9530 (ext 420).

Secretary's Decision in a Request to Reconsider an OCS Decision

As reported in Issue No. 1 of the Federal Consistency Bulletin, on January 8, 1993, former Secretary Franklin issued a decision in the consistency appeal of Chevron U.S.A., Inc. (Chevron Decision) from an objection by the State of Florida. On February 26, 1993, the Assistant General Counsel, Office of the Governor of the State of Florida, requested that Secretary Brown reconsider former Secretary Franklin's decision. In a letter to the Secretary dated March 8, 1993, counsel for Chevron U.S.A. Production Company urged Secretary Brown to let the decision stand. Secretary Brown's response, dated March 23, 1993, declined to reconsider former Secretary Franklin's decision. Secretary Brown stated that the Chevron appeal decision was decided on the merits and based on a completely developed record, which was weighed in light of the applicable law and regulations.

OCRM Coordination with Other Federal and Non-Federal Entities

In addition to the interaction with other federal agencies involving specific state issues noted above, OCRM recently met with the following federal and non-federal entities.

Environmental Protection Agency

On June 29, 1993 OCRM and EPA met to discuss ocean dump-site designations under section 102 of the MPRSA. Discussions centered on the relationship between the federal consistency provision of the CZMA and ocean dump-site designations under the MPRSA, and the Coastal Zone Act Reauthorization Amendments of 1990 and 1993 changes to the MPRSA section 106. OCRM and EPA preliminarily agreed to develop guidance to the states and EPA regions on consistency and ocean dump-site designations. The proposed guidance will address procedural and substantive requirements as well as the scope of consistency reviews on the designation of ocean dump-sites under the MPRSA. The development of the guidance will be closely coordinated with the state CMPs.

OCRM plans to meet, in the near future, with other EPA divisions to discuss CERCLA/Superfund, see Delaware/Superfund issue above, and possibly EPA, the Coast Guard, and the Minerals Management Service on implementing the Oil Pollution Act of 1990 (OPA). See discussion on OPA under OCRM Policy Decisions, Guidance, and Projects.

U.S. Army Corps of Engineers

On June 11, 1993, OCRM met with the Corps to begin discussions and coordination on issues related to the implementation of the CZMA, particularly federal consistency. The meeting was very useful and a good start in improving a dialogue between our offices. It was well attended by upper level Corps officials and we engaged in frank and open discussions.

Discussions centered on federal consistency procedures and the 1990 amendments to the CZMA and the need to identify and discuss areas of general CZMA policy where there is potential conflict between the Corps and OCRM and the states, identify points of contact, discuss inconsistencies among Corps districts, and initiate discussion on some substantive issues. OCRM and the Corps agreed to continue to discuss these specific issues and other issues as they arise, on a more regular basis.

The following specific issues were discussed:

Conditional permits, specifically the Corps recent regulatory guidance letter (RGL) on provisional permits. We discussed the Corps' regulatory guidance letter (RGL) on the issuance of provisional permits pending state Clean Water Act section 401 certification and Coastal Zone Management Act (CZMA) section 307 federal consistency review. According to the Corps, the provisional permit RGL is necessary because there is confusion among applicants as to who they need to see for various approvals and there is a need to document where administrative delays occur. The Corps noted that they process 70 percent of the individual permits within 120 days. Under the RGL, Corps districts will not issue a provisional permit if there are reasonable state 401 or consistency delays. However, the Corps, generally, will issue a provisional permit if the state fails to respond within 120 days.

OCRM and the Corps have discussed CZMA section 307 requirements that a federal agency may not issue a license or permit unless a state concurs with the applicant's consistency certification or the state's concurrence is conclusively presumed. OCRM has also informed the Corps of coastal states' concerns that the issuance of provisional permits may give applicants leverage against the state, thereby reducing the flexibility needed for negotiations between a state and an applicant, and that provisional approvals may give an applicant a false sense of approval. However, the Corps' May 20, 1993, RGL on provisional permits does provide clear instructions to provisional permit recipients of the need to obtain state consistency concurrence. Further, a license or permit is defined functionally in CZMA regulations as an approval. 15 C.F.R. § 930.51(c). Thus, technically the Corps' provisional permit is not a permit because it is lacking the requisite approval.

While we recognize that the Corps' provisional permits are legally permissible, we discourage them as a matter of policy. An alternative that would serve the Corps' needs to eliminate confusion and document delays, but not mislead applicants or hinder state/applicant negotiations, would be to issue a notice, i.e., a postcard, stating that the Corps has completed its review and is waiting for state consistency concurrence. Since, under the current RGL, the applicant has to come back for final Corps approval anyway, there would be no increase in administrative processing.

Federal Projects. The Corps expressed concern that the 45 day review period for federal projects was too long for some emergency situations. OCRM informed the Corps that the regulations allowed federal agencies to deviate from full consistency when required by other federal law. Also, we suggested that the Corps work closely with the states to develop expedited review procedures or general consistency determinations for emergency situations and ongoing activities. We offered OCRM assistance. It would be helpful

to OCRM and the states for states to provide OCRM with examples/experience on expedited reviews.

Consistency Among Corps Districts. While the Corps acknowledged that there was often inconsistency among Corps districts, they noted that the districts have discretion to implement Corps programs, but should not be acting contrary to other federal requirements. As examples of inconsistency among Corps districts we discussed complying with state mitigation policies when proposing a Corps project and Nationwide Permits.

We discussed the issue where the State of Maine has several Corps projects which will require mitigation under Maine's CMP. See discussion above under Significant State Issues.

We then discussed the issuance of nationwide permits (NWPs) in 1991 and that some Corps Districts refused to attach regional conditions to the NWPs, thereby effecting a state disagreement with the Corps NWP program. This resulted in some states having to process a large number of CWA section 401 and consistency certifications for relatively minor activities and defeats the purpose of the NWPs. We suggested that Corps Districts and states should be able to negotiate reasonable conditions which address state CMP requirements, but which do not place additional undue burdens on the Corps or the states. The Corps recognized this problem and directed our attention to a RGL issued September 14, 1992, encouraging the districts to take another look at incorporating regional conditions. OCRM will look at that RGL and discuss it with states that still have problems with the NWPs.

Winter Navigation in the Great Lakes. We briefly discussed the winter navigation issue in Michigan. We discussed Michigan's concern that the Corps should determine the opening and closing of the locks based on environmental criteria and not on a set date. The Corps noted attempts to reach a consensus with the State, but there were overriding interstate commerce concerns, such as the need to have a certain date for planning purposes.

Subsequent to OCRM's meeting with the Corps, the Michigan DNR met with the regional offices of the Corps, the U.S. Fish and Wildlife Service, and the U.S. Coast Guard on June 29, 1993. These agencies are currently working on an agreement that would establish a monitoring program and reduce vessel speeds during certain times of the year.

Ocean Dumping Issues. We then discussed the Corps' objections to EPA's designation of the Mass Bay Dump Site, after EPA included conditions that Massachusetts asserted were necessary in order to be consistent with the Massachusetts CMP. See discussion above under Significant State Issues.

Other Issues. We agreed to formalize points of contact, and explore the possibility of developing a joint Corps/EPA/NOAA guidance document on the steps an applicant must take for project approval (including points of contact), under the various federal/state programs.

American Association of Petroleum Landsmen - OCS Committee

On April 13, 1993, OCRM, NOAA General Counsel for Ocean Services, and the National Marine Fisheries Service (NMFS) met with the American Association of Petroleum Landsmen (AAPL) - OCS Committee. The AAPL, an oil and gas industry association, requested a meeting with OCRM to discuss various issues related to consistency and marine sanctuaries and the new administration. NMFS discussed the reauthorization of the Marine Mammal Protection Act. OCRM and NOAA General Counsel provided an update on the marine sanctuary program and recent OCS consistency issues and appeal decisions.

OCRM Policy Decisions, Guidance, and Projects

Reviewing Activities under the Oil Pollution Act of 1990

On August 13, 1993, OCRM sent general guidance to the states on coordinating state input into the Oil Pollution Act of 1990 (OPA) process. This section reiterates that guidance. Questions on opportunities for state CMP input into the OPA process should be directed to David Kaiser. OCRM is currently working with the Coast Guard, the Environmental Protection Agency (EPA), and the Minerals Management Service (MMS), to improve federal-state coordination of OPA activities.

Overview of OPA requirements

OPA addresses the matter of oil spill response planning from two perspectives. While certain vessels and facilities must plan for the possibility of spills at various locations, those plans must be consistent with plans developed by the heart of the planning effort, a broad federal/state/local community planning effort conducted by Area Committees.

OPA requires tank vessels, offshore facilities, and certain onshore facilities that could reasonably be expected to cause substantial harm to the environment by discharging oil into the navigable waters, adjoining shorelines, or the exclusive economic zone of the United States to prepare and submit plans to respond "to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance." 33 U.S.C. § 1321(j)(5)(OPA § 4202(a)(6)). EPA is responsible for reviewing and approving response plans for non-transportation-related onshore facilities, MMS for offshore facilities (other than deep water ports) including associated pipelines, and the Coast Guard for marine transportation-related onshore facilities, deepwater ports, and tank vessels.

All plans must be approved by August 18, 1993, or the vessel or facility may not handle, store, or transport oil. However, notwithstanding this requirement, a vessel or facility owner or operator may operate for up to two years after the plan has been submitted, but not approved, if the owner/operator certifies to the federal agency that the owner/operator has ensured by contract or other approved means the availability of private personnel and equipment necessary to respond to the maximum extent practicable, to a worst case discharge, and receives written authorization from the federal agency.

As noted above, the heart of the OPA oil pollution response planning system is the OPA requirement that Area

Committees, made up of qualified personnel from federal, state, and local agencies, develop Area Contingency Plans (ACPs) and work with state and local officials to enhance their contingency planning. Area Committees are to be established in each designated area to plan for a coordinated "community" response to oil or hazardous substance discharges. The coordinated community response includes federal, state, and local government agencies, and the individual vessels and facilities. The ACPs, when implemented, will be used in responding to an oil or hazardous substance spill. The important point is that all individual vessel and facility plans must eventually be consistent with the ACPs.

This guidance is primarily concerned with the Coast Guard's ACP planning process. OPA preserves states' authority to regulate facilities and vessels in their jurisdiction. Thus, it may be less efficient and unnecessary for state CMPs to concentrate on onshore facilities and vessels, since such facilities and vessels would have to meet any state and local requirements. State CMPs should also consider the effectiveness of concentrating on OPA plans required for offshore facilities. The plans required by MMS are modifications to existing plans which states should have already reviewed for consistency. MMS has stated that any modifications will be more stringent, per OPA. However, OCRM strongly encourages state CMPs to actively participate, at some level, in the ACP process, which is specifically concerned with assuring that response capability and protection is provided for areas within the various coastal zones.

The remainder of this guidance provides additional information on the OPA oil spill response planning process under the Coast Guard's jurisdiction and opportunity for state CMP input. A better understanding of this process should provide state CMPs with a clearer idea on integrating state concerns, including those associated with the coastal zone, into the ACP planning process.

The OPA Oil Spill Response Planning Process

State CMPs should actively participate in the National Contingency Planning process at the Area Committee level. This process can provide an effective means of federal-state coordination of activities affecting state coastal resources and uses.

OPA recognizes direct community participation as vital to the viability of the OPA planning process. Such a planning process provides a means by which affected policies of states, including state CMP policies, may be integrated. The Area Committee (AC) and Area Contingency Plan (ACP) are the critical tools for implementing this mandate.

The revised NCP and RCPs, and the ACPs recognize that the process of planning for and responding to an oil or hazardous substance spill is iterative and must involve the federal, state, and local community working together cooperatively. Provided that state CMPs play an active role, these cooperative efforts should ensure consistent application of coastal zone management policies. It is OCRM's view that state involvement in developing ACPs through the Area Committees may be the most effective way to ensure that oil spill response planning will address state concerns. The ACP process should provide a reasonable opportunity to apply state CMP policies and integrate them into the ACP. Further, the vessel and facility plans developed under OPA must be consistent with the ACPs including those state policies integrated into them. Once they are consistent with the ACPs, they should be consistent with state CMPs. Participation in this planning process does not preclude the assertion or exercise of authorities under any law.

In the coastal zone, the Coast Guard, as lead federal agency for response, has established 48 Area Committees and produced the first iteration of 48 Area Contingency Plans. Although the Area Committee in the coastal zone is chaired by the Coast Guard On Scene Coordinator, neither the AC nor the ACP belong solely to the Coast Guard or the federal government. Rather, they are community functions intended to benefit the entire community. Ideally, the ACP will be signed by all members of the Area Committee, (including interested agencies of State and local governments) and endorsed by the rest of the community (including industry, academia, environmental groups and the concerned public).

The ACP identifies (1) sensitive areas; (2) federal, state, local, and industry response organizations; (3) equipment, resources and personnel available for response; and (4) priorities for employing these resources. It examines response equipment in the Area, including equipment detailed in vessel and facility response plans as prescribed in the federal regulation. The Area Committee identifies environmentally and economically sensitive areas, devises appropriate strategies for protecting those areas, recognizes that not all areas can be equally protected simultaneously and, therefore, establishes response priorities (a hierarchy for identifying what needs to be protected first). Finally, the Area Committee looks at response resource needs and compares them to response resources availability from both public and private resources. Some response resources shortfalls may be made up by relocating some resources or though public or private acquisition. Often, however, planning strategies for employment will have to recognize that not all sensitive areas can be protected equally and simultaneously. Thus, there is significant flexibility for the Area Committees, and hence, state CMPs, to adjust each ACP to meet local concerns.

The Regional Response Team which the Coast Guard and EPA co-chair is the planning, policy and coordinating body which develops Regional Contingency Plans and provides one level of review for the Area Contingency Plans. Its members are drawn from regional representatives of the 15 federal agencies listed in the NCP and state representatives within the region. The RRT reviews the ACP for consistency with the NCP and makes recommendations on the availability of regional resources. The RRT provides another level for formalized state representation and coordination.

Vessel and Facility Response Plans (VRP/FRP) are required to be consistent with the ACPs and the NCP. Tank vessel and facility representatives are encouraged to actively participate in Area Committee activities to maximize consistency and coordination of all planning efforts. In achieving consistency, the VRP/FRP identifies (1) the plan holder response organization, as it fits into the Area Contingency Plan; and, (2) company owned/contracted resource, personnel, and equipment to be deployed in response within the Area. The number and kinds of response resources identified in these plans are based on planning factors detailed in the applicable regulations for vessels (33 CFR 155), and facilities (33 CFR 150). Most vessel and facility response plan holders are contracting for response resources from Coast Guard classified Oil Spill Response Organizations.

The first round of coastal zone ACPs being prepared by the Coast Guard were completed by July 1, 1993. The process of revision and improvement should begin almost immediately. There are several factors which will influence the next iteration. Greater community involvement, including coastal zone management agencies is a primary one. Vessel and Facility Response Plans are currently undergoing the review and certification stages; final VRP and FRP approval is expected to be completed within two years from when the plans were submitted. The details in these plans concerning response resource availability and response structure should help refine response resource inventories.

Additionally, The Preparedness For Response Exercise Program (PREP) is intended to provide ongoing assessment of the ACPs and vessel and facility response plans. The purpose of the PREP is to enhance the preparedness of the National Response System. The National Response System is a system comprised of a coalition of coordinating entities whose role is to effect response to an oil or hazardous substance spill. This coalition includes federal, state and local government and industry forces working in concert according to the applicable contingency or response plans. Each specific vessel and facility response plan and Area Contingency Plan constitutes a unit of the National Response System. The goal of the PREP is to achieve integration, cooperation and coordination of the entire response community for conducting exercises to evaluate the "real world" effectiveness of response plans to an oil or hazardous substance spill and the readiness of the plan holders, while providing an important learning opportunity for all involved. Participation in PREP will enable the response community to ensure efficient use of government and industry resources by minimizing overlapping or duplicative exercises and providing a consistent approach to conducting and evaluating required spill exercises. The lessons learned from the PREP Program will provide fundamental feedback to all plan holders concerning adequacy of existing plans and direction for future revisions.

Finally, the Oil Spill Response Organization (OSRO) classification mechanism provides a continuous mechanism for checking industry vigilance in maintaining response equipment.

The Area Committee is a standing body intended to bring it all together. It is the ACP process of discussion, negotiation and cooperation, rather than the plan itself, that is vital to the success of any future response effort. The States are strongly encouraged to participate in all levels of this dynamic, iterative process. Effective state CMP participation should ensure that oil spill contingency plans and response efforts reflect state CMP policies.

Changes to the Marine Protection, Research, and Sanctuaries Act Section 106(d) -- Ocean Dumping

In 1993 Congress amended the MPRSA section 106(d). The amendments appear to allow for state regulation regarding the dumping of material into ocean waters within the jurisdiction of a state. Previously, under MPRSA section 106(d), states were preempted from any direct state regulation of ocean dumping activities. Using federal consistency states could only address ocean dump-site designations or disposal if the activities affected the coastal zone and the state could apply enforceable CMP environmental policies. If states policies on ocean dumping may now be included in state CMPs, then they may possibly be used for state consistency reviews for applicable activities. OCRM will further discuss, with EPA and the Corps, the implications of the 1993 changes to the MPRSA.

State Federal Consistency Procedures - Single State Agency Responsibility

Recently several states have proposed to change their consistency review procedures to involve several state agencies in either conducting consistency reviews or in issuing state permits in lieu of consistency reviews. These changes potentially could conflict with the requirement for a single state consistency agency pursuant to 15 C.F.R. § 930.18. The reasons for this requirement are clear: uniform application of a state's coastal management policies, efficient coordination of all state coastal management requirements, comprehensive coastal management review, and providing a single point of contact for federal agencies to discuss consistency issues. State CMPs should ensure that all relevant enforceable policies are considered for a federal consistency review, not just those of a particular state permit program.

Under NOAA regulations, a state must designate a single state agency to perform the consistency functions, including formally commenting on all consistency determinations or concurring or objecting to consistency certifications. 15 C.F.R. § 930.18. Further, the single consistency agency must be the lead coastal management agency, or a single state agency designated by the lead coastal management agency. Id. The single consistency agency may rely on the expertise of other state agencies, but other state agencies may not be the state lead for consistency reviews.

The requirements for state CMPs to ensure that all relevant enforceable policies are considered under state permit agency reviews is derived from the CZMA section 307(c)(3)(A) and various sections of NOAA's regulations. The CZMA section 307(c)(3)(A) requires applicants for federal licenses and permits to be consistent with the enforceable policies of a states coastal program. The CZMA section 304(12) defines "program" as comprehensive standards to guide public and private uses in the coastal zone. Thus, the CZMA requires compliance with all relevant enforceable policies of a program and not a subset thereof. This requirement for comprehensive coastal management is further defined in NOAA regulations. Enforceable policies must be sufficiently comprehensive and specific to regulate land and water uses. 15 C.F.R. § 923.40(a). Further, the major CMP approval criterion is a determination that state agencies responsible for implementing the CMP do so in conformance with the policies of the management program. 15 C.F.R. § 923.40(b). See also 15 C.F.R. § 923.41(b)(2). The regulations also require that networked states demonstrate that CMP authorities implement the full range of policies. 15 C.F.R. § 923.43(c)(1)-(2). The federal consistency regulations mirror the requirement for the application of enforceable policies in a comprehensive manner. See 15 C.F.R. §§ 930.1(e)(federal and state agency consistency decisions must be directly related to the policies and standards of the program), 930.50 and 930.56(a)(activities must be conducted in a manner consistent with the program), and 930.58(a)(3)(assessment of effects to relevant elements of the management program), (4)(applicants must be consistent with enforceable policies of the management program).

If all CMP enforceable policies are part of mandatory permit programs, however, then issuance of the relevant state permits can constitute the state's consistency concurrence. Federal agencies and applicants should be notified as part of this process (that is, there are no other relevant enforceable CMP policies that are not part of required permits). On the other hand, activities affecting the coastal zone, that require federal approvals, but which do not fall under the jurisdiction of state permit authority, must be consistent with the CMP enforceable policies, and the lead CMP agency must conduct the consistency review. Moreover, if there are other enforceable CMP policies that are not part of a state permit program, then the state CMP must ensure that other relevant enforceable policies are considered. Individual projects must be reviewed in light of all relevant enforceable policies.

Since these considerations should have been addressed at the CMP approval stage, states should already have mechanisms in place to ensure that all relevant enforceable policies are considered. If a state CMP believes it has existing procedures, or proposes procedures, inconsistent with this discussion, they should notify their CPD program contact or David Kaiser.

Starting the Consistency Review Timeclock for Incomplete Consistency Applications

Recently states have requested that OCRM clarify when the state consistency review timeclock starts for federally licensed and permitted activities with incomplete consistency applications. NOAA regulations provide states with two alternative means of responding to incomplete consistency applications.

First, a state may commence its review upon receipt of a copy of the consistency certification, and the complete information and data required pursuant to 15 C.F.R. § 930.58. 15 C.F.R. § 930.60(a). Thus, when a state receives a consistency certification without the necessary data and information, the state may, in a timely fashion, notify the applicant and the federal agency that the consistency review timeclock will not start until such information is received by the state. If the State notifies the applicant and the federal agency that the necessary data and information was not received with the consistency certification and that the consistency review timeclock has not started, then the consistency review process has not begun and the federal agency cannot conclusively presume state concurrence. If a state intends to start the consistency review timeclock only when it has received a consistency certification and the necessary data and information, pursuant to 15 C.F.R. § 930.60(a), the State should so inform relevant federal agencies, and the federal agencies should inform permit applicants.

Second, NOAA regulations also allow a state to begin the consistency review timeclock when it receives the consistency certification, even if the necessary data and information are not provided. The regulations provide:

> A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 930.58. If the State agency objects on the grounds of insufficient information, the objection must describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program.

15 C.F.R. § 930.64(d).

State review of federal permit activities will, of course, be expedited if an applicant provides the necessary data and information, pursuant to 15 C.F.R. § 930.58, when an application is submitted.

Implementing the CZMA Section 306(d)(14) - Public Participation for State Reviews of Direct Federal Activities

When Congress reauthorized the CZMA in 1990, a new requirement was added, section 306(d)(14), which requires that "[t]he management program provide for public participation in permitting processes, consistency determinations, and other similar decisions." This requirement must be met by November 5, 1993 ("consistency determinations" refers to the state's review of federal agency consistency determinations for direct federal activities under CZMA section 307(c)(1) (NOAA regulations already require states to provide for public participation in the state CMP's review of consistency certifications for federally licensed and permitted activities)). OCRM contacted all states to alert them to this requirement and to determine, on a state-by-state basis, the extent to which this requirement has been met and to provide guidance on meeting the requirement.

One example of state public participation in state CMP review of consistency determinations is the State of Massachusetts' procedure for public input on direct federal activity reviews. Massachusetts provides notice of all federal activities in the State's Environmental Monitor, which provides a 21 day comment period. The Monitor is published bi-weekly with a circulation of about 1500 state-wide. Most local planning boards, conservation commissions, etc., are on the mailing list, as are federal and state agencies, environmental interest groups and members of the general public. There is no cost to be on the mailing list. The Monitor was originally established to provide public notification under the Massachusetts Environmental Policy Act - the State's version of NEPA. It is now used for a range of other notifications, including federal consistency. The Massachusetts CMP submits lists of projects to be reviewed under consistency for each Monitor. In a case of minimum State CMP review time (where a consistency determination is submitted immediately after the most recent publication of the Monitor), the State CMP would take 13 days to get the notice into the Monitor and then have a 21 day comment period - a total of 34 days out of the 45 day review period. Apparently, this has not caused any significant problems in the CMP's reviews. For additional information on Massachusetts' procedure contact Steve Bliven, Assistant Director, Massachusetts CMP, (617) 727-9530 (ext. 420).

Federal Consistency Manual

The Manual will explain existing regulations in light of the Coastal Zone Act Reauthorization Amendments of 1990, as well as clarify OCRM's interpretation of the consistency regulations. Development of the Manual is behind schedule, but we still expect to release a draft for comment sometime this fall.

Secretarial Appeal Decisions

1993 CZMA Consistency Appeal Decisions Since January 15, 1993

Under CZMA § 307(c)(3), a state's consistency objection precludes a federal agency from issuing a permit for an activity at issue unless, upon appeal by the applicant, the Secretary of Commerce finds that the activity is either consistent with the objectives of the CZMA (Ground I) or necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must override the state's objection. Since January 15, 1993, the Secretary has issued the following consistency appeal decision to date.

Puerto Rico - Appeal of Jorge L. Guerrero-Calderon (Guerrero-Calderon Decision), March 5, 1993.

In August of 1988, Mr. Jorge L. Guerrero-Calderon (Appellant) applied to the U.S. Army Corps of Engineers for a permit to construct a 41-foot pier to facilitate convenient water access to his property located on Culebra Island, Puerto Rico. The Commonwealth of Puerto Rico objected to the Appellant's consistency certification for the proposed project on the ground that it is inconsistent with Puerto Rico's coastal management program policies providing for the protection of sea turtle habitat. On appeal, the Secretary of Commerce found that the Appellant's proposed project failed to satisfy 15 C.F.R. § 930.121 (b). The proposed project will adversely affect the natural resources of the coastal zone by leading to more boating activity in the Tamarindo Bay area which could degrade sea turtle habitat and potentially harm endangered and threatened sea turtles feeding on seagrass in the vicinity. These adverse effects upon the natural resources of the coastal zone are substantial enough to outweigh any minimal contribution of the project to the national interest. Because the Appellant failed to satisfy Ground I and did not plead Ground II, the Secretary declined to override Puerto Rico's objection.

Pending Consistency Appeals

(As of July 30, 1993)

Appellant	Activity	State
Mobil (Manteo)	NPDES discharges	NC
Mobil (Manteo)	OCS exploration plan	NC
Carlos Cruz-Colon	Construction of a dock or boardwalk	PR
Rushton/ Codd	Construction of private home in Chesapeake Bay critical area	MD
ERA, S.E. Inc.	Reconstruction of dock	PR
Mobil (Pensacola)	OCS exploration plan	FL
Olga Vélez-Lugo	Construction of a dock and placement of fill	PR
Jesse J. Fogle	Impoundment of wetlands and placement of fill	SC
William O. Bryans	Impoundment of wetlands and placement of fill	SC

For further information on appeals call Roger Eckert, NOAA Office of General Counsel for Ocean Services, (301) 713-2967.

Federal Consistency Bulletin Board

The Consistency Bulletin Board provides states, OCRM, and other parties the opportunity to alert readers to upcoming events, various issues, request information from other states on a federal consistency issue, transfer ideas, etc. Items for the Bulletin Board may also present the lighter side of federal consistency (if it exists).

OCRM has moved to Silver Spring Maryland! Our new address is

Office of Ocean and Coastal Resource Management,
NOAA
1305 East-West Highway, 11th Floor
Silver Spring, Maryland 20910

OCRM Director - (301) 713-3155
Evaluations - (301) 713-3086
Sanctuaries and Reserves - (301) 713-3125
Minerals and Energy - (301) 713-3159
CPD Chief - (301) 713-3102
Federal Consistency - (301) 713-3098
N. Atlantic - (301) 713-3105
S. Atlantic - (301) 713-3117
Great Lakes - (301) 713-3113
Gulf - (301) 713-3109
Pacific - (301) 713-3121
Fax - (301) 713-4367

NOAA has a new General Counsel.

OCRM welcomes Meredith Jones, formerly of Bechtel Financial Services, Inc., in San Francisco, Calif. She replaces Tom Campbell, NOAA General Counsel under the Bush Administration.

FEDERAL CONSISTENCY BULLETIN

Office of Ocean and Coastal Resource Management

Issue No. 3
June 1994

The Federal Consistency Bulletin is intended to keep states, federal agencies, and other interested parties abreast of current federal consistency issues. The federal consistency provision, section 307, of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires that activities performed by the federal government, that affect any land or water use or natural resource of a state's coastal zone, must be consistent, to the maximum extent practicable, with the enforceable policies of a state's federally approved coastal management program. Federally permitted and funded activities must be consistent with the enforceable policies of a state's coastal management program. The Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, administers the CZMA and federal consistency at the national level.

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Significant State Issues

Interstate Consistency Update

As reported in Federal Consistency Bulletins, Issue No. 1, January 1993, and Issue No. 2, August 1993, the North Carolina and Virginia Beach dispute over the Lake Gaston water withdrawal continues to drive the interstate consistency issue. On May 19, 1994, the Secretary of Commerce, while overriding North Carolina's objection to the project, enabling federal agencies to issue necessary approvals to Virginia Beach, formally sanctioned interstate consistency. An executive summary of the decision follows:

Introduction

The Virginia Electric and Power Company (VEPCO), on behalf of the City of Virginia Beach, Virginia, (City), appealed to the Secretary of Commerce to override the State of North Carolina's objection to the City's proposal to withdraw water from Lake Gaston for the City's water supply needs. This issue has had a long and contentious history, and the decision was reached only after a thorough consideration of all the evidence in the record. As explained in more detail below, the Secretary overrode North Carolina's objection, thereby allowing the City to obtain federal permits to build a pipeline for the withdrawal of up to 60 million gallons a day (mgd) of water from Lake Gaston.

VEPCO's appeal arose under the Coastal Zone Management Act (CZMA), an act administered by the National Oceanic and Atmospheric Administration (NOAA), an agency within the Department of Commerce. Section 307 of the CZMA provides that any applicant for a required federal license to conduct an activity affecting any land or water use or natural resource of the coastal zone, shall provide to the permitting agency a certification that the proposed activity complies with the enforceable policies of a state's coastal zone management program.

VEPCO requested approval from the Federal Energy Regulatory Commission (FERC) for the City's project. Because North Carolina objected to the project, FERC could not grant a license or permit, unless the Secretary of Commerce found that the activity is consistent with the objectives of the CZMA or is otherwise necessary in the interest of national security.

Background

The City, located on the coast of southeastern Virginia, is the largest city in Virginia, with more than 400,000 residents. The City has no water supply of its own and, historically, has purchased all of its water from the adjacent city of Norfolk. A series of droughts plaguing southeastern Virginia over the past 15 years has caused water shortages throughout the area. In response, the City adopted mandatory year round water restrictions and imposed a moratorium on extensions of its water system. Numerous water studies have shown that southeastern Virginia will need at least an additional 60 mgd of water by the year 2030.

More than a decade ago, after several years of study, the City embarked upon a project to withdraw potable water from Lake Gaston for the consumption of its residents and those of neighboring cities. Lake Gaston, which lies approximately 100 miles west-southwest of the City, is a man-made lake formed by damming a portion of the Roanoke River. Lake Gaston is part of a hydroelectric project constructed in the 1950s by VEPCO, under a license granted by FERC. Lake Gaston lies partly in Virginia and partly in North Carolina. The proposed project involves the permanent, consumptive withdrawal of up to 60 mgd of water from Lake Gaston, which is the equivalent of 22 billion gallons per year.

To gain access to Lake Gaston, the City proposes to construct a pipeline. The proposed pipeline would originate in a branch of Lake Gaston in Brunswick County, Virginia, at a location approximately 400 yards north of the Virginia-North Carolina border, run 76 miles across southeastern Virginia, and end at Lake Prince in Isle of Wight County, Virginia. The proposed pipeline would be located entirely within Virginia.

In 1983, in order to construct the pipeline, the City applied to the U.S. Army Corps of Engineers (Corps) for a permit under two federal statutes, the Clean Water Act and the Rivers and Harbors Act. The Norfolk District Corps of Engineers issued the permit after conducting an environmental assessment pursuant to the National Environmental Policy Act (NEPA), and concluded that the project would have no significant environmental effects.

The State of North Carolina (State) challenged the adequacy of the Corps' NEPA review in the federal courts. A decision issued in July 1991, ultimately upheld the issuance of the Corps permit.

To install and operate its water intake facility for Lake Gaston, the City must also obtain permission from VEPCO, and VEPCO, in turn, must obtain approval from FERC. VEPCO applied to FERC on February 20, 1991, to obtain the necessary permit approval for the pipeline project. The State of North Carolina requested a certification that the proposed project was consistent with North Carolina's coastal management program, a program which had been approved under the CZMA. The City and VEPCO jointly submitted such a certification.

On September 9, 1991, the State objected to the City's and VEPCO's consistency certification on the ground that the proposed project is inconsistent with several enforceable policies contained in the State's coastal management program. Specifically, the State alleged that the project is not consistent with its guidelines for estuarine waters and public trust areas because the proposed withdrawal of water would significantly increase the number of low flow days experienced by the lower Roanoke River system in coastal North Carolina. This increase, the State asserted, would cause significant adverse effects on its coastal zone, including the Roanoke River striped bass fishery.

Under the CZMA, the State's consistency objection precludes any federal agency from issuing any license or permit necessary for the City's proposed project, unless the Secretary of Commerce (Secretary) finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or is necessary in the interest of national security (Ground II).

On October 3, 1991, VEPCO, on behalf of the City, filed with the Secretary a notice of appeal from the State's objection to the City's proposed project. The City argued that the project satisfies both Ground I and Ground II and raised several threshold issues. On December 3, 1992, then-Secretary of Commerce Barbara Franklin, relying on a Department of Justice opinion, terminated the appeal on the basis that North Carolina lacked the authority under the CZMA to review a proposed project that would occur wholly within Virginia. In February, 1993, the Department of Justice was asked again whether its previous opinion still represented its view, and Justice responded affirmatively. Subsequently, the Department of Justice withdrew its opinion, and on January 7, 1994, the Department of Commerce reopened the appeal.

Upon consideration of the entire record, which included submittals by the City and North Carolina, written information from federal agencies and the public, and views given during a public hearing, the Secretary made the following findings.

Threshold Issues

A. Compliance With the CZMA and its Implementing Regulations

First, the City argued that the CZMA's consistency review provisions do not apply because VEPCO has not applied for a required federal license or permit. According to the CZMA, the City must first have applied for a federal license or permit in order to trigger the State's right to lodge a consistency objection. The Secretary found that to be because the regulatory definition of the term "license or permit" includes federal agency approvals, and because FERC approval is required for the project, VEPCO has applied for a required federal license or permit.

Second, the City argued that the CZMA's consistency review provisions do not apply because the proposed project is not an activity "affecting any land or water use or natural resource of the coastal zone." The Secretary found that there was enough evidence in the administrative record to establish that the State had

made a prima facie showing of effects on the coastal zone.

Third, the City argued that the consistency review provisions of the CZMA do not apply because the policies cited by the State in its objection letter do not constitute "enforceable policies." The Secretary found that because the policies cited by the State are legally binding and provide the State with the authority to control land and water uses and natural resources in its coastal zone, they are enforceable policies as defined in the CZMA.

B. Interstate Consistency

The CZMA encourages coastal states to establish management plans for protecting their coasts from environmental damage. A threshold issue raised by the City is whether, under the CZMA, a state (North Carolina) has a right to review, i.e., comment on and possibly object to, a federally licensed or permitted activity occurring totally within another state (the Lake Gaston project in Virginia). The purpose of the review would be to determine if the activity has negative effects on the coastal environment of the reviewing state (North Carolina). This issue is referred to as "interstate consistency."

First, the City argued that the Corps of Engineers previously decided, in a 1984 application for a permit related to the proposed project, that the CZMA does not allow one state to review activities in another state, and that the Secretary is therefore precluded from considering this issue. The Secretary found that because the Corps' permit findings did not include a decision on whether the CZMA authorizes interstate review, he was not precluded from considering the issue.

Second, the State argued that the project partially occurs in North Carolina, and thus does not involve interstate consistency. The Secretary concurred with former Secretary Franklin's decision that this project occurs wholly in the Commonwealth of Virginia, where the pipeline will be built and where the extraction of the water will occur.

Third, the City argued that interstate consistency review is not authorized pursuant to the CZMA. Based upon the plain language of the CZMA and its legislative history, the Secretary found that the CZMA authorizes one state to review for consistency with its federally approved coastal management program activities which, although occurring totally within the boundaries of another state, affect any land or water use or natural resource of the coastal zone of the reviewing state.

C. Conclusions Regarding Threshold Issues

The Secretary determined that threshold issues raised by Virginia Beach and the State of North Carolina did not preclude him from considering the merits of this case.

Ground I: Consistent with the Objectives or Purposes of the CZMA

To find that the proposed activity satisfies Ground I, the Secretary must determine that the project satisfies all four of the elements specified in the regulations implementing the CZMA (15 CFR § 930.121). If the project fails to satisfy any one of the four elements, it is not consistent with the objectives or purposes of the CZMA and federal licenses or permits may not be granted. The four elements of Ground I are:

1. The proposed activity promotes one or more of the competing national objectives or purposes contained in the CZMA.

2. The proposed activity's individual and cumulative adverse effects on the coastal zone are outweighed by its contribution to the national interest.

3. The proposed activity will not violate any requirements of the Clean Water Act or the Clean Air Act.

4. There is no reasonable alternative available that would provide the 60 mgd of water needed in southeastern Virginia in a manner consistent with the State's coastal management program.

The Secretary made the following findings with regard to Ground I:

1. The proposed project will foster development of the coastal zone and coastal zone resources, and thus furthers more than one of the objectives or purposes of the CZMA.

2. The proposed project's individual and cumulative adverse effects on the coastal zone are outweighed by its contribution to the national interest.

While the record shows that the project's effects on water flow in the Roanoke River will have individual and cumulative adverse effects on striped bass, those effects will likely be small. The record shows that the project's effects on water quality will be minimal, and will minimally affect striped bass. The record shows that the project's effects on coastal wetlands and on other coastal resources and uses will be minimal.

The proposed project will contribute significantly to the national interest because it will allow the beneficial use of water resources of the coastal zone. Providing potable water for human consumption to a major metropolitan area constitutes a very high priority use among all beneficial uses of water. The record shows that the project will contribute significantly to the national interest because of the extent to which it will further and support economic development in the coastal zone, and the extent to which it will alleviate southeastern Virginia's projected water deficit.

In sum, although the project will affect the Roanoke River striped bass fishery, as well as other coastal resources and uses, the evidence shows that the individual and cumulative adverse effects of the project are outweighed by the national interest contribution of alleviating the City's water supply shortage and encouraging economic development.

3. The proposed project will not violate the Clean Water Act or the Clean Air Act.

4. There are no reasonable alternatives available which would permit the project to be conducted in a manner consistent with the State of North Carolina's coastal management program. The proposed alternatives failed for one or more reasons. The State failed to describe some alternatives with sufficient specificity. Some alternatives were unreasonable, i.e., environmental advantages of the alternative did not outweigh the increased cost of the alternative over the proposed project. Finally, some alternatives were found to be unavailable either because of technical or legal barriers or because an alternative did not meet the primary purpose of the project, which is to provide up to 60 mgd of additional water to southeastern Virginia.

Ground II: Necessary in the Interest of National Security

Although southeastern Virginia is home to the largest naval complex in the world, the record demonstrates that there would be no significant impairment to a national defense or other national security interest if the City's project is not allowed to go forward as proposed. Therefore, the Secretary found that the requirements of Ground II have not been met.

Conclusion

The Secretary found that the proposed project is consistent with the objectives or purposes of the CZMA (Ground I). Accordingly, the proposed project may be issued the necessary permits by federal agencies.

If a coastal state determines that an activity occurring in another state could be reasonably expected to affect their coastal zone and intends to review the activity for consistency, it should contact OCRM, the activity proponent, and the state in which the activity will occur, at the earliest time practicable. Early coordination helps alleviate potential conflicts and will ensure adherence to proper procedures.

NOAA regulations and practice establish a procedure for interstate reviews. States can define the geographic scope of listed activities to be reviewed outside the coastal zone, under 15 C.F.R. § 930.53(b), or if no geographic scope is defined or it is an unlisted activity, then the state must obtain OCRM approval to review the activity as an unlisted activity, under 15 C.F.R. § 930.54.

California and the Closure of Fort Ord

As reported in the previous Bulletin, the Army Corps of Engineers (Corps) is in the process of closing Fort Ord and reviewing alternatives for re-use of the site. Fort Ord is a large military base adjacent to Monterey Bay. Prior misunderstandings regarding consistency determinations, the state's 45 day review, and the record of decision, have been resolved. The Corps issued a final consistency determination and the state agreed with the determination. The California Coastal Commission remained concerned over reuse decisions outside Corps control. However, the Commission decided that the commitments given by the Corps and by area local governments would provide for continued Commission involvement in the planning and reuse of Fort Ord. In concluding its analysis, the Commission found:

> [G]iven the measures provided in this consistency determination, an understanding of the limitations to the Commission's jurisdiction in reviewing this consistency determination, and, to the extent they exist, the opportunities for continuing Commission involvement in the planning for this vital coastal region, the proposed disposal and reuse of Fort Ord is consistent with the California Coastal Management Program.

The state's agreement was based on the following disposition of Fort Ord.

The disposal and reuse have been planned to provide for the transfer of most sensitive environmental areas to other federal agencies and state agencies that are able to manage the lands without significant environmental impacts. Transfer of portions of Fort Ord to local agencies is intended to allow for development of educational, recreational, airport business, and institutional uses to offset the economic effects to the region of the closure of Fort Ord.

All areas in the coastal zone will be transferred to the California Department of Parks and Recreation, to be managed for public access and visitor-serving uses, and habitat preservation. Other major uses may include University science offices, State University campus, County agricultural center, youth camp, airport, retail centers, light industrial development, resort hotels, residential development, etc.

For additional information from California contact Mark Delaplaine at (415) 904-5280.

New Jersey Unlisted Activity Request for Shipment of Spent Nuclear Fuel

New Jersey sought OCRM's permission to review Long Island Power Authority's (LIPA's) transportation of irradiated nuclear fuel from the former Shoreham Nuclear Power Station in New York, through New Jersey waters, to Philadelphia Electric Company's Limmerick Generating Station in Eddyston, Pennsylvania, and the Coast Guard's involvement in that transport.

New Jersey asserted that Coast Guard approval of LIPA's transportation plan was a listed Federal license or permit activity in the New Jersey Coastal Management Program (NJCMP) requiring that LIPA submit a consistency certification to New Jersey. Alternatively, New Jersey requested OCRM approval to review the activity as a unlisted activity under 15 C.F.R. § 930.54.

OCRM found that the activity was not listed. Additions to the NJCMP list of federal licenses or permits in New Jersey's Federal Consistency Guidelines (Guidelines) were not submitted by the State for incorporation into the NJCMP, pursuant to 15 C.F.R. § 930.53(d) and 15 C.F.R. Part 923, Subpart I. OCRM could not approve New Jersey's request to review the activity as an unlisted activity. OCRM determined that the proposed shipment by LIPA does not involve the issuance of a required license or permit by the Coast Guard as defined in CZMA section 307(c)(3)(A) and 15 C.F.R. Part 930, Subpart D, based on the information provided by the State, and comments by LIPA and the Coast Guard. Therefore, the activity was not subject to consistency review under the CZMA.

OCRM informed New Jersey that OCRM is committed to fully supporting the coastal states' use of the federal consistency provision, and ensuring that federal agencies and applicants for federal approvals comply with consistency requirements. As such, OCRM gives a broad meaning to the definition of "federal license or permit" in 15 C.F.R. § 930.51(a). However, in this case, LIPA did not apply for a federal license or permit, and moreover, the Coast Guard had not proposed any activities concerning the shipment. LIPA was not legally required to present the Coast Guard with its operation plan for review, but elected to do so on a voluntary basis. Although the Coast Guard could have exercised its statutory authority to control the shipment, no such control was asserted in this case. Absent this control, LIPA could proceed with the shipment without Coast Guard review or approval.

New Jersey filed suit against NOAA, the Coast Guard, and the NRC, but the courts found for the federal government on all counts. For more information from New Jersey call Steve Whitney at (609) 292-1875.

BCDC Unlisted Activity Request for Airport Expansion

The San Francisco Bay Conservation and Development Commission (BCDC) sought OCRM approval to review the San Francisco International Airport's (SFIA's) airport layout plan (ALP) submitted to the Federal Aviation Administration (FAA), for consistency with BCDC's coastal management program. SFIA objected to BCDC's request and raised several procedural and substantive issues. At one point BCDC had initiated discussions with SFIA to withdraw BCDC's request if FAA and SFIA would agree not to require SFIA to expand in size in the reasonably foreseeable future. BCDC also wanted written notification of all future ALPs. However, that effort stalled, and SFIA asserted that BCDC had waived its federal consistency rights by not notifying all parties within the timeframe required by NOAA regulations. After many discussions with the parties, OCRM believed that the parties could settle their differences without further administrative processes. Therefore, rather than ruling on the timeliness issue, OCRM encouraged the parties to discuss their substantive concerns. They agreed to do so and resolved their differences without further administrative proceedings.

SFIA will provide BCDC with all future revised ALPs and will obtain required BCDC permits. FAA has assured BCDC, in writing, that FAA will not approve ALPs or financial grants to SFIA that would require SFIA to expand its runways (and, therefore, require filling of San Francisco Bay). As a result BCDC withdrew its request to review this ALP for consistency.

For more information from BCDC contact Alan Pendleton at (415) 557-3686.

California Unlisted Activity Request for ICC Water Carrier License

No state lists Interstate Commerce Commission (ICC) water carrier licenses in their state CMPs. However, the ICC requires all applicants to notify relevant coastal states of applications made to the ICC. The ICC does this to ensure that coastal states receive adequate notice of an unlisted activity. If the ICC does not receive notification from a state within 30 days (pursuant to 15 C.F.R. § 930.54(a)) that the state intends to review the activity for consistency, then consistency review has been waived and the ICC may issue the permit. This process has run relatively smoothly and consistency review has been asserted by states in only a few instances.

In one case, California received notice from an ICC applicant. California did not assert consistency because the shipper indicated that petroleum products or hazardous substances were not involved, and that the vessels would use established navigation routes. The 30 days lapsed in which California could assert consistency. However, a short time after, California received an environmental report from the ICC that indicated that the shipper would be transporting petroleum products.

California notified ICC and the applicant that they intended to review the license for consistency, even though they had previously declined to review. OCRM supported California on the ground that the state in fact had not waived its consistency rights, because the state had never received notice that the license included petroleum transport. The ICC agreed with OCRM and encouraged the applicant to discuss the matter with California. The applicant agreed to remove petroleum product transportation from the application and California withdrew its unlisted activity request.

For more information from California call Mark Delaplaine at (415) 904-5280.

California Unlisted Activity Request - Commercial Spaceflights

The California Commercial Spaceport, Inc. (CCSI) proposes to establish a commercial space launch complex at Vandenberg Air Force Base. CCSI will be responsible for the construction and operation of the facility, but the Air Force must lease land to CCSI and may have to issue some form of approval. Because of potential effects to coastal uses and resources, California notified CCSI and the Air Force of its intent to review the activity, as an unlisted activity, for consistency with California's CMP.

If Air Force approval is required for the spaceport, the approval is not a "listed activity" in California's federally-approved coastal management program, and OCRM must approve California's request to review (California does not need OCRM approval to review a direct federal activity under section 307(c)(1) of the CZMA).

OCRM must approve or disapprove California's request to review based on whether the spaceport can be reasonably expected to affect any land or water use or natural resource of California's coastal zone. Both CCSI and the Air Force have agreed with California that the spaceport can be reasonably expected to affect the coastal zone.

However, the Air Force asserts that California should not be allowed to review the activity under section 307(c)(3) of the CZMA (federally licensed or permitted activity), stating that the activity is a direct federal activity under section 307(c)(1) or (2) of the CZMA.

Despite the Air Force's position, California intends to review the consistency determination under CZMA section 307(c)(3). However, as noted above, California cannot review the activity

under section 307(c)(3) without OCRM approval. OCRM has not determined whether the Air Force involvement is a direct federal activity or a required federal approval. However, all parties wish to facilitate review of the consistency determination.

The State, CCSI, and the Air Force, agreed that OCRM should make a determination of effects and that the remaining issues will be addressed through informal negotiations. Therefore, OCRM determined that, based on the information provided by the parties, the construction and operation of the spaceport can be reasonably expected to affect the coastal zone. Therefore, California may begin its review of the activity. OCRM's approval does not determine whether the State may use the review standard of (c)(3) or the review standard of (c)(1) or (2). The State, CCSI, and the Air Force, agreed that, if OCRM determines that the Air Force involvement is a direct federal activity under CZMA section 307(c)(1) or (2), the State should complete its review pursuant to the requirements of 15 C.F.R. Part 930, Subpart C. If OCRM determines that the Air Force involvement is a required federal approval under CZMA section 307(c)(3), the State may complete its review pursuant to the requirements of 15 C.F.R. Part 930, Subpart D.

Negotiations are currently underway and OCRM is deliberating the issue of which standard of review the State may apply. For more information from California call Mark Delaplaine at (415) 904-5280.

California Unlisted Activity Request and Hawaii's Review of the Acoustic Thermometry of Ocean Climate (ATOC) Project

The purpose of the ATOC project is to study global warming by measuring underwater sound waves to detect temperature variations in the deep ocean. Scripps Institution of Oceanography proposes to transmit underwater sound waves from sources off Kauai, Hawaii and Pt. Sur, California to 18 receivers scattered throughout the Pacific Ocean. The acoustic source equipment would be placed at water depths of 850 meters. Because ATOC has the potential to harass marine mammals while performing the research, Scripps has applied to NOAA's National Marine Fisheries Service (NMFS) to "take" marine mammals for scientific research. Both California and Hawaii have asserted consistency on ATOC.

Hawaii and California are concerned that the noise generated by ATOC could affect marine mammals, some of which are considered coastal zone resources, and commercial fishing. Further the states are concerned with the lack of data on effects to these coastal resources.

Hawaii lists NMFS marine mammal permits in its coastal management program. Therefore, Scripps is required to submit a consistency certification to Hawaii. Hawaii has notified Scripps and NMFS of this requirement. California does not list the NMFS permits and, therefore, requested OCRM approval to review the permit as an unlisted activity. Both Scripps and NMFS requested that OCRM deny California's request because ATOC would not affect California's coastal resources and because California did not meet the procedural requirement for timeliness under CZMA regulations.

At OCRM's encouragement, California and Scripps discussed California's concerns. OCRM stayed its decision on the timeliness matter to give everyone time to negotiate. As a result of the discussions between California and Scripps, California withdrew its intent to review the NMFS permit application as an unlisted activity. California reserved its rights to future federal consistency reviews for other federal approvals for ATOC.

For more information from California call Mark Delaplaine at (415) 904-5280. For more information from Hawaii call Doug Tom at (808) 587-2875.

Wisconsin Federal Consistency Manual

For several years OCRM has been working with Wisconsin on federal consistency issues. Wisconsin's implementation of federal consistency has been an issue in previous program evaluation (CZMA section 312) findings. As a result, Wisconsin produced a draft Wisconsin federal consistency manual. However, OCRM had some remaining concerns on the implementation of federal consistency in Wisconsin. OCRM's primary concerns have been ensuring that a single state agency has the federal consistency authority and that all relevant Wisconsin coastal management program (WCMP) enforceable policies are considered when reviewing an activity for consistency.

To better understand how the WCMP implements federal consistency, OCRM's Federal Consistency Coordinator, David Kaiser, and OCRM Program Specialist, Neil Christerson, spent a day with WCMP staff in Wisconsin. OCRM learned that Wisconsin appears to make effective use of federal consistency, but that the current draft WCMP Manual does not adequately describe the actual federal consistency procedures the WCMP uses that would address OCRM concerns. Wisconsin is in the process of revising the manual to more clearly describe how consistency decisions are made in Wisconsin and how WCMP coordinates federal consistency decisions with other WCMP networked agencies.

For more information from Wisconsin call Mary Frazer, WCMP Federal Consistency Coordinator, at (608) 266-8269.

Alaska - MOU with Minerals Management Service

In 1992, the Alaska Coastal Management Program (ACMP) initiated a project to analyze and resolve both procedural and substantive issues surrounding state review of federal Outer Continental Shelf (OCS) lease sales. These issues were brought to light during the state review of OCS Lease Sale 124 in the Beaufort Sea. This was the first sale since the 1990 amendments to the Coastal Zone Management Act clarified that OCS lease sales were subject to federal consistency review.

A major product from this effort is a comprehensive report that discusses state and federal roles in the OCS leasing process and includes recommendations for improvements. One of the central recommendations was that the ACMP enter into a Memorandum of Understanding (MOU) with the U.S. Minerals Management Service (MMS). Both parties have been working diligently on the MOU, and it should be completed this summer. The MOU will facilitate early consultation and information exchange and reconcile procedural issues between the ACMP review process and the

federal Outer Continental Shelf Lands Act process.

For more information from Alaska call Beth Kerttula at (907) 465-6713.

OCRM Coordination with Other Federal and Non-Federal Entities

In addition to the interaction with other federal agencies involving specific state issues noted above, OCRM has met with the following federal and non-federal entities.

Federal Energy Regulatory Commission (FERC)

At FERC's request, OCRM and FERC met to discuss federal consistency procedures. FERC wanted to ensure that it fully complied with federal consistency requirements as it goes through the lengthy process of re-licensing numerous hydro-electric power licenses. OCRM provided extensive comments on FERC's federal consistency guidance to its field staff and stressed the need for FERC to coordinate closely and early with state coastal management programs.

For more information from FERC call Rich McGuire, Division of Project Review, Office of Hydropower Licensing, FERC, at (202) 219-3084.

Federal Agency Workgroup on the Dredging Process

The Interagency Workgroup on the Dredging Process (Workgroup) was convened by Secretary of Transportation Peña in November 1993. The Workgroup consists of representatives from the Environmental Protection Agency, the Fish and Wildlife Service, NOAA's National Marine Fisheries Service, OCRM, the Army Corps of Engineers, and the Maritime Administration (MARAD). The Workgroup's mission is to review the existing dredging and disposal process and identify ways to improve it at both a national and a local level. As part of this effort, the Workgroup has conducted outreach meetings in ten important port cities to solicit information about problems, issues, and solutions on the dredging process from the public including port, shipping, and environmental interests.

Two rounds of outreach meetings were planned. The first round, held in January and February 1994, resulted in the identification of issues and potential solutions to problems associated with the dredging process. The Workgroup used the information from the first round of outreach meetings to develop an "Options Paper." The second round of outreach meetings were held in early June 1994. The focus of the second round of outreach meetings was to elicit comments on the Options Paper. The Workgroup is now taking the input from the second round to develop final recommendations. MARAD's plan is to have final recommendations by the end of July 1994.

The Options Paper identified three overarching themes: 1) both short-term and long-term management and planning strategies are needed; 2) the role of Federal, state, and local government must be clearly defined and implemented; and 3) adequate and appropriate funding is critical to achieve the goals of the process. The 28 options are then divided into five issue areas: 1) Federal interagency and external coordination; 2) proactive local planning and coordination; 3) dredged material disposal; 4) dredging policy; and 5) Funding and Project Development.

OCRM has had extensive input into this process and federal consistency (as well as other CZMA issues) is one of many important topics addressed. For more information from OCRM contact John King, Assistant Regional Manager, Pacific Region, CPD, at (301) 713-3121. For more information from MARAD contact Carl Sobremisana, Outreach Coordinator, at (202) 366-1765/5471.

Department of Justice

In the past, the Department of Justice (Justice) had not always taken positions on CZMA issues that were aligned with those of OCRM and the states. With the goal of trying to work through those often conflicting positions, OCRM and the NOAA General Counsel for Ocean Services initiated an effort to more closely coordinate with Justice. As a result OCRM and the NOAA General Counsel regularly discuss consistency issues with Justice, both generally and in response to specific state CZMA litigation against NOAA or other federal agencies. This coordination has lead to a better understanding of federal consistency, not only between OCRM and Justice, but also between OCRM and other federal agencies, through Justice's assistance. As a result, a greater opportunity for more efficient and effective resolutions of CZMA disputes now exists.

Corps of Engineers

As a result of OCRM's participation on the Interagency Workgroup on the Dredging Process, Jeff Benoit, OCRM Director, met with Morgan Rees, Deputy Assistant Secretary of the Army, to discuss issues of mutual concern. Issues included who pays when state coastal management programs require beneficial use of dredged material disposal or mitigation requirements for Corps projects. While this issue was the catalyst for the meeting, the primary concern was coordination between OCRM and the Corps to develop a federal position on these issues and to avoid conflicts with state programs by addressing state concerns as early as possible. OCRM and the Corps will continue to work on these issues in the coming months.

Department of the Air Force

As a result of California's request to review a commercial spaceport project at Vandenberg Air Force Base, OCRM and the NOAA General Counsel for Ocean Services met with Vandenberg and Air Force Headquarters personnel in Washington, D.C. While the discussions centered on the Spaceport issue, the meeting gave OCRM and the Air Force the opportunity to learn more of each other's mission and viewpoints on consistency issues. OCRM expects to work more closely with the Air Force on these issues in the future.

OCRM Policy Decisions, Guidance, and Projects

Implementing the CZMA Section 306(d)(14) - Public Participation for State Reviews of Direct Federal Activities

When Congress reauthorized the CZMA in 1990, a new requirement was added, section 306(d)(14), which requires that "[t]he management program provide for public participation in permitting processes, consistency determinations, and other similar decisions." This requirement was to be met by November 5, 1993. OCRM provided proposed guidance on meeting this requirement on November 4, 1993, 58 Fed. Reg. 58840. Final guidance was published on June 13, 1994. 59 Fed. Reg. 30339. States will have one year to comply with the Guidance. Based on draft submissions by a few states, OCRM offers the following additional guidance. First, the CZMA section 306(d)(14) requires the state CMP to provide adequate public comment, not the federal agency. The purpose of the requirement is to provide the public with an opportunity to comment to the CMP on the CMP's review for consistency of a federal activity with the enforceable policies of a CMP, in addition to commenting on the activity itself. Therefore, a federal agency cannot be required to publish or pay for the notice (a federal agency could agree to do it voluntarily). Second, while meeting public participation requirements within the states' 45-day review period (plus appropriate extensions) for consistency determinations may be troublesome, it is unlikely the 45 days will be increased. Therefore, states should be developing procedures that fit within current regulatory timeframes. As discussed in previous Bulletins, some states, such as Massachusetts, have used a publication that circulates state-wide to most local planning boards, conservation commissions, state and local agencies, and other interested parties to notify them of activities that the state will be reviewing for consistency. Other states, such as California, have published state-wide notice of the opportunity to comment at monthly meetings of the Coastal Commission on activities that the state will review for consistency.

State CMP Objection Letters

There have been several instances where state objection letters have not contained all required information or have not adequately notified applicants of their right to appeal the objection to the Secretary of Commerce. Defective letters could cause problems for the state if the applicant appeals the objection. The CZMA regulations provide for two types of state objections. Depending on the type of objection, an objection letter should include the following information:

1. **The objection must be based on enforceable policies.** Only enforceable policies incorporated into a state's approved coastal management program may be used to object to a proposed activity. The objection letter should describe the applicable enforceable policies and cite the enforceable policies. 16 U.S.C. § 1456(c)(3); 15 C.F.R. § 930.64(b).

2. **The objection letter must describe how the activity is inconsistent.** There must be a complete description of how a project is inconsistent with enforceable polices. 15 C.F.R. § 930.64(b).

3. **The objection must be timely.** An objection letter should include the date the complete consistency certification (or determination) and necessary information was received by the state and the consistency review period began. A decision on a consistency certification must be made within six months from the date the certification and necessary information was received. If a consistency review of a federally permitted activity is to extend beyond three months the applicant must be notified in writing. The date the applicant was notified of this should also be included in the objection letter. 15 C.F.R. § 930.63.

4. **The applicant must be advised of appeal rights (except for 307(c)(1) and (2)).** There must be a paragraph in the objection letter advising the applicant of the right to appeal the state's objection to the U.S. Secretary of Commerce within 30 days of receipt of the letter. This paragraph should also note that the appeal must be based on the two grounds for a state override: consistent with the purposes and objectives of the CZMA, or necessary for national security. 15 C.F.R. § 930.64(e).

5. **If the objection is based on insufficient information, the objection letter must describe the information needed and why it is needed.** A state may object to a project based on insufficient information if the applicant has failed, following a written request, to supply the required information. If an objection is based on insufficient information the objection letter must describe the nature of the information requested and the necessity of having that information to determine consistency. 15 C.F.R. § 930.64(d).

6. **Consistent alternatives must be identified and discussed.** An objection letter must include alternatives that would be consistent. 15 C.F.R. § 930.64(b). While a state is not required to include consistent alternatives for objections based on insufficient information, see 15 C.F.R. § 930.64(d), because alternatives are a factor considered on appeal states should still include some discussion of alternatives. Consistent alternatives should be described with as much specificity as possible to allow the applicant, but especially the Secretary of Commerce, to determine if the alternatives are available and reasonable.

7. **The objection letters must be sent to the applicant, the appropriate federal agency, and the Director of OCRM (Jeffrey R. Benoit).** 15 C.F.R. § 930.64(a).

Applicability of Federal Consistency to State-Issued NPDES Permits

Recently, a question was raised as to whether state-issued Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permits, where the state NPDES program has been authorized by EPA, are subject to federal consistency review. The Delaware coastal management

program has specifically asked for a NOAA legal opinion. After review of the CZMA, CWA, and case law, NOAA has determined that federal consistency does not apply to NPDES permits issued by a state.

When EPA approves a state NPDES permitting program, the NPDES permit becomes a state permit. The NPDES permit is no longer a federal permit issued by EPA. While EPA retains some control over the program -- EPA may revoke its approval of the state NPDES program and may veto a state decision -- EPA does not retain sufficient control over the issuance of a state NPDES permit to implicate federal consistency.

This may not be the case for all federal permit programs transferred to states. In addition, it is possible that some actions taken by EPA under CWA section 402(b) may be "federal" and subject to consistency, even after EPA has approved a state NPDES permitting program. For instance, consistency may be implicated where EPA has vetoed a state permit, and consistency is implicated where EPA, after objecting to a state NPDES permit, issues the permit where the state fails to resubmit a permit revised to meet EPA's objections, see 33 U.S.C. § 1342(d)(4).

Imposing Time Limits on State Federal Consistency Agreements and Concurrences

Periodically, a state asks if it can place a time limit on a consistency agreement or concurrence. OCRM has never directly answered this question. OCRM's position on this question is that a state cannot unilaterally place a time limit on its agreement or concurrence. It has long been NOAA's view that the consistency regulations do not allow "conditional concurrences." The regulations require a state to either agree or disagree (a federal agency or a private applicant, however, can agree to any conditions). A time limit should be viewed like any other condition. Thus, if a state, during consistency negotiations, asserts that the state could only find the activity consistent for five years (because of the nature of the project, developing state policies, developing understanding of effects to resources, etc.), there would be an incentive for a federal agency or applicant to agree to a time limit.

In considering time limits, states and federal agencies should, where appropriate, make full use of phased review. See 15 C.F.R. § 930.37(c). In addition, the regulations provide for remedial action by a federal agency for ongoing activities where the State previously determined an activity to be consistent but which the State agency later maintains is being conducted or is having a coastal zone effect substantially different than originally proposed and, as a result, is no longer consistent with the State's management program. See 15 C.F.R. §§ 930.44, 930.66, 930.86, 930.100.

NOAA regulations do not specifically address activities not yet begun where the State previously determined an activity to be consistent but which the State agency later maintains will be conducted or will have a coastal zone effect substantially different than originally proposed. Neither do NOAA regulations specifically address the situation where a previously reviewed activity not yet begun should undergo consistency review again when the effects of the activity have substantially changed. OCRM will address this issue in the revised consistency regulations. In the meantime, the State should work with the project proponent or federal agency to address any new consistency concerns.

Federal Consistency Manual and Revised Regulations

As discussed in previous Bulletins, OCRM was preparing a Federal Consistency Manual that would explain existing regulations in light of the Coastal Zone Act Reauthorization Amendments of 1990, as well as clarify OCRM's interpretation of the consistency regulations. Unfortunately, due to OCRM resource limitations, development of the Manual has been delayed. Originally, OCRM's intent was to complete the Manual and eventually revise the consistency regulations. At this time, OCRM believes that the regulations should be revised first, and then a Manual based on the new regulations may be needed. OCRM hopes to have proposed regulations late this summer. In the meantime any comments or suggestions (general or specific) on revisions to the consistency regulations are encouraged. Comments should be sent to David Kaiser, OCRM Federal Consistency Coordinator, at (301) 713-3098. Fax - (301) 713-4367.

Secretarial Appeal Decisions

1993 CZMA Consistency Appeal Decisions Since August 1993

Under CZMA § 307(c)(3), a state's consistency objection precludes a federal agency from issuing a permit for an activity at issue unless, upon appeal by the appellant, the Secretary of Commerce finds that the activity is either consistent with the objectives of the CZMA (Ground I) or necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must override the state's objection. Since August 1993, the Secretary has issued the following consistency appeal decisions to date.

North Carolina/Virginia - Appeal of Virginia Electric and Power Company (Lake Gaston). See lead article, p. 1.

Puerto Rico - Appeal of Carlos A. Cruz-Colón. Mr. Carlos A. Cruz Colón (Appellant) is the owner of an improved lot located adjacent to the Torrecillas Lagoon in Carolina, Puerto Rico. The Appellant proposed constructing an "L"-shaped wood pier that would be used by him for private recreational purposes. The Puerto Rico Planning Board (PRPB), the Commonwealth of Puerto Rico's coastal management agency, objected to the Appellant's project on the ground that it would violate Puerto Rico's Coastal Management Program (CMP) policies which provide for the protection of natural resources from irreparable damage, and the avoidance of activities which could cause the deterioration of natural systems, including mangroves. The PRPB recommended as an alternative that the Appellant construct a public facility for the use of area residents. The Secretary found that the alternative identified by the PRPB in its consistency objection was both an available and reasonable alternative that would be consistent with Puerto Rico's CMP. Accordingly, the Secretary held that the fourth element of Ground I was not satisfied. Because the Appellant's proposed project failed to satisfy all of the requirements of Ground I, the Secretary did not override the PRPB's objection to the Appellant's proposed project, which may not be permitted by Federal agencies.

Pending Consistency Appeals

(As of June 30, 1994)

Appellant	Activity	State
Mobil (Manteo)	NPDES discharges	NC
Mobil (Manteo)	OCS exploration plan	NC
ERA, S.E. Inc.	Reconstruction of dock	PR
Mobil (Pensacola)	OCS exploration plan	FL
Olga Vélez-Lugo	Construction of a dock and placement of fill	PR
Joseph Mattone	Construction of sea wall and placement of fill	NY

For further information on appeals call Roger Eckert, NOAA Office of General Counsel for Ocean Services, (301) 713-2967.

Federal Consistency Bulletin Board

The Consistency Bulletin Board provides states, OCRM, and other parties the opportunity to alert readers to upcoming events, various issues, request information from other states on a federal consistency issue, transfer ideas, etc. Items for the Bulletin Board may also present the lighter side of federal consistency (if it exists).

OCRM HAS A NEW DIRECTOR -- As many of you are aware, Jeffrey R. Benoit was appointed by the Clinton Administration as the Director of OCRM. Jeff was the Program Manager for the Massachusetts coastal management program for several years. Jeff brings leadership, experience, knowledge, initiative, and motivation to OCRM. Jeff is also well versed in federal consistency issues and is committed to maximizing the benefits of federal consistency.

FEDERAL CONSISTENCY COORDINATOR PLAYS HOOKEY THIS SUMMER -- OCRM's Federal Consistency Coordinator, David Kaiser, will only be available on a part time basis for June and July, 1994. Unfortunately, he will not be enjoying himself, but will be preparing to take the Bar exam in late July (after graduating from the George Washington University Law School in May). David will focus on revised regulations and especially controversial or difficult consistency issues.

OCRM COASTAL PROGRAM DIVISION (CPD) STAFF -- Several new staff have joined CPD over the past year or so. To keep everyone up to date here is a list of CPD staff, responsibilities, and phone numbers:

Name	State/ Responsibility	Phone No.
Clement Lewsey	Chief	301-713-3102
Debra Walker-Smith	Administrative Assistant	301-713-3102
Sonja Taylor	Support Staff	301-713-3102
David Kaiser	Federal Consistency	301-713-3098
Marcella Jansen	Nonpoint Source/6217	301-713-3098
Peyton Robertson	Nonpoint Source/6217	301-713-3098
Ruth Best	CEIP Loans	301-713-3098
Laurie McGilvray	N. Atlantic Regional Mgr.	301-713-3105
Helen Farr	New York, New Jersey	301-713-3105
Pat Scott	Mass., Maine, Rhode Island	301-713-3105
Dwight Reynolds	Connecticut, New Hampshire	301-713-3105
Raquel Roundtree	Support Staff	301-713-3105
Ed Kruse	S. Atlantic Regional Mgr.	301-713-3117
Joshua Lott	Maryland, Georgia	301-713-3117
Joelle Gore	North and South Carolina	301-713-3117
Jim Mills	Delaware, Virginia	301-713-3117
Bill O'Beirne	Acting Gulf & Caribbean Regional Mgr. and Texas	301-713-3109
Nathalie Peter	Virgin Islands, Puerto Rico and Alabama	301-713-3109
Jewel Griffin	Louisiana, Mississippi	301-713-3109
Jeanine Stevens	Florida	301-713-3109
Ellen Brody	Acting Great Lakes Regional Mgr.	301-713-3113
Neil Christerson	Pennsylvania, Minnesota	301-713-3113
Kenneth Walker	Michigan, Indiana	301-713-3113
Diana Olinger	Wisconsin, Ohio	301-713-3113
Bill Millhouser	Pacific Regional Mgr.	301-713-3121
John King	Alaska, California, BCDC	301-713-3121
Masi Okasaki	Washington, Hawaii	301-713-3121
Patty Dombusch	Oregon, Am. Samoa	301-713-3121
Matt Arnn	Guam, N. Marianas	301-713-3121
Deborah Jefferson	Support Staff	301-713-3121
CPD FAX:		301-713-4367

FEDERAL CONSISTENCY BULLETIN

Office of Ocean and Coastal Resource Management

Number 4
February 1996

The Federal Consistency Bulletin is intended to keep states, federal agencies, and other interested parties abreast of current federal consistency issues. The federal consistency requirement, section 307, of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires that activities performed by the federal government, that affect any land or water use or natural resource of a state's coastal zone, must be consistent, to the maximum extent practicable, with the enforceable policies of a state's federally approved coastal management program. Federally approved and funded activities must be consistent with the enforceable policies of a state's coastal management program. The Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, administers the CZMA and federal consistency at the national level.

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Significant State Issues

New York and the Navy: Dredge Material Disposal for SEAWOLF Submarine

The Navy will homeport a Seawolf Class Submarine at the Naval Submarine Base at New London, Connecticut. As part of the activity, the Navy is dredging the Thames River and disposing the dredged material at the New London Disposal Site (NLDS) in Long Island Sound. The NLDS is both in Connecticut and New York waters, although the dredged material for this activity will be placed in Connecticut waters. The Navy, in its draft environmental impact statement (DEIS), determined that disposal activities at the NLDS would not affect New York coastal resources, and provided New York with a negative determination. New York replied that the disposal would affect New York resources and that the Navy should provide the State with a consistency determination. The Navy maintained its negative determination and asserted that New York did not respond within 90 days of receiving the Navy's negative determination, as provided by 15 C.F.R. § 930.35(d).

On October 2, 1995, New York sued the Navy, in the U.S. District Court for the Northern District of New York, to obtain a declaratory judgement and a permanent injunction restraining the Navy from starting the dredging until the 90-day no action period required by the CZMA had passed. On October 12, New York issued its decision, concluding that the Navy's dredge disposal project was not consistent with the New York coastal management program.

On December 20, 1995, the General Counsel of the Navy sent a letter to the New York Secretary of State agreeing to modify the project to alleviate New York's concerns. The Navy agreed to provide New York with barge reports indicating the actual sites of disposal and containment, as well as providing state observers full access to the site. This will assure long term effectiveness of the material that will cover the contaminated sediments.

In accordance with the agreement, New York and the Navy will develop a biological monitoring project which will assess the toxic and bioaccumulative effects of the disposal activity upon fish, shellfish and other organisms commonly found near Fishers Island, New York. As a result of the agreement, on December 22, 1995, the case was dismissed.

In addition, the State of Connecticut is presently working with New York on revising the interim Long Island Sound Dredged Material Management Plan which includes an evaluation of open water disposal of dredged sediments as related to state and federal water quality criteria. For more information, contact William Barton in the New York Department of State's Consistency Bureau at (518) 474-6000.

California and the Air Force: Unlisted Activities and Commercial Space Launches

As reported in Federal Consistency Bulletin, Number 3, the California Commercial Spaceport, Inc. (CCSI) proposed to establish a commercial space launch complex at Vandenberg Air Force Base (Vandenberg AFB). The California Coastal Commission (Commission) notified CCSI and the Air Force of its intent to review the activity, as an unlisted activity, for consistency with California's CMP. OCRM approved the Commission's request and the Commission found the activity to be consistent with California's coastal management program. A remaining issue was whether the proposed commercial launches at Vandenberg AFB are subject to CZMA section 307(c)(3) (federal license or permit activity) or CZMA section 307(c)(1) (direct federal activity).

In this case, OCRM concluded that, it does not matter whether the activity is a CZMA section 307(c)(1) or (c)(3) activity. The activities proposed by the Air Force in conjunction with the CCSI activity are not legally required, and therefore, must be fully consistent with the state's coastal management program. These direct federal activities include procurement and management of fuels and design and operational decisions. As for the proposed lease of federal property, generally, leases are a federal approval for a private activity and are CZMA section 307(c)(3) activities. However, in a particular case, a lease, like any other federal action, may be a (c)(1) activity. It depends in part on who is conducting the activity and who benefits from the activity. In the CCSI case, CCSI's spaceport project appeared to be a federal license or permit activity under CZMA section 307(c)(3). CCSI is the primary beneficiary of the spaceport: the primary purpose of the project is commercial and not military. CCSI is, for the most part, conducting the activity: the project is being constructed under the authority of the Western Commercial Space Center, a not-for-profit corporation, and operated by CCSI. Vandenberg AFB is not contracting for the activity to benefit the federal government (in fact, the Air Force provided a grant to CCSI indicating assistance for a private activity).

OCRM is still discussing the issue with the Commission and the Air Force. There may be launch activities or launches that will be direct federal activities. Recently, McDonnell Douglas proposed to launch up to 10 rockets a year. Some of the payloads will be commercial and some will be for the federal government. The Commission intends to review this activity as an unlisted federal license or permit activity as well. The Commission and Vandenberg AFB are discussing how best to address the Commission's concerns. For more information from the Commission call Jim Raives at (415) 904-5292.

North Carolina and Virginia Beach: Lake Gaston Update

On May 19, 1994, the Secretary of Commerce overrode North Carolina's objection to a proposed water supply project by the City of Virginia Beach, Virginia. See Federal Consistency Bulletin No. 3 for more information on the Secretary's decision. Since then, North Carolina challenged the Secretary's Lake Gaston decision in a federal district court. As a part of that litigation, North Carolina and the City of Virginia Beach unsuccessfully attempted to mediate their differences. On September 28, 1995, the federal district court upheld the Secretary's decision. North Carolina has decided not to appeal the court's decision. Also, the Federal Energy Regulatory Commission (FERC) approved the City's water supply project, and North Carolina has sought judicial review of FERC's decision.

California and Southern Pacific Railroad: Unlisted Activity Request

The Commission requested OCRM approval to review, as an unlisted activity, Southern Pacific Transportation Company's (SPTCo) request of Vandenberg AFB for permission to keep a gate erected by SPTCo on Vandenberg AFB property. The purpose of the gate is to prohibit pedestrian and vehicular traffic across SPTCo's railroad right-of-way to access the beach. The beach is part of or adjacent to Ocean Beach County Park, Santa Barbara County, less than one mile north of the access way. SPTCo urged OCRM to deny the Commission's request on the grounds that SPTCo was prohibiting an illegal activity (trespassing) and an illegal activity cannot be protected under the CZMA.

OCRM found that, the CZMA requires that CMPs identify and manage *permissible* uses, 16 U.S.C. § 1455(d)(2)(B) and (D)(emphasis added), and that prohibiting an illegal activity could not affect a coastal use since illegal activities are not permissible uses subject to the CZMA. However, in this case the Commission and SPTCo take issue on whether the use is permissible. OCRM is not the body to interpret state law. Thus, OCRM did not decide the issue of whether a permissible use was involved, but made its decision based only on whether the activity can be reasonably expected to affect any land or water use or natural resource of the coastal zone.

OCRM approved the Commission's request finding that SPTCo's gate can be reasonably expected to affect public access to the beach. Public access to the beach in this area of California is limited. Despite the existence of another access point less than a mile away, the gate is reasonably likely to block access to the beach. For more information from the Commission call Jim Raives at (415) 904-5292.

Alaska and the Forest Service MOU

Alaska is improving the efficiency and effectiveness of federal consistency reviews by developing memoranda of understanding (MOU) with federal agencies. An MOU with the Minerals Management Service was signed this past year, see below, and work has begun on an MOU with the Corps. Currently, Alaska and the U.S. Forest Service are developing an MOU. Issues center on the timing of consistency reviews with the NEPA process, the content of a consistency determination, adequate information, and identification of Alaska's forestry enforceable policies. see below, Timing of Consistency with NEPA under OCRM Policy Decisions, Guidance and Projects, OCRM has provided substantial input into this MOU and believes the end result will greatly improve Forest Service consistency determinations and the State's review and the relationship between Alaska and the Forest Service. For more information from Alaska call Lisa Weissler at (907) 465-3529.

California Unlisted Activity Request and Hawaii's Review of the Acoustic Thermometry of Ocean Climate (ATOC) Project

As discussed in Federal Consistency Bulletin, Number 3, the purpose of the ATOC project is to study global warming by measuring underwater sound waves to detect temperature variations in the deep ocean. Scripps Institution of Oceanography proposes to transmit underwater sound waves from sources off Kauai, Hawaii and Pt. Sur, California to receivers scattered throughout the Pacific Ocean. The acoustic source equipment would be placed at water depths of 850 meters. Because ATOC has the potential to harass marine mammals while performing the research, Scripps applied to NOAA's National Marine Fisheries Service (NMFS) to "take" marine mammals for scientific research. Scripps also applied for a permit from OCRM (Monterey Bay National Marine Sanctuary). Both California and Hawaii asserted consistency on ATOC.

The states are concerned that the ATOC project could affect marine mammals and commercial fishing. The states are also concerned with the lack of data on effects to these coastal resources. The California portion of the ATOC project was modified in response to concerns. After substantial analysis, public input, and discussions with Scripps, both states found the ATOC project consistent. For more information from California call Mark Delaplaine at (415) 904-5280. For more information from Hawaii call John Nakagawa at (808) 587-2878.

Alaska - MOU with Minerals Management Service

As reported in Bulletin Number 3, in 1992, the Alaska Coastal Management Program (ACMP) initiated a project to analyze and resolve both procedural and substantive issues surrounding state review of federal Outer Continental Shelf (OCS) lease sales. This project resulted in the development of an MOU with the Minerals Management Service. The MOU was completed and signed by the State and MMS this past year. The MOU will facilitate early consultation and information exchange and reconcile procedural issues between the ACMP review process and the federal Outer Continental Shelf Lands Act process. For more information from Alaska call Kerry Howard at (907) 465-3562.

Nationwide Permit 29 (Small Landowners)

In March 1995, the Army Corps of Engineers (Corps) announced a small landowner relief package consisting of (1) a new nationwide permit (NWP 29) allowing the alteration of up to one half acre of non-tidal wetlands for single-family homes, driveways, septic systems, etc:, and (2) a policy statement that an off-site alternatives analysis will not be required for alteration of up to two acres of non-tidal wetlands for single-family homes, expansion of small businesses, etc.

OCRM supported the concept of the NWP to reduce the regulatory burden on small landowners while maintaining environmental safeguards, but were concerned that the NWP goes too far. OCRM's concerns centered on cumulative impacts on a regional or nation wide basis; the NWP might encourage avoidable or unnecessary filling of wetlands; the NWP might apply to large landowners, developers, and speculators, as well as small landowners; and the NWP may encourage the siting of on-site septic systems in inappropriate areas.

State CMPs also expressed concern with NWP 29. The Corps, in its Federal Register notice and individual letters to state

CMPs, provided state CMPs with a consistency determination. Several states have objected to NWP 29 while a few states may find the NWP consistent providing certain conditions are met. Where a state CMP has disagreed with the Corps' consistency determination, work cannot proceed until the applicant has obtained consistency concurrence from the state CMP.

OCRM Coordination with Other Federal and Non-Federal Entities

In addition to the interaction with other federal agencies involving specific state issues noted above, OCRM has met with the following federal and non-federal entities.

Federal Consistency Workshops

Since September 1994, OCRM has held six regional federal consistency workshops around the country (Virgin Islands, Gulf & Caribbean region, two in Alaska, Great Lakes region, and the Pacific Islands). Over 275 state, local and federal agency representatives participated in the workshops. OCRM has received very favorable comments on the workshops. The workshops appear to have greatly improved communication and helped everyone understand the requirements and benefits of federal consistency. The workshops were also very helpful to OCRM by making connections with many regional offices of federal agencies.

Workshops may also be held in the Northeast, Northwest, and mid-Atlantic states next year, but are dependent on available funding. In the coming months OCRM will also hold a workshop in Washington, D.C. for the headquarter offices of the federal agencies.

If funds allow we will also conduct issue-specific workshops for individual states or regions. An example is the workshop held in Juneau Alaska for Forest Service issues. The workshops can be tailored to meet the specific issue and level of understanding of the participants. For the issue-specific workshops OCRM expects to pay only for OCRM travel. States (or federal agencies) would provide meeting facilities. If a workshop is requested that involves more than one state, the states will be responsible for their travel and per diem costs. If funds become available, we will send out a notification of availability for these workshops. Priority will be given to (1) those states or regions that have not had a general workshop (and one is not planned for 1996); (2) first come-first serve; and (3) application of the issue to more than one state or region.

Department of Justice

OCRM and the NOAA General Counsel for Ocean Services continued to work closely with the Department of Justice (Justice). Our improved relationship with Justice continues to lead to a better understanding of federal consistency, not only between OCRM and Justice, but also between OCRM and other federal agencies, through Justice's assistance.

Corps of Engineers

OCRM, on several occasions, met with the Corps to discuss consistency issues. In November 1994, OCRM, NOAA General Counsel for Ocean Services, and the Corps met to discuss several issues raised by the Corps. One outcome of the meeting was a recognition that Corps districts often lacked adequate knowledge of federal consistency requirements. To address this we worked with Corps headquarters and the states to ensure that local Corps offices were well represented at the consistency workshops. Other issues and OCRM's response included:

Paying for State Beneficial Use/Mitigation Requirements

This has been a longstanding issue: who pays for mitigation or beneficial use of dredged material when required by a state CMP's enforceable policies. The Corps does not necessarily object to federally approved state mitigation and beneficial use requirements, but does not believe the Corps should pay the cost to comply with such requirements.

For example, the Corps believes that state mitigation and beneficial use requirements are unrelated to the impacts of dredging and dredged disposal and are unnecessary to meet requirements of the Clean Water Act and other environmental statutes. The Corps has authorities to cost share beneficial uses of dredged material for placement of material on beaches (Water Resources Development Act of 1986 (WRDA) section 933), and for protection, restoration, and creation of aquatic habitat and wetlands (WRDA of 1992 section 204). These authorities are funded separately from the operation and maintenance of navigation projects.

OCRM disagrees with the Corps' view that state mitigation and beneficial use requirements are unrelated to the impacts of dredging and disposal. OCRM considers federally approved state CMP enforceable policies to be requirements for federal agencies to follow, to the maximum extent practicable, and federal agencies should address such requirements, as they would any other Clean Water Act requirement.

Options discussed for resolving the issue included: Memoranda of agreements; earlier coordination between states and federal agencies; changes to WRDA. Proposed changes to WRDA that may be helpful include cost sharing for environmental projects and a greater federal share.

State Requires Extensive Design Specs for Corps Projects

OCRM believes that if design specifications are reasonably obtainable, then the Corps should provide the state with the information. If not, then the Corps should provide phased consistency determinations. If the Corps cannot reasonably provide all project information at one time, the Corps should identify distinct project phases (for the entire project) and submit consistency determinations for the phases as the information becomes available. See also below Timing of Consistency with NEPA under OCRM Policy Decisions, Guidance, and Projects.

Processing Fees

OCRM has already provided guidance on this. See Bulletin Number 1, at 8. While state agencies can assess federal agencies user or processing fees for reviewing consistency determinations, the assessed federal agency must determine if such a fee is allowable or required under federal law applicable to that agency's actions. Therefore, state agencies should complete their consistency reviews regardless as to whether or not a federal agency has paid an assessed processing fee.

Meeting Adjacent State Requirements

Each affected state's enforceable policies must be complied with to the maximum extent practicable. If there are conflicting state requirements efforts should be made to comply with both. The most useful resolution is to coordinate early with all affected states, identify conflicting policies, and work out a solution among all the parties.

State Consistency Reviews at Final Stage of Process

State consistency reviews should occur at the earliest practicable stage. This requires that the federal agency provide the state with sufficient information early, e.g., at the draft EIS stage (while the federal agency still has discretion to change the project). See below Timing of Consistency with NEPA under OCRM Policy Decisions, Guidance, and Projects.

Project in Coastal Zone, But Disposal Beyond State Waters

States may review for consistency the designation of an offshore dump-site (in or outside state waters) (as a direct federal activity that is reasonably likely to affect the coastal zone) and the subsequent use of an approved dumpsite (either as a direct federal activity if the Corps is conducting the activity, or as a federal license or permit activity if a non-federal applicant is conducting the activity).

Different State Agencies Involved in Consistency Process

For purposes of consistency, the Corps is only responsible to the designated state federal consistency agency (usually the lead CMP agency).

Timely State Review

The time frames, especially for direct federal activities, are not long. Many states have instituted procedures to further reduce state response times. For state responses that are toward the end of the regulatory time frames, the problem is usually lack of early coordination or complexity of the project. The earlier the state CMP is brought into the process, the quicker its concerns can be addressed, and the earlier state concurrence can be obtained.

OCRM Policy Decisions, Guidance, and Projects

Federal Consistency Workbook

The Federal Consistency Workbook is designed to be both an education aid as well as a day-to-day resource document for complying with the federal consistency requirements, understanding the benefits of federal consistency, and improving coordination and communication between states and federal agencies. The Workbook has already received wide acclaim from the coastal management community.

The Workbook evolved through the Federal Consistency Regional Workshops. The workbooks were used at the workshops and will be updated as requirements and information changes. The current distribution of the Workbook is 415 state, local, federal, academic, and private individuals. This Bulletin should be included in your Workbook under tab 17.

Consistency Internet Bulletin Board.

OCRM plans to develop an Internet consistency bulletin board. The bulletin board will allow OCRM to quickly, and briefly, notify the coastal management community of current federal consistency issues as well as allow others to place items on the bulletin board. This should be up and running sometime in March or April 1996. Issues will not be discussed in as in-depth a manner as the Federal Consistency Bulletins. Especially complex questions will be pulled from the bulletin board and addressed in more detail by OCRM with the state or federal agency.

Coordinating Federal Consistency and Disposal of Federal Land by the General Services Administration (GSA)

OCRM is developing guidance on coordinating federal consistency and the disposal of federal land by GSA. The guidance is necessary due to recent misunderstandings and conflict between GSA, OCRM, and New York over the need of

GSA to adequately consider the effects of the disposal of federal property on state coastal uses or resources, the process for doing so, GSA's mission to dispose of federal property, and GSA's regulations governing the disposal of federal property.

NOAA and Justice are developing draft guidance, which will be provided to GSA and the New York CMP for their input. Following this, OCRM will finalize the guidance. The guidance will be our recommendation for coordinating the two programs. If followed by states and regional offices of GSA, a structure will be in place to address state CMP concerns, allow GSA to proceed in a timely fashion, and resolve most potential conflicts.

State Assumption of the Clean Water Act Section 404 Permit Program

Several states and the U.S. Environmental Protection Agency (EPA) have raised questions regarding the application of federal consistency to a state's assumption of the Clean Water Act section 404 program. See Bulletin Number 3, at 10 for the applicability of consistency to state issued NPDES permits. Consistency applies to 404 assumptions in the following manner:

1. A question has been raised as to whether EPA's decision to approve or deny a state request to assume the section 404 permit program requires EPA to prepare a consistency determination. OCRM and EPA are currently discussing the issue.

2. Once a state has assumed the 404 authority, 404 permits issued by the state are state permits. There is no requirement for a permit applicant to submit a consistency certification. (This of course only applies to those 404 activities assumed by the state. Consistency will, of course, continue to apply to 404 activities retained by the Corps or EPA.)

3. EPA can object to the issuance of a particular state 404 permit. If EPA objects the state must either adopt permit conditions to satisfy EPA's objections or deny the permit. If the state does not adopt EPA's concerns EPA's objection stands, and the permit application is referred to the Corps for processing.

4. The referred application to the Corps is a federal license or permit (307(c)(3)) activity.

Revised Program Change Regulations and Guidance

Over the years OCRM has provided guidance on requirements and submission procedures for changes made to state CMPs. OCRM has developed new draft guidance which will consolidate and replace all previous program change guidance. The draft guidance will be sent to state CMPs for their comment.

The new guidance clarifies information requirements for program change requests. The focus of the guidance is to explain the difference between procedures for the two types of program changes: routine program changes and program amendments. The guidance also explains a proposed update of the program change regulations (also provided to state CMPs for comment). The regulations are being changed in response to President Clinton's Regulatory Reform Initiative. The change in the regulations will be published shortly (for further comment) as proposed regulations in the Federal Register.

In the regulation update, OCRM will propose to replace the four criteria by which program change requests were evaluated with a reference to the five program areas identified in the program development regulations: (1) uses subject to management, (2) special management areas, (3) boundaries, (4) authorities and organization, and (5) coordination, public involvement and national interest. The regulations would also require states to identify any enforceable policies to be added or changed by the program change.

Federal Consistency and Activities on Native American Lands

The application of federal consistency to federal actions regarding Indian tribes or on Indian lands has been recently raised in several instances. In Rhode Island, a federal district court found that a proposed Narragansett Indian tribe activity was subject to the federal consistency requirement (but not necessarily all enforceable policies). In Connecticut, the State is concerned with the purchase of land by the Bureau of Indian Affairs (BIA). BIA will hold the property in trust for the Mohican Tribe. The Tribe plans to build a casino on the property. Connecticut believes that the purchase of the land by BIA is a direct federal activity (BIA included a consistency determination in its EIS and Connecticut, after some negotiations, agreed with the determination). Alaska is concerned about the use of a Native American allotment for cutting trees and whether there is a direct federal activity or federal license or permit activity involved. In Wisconsin, a developer (a non-Native American) proposes to build a golf course and condos on private land that is within the Oneida Indian Reservation. How does Indian law and federal consistency apply?

There is no one answer for all of these questions. Due to the unique nature of Indian tribes and Indian sovereignty, and applicable settlement acts or treaties, each instance must be examined on a case-by-case basis to determine to what extent Native American activities or activities within Native American lands are subject to state CMP policies. Recent guidance is contained in Narragansett Indian Tribe v. The Narragansett Electric Co., et al., No. 93-667-T (D.R.I. Feb. 21, 1995). The

Rhode Island case shows that Native American activities can be subject to consistency requirements. However, as the court found, the extent of state jurisdiction depends on:

> whether the kind of state regulation being asserted would interfere with federal or tribal interests reflected in the applicable federal statutes when they are read against the backdrop of Indian sovereignty and, if so, whether the state interests served are sufficiently compelling to justify the exercise of state authority.

Slip Op. at 23. In other words, applicable federal law may preempt state regulatory authority over the Tribe. However, the court found that the Rhode Island Coastal Resources Management Plan (CRMP) serves rather than conflicts with federal interests, the CRMP is not preempted by federal law, and the CRMP is applicable to the proposed housing activity, at least as a general matter. See id. at 28, 33-34. Furthermore, unlike the provision in the Clean Water Act allowing tribes to assume the role of states for purposes of the statute, the CZMA does not allow tribes to function as states. See id. at 28-29. C.f. Rhode Island v. Narragansett Indian Tribe, 19 F.3d at 703.

The court found, that strict compliance with every provision of the CRMP may not be required, and that certain policies may be preempted. See id. at 34. The court stated: "Without some indication that exemption from the otherwise plain requirements of the CZMA is 'necessary to protect tribal self-government or to control internal relations' no such exemption should be inferred." Id. at 32. The court also found that the presumption against extending state regulatory authority to the proposed activity is considerably weakened because of the likelihood of adverse coastal effects from the project, and the important state interest at stake. See id. at 32-33. The Rhode Island District Court case also states that the farther removed a proposed activity on Indian lands or by a Native American is from self-government or internal relations the more it is potentially subject to state jurisdiction. See id. at 14, 20-22.

In summary, the court found that the Tribe is subject to federal consistency and the CRMP as a general matter. Depending on the nature of a proposed activity, however, particular CRMP policies may be preempted.

Specifying Alternatives for State Objections for CZMA § 307(c)(3) Activities

State CMP objection letters must describe alternative measures (if they exist) which, if adopted by the applicant, would permit the proposed activity to be conducted in a manner consistent with the CMP. 15 C.F.R. § 930.64(b)(2). See Federal Consistency Workbook, Tab 13, or Bulletin Number 3, at 10, for other information that should be in state objection letters. Identifying alternatives is important since the identification of alternatives by the CMP is one of the four factors the Secretary considers when an applicant appeals a state's objection. See 15 C.F.R. § 930.121(d).

The Secretary has determined that for an alternative to satisfy 15 C.F.R. § 930.121(d), the alternative must be (1) stated by the state to be consistent with the CMP; (2) described by the state with sufficient specificity; (3) reasonable; and (4) available. See Secretary of Commerce, Decision and Findings in the Consistency Appeal of the Virginia Electric and Power Company, (Lake Gaston Decision), May 19, 1994, at 38. These criteria are applied on a case-by-case basis.

Consistent with the CMP means that the state CMP has asserted that the alternative *is* consistent (not *may* be consistent or consistent if well-designed, etc).

Sufficient specificity means that a proposed alternative is specific enough if it can be implemented and conducted in a manner consistent with the CMP. Application of the specificity requirement demands a case specific approach. More complicated projects or alternatives generally require more information than less-complicated projects. In the Lake Gaston case, the project and the alternatives addressed a large-scale water supply problem and the Secretary found that some alternatives were not described with sufficient specificity. Also, if a state CMP requires a "well-designed" alternative, but does not elaborate on what a well-designed alternative is, then the alternative would most likely not be described with sufficient specificity.

A proposed alternative is *reasonable* if the environmental advantages of the alternative outweigh the increased cost of the alternative over the proposed project.

Finally, a proposed alternative is *available* if the proponent of the proposed project can implement the alternative and the alternative achieves the primary purpose or essential purpose of the project.

Reviewing Classified Activities

States have recently asked about asserting consistency over classified military projects. OCRM is not aware of a state's review of a classified activity, but we offer the following guidance.

The 1990 changes to the CZMA make it clear that no federal activity is exempt from the consistency requirement. Thus, a classified activity that is reasonably likely to affect coastal uses or resources is not exempt from consistency (the activity could be exempted by the President under CZMA section 307(c)(1)(B)). However, under the consistent to the maximum extent practicable standard, the federal agency could only provide project details and effects that it is legally permitted to release. Despite the fact that a federal agency may not be able

to disclose certain project details and effects, the federal agency should still *conduct* the classified activity consistent to the maximum extent practicable with the state CMP. Concerned state CMPs may want to consider developing general consistency agreements with relevant federal agencies for classified activities.

Timing of Consistency with NEPA

Coordinating consistency reviews with NEPA draft and final environmental impact statements (DEIS and FEIS) is becoming more and more of an issue. OCRM believes that the following guidance on the timing of federal consistency and development of NEPA documents will provide needed flexibility for both states and federal agencies and still ensure adequate consistency review by the state.

CZMA regulations require that federal agencies shall provide states CMPs with a consistency determination at the earliest practicable time in the planning of an activity. 15 C.F.R. § 930.34(b). A determination should be prepared following the development of sufficient information to determine reasonably the consistency of an activity, but before the federal agency reaches a significant point of decision-making. Id.

If a negative determination is required, it too shall be provided at the earliest practicable time. 15 C.F.R. § 930.34(d).

An FEIS is not usually the earliest practicable time for a determination and it is a significant point in a federal agency's decision-making process. Consistency and negative determinations, and the state CMP's review of the determinations, should be completed before the FEIS is published, if possible. The ideal location for a consistency determination is in the DEIS. (States should provide federal agencies with their concerns and relevant enforceable policies during the scoping process.) Information used to prepare the DEIS may also be useful in determining effects and consistency, e.g., substantiating reports, technical data.

The CMP would then conduct its consistency review of the preferred alternative in the DEIS, and issue a consistency decision. If the preferred alternative and the FEIS have not substantially changed, then the consistency decision would become final. The federal agency should notify the state CMP prior to completing the FEIS as to whether the FEIS will be substantially different than the DEIS. If the FEIS will be substantially different, the federal agency should provide the state with a revised consistency determination 90 days before completion of the FEIS (states and federal agencies are encouraged to agree to a shorter notification and review time for the revised consistency determination).

If the state CMP disagrees with the federal agency's finding that the activity has not substantially changed the state should immediately notify the federal agency and provide the federal agency with the state's reasons. If a disagreement persists, the state and the federal agency should attempt to resolve their differences before publication of the FEIS. OCRM will be available to facilitate negotiations.

State CMPs should base their reviews, to the extent possible, on the information provided in the DEIS, and on information used to prepare the DEIS. Federal agencies should make every effort to provide sufficient information. If there is not enough information for the state to determine consistency (or if there will be later phases of the project for which information is not readily available at the time of the DEIS) the federal agency should provide the CMP with phased determinations. State CMPs may also, pursuant to 15 C.F.R. § 930.42(b), disagree with the consistency determination for lack of information.

If a federal agency provides a consistency determination in a DEIS, the state CMP must agree or disagree within 45 days (or request an extension), otherwise the state CMP's agreement will be presumed. Likewise, if a DEIS contains a negative determination, the state CMP must notify the federal agency of a disagreement with the negative determination within 90 days.

Ocean Management and Federal Consistency

At the South Atlantic Ocean Management Workshop, held in Wilmington, North Carolina, May 7-9, 1995, OCRM discussed ocean management, state jurisdiction and federal consistency.

There are many possibilities for state ocean management: agreements with other states and federal agencies, interstate compacts, partnerships with National Marine Sanctuaries and National Estuary Programs, etc. These partnerships are important as state authority to directly regulate activities in the ocean is limited to the area of state jurisdiction. Thus, state ocean management efforts should maximize the authority granted by federal law, using these authorities to augment ocean management planning efforts and agreements with federal agencies.

Federal laws, such as the Outer Continental Shelf Lands Act and the Abandoned Shipwreck Act, provide for some state authority. However, these laws only provide state input into specific issues. Neither of these, nor other federal laws, provide states with the authority and the comprehensive ocean management potential granted by the Coastal Zone Management Act (CZMA).

The CZMA federal consistency requirement is an existing state ocean management tool. While states cannot directly regulate federal actions outside of state jurisdiction, federal consistency requires federal actions to be consistent with state policies.

Through federal consistency states address, or can address, ocean management issues, such as: offshore oil and gas

planning, exploration, development, and production; fisheries management; endangered species protection; recreation; historic preservation; ocean dumping; sand mining; and any other activities that are reasonably likely to affect any coastal use or resource.

In order for state CMP enforceable policies to apply to ocean issues they must be tied to affected uses or resources of the coastal zone. For example, if a state wants to minimize effects to offshore fish spawning areas from outer continental shelf (OCS) oil and gas activities, the state should first develop policies that protect fish spawning areas within the state's jurisdiction from any activity. The ocean management plan should then identify fisheries that are coastal resources. These could be fish that spend time in both the coastal zone and on the OCS (resources that are both of the coastal zone and the OCS are coastal resources). Fishing for non-coastal resources (fishery that spends all of its time on the OCS) may also be a coastal use which can be addressed in program policies. Once this is done, the state, through federal consistency, could apply the enforceable policy to any federal action affecting the OCS fishery.

Federal consistency and state CMP enforceable policies could be incorporated into a state ocean management plan in the following way:

1. Identify state coastal uses and resources of the ocean.
2. Identify federal actions that are reasonably likely to affect coastal uses and resources.
3. Describe forms of state authority and input into ocean issues.
4. Describe the enforceable policies and enforceable mechanism for the policies.
5. Coordinate and cooperate closely with federal agencies.

Update on CZMA Section 306(d)(14): Public Participation for State Reviews of Direct Federal Activities

As reported in previous Bulletins, state CMPs must now provide for public participation in permitting processes, consistency determinations, and other similar decisions. Many states have submitted proposed public participation procedures for OCRM review. Most have been approved. Others still need minor revisions. States that have not submitted their procedures to OCRM should do so as soon as possible.

Approved state procedures include publication in local newspapers, state environmental mailings to interested parties (state and local government agencies and other interest groups), including the items on the agenda of state coastal commissions, etc. In all cases the public notice makes it clear that the public is invited to comment on the state CMP's review of whether a federal activity is consistent with the state CMP.

Revised Federal Consistency Regulations

As discussed in previous Bulletins, OCRM is revising the federal consistency regulations. OCRM plans to provide copies of the changes to the recipients of the Bulletins. OCRM will then publish proposed regulations in the Federal Register.

Providing Details to OCRM When Requesting Consistency Guidance

On several occasions states have requested OCRM guidance on the application of consistency to a particular case where OCRM could either not provide a definitive answer or had to later alter its guidance. States requesting OCRM guidance on a specific issue or case should disclose all available details of the issue to OCRM, regardless of whether or not the state believes the information to be detrimental to the state's position. OCRM guidance has limited value if it is not based on all the relevant facts.

Secretarial Appeal Decisions

CZMA Consistency Appeal Decisions Since June 1994

Under CZMA § 307(c)(3), a state's consistency objection precludes a federal agency from issuing a permit for an activity at issue unless, upon appeal by the appellant, the Secretary of Commerce finds that the activity is either consistent with the objectives of the CZMA (Ground I) or necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must override the state's objection. Since June 1994, the Secretary has issued the following consistency appeal decisions to date.

Florida - Decision and Findings in the Consistency Appeal of Mobil Exploration & Producing U.S. Inc., (Mobil Pensacola Decision), June 20, 1995.

On June 20, 1995, the Secretary overrode Florida's objection to Mobil's plan to drill an exploratory well on Pensacola Block 889, located about 13.5 miles from Pensacola, Florida, and 74 miles from Theodore, Alabama. Mobil's plan was submitted as a supplement to a plan of exploration to drill six wells on the Pensacola lease blocks. Florida had not objected to Mobil's plan of exploration for the original six wells. The Secretary found that the supplemental plan of exploration was consistent with the objectives of the CZMA.

Puerto Rico - Decision and Findings in the Consistency Appeal of Olga Vélez Lugo, (Vélez Lugo Decision), September 9, 1994.

On September 9, 1994, the Secretary declined to override the Commonwealth of Puerto Rico's objection to a proposal by Ms. Olga Vélez Lugo (Appellant) to construct a wood dock, restore a boat ramp and level a wetland/mudflat area by depositing fill. The dock and boat ramp would be used by the Appellant for private recreational purposes. The Secretary found that the proposed project's minimal, at best, contribution to the national interest did not outweigh the substantial, cumulative adverse effects the activity would have on the natural resources of the coastal zone.

North Carolina - Decision and Findings in the Plan of Exploration Consistency Appeal of Mobil Oil Exploration & Producing Southeast, Inc., (Mobil Manteo POE Decision), September 2, 1994,

and

North Carolina - Decision and Findings in the Drilling Discharge Consistency Appeal of Mobil Oil Exploration & Producing Southeast, Inc., (Mobil Manteo Drilling Discharge Decision), September 2, 1994.

On September 2, 1994, the Secretary declined to override North Carolina's objections to Mobil's proposed discharge of drilling wastes and overall plan of exploration for Manteo Block 467, located about 39 miles offshore North Carolina. Mobil proposed to drill in an area known as "The Point," a prime fishing area for North Carolina fishermen. North Carolina's objections were based on lack of necessary information. 15 C.F.R. § 930.64(d). The Secretary found that the information in the administrative records was inadequate to determine whether the national interest benefits of Mobil's proposed activities outweigh the proposed activities' adverse coastal effects. Accordingly, Mobil failed to demonstrate that its proposed activities were consistent with the objectives of the CZMA. Mobil also failed to demonstrate that its activities were necessary in the interest of national security. Mobil is challenging the two Mobil Manteo decisions in a federal court.

Pending Consistency Appeals

(As of January 31, 1996)

Appellant	Activity	State
Texasgulf	Phosphate Mining	NC
Joseph Mattone	Construction of seawall and Placement of fill	NY
Vieques Marine Laboratories	Mariculture Shrimp Farm	PR

For further information on appeals call Roger Eckert, NOAA Office of General Counsel for Ocean Services, (301) 713-2967, x 213.

Federal Consistency Bulletin Board

The Consistency Bulletin Board provides states, OCRM, and other parties the opportunity to alert readers to upcoming events, various issues, request information from other states on a federal consistency issue, transfer ideas, etc. Items for the Bulletin Board may also present the lighter side of federal consistency (if it exists).

After reading this Bulletin, include it in your Federal Consistency Workbook with the other Bulletins

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OCRM bids farewell to Ellen Brody. Ellen was with OCRM's Coastal Programs Division for 8 ½ years as a program specialist, assistant regional manager and acting regional manager for the Great Lakes region. Ellen worked on a host of coastal management issues and was invaluable to our office. She was very active in federal consistency and will be sorely missed. Ellen and her husband Michael have moved to Michigan where Michael will be teaching at the University of Michigan. Ellen will undoubtedly continue to stay involved in coastal and other natural resource management issues.

Federal Consistency Bulletin Index

The Federal Consistency Bulletins have reported on numerous state and federal agency issues and provided substantial guidance on the implementation of consistency. Following is an index of all items included in the first four Bulletins:

Significant State Issues:

Alaska - MOU with Minerals Management Service. Bulletin No. 3, at 8.

Alaska - MOU with Minerals Management Service. Bulletin No. 4 at 3.

Alaska and the Forest Service MOU. Bulletin No. 4, at 3.

BCDC Unlisted Activity Request for Airport Expansion. Bulletin No. 3, at 6.

California and the Transportation Corridor Agencies. Bulletin No. 1, at 4.

California and the Closure of Fort Ord. Bulletin No. 2, at 4.

California and the Closure of Fort Ord. Bulletin No. 3, at 5.

California Unlisted Activity Request for ICC Water Carrier License. Bulletin No. 3, at 6.

California Unlisted Activity Request - Commercial Spaceflights. Bulletin No. 3, at 6.

California and the Air Force: Unlisted Activities and Commercial Space Launches. Bulletin No. 4, at 2.

California Unlisted Activity Request and Hawaii's Review of the Acoustic Thermometry of Ocean Climate (ATOC) Project. Bulletin No. 3, at 7.

California Unlisted Activity Request and Hawaii's Review of the Acoustic Thermometry of Ocean Climate (ATOC) Project. Bulletin No. 4, at 3.

California and Southern Pacific Railroad: Unlisted Activity Request. Bulletin No. 4, at 2.

Connecticut, the Coast Guard, and Security Zones. Bulletin No. 2, at 2.

Delaware, EPA, and Superfund. Bulletin No. 2, at 2.

Hawaii, American Samoa, and Guam and Japanese Plutonium Shipments. Bulletin No. 1, at 3.

Interstate Consistency Update. Bulletin No. 3, at 1.

Lake Gaston Consistency Appeal -- Interstate Consistency Dealt a Setback. Bulletin No. 1, at 1.

Lake Gaston Consistency Appeal Decision and Interstate Consistency Update. Bulletin No. 2, at 1.

Louisiana and Consistency User Fees. Bulletin No. 1, at 4.

Maine, the Corps, and Mitigation. Bulletin No. 2, at 4.

Massachusetts, EPA and Ocean Dump Site Designation. Bulletin No. 1, at 5.

Massachusetts, New Hampshire and Interstate Consistency. Bulletin No. 1, at 5.

Mass. and GSA Land Acquisition. Bulletin No. 1, at 6.

The Mass Bay Disposal Site. Bulletin No. 2, at 5.

Nationwide Permit 29 (Small Landowners). Bulletin No. 4, at 4.

New Jersey and OCS Policies. Bulletin No. 2, at 3.

New Jersey and Ocean Disposal of Dredged Material Containing Dioxin. Bulletin No. 2, at 3.

New Jersey Unlisted Activity Request for Shipment of Spent Nuclear Fuel. Bulletin No. 3, at 5.

New York and GSA/ U.S. Marshals Service Land Disposal. Bulletin No. 1, at 2.

New York and GSA/U.S. Marshals Service Land Disposal Update - Court Denies New York's Request for a Preliminary Injunction. Bulletin No. 2, at 2.

New York and the Navy: Dredge Material Disposal for SEAWOLF Submarine. Bulletin No. 4, at 1.

North Carolina and Virginia Beach: Lake Gaston Update. Bulletin No. 4, at 2.

Pennsylvania, the Corps, & Nationwide Permits. Bulletin No. 1, at 2.

Secretary's Decision in a Request to reconsider an OCS Decision. Bulletin No. 2, at 5.

Wisconsin Federal Consistency Manual. Bulletin No. 3, at 7.

OCRM Coordination with Other Federal and Non-Federal Entities:

American Association of Petroleum Landsmen - OCS Committee. Bulletin No. 1, at 7.

Army Corps of Engineers. Bulletin No. 2, at 6.

Army Corps of Engineers. Bulletin No. 3, at 9.

Army Corps of Engineers. Bulletin No. 4, at 4.

Department of Justice. Bulletin No. 3, at 9.

Department of Justice. Bulletin No. 4, at 4.

Department of the Air Force. Bulletin No. 3, at 9.

Environmental Protection Agency. Bulletin No. 2, at 6.

Federal Agency Workgroup on the Dredging Process. Bulletin No. 3, at 8.

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Review of Activities Outside the Coastal Zone: Unlisted Activities and Geographic Scope. Bulletin No. 1 at 8.

Revised Federal Consistency Regulations. Bulletin No. 4, at 10.

Revised Program Change Regulations and Guidance. Bulletin No. 4, at 6.

Reviewing Activities Under the Oil Pollution Act of 1990. Bulletin No. 2, at 7.

Reviewing Classified Activities. Bulletin No. 4, at 8.

Specifying Alternatives for State Objections for CZMA 307(c)(3) Activities. Bulletin No. 4, at 7.

Starting the Consistency Review Timeclock for Incomplete Consistency Applications. Bulletin No. 2, at 11.

State Assumption of the Clean Water Act Section 404 Permit Program. Bulletin No. 4, at 6.

State CMP Objection Letters. Bulletin No. 3, at 10.

State Federal Consistency Procedures - Single State Agency Responsibility. Bulletin No. 2, at 10.

State Permit Requirements for Federal Agencies. Bulletin No. 1, at 8.

Timing of Consistency with NEPA. Bulletin No. 4, at 8.

Update on CZMA Section 306(d)(14): Public Participation for State Reviews of Direct Federal Activities. Bulletin No. 4, at 9.

Secretarial Appeal Decisions:

19 92 and1993 CZMA Consistency Appeal Decisions to Date. Bulletin No. 1, at 9.

199 3CZMA Consistency Appeal Decisions Since January 15, 1993 . Bulletin No. 2, at 12.

1993 CZMA Consistency Appeal Decisions Since August 1993. Bulletin No. 3, at 11.

All Consistency Appeal Decisions. Bulletin No. 1, at 12.

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Pending Consistency Appeals. Bulletin No. 4, at 11.

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BLM Regional Plan Information Requested by Oregon. Bulletin No. 1, at 14.

Federal Consistency Coordinator Plays Hookey. Bulletin No. 3, at 13.

Mitigation Information Requested by Maine. Bulletin No. 1, at 14.

New NOAA General Counsel. Bulletin No. 2, at 13.

New OCRM Address. Bulletin No. 2, at 13.

OCRM Bids Farewell to Ellen Brody. Bulletin No. 4, at 11.

OCRM Coastal Program Division Staff Positions and Phone Numbers. Bulletin No. 3, at 13.

OCRM Has a New Director. Bulletin No. 3, at 13.

Upcoming Events. Bulletin No. 1, at 14.

FEDERAL CONSISTENCY BULLETIN

Office of Ocean and Coastal Resource Management

Number 5
April 1997

The Federal Consistency Bulletin is intended to keep states, federal agencies, and other interested parties abreast of current federal consistency issues. The federal consistency requirement, section 307 of the Coastal Zone Management Act of 1972 (CZMA), as amended, requires that activities proposed by the federal government, that are reasonably likely to affect any coastal use or resource, must be consistent, to the maximum extent practicable, with the enforceable policies of a state's federally approved coastal management program. Federally approved and funded activities must be consistent with the enforceable policies of a state's coastal management program. The Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, administers the CZMA and federal consistency at the national level.

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State Issues

NOAA Approves the Texas Coastal Management Program

On December 23, 1996, NOAA approved the Texas Coastal Management Program (TCMP). NOAA's approval follows several years of coastal communities' grass roots efforts, state legislation and support, and close coordination between the state and OCRM. With federal approval, Texas is eligible for federal CZMA program implementation funds, federal consistency applies to federal actions reasonably likely to affect Texas coastal uses or resources, national interests will be considered when the state is making coastal management decisions, and interested parties in the state are now eligible to apply for a deepwater port license from the U.S. Coast Guard, pursuant to the Deepwater Port Act of 1974. Federal consistency applies to the TCMP as of January 10, 1997 (the date NOAA's approval was published in the Federal Register, 62 Fed. Reg. 1439-1440).

The TCMP is based primarily on the Coastal Coordination Act of 1991 (33 TEX. NAT. RES. CODE ANN. §201 *et. seq.*) as amended by HB 3226 (1995). Key elements of the Coastal Coordination Act and its implementation regulations (31 TAC §§501, 503, 505, and 506) include: establishment of the Coastal Coordination Council (Council) to develop policy and oversee implementation of the TCMP; development of a uniform set of coastal goals and policies; establishment of the fundamental legal requirements that selected "networked" state agencies and local governments must comply with; establishment of the scope and organizational framework of the program and the program boundaries; establishment of procedures to ensure networked state agency and local government implementation and adherence to the uniform policies; establishment of procedures to ensure that federal activities will comply with the state's coastal policies; establishment of mechanisms such as the Council to ensure implementation of, and adherence to, the coastal policies; and establishment of the procedures for enforcement of the TCMP by the networked agencies and the Council and Attorney General's Office.

The TCMP's seaward boundary is the state's territorial seaward limit. The state's inland boundary is based on the State's Coastal Facilities Designation Line (CFDL). The CFDL was developed in response to the Oil Spill Act of 1990 and basically delineates those areas in which oil spills would affect coastal waters or resources. For the purposes of the TCMP, the CFDL has been modified somewhat to capture wetlands in upper reaches of tidal waters. The program boundaries encompass all or portions of 19 coastal counties including Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Liberty, Jefferson, and Orange counties and overall include roughly 8.9 million acres of land and water.

Within this coastal zone boundary, the scope of the TCMP's regulatory program is focused on the direct management of fourteen generic "Areas of Particular Concern," called coastal natural resource areas (CNRAs). These CNRAs are associated with valuable coastal resources or vulnerable or unique coastal areas and include: waters of the open Gulf of Mexico; waters under tidal influence; submerged lands; coastal wetlands; seagrasses; tidal sand and mud flats; oyster reefs; hard substrate reefs; coastal barriers; coastal shore areas; Gulf beaches; critical dune areas; special hazard areas; critical erosion areas; coastal historic areas; and coastal preserves. Specifically, the geographic scope of the regulatory programs is based on the direct regulatory jurisdiction of those "networked" state agency and local government authorities which are subject to the program as provided by the Coastal Coordination Act. It should be noted that the geographic scope extends upstream 200 miles from the mouths of rivers draining into coastal bays and estuaries in order to manage water appropriations on those rivers. In addition, the State has designated the Western Outer Continental Shelf (OCS) planning area as the geographical area in which federal consistency shall apply outside of the coastal boundary. The TCMP also identifies those federal lands which are excluded from the State's coastal zone.

The state TCMP contact is Tom Nuckols, Co-Director, Coastal Division, General Land Office, 1700 North Congress Ave., Austin, TX 78701. (512) 463-5054. Fax: (512) 475-0680. For information from OCRM on the TCMP, please call Ed Kruse at (301) 713-3117, ext. 181.

Louisiana, the Minerals Management Service (MMS), and 5-Year OCS Lease Plans

Every five years MMS publishes a program for outer continental shelf (OCS) oil and gas leasing. On August 11, 1995, a Notice in the Federal Register (60 Fed. Reg. 155) was published requesting comments from states, local governments, and other interested individuals and groups, the oil and gas industry, and federal agencies on the Draft Proposed 5-Year Program (1997-2002). In response to this notice, Louisiana's coastal management program notified MMS that coastal effects were reasonably likely and that, pursuant to CZMA section 307(c)(1), MMS should submit a consistency determination.

Rather than determine whether the 5-year program would likely affect any coastal use or resource, and provide Louisiana with a consistency determination or a negative determination, MMS' response to Louisiana was that the 5-year program was not a federal activity and was not subject to the consistency requirement. Louisiana requested OCRM assistance. Eventually, Louisiana agreed that, for this 5-year program, a consistency determination was not required as coastal effects and the means to avoid, reduce, or minimize them could not be reasonably identified at this stage.

NOAA commented that MMS should determine if coastal effects are reasonably likely and provide to Louisiana either a consistency determination or a negative determination. OCRM and MMS discussed the issue throughout the summer and fall and have agreed to work together to determine how to effectively and efficiently combine and coordinate the federal consistency requirement and MMS' state involvement process for the 5-Year Program. This issue may also be resolved through changes to the consistency regulations. One of the issues that may be addressed in the revised regulations is the consistency requirement for direct federal activities with de minimis effects.

Connecticut, the Federal Energy Regulatory Commission (FERC), and Regulation of Coal-Burning Electric Generating Facilities

In early 1996, FERC issued a proposed rulemaking: Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities (Docket No. RM95-8-000) and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities (Docket No. RM94-7-001). In February 1996, Connecticut notified FERC that the proposed rulemaking was likely to adversely affect Connecticut's coastal resources. Connecticut believed that the promotion of competition is likely to increase energy production by Mid-west coal burning plants which will in turn increase the export of nitrogen and sulphur oxides and that these oxides, falling out through atmospheric deposition, are linked to adverse environmental impacts in Long Island Sound.

FERC responded, in its final rule, that the FERC rulemaking was not subject to the consistency requirement. FERC did not make a determination of effects, but exempted itself from consistency. Connecticut filed, under FERC's rules, a request for a rehearing on the CZMA issue. OCRM met with FERC to discuss the consistency requirement and urged FERC to respond to Connecticut's rehearing request with a consistency determination or a negative determination.

FERC performed an effects analysis and, in September 1996, FERC responded to Connecticut with both a negative determination (no effects) and a consistency determination if the regulations did lead to effects. FERC described the commitments it had made with the U.S. Environmental Protection Agency in case there were effects.

This was the first time that OCRM had worked with the rate structure side of FERC (OCRM and FERC's hydroelectric licensing staff have worked closely together and have effectively coordinated and resolved issues, see e.g. next article). FERC adequately responded to Connecticut's rehearing request.

Washington, FERC, and Hydroelectric Relicensing

In 1974, the City of Tacoma, Washington filed a relicense application with FERC for Tacoma's Cushman Hydroelectric Project. The Washington coastal management program (WCMP) asserted consistency on FERC's recent processing of the application. Tacoma asserted that the CZMA consistency requirement does not apply to the Cushman Project licensing. Tacoma argued that consistency did not apply as the relicensing application was filed before WCMP approval (in 1976) and that the state's earlier issuance of a 401 water quality certification precluded further CZMA review.

OCRM, working through the NOAA Office of General Counsel Northwest (Seattle), urged FERC to deny Tacoma's request regarding federal consistency. NOAA found that federal consistency applied in this case where the federal license application was filed prior to federal approval of a state coastal management program, but which was still pending after federal approval of the state coastal management program (in this case pending 20 years after coastal program approval). Tacoma's application is current; it is not something that started and ended prior to federal approval of Washington's coastal management program. Tacoma is still an applicant. In fact, Tacoma's application is more current today than it was 22 years ago; the license application was amended in 1991, FERC's draft Environmental Impact Statement (EIS) was issued in November 1995. Also, NOAA's regulations recognize the application of consistency to federal license or permit activities initiated prior to management program approval. See 15 C.F.R. § 930.51(b)(1). NOAA also found that the issuance of a state's 401 water quality certification does not preclude an applicant's CZMA federal consistency responsibility: they are two separate issues. FERC denied Tacoma's request.

California Unlisted Activity Request of a Project on Postal Service Property

California requested OCRM approval to review, as an unlisted activity, the construction of a wireless communications tower and to co-locate multiple commercial wireless operators on property owned by the U.S. Postal Service. California was concerned with visual impacts of the tower on the quaint coastal village, Half Moon Bay. The state was also concerned with water quality and habitat impacts from the tower and construction of the tower on a nearby creek. However, the Postal Service decided that the project would not go forward at this time and that further studies were needed. OCRM, therefore, responded that the state's request was premature and that there was nothing for OCRM or the state to review. The state could raise the issues through federal consistency at a later time if the Postal Service decided to proceed with its consideration of the activity.

North Carolina's Proposed Revised Energy Facility Policies

North Carolina proposes to adopt revised coastal management policies regarding energy facilities. The proposed policies are needed to clarify existing policies regarding energy production in the coastal region, especially for exploration and production on the outer continental shelf. Their intended effect is to improve existing policies and provide federal agencies and applicants for federal approvals with greater predictability and notification of the state's coastal management concerns, information needs, and federal consistency reviews. OCRM has preliminarily determined that the changes would be a routine change to North Carolina's coastal management program. The policies, among other things, provide greater specificity as to information requirements and addressing effects to important resource habitats, e.g., fish spawning areas. The policies apply to activities that affect the state's coastal uses or resources.

Florida's Proposed Revised Energy Facility Policies

Florida also proposed to amend its energy facility siting policies. Florida proposes to eliminate the state's existing policy which encourages the development of oil and gas resources and to add a policy that expressly prohibits, without exception, the issuance of permits for oil and gas exploration, development, or production within Florida's jurisdiction. The State proposed these changes as a routine change. OCRM determined that the blanket prohibition of all petrochemical facility development within the entire Florida coastal zone is a substantial change in the enforceable policies related to the consideration of the national interest involved in the planning for, and in the siting of, facilities which are necessary to meet requirements which are other than local in nature. See 15 C.F.R. § 923.80(d)(5). Thus, OCRM determined that the change is an amendment to the Florida coastal management program.

Massachusetts Programmatic General Permit

The New England Division of the Army Corps of Engineers (Corps), the Massachusetts Department of Environmental Protection (DEP), which is the state's environmental permitting agency, and the Massachusetts Coastal Zone Management Program (MCZMP), a network program which is the state's coastal policy agency, all worked together to develop a statewide programmatic general permit (PGP) to reduce the regulatory burden on projects of minimal environmental impact. The PGP covers activities subject to the Corps' section 10/404 permits and is divided into three categories. Category 1 projects have minor impacts and do not require notification to the Corps. Examples include alteration of less than 5,000 sq. ft. of wetlands approved under the Massachusetts Wetlands Protection Act; repair of currently serviceable previously authorized structures, and maintenance dredging of less than 1,000 cu. yd. of material. Category 2 projects exceed Category 1 thresholds and are reviewed by the Joint Processing Committee to determine if the proposed activity is eligible for a PGP or if an Individual Permit will be required. About 95% of screened projects receive PGPs. Category 3 projects are those that are categorically required to obtain an Individual Permit from the Corps. Examples include permanent fill in salt marshes and projects required to prepare an environmental impact statement.

Major features of the PGP are 1) categories are set up so that state and federal thresholds are similar for each resource; 2) it eliminates multiple reviews of the same impact; and 3) both state and federal agencies were willing to revise their thresholds to achieve the first two objectives. The PGP also rescinds the Nationwides in Massachusetts.

The MCZMP reviewed the proposed PGP as a direct federal action and found it to be consistent with its enforceable policies. Projects that are eligible for a PGP are not generally required to complete a separate consistency review, though MCZMP did reserve the right to review projects that have impacts beyond those anticipated in Massachusetts' review of the PGP. MCZMP sits as a member of the Joint Processing Committee and participates in Category 2 screening decisions. Federal resource agencies are notified within 10 days of a Joint Processing meeting if MCZMP intends to require a federal consistency review.

Implementation of the PGP has improved state/federal cooperation. MCZMP's federal consistency reviews have been reduced from about 200 a year to about 50 a year (this reduction is also attributable to other state permit streamlining efforts but is primarily a result of implementation of the PGP). Response from the regulated community has been very positive and there are no known instances where reduction of regulatory review has resulted in increased environmental damage.

The PGP will be renewed every 5 years. MCZMP, DEP and the Corps will revise the permit as needed. Current experience has suggested improvements in stormwater and aquaculture provisions. For further information from the State contact Jane W. Mead, Senior Project Review Coordinator, at (617) 727-9530, ext. 418.

Connecticut, Local Governments, and Litigation Regarding Native American Casinos

The Bureau of Indian Affairs (BIA) purchased some land in eastern Connecticut to be held in trust for the Pequod Tribe. The land is to be used to expand the parking facility at the

Pequod's casino (Foxwoods). Three local communities opposed the action and sued BIA, claiming noncompliance with, among other things, the CZMA federal consistency requirement. OCRM assisted the Department of Justice in responding to the towns' lawsuit.

The towns argued that BIA should have made a consistency determination. However, because BIA determined that the proposed federal agency action would have no reasonably foreseeable effect on the state's coastal uses or resources, no consistency determination was required (the activity, the parking structure, is fairly far removed from the Thames River and any runoff would be well filtered before reaching the Thames). A negative determination was also not required. Further, the Connecticut Coastal Management Program (CCMP) knew of the proposed activity and agreed that there was no foreseeable effect.

The towns also argued that they were responsible for implementing Connecticut's Coastal Management Plan. However, for purposes of the CZMA, the State, not the towns, has responsibility and authority to implement the federal consistency requirement. The CCMP (the Office of Long Island Sound Programs) did not notify BIA of the need to make a consistency determination. The case has been argued and a decision from the court is pending.

OCRM Coordination with Other Federal and Non-Federal Entities

In addition to the interaction with other federal agencies involving specific state issues noted above, OCRM has met with the following federal and non-federal entities.

Federal Consistency Workshops

OCRM recently held its tenth regional federal consistency workshop in Wrightsville Beach, North Carolina for the South Atlantic Region (North Carolina, South Carolina and Georgia and regional offices of federal agencies). The workshop was well attended: a total of 49 people participated from eight federal agencies and the three states. With this workshop OCRM has completed its goal of conducting a general federal consistency workshop for all coastal states and federal agencies. Further workshops will be held for newly approved state coastal management programs (there will be a Texas workshop later this year) and for more specific issues as requested by coastal states.

In 1994, OCRM and state coastal management programs identified consistency workshops as a high priority for OCRM assistance and outreach efforts. The purpose of the workshops is to assist state coastal management programs and federal agencies understand and comply with the Coastal Zone Management Act's federal consistency requirement, make full use of the benefits of federal consistency, and resolve potential conflicts through early and effective consultation, coordination, and cooperation.

From September 1994 to January 1997, OCRM conducted ten workshops around the country. These were for the Virgin Islands; the Gulf & Caribbean region (Florida, Alabama, Mississippi, Louisiana, Texas, and Puerto Rico); two in Alaska; the Great Lakes region (Wisconsin, Michigan, Pennsylvania, Ohio, Minnesota, and Indiana); the Pacific Islands (Hawaii, Guam, American Samoa, and Northern Marianas); the Pacific Northwest (Oregon and Washington); the Mid-Atlantic region (New Jersey, Maryland, Delaware, and Virginia); the North Atlantic region (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York); and the South Atlantic region (North Carolina, South Carolina and Georgia).

Over 475 state and federal people participated in the workshops. State and federal participants noted how useful the workshops were and the need to conduct additional workshops, for both general education and to address specific issues. In conjunction with the workshops OCRM developed a Federal Consistency Workbook to be used as an educational tool for the workshops and as a practitioners resource. The workbook has been distributed to over 650 people. Many recipients of the workbook have noted how informative and useful the workbook has been.

Corps of Engineers

Operations and Maintenance CZMA Policy.

Partly as a result of discussions over the approval of the Texas Coastal Management Program, OCRM and the Corps cooperatively developed a draft policy on CZMA consistency compliance requirements for Corps Operation & Maintenance (O&M) projects. The policy clarifies the Corps' responsibilities for complying with CZMA section 307(c) when undertaking congressionally authorized O&M activities at navigation projects. There have been issues over the years between states and the Corps on compliance with state coastal management program mitigation and beneficial use enforceable policies. This policy discusses Corps responsibility in light of the CZMA "consistent to the maximum extent practicable" standard and what this means for compliance and funding purposes. This draft policy was sent to Corps districts and state coastal management programs for review and comment (comments are due on May 9, 1997). This draft policy is reprinted in the following section on OCRM Policy Decisions, Guidance and Projects.

Nationwide Permits.

The Corps reissued the Clean Water Act section 404 nationwide

permit (NWP) program this year. As part of the NWP reissuing process, the Corps provided a consistency determination to the coastal states. Corps Districts were directed to work with the coastal states to negotiate state or regional conditions to obtain state agreement.

OCRM, other NOAA offices, and other federal agencies tried to convince the Corps that if a state CMP agency disagrees with the Corps consistency determination for a NWP, the Corps should rescind that NWP in that state. The Corps declined to take this action. If a state disagrees with the Corps consistency determination for a particular NWP, then the Corps will deny authorization for those activities without prejudice. Anyone wanting to perform such activities must present a consistency certification to the appropriate state agency for concurrence, under CZMA § 307(c)(3)(A). Upon concurrence by the state, the activity would be authorized by the NWP. OCRM has only received disagreement letters from two coastal states.

Texas. During the development of the Texas Coastal Management Program (TCMP), and particularly in response to comments on the TCMP draft environmental impact statement, OCRM worked closely with the State and the Corps to address Corps concerns regarding the TCMP, especially the TCMP's policy regarding the beneficial use of dredge material.

Coast Guard

OCRM worked closely with the Coast Guard, through NOAA's Hazardous Materials Response and Assessment Division (HAZMAT), Office of Ocean Resources Conservation and Assessment, on coordinating the CZMA and the Oil Pollution Act Area Contingency Plan (ACP) Process. In September 1996, HAZMAT sent guidance to National Response Team and Area Contingency Plan members. The guidance explains the CZMA and federal consistency requirements, and stresses the importance of the involvement of the state CMP managers while the ACPs are being developed and revised.

Economic Development Administration

OCRM worked closely on a number of issues with another Department of Commerce office: the Economic Development Administration (EDA). OCRM provided guidance to EDA on whether EDA may "approve" a grant application from a state or local government prior to the completion of a coastal state's CZMA federal consistency review, where EDA's approval contains a condition that the federal funds will not be dispersed until the applicant has satisfied the federal consistency requirement. The CZMA and its implementing regulations require that federal agencies not grant federal funds if a state CMP agency objects to the activity. OCRM found that EDA's procedure complies with this requirement. EDA's disbursement of funds is conditioned, in part, on the federal consistency requirement.

OCRM also assisted EDA and the states on EDA's proposal to award $40 million in disaster relief funds to North Carolina as a result of Hurricane Fran and for the grant of funds for infrastructure repair at the Charleston Naval Base in South Carolina.

Environmental Protection Agency

OCRM continued to assist EPA Region IV on the development of a general permit (GP) for outer continental shelf National Pollutant Discharge Elimination System (NPDES) permits. OCRM advised EPA to treat the NPDES GP as a direct federal activity, obtain state CMP agreement at the draft environmental impact statement (DEIS) stage, with the goal of eliminating the need for future consistency reviews of individual NPDES permit applications. EPA issued its DEIS and included detailed consistency determinations for each affected state.

Council on Environmental Quality

OCRM participated in a federal inter-agency effort to "reinvent" National Environmental Policy Act (NEPA). The effort was spearheaded by the Council on Environmental Quality (CEQ). CEQ launched the effort as a spin-off from CEQ's NEPA Effectiveness Study. Phase I explored improving NEPA implementation in three sectors: oil and gas, grazing and timber. The NEPA reinvention team developed a set of initial recommendations that center on reducing duplication of analyses, improving consistency among agencies, improving early public involvement, improve readability of NEPA documents via focused analysis, elimination of repetition, etc.

OCRM Policy Decisions, Guidance and Projects

CZMA is reauthorized

On June 3, 1996, the President signed into law the Coastal Zone Protection Act of 1996 (CZPA), Pub. L. No. 104-150. The CZPA reauthorized appropriations for the CZMA, and for the most part, made few changes from the 1990 amendments. The CZPA had overwhelming support in Congress. The only change to the federal consistency requirement is to the Secretarial override process. Section 8 of the CZPA addresses the Secretarial override process, provided in CZMA § 307, whereby the Secretary of Commerce may override a state's consistency objection to a federal permit, license or funded project. Specifically, CZPA section 8 provides that the Secretary shall publish a notice in the Federal Register indicating when the decision record in a consistency appeal has closed. No later than 90 days after the date of publication of this notice, the Secretary shall issue a final decision or publish

another notice in the Federal Register detailing why the decision cannot be issued within the 90-day period. In the latter case, the Secretary shall issue a decision no later than 45 days after the date of the publication of the notice.

Revised Federal Consistency Regulations

OCRM continues to work on revised consistency regulations. An informal draft was presented to federal agencies for review and comment in December 1996. OCRM will, to the extent possible, incorporate or respond to federal agency comments and provide the federal agencies and state coastal management programs with another informal draft for review and comment. This draft should be available in June 1997. OCRM will eventually publish revised regulations in the Federal Register as a proposed rule.

The changes codify the CZMA 1990 and 1996 amendments and clarify 17 years of implementation and interpretation. The draft revisions are intended to facilitate smooth and effective implementation of the federal consistency requirement.

Revised Program Change Regulations and Guidance

Over the years OCRM has provided guidance on requirements and submission procedures for changes made to state CMPs. OCRM published revised regulations, 61 Fed. Reg. 33802-33819 (to be codified at 15 C.F.R. part 923, subpart H), and new program change guidance (July 1996).

The new guidance clarifies information requirements for program change requests. The focus of the guidance is to explain the difference between procedures for the two types of program changes: routine program changes and program amendments. The guidance also explains the recent update of the program change regulations. In the regulation update, OCRM replaced the four criteria by which program change requests were evaluated with a reference to the five program areas identified in the program development regulations: (1) uses subject to management, (2) special management areas, (3) boundaries, (4) authorities and organization, and (5) coordination, public involvement and national interest. The regulations also require states to identify any enforceable policies to be added or changed by the program change.

Draft Local Government Implementation Policy

OCRM developed a draft local government implementation policy. The purpose of the policy is to clarify CZMA and NOAA regulations and OCRM policy regarding local government implementation of a state's federally approved coastal management program (CMP). Comments from state coastal program managers are due on May 9, 1997.

The proposed policy, based on an analysis of existing state and OCRM practice, would provide states and OCRM with flexibility regarding local government funding, and ensure consistent application of OCRM policy and CZMA requirements. The proposed policy addresses whether the means by which a local government implements state CMP authorities must be incorporated into the CMP and the implications of incorporation versus non-incorporation for program changes, federal consistency, CZMA section 312 evaluations and CZMA section 306 funding. The policy does not dramatically alter existing practice, but does clarify requirements and policy.

The draft policy statements are (there is also a discussion of each policy statement in the draft guidance):

Incorporation into the CMP - Local implementation mechanisms, or LIMs (the means by which a local government implements state CMP authorities includes local comprehensive plans, ordinances, local permits, enforcement actions, and other local implementation efforts--hereinafter referred to as "local implementation mechanisms" or "LIMs"), used to implement state CMP authorities do not have to be incorporated into the CMP, so long as the state CMP authorities that define the use of such LIMs meet CZMA and NOAA regulation requirements for state establishment of criteria and standards for local implementation - Technique A. CZMA § 306(d)(11)(A); 15 C.F.R. § 923.42.

Program Changes - Where LIMs are incorporated into a state's CMP, changes to those LIMs must, generally, be submitted to OCRM as a program change pursuant to CZMA and NOAA regulation program change requirements. Note however that changes to LIMs may not need OCRM approval if they do not affect the federally-approved CMP. Depending on the nature of the particular state CMP and the nature of the change to the CMP, a state may make minor adjustments in how it manages the coastal zone without necessarily changing its approved CMP. Thus, a state may determine that a necessary change in its federally-approved CMP is so insignificant that it need not be submitted to OCRM for review. See 61 Fed. Reg. 33803 (preamble to revised CZMA program regulations). However, changes not incorporated into the CMP, no matter how insignificant, may not be used for federal consistency purposes and may be subject to CZMA funding limitations. See sections on federal consistency and funding, below.

Where LIMs are not incorporated into the CMP, changes to those LIMs do not have to be submitted as program changes. Note however that if an unincorporated LIM, or a change to such a LIM, affects the approvability of a state's CMP, e.g., affects the state's consideration of the national interest in energy facility siting, then the state could submit the change for OCRM's review and/or the state might have to take remedial action through its oversight capabilities. In either case the state might be subject to possible program sanctions or program approval withdrawal.

Federal Consistency - Federal consistency applies to LIM enforceable policies, or any other state enforceable policies, that are incorporated into a state's CMP. Federal consistency does not apply to those policies, including to those that are LIMs, that are not incorporated.

Periodic (312) Evaluations - The state's oversight of local implementation of its CMP is subject to OCRM review and evaluation regardless of whether or not the LIMs are incorporated. If a local government takes action that affects the approved CMP, OCRM may include in its 312 evaluation finding as a necessary action that the state take remedial action through its oversight capabilities (the state could also submit the LIM as a program change for OCRM review). In either case the state might be subject to possible program sanctions or program approval withdrawal. OCRM will continue to evaluate the expenditure of CZMA funds by local governments, whether or not LIMs are incorporated into the state's CMP. OCRM has the responsibility to ensure that CZMA funds are used for the intended purpose, consistent with the state's CMP and the CZMA.

Funding Local Governments - The primary purpose of CZMA section 306 funds is to assist coastal states to administer and implement their CMPs. States must ensure that funds are available to implement CMP authorities, CZMA section 312 necessary actions and recommendations, and other CMP section 306 needs as negotiated by a state and OCRM as part of the grant negotiation process.

Subject to adequate state overview, and provided the activities support the effective development or implementation of the coastal management program, a state may allocate administrative grant funds to local governments to implement state coastal management program authorities that have met management control Technique A requirements (see 15 CFR § 923.42), where the state authorities are incorporated in the CMP (the LIMs that implement the authorities do not have to be incorporated in the CMP); other local activities that are identified in a state's federally approved coastal management program document or program approval findings as adequate to be management program implementation activities (another local government implementation activities may be funded, except for one-time projects discussed below); or one-time projects. One-time projects include demonstration projects such as one local government developing a comprehensive plan or ordinance as a model for other localities; development of local plans or ordinances which are expected to be incorporated in a coastal state's CMP; development of specialized one-time studies or projects e.g., hurricane evacuation plans and public access plans, etc.

States may allocate funds to local governments for section 306A projects if the projects meet the CZMA section 306A requirements and OCRM's Section 306A Guidance, and if the state is adequately funding the CMP and addressing any section 312 evaluation necessary actions.

Final Draft Guidance on Incorporation of 6217 Programs into a State's CMP

In 1993, OCRM and EPA stated in the Coastal Nonpoint Pollution Control Program Development and Approval Guidance that "when a state coastal nonpoint program receives final Federal approval, it will be incorporated automatically into the state's coastal management and nonpoint programs." OCRM has developed final draft guidance on incorporating state Coastal Nonpoint Pollution Control Programs (6217 programs) into a state's Coastal management program.

In October 1996 OCRM provided a draft of this guidance for state review and comment. Six states submitted comments. The final guidance was revised to address those comments. Because of the changes made to the draft OCRM provided states with the final draft for another review. Comments are due on May 9, 1997.

OCRM is allowing states to incorporate fully approvable 6217 program elements now, rather than waiting until final program approval, for several reasons. First, earlier incorporation of fully approved elements is an administrative convenience and will allow the state to apply the incorporated policies through its coastal management program, e.g., for federal consistency. Second, the time frame for full 6217 program approval is longer than envisioned in 1993 and states may want to incorporate fully approved elements now. Third, earlier incorporation of approvable elements into a state's CMP will streamline the approval process and reduce administrative burdens; and fourth, the state can capitalize on the current public review process. The guidance contains the following policy statements (in the final draft guidance there is also a discussion of each policy):

Policy 1 - The CZMA § 306(d)(16) requires that state CMPs contain enforceable policies and mechanisms to implement state 6217 programs. Thus, states shall incorporate 6217 program enforceable policies and mechanisms into their CMPs at the time of final 6217 program approval. Prior to final approval a state may choose to automatically incorporate those elements of a state's 6217 program that OCRM and EPA have approved (i.e., those that do not have conditions). Automatic incorporation does not apply to changes to state 6217 program elements made after OCRM's and EPA's final approval. States may also, at any time, submit 6217 program elements as a program change pursuant to the program change requirements under 15 C.F.R. part 923, subpart H, and OCRM's Program Change Guidance (July 1996).

Policy 2. Except for local government mechanisms which will be used to implement a state's 6217 program, see Policy 3, the only actions for a automatic incorporation required by the state are to: (1) identify those elements to be incorporated; (2) ensure that any new CMP enforceable policies are identified; and (3) notify OCRM, federal agencies, and other interested parties, of OCRM approval and the incorporation of the elements into the

state CMP.

Policy 3: For state 6217 enforceable elements that will be implemented by local governments, states must show, prior to automatic incorporation, that the local implementation mechanisms were developed pursuant to, and conform to, state standards and criteria, and that the state has the ability to ensure local compliance with the state's 6217 statutes or programs.

Policy 4: Water pollution control requirements of a state's 6217 program that were established pursuant to the Clean Water Act are automatically incorporated into the state's CMP upon promulgation of the state requirement and notification to OCRM and relevant federal agencies.

Policy 5: Only those 6217 program elements incorporated into a state's CMP and meeting the definition of enforceable policy under 16 U.S.C. § 1453(6a) may serve as a basis for state objections for federal consistency purposes.

Native Americans and Coastal Management Programs

Over the years states and Native American Tribes have asked whether Tribes are subject to federal consistency and whether Tribes could develop their own autonomous coastal management programs. As for federal consistency, OCRM has stated that Tribes are subject to federal consistency, but that the extent to which a Tribe must be consistent with specific state enforceable policies depends on federal law applicable to a particular Tribe. See Federal Consistency Bulletin No. 4, February 1996, at 6, for OCRM's view on the applicability of federal consistency to Native Americans.

As for whether a Tribe may develop an autonomous coastal management program, OCRM has stated in the past that the CZMA only allows coastal states and U.S. territories to develop coastal programs. Tribes may be part of and implement a part of a state's coastal management program (much like a regional agency). 15 C.F.R. § 923.92(b)(2). However, the Narragansett Tribe (Rhode Island) believes that the CZMA does allow Tribes to develop autonomous coastal management programs and has asked that OCRM make a new determination based on information to be provided by the Tribe. The Narragansett Tribe has also asked that OCRM provide more specific guidance on the application of federal consistency. In the coming months, OCRM will examine how to facilitate Tribal coastal management efforts.

OCRM/Corps O&M Draft Policy

The following draft policy on CZMA Consistency Compliance Requirements for Corps Operation & Maintenance (O&M) Projects was developed in a cooperative effort between OCRM and the Corps. It was sent to states and Corps districts for comment on March 27, 1997. Comments are due on May 9, 1997.

DRAFT
Revised: March 18, 1997
Coastal Zone Management Act
Consistency Compliance Requirements
for Corps of Engineers O&M Projects

This policy paper clarifies the responsibilities of the U.S. Army Corps of Engineers (Corps) for complying with section 307(c) of the Coastal Zone Management Act (CZMA) when undertaking congressionally authorized operations and maintenance (O&M) activities at navigation projects. This policy paper does not change existing regulations, rather, it serves to compile and interpret those regulations and policies in the specific context of the Corps O&M navigation mission. The following are addressed:

Background
Authorities
Roles and Responsibilities of the Corps and State
Public Notification
State Conditional Concurrences
State Letters of Disagreement
Funding
Conflict Resolution

Background

1. Meeting the objectives of federally approved state coastal management programs (CMPs) while accomplishing the congressionally authorized navigation mission is an important goal of the Corps. Section 307(c) of the CZMA was established in 1972, among other things, to require that Federal activities be conducted in a manner consistent to the "maximum extent practicable" with state CMPs.

2. The Corps fully supports conducting its activities in a manner that is consistent to the maximum extent practicable with enforceable policies of state CMPs. However, Corps project managers often have difficulty meeting state CMP requirements within navigation project maintenance schedules established by the Congress through the budget process. Also, the Corps may not have the authority or discretion to comply with some state CMP requirements. Thus, the purpose of this policy paper is to provide specific guidance on how the Corps can effectively and efficiently accomplish its mission and comply with CZMA requirements.

3. Corps compliance with state CMP policies may be prohibited by other federal law or compliance may be difficult given limited Corps discretion. For example, the State of Texas requires that dredged material from certain navigation projects be used for beneficial purposes. The State of Louisiana has a similar policy and is applying it to the designation for the Atchafalaya River ocean disposal site final designation. New

Jersey is applying its CMP water quality policies to an ocean disposal site consistency determination (the "Mud Dump" site), and Florida has long held that the Corps must place all suitable dredged material on coastal beaches at federal expense. The consistency regulations are specific about timeframes and when the process concludes. Delaying federal action beyond the required timeframes, when there is an issue between the Corps and the state, is encouraged if there is a reasonable chance that the issue will be resolved and the state will then agree with the Corps' consistency determination. At any rate, after the statutory 90-day period the Corps may proceed with a direct federal activity over a state CMP agency's disagreement if the Corps provides the state with the legal requirements that prohibit Corps compliance with the state CMP. In addition to clarifying this requirement, the intent of this policy document is also to encourage earlier coordination between the Corps and the states. Other congressional authorizations and appropriations may also address these issues.

Authorities

1. CZMA section 307(c)(2) requires that any federal agency proposing development projects in the coastal zone of a state insure that those projects are conducted consistent to the maximum extent practicable with the enforceable policies of state CMPs. The term "consistent to the maximum extent practicable," means that proposed Corps projects must be fully consistent with state CMPs unless compliance is prohibited based upon the requirements of existing law applicable to Corps operations. See 15 CFR § 930.32. The word "practicable" within the definition means capable of being done. When modified by the phrase "to the maximum extent," the complete term means to the fullest degree permitted by existing law. If the Corps believes that a state's recommendations for making a project consistent exceed the Corps' authority, with respect to either authorization or appropriation, then the Corps has complied to the maximum extent practicable. Letter from Douglas A. Riggs, General Counsel, U.S. Dept. of Commerce, to Corps (Aug. 20, 1986, page 3 of enclosure to the letter). Determining whether state CMP compliance recommendations exceed either authorization or appropriation for a congressionally authorized navigation project is a Corps responsibility.

2. In addition, CZMA section 307(e)(1) provides that CZMA requirements cannot diminish Corps jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor limit the authority of Congress to authorize and fund projects. This section ties in with the concept of consistent to the maximum extent practicable.

3. CZMA section 307(f) provides that CZMA requirements shall not in any way affect any requirement established under the Clean Water Act (CWA) or any requirement established by the Corps or any state or local government pursuant to the CWA. Such federal, state and local water pollution control requirements shall be incorporated in state CMPs and shall be the water pollution control requirements applicable to such program. When the Corps prepares a CWA section 404(b)(1) evaluation report, it must include an analysis of alternatives. The alternatives analysis must consider state CMPs. See 40 CFR § 230.10(a)(5). Thus, Corps activities must be conducted consistent with state and local government water pollution control requirements so long as compliance is not prohibited by CWA section 404 water pollution control requirements.

Roles and Responsibilities of the Corps and State

1. Corps regulations at 33 CFR § 336.1(b)(9) require that the Corps provide the CWA public notice and any additional information the district engineer determines appropriate in support of the consistency determination. Usually, the 404(b)(1) evaluation report and the National Environmental Policy Act document, if one is necessary, are sufficient to satisfy the Corps consistency determination. If a state CMP agency believes that additional information is necessary it should immediately notify the district engineer. The district engineer will attempt to satisfy the state's request for additional information or negotiate a resolution. The Corps and the state CMP should coordinate as early as practicable before beginning the O&M project. Early coordination will help the Corps identify state concerns and policies and address such concerns and policies to the extent practicable early in the Corps environmental compliance process. This will help eliminate conflict and avoid delays and costs due to delays.

2. Consistency determinations must be provided by the Corps to the state CMP at the earliest practicable time, but at least 90 days before initiation of the O&M project. 15 CFR § 930.34(b). The content of a consistency determination shall include a brief statement of consistency, an evaluation of the relevant CMP policies, a detailed description of the activity, its associated facilities, their coastal effects and comprehensive data and information sufficient to support the determination. 15 CFR § 930.39(a). The Corps may provide this information in any manner it chooses so long as the requirements of 15 CFR part 930, subpart C are met. This information and analysis could be combined with an environmental analysis under the National Environmental Policy Act or CWA 404(b)(1) guidelines.

3. If the state agency response is not developed and issued within the initial 45 day period, the state must notify the Corps of the basis for the delay and request an extension of time. The Corps can presume agreement if the state agency fails to provide a response or request an extension within the 45 day period. If requested within the time period, the Corps shall grant a 15 day extension. 15 CFR § 930.41(b). See also 33 CFR § 336.1(b)(9)(iv). In the case of complex or large projects, longer extensions should be granted. Extensions beyond six months should be granted only in rare and unusual circumstances.

Public Notification

1. CZMA section 306(d)(14) requires the state CMP agency to provide timely public notice of requested consistency determinations. The Corps cannot be required to publish or pay for the state public notice. However, consistency determination requests are routinely included in the public notice for the Corps project to avoid duplication and unnecessary delay. See, e.g., 15 CFR § 930.61. Corps public notices that incorporate the notification requirements of the CZMA will include the information identified at 33 CFR § 337.1(a)(11). That information is generally adequate to meet the states' CZMA public notification requirements.

2. State agency review will commence when the state CMP receives the Corps consistency determination and information required by 15 CFR § 930.39(a). Normally the public notice with the information requested at 33 CFR § 337.1(a)(11), and other supporting information the district engineer determines necessary for the state to determine if the proposed project is consistent to the maximum extent practicable with the state CMP is sufficient. A state agency request for information or data in addition to that required at 15 CFR § 930.39(a), does not extend the date of commencement of state agency review.

State Conditional Concurrences

The CZMA does not authorize the states to enforce conditional concurrences unilaterally; rather, the CZMA requires the state to concur or disagree with a consistency determination. The National Oceanic and Atmospheric Administration (NOAA) regulations do not contemplate a conditional concurrence unless the Corps agrees to the conditions. However, states must identify, as part of a state disagreement to a consistency determination, alternative measures (if any) which would make the Corps project consistent to the maximum extent practicable with the management program. 15 CFR § 930.42(a).

State Letters of Disagreement

In those cases where the state agency disagrees with the Corps consistency determination, NOAA regulations provide two alternative ways a state may disagree. See 15 CFR § 930.42(a) and (b).

1. **Disagreement as to the Consistency of the Activity.** A state may disagree that the activity is consistent to the maximum extent practicable with its CMP. The state must include the following information in its response:

a. **The Disagreement Must be Based on Enforceable Policies.** Only enforceable policies incorporated into a state's CMP may be used to disagree with a proposed activity. The disagreement letter should cite and describe the applicable enforceable policies. CZMA § 307(c)(1)(A); 15 CFR § 930.42(a).

b. **The Disagreement Letter Must Describe How the Activity is Inconsistent.** There must be a description of how a project is inconsistent with enforceable policies. 15 CFR § 930.42(a).

c. **The Disagreement Must be Timely.** A disagreement letter should verify when the consistency review of the complete consistency determination and necessary information began. A decision on a consistency determination must be made within 45 days from the date the consistency determination and necessary information was received, unless the review period has been extended. If the consistency review of the Corps activity is to extend beyond 45 days the Corps must be notified in writing. 15 CFR § 930.41.

d. **Consistent Alternatives Must be Identified and Discussed.** A disagreement letter must include alternatives, if any, that would be consistent with the state's CMP. 15 CFR § 930.42(a).

2. **Disagreement Based on Insufficient Information.** Disagreement letters must describe the information needed and why it is needed if the disagreement is based on insufficient information. The state may disagree with a project based on insufficient information if the Corps has failed, following a written request, to provide the required information. If disagreement is based on insufficient information the disagreement letter must describe the nature of the information requested and the necessity of having that information to determine consistency. 15 CFR § 930.42(b).

3. **Disagreement Letters Must be Sent to the Corps and the Director of the Office of Ocean and Coastal Resource Management in Washington, DC and Silver Spring, MD, respectively.** 15 CFR § 930.42(c).

Funding

1. The Corps may allocate funds to comply with state CMP requirements that are consistent with Corps authorities and congressional funding for specific navigation projects. If the district engineer determines that the state recommendations to achieve consistency exceed either the authority or funding for a project, the district engineer will so notify the state indicating that the Corps has complied to the maximum extent practicable with the state's CMP. 33 CFR § 336.1(b)(9)(v).

2. In those cases where the district engineer determines that state recommendations exceed either the Corps' authority, or congressional funding for a project, the district engineer will determine whether funding from continuing authorities or Water Resources Development Acts (WRDA) are available to meet state CMP requirements. Authorities particularly applicable to meeting state CMP requirements are the authority to beneficially use dredged material to protect, restore, and establish aquatic and related habitat provided by section 204 of WRDA 1992, as amended, and the authority to place dredged material on beaches provided by section 145 of WRDA 1976,

as amended. A determination by the district engineer regarding the use of such authorities will occur concurrent with and not extend the time period for state agency review. Thus, early coordination with the state may be necessary to determine the need for or availability of additional authorities or funding to bring a project into consistency with the CMP. If funds and alternative cost-sharing programs are not available or appropriate, as determined by the district engineer, the Corps will request that the state fund the additional expense, see 33 CFR § 337.2(b)(2), or the district engineer will notify the state that the Corps has complied to the maximum extent practicable with the state's CMP. If the state CMP agency agrees to fund the additional cost, the Corps will comply with the requirement.

3. In cases where the Corps and state CMP agency cannot reach agreement and no other funding sources are available, the district engineer may defer dredging using the procedures of 33 CFR § 337.8, or the district engineer may proceed with the activity if the district engineer describes to the state CMP agency the legal authority which limits the Corps' discretion to comply with the CMP's requirements. See 15 CFR § 930.32(a).

4. In those cases where the project has a local sponsor and the Corps and state CMP agency cannot reach agreement and no other funding sources are available, the district engineer may request the local sponsor fund the additional requirement. 33 CFR § 337.2(b)(2).

Conflict Resolution

If the Corps and a state CMP agency disagree as to the application of the CZMA Federal consistency requirement to Corps O&M projects they should attempt to expeditiously resolve their differences. If the Corps and the state CMP agency cannot reach agreement, either party may request that NOAA's Office of Ocean and Coastal Resource Management informally facilitate settlement of the dispute. See 15 CFR § 930.111. Either party may also request that the U.S. Secretary of Commerce mediate a serious disagreement between the Corps and a state (a more formal procedure). See 15 CFR part 930, subpart G.

Update on CZMA Section 306(d)(14): Public Participation for State Reviews of Direct Federal Activities

As noted in previous Bulletins, state CMPs must now provide for public participation in permitting processes, consistency determinations and other similar decisions. Many states have submitted proposed public participation procedures for OCRM review. States that have not submitted their procedures to OCRM should do so as soon as possible.

Approved state procedures include publication in local newspapers, state environmental mailings to interested parties (state and local government agencies and other interest groups) including the items on the agenda of state coastal commissions, etc. In all cases the public notice makes it clear that the public is invited to comment on the state CMP's review of whether a federal activity is consistent with the state CMP.

Consistency Internet Bulletin Board.

OCRM has developed an Internet consistency home page and bulletin board. The home page provides some brief information on federal consistency. The bulletin board will allow OCRM to quickly, and briefly, notify the coastal management community of current federal consistency issues. The homepage and bulletin board are in an infancy stage. OCRM hopes to keep the bulletin board updated this year. The bulletin board can be accessed from the OCRM home page at: **<http://www.nos.noaa.gov/ocrm>** or directly at: **<http://www.nos.noaa.gov/ocrm/czm/federal_consistency.html>**

National Federal Consistency Meeting

OCRM is considering holding a national federal consistency meeting in 1998. The purpose of the meeting would be to bring state coastal management program federal consistency staff, federal agencies and OCRM together to address a range of federal consistency issues, including revised federal consistency regulations. Meeting sessions would address the revised regulations, improving communication and cooperation between states and federal agencies, and resolving specific consistency issues between states and federal agencies. States, federal agencies and OCRM too often address consistency issues in a reactionary manner. While OCRM's regional federal consistency workshops have helped improve coordination and educated federal agencies and states on consistency requirements, a broader meeting would bring states and federal agencies together to develop proactive policy and agreements regarding federal consistency.

The meeting would be 2-3 days and would most likely be held in the Washington, D.C. area - Having the workshop in Washington will allow more OCRM and federal agency staff to attend. However, the workshop could be held outside the Washington area and be treated more as a working retreat. Funds will most likely not be available for 1997. However funds may be available for FY 1998. Any thoughts on such a meeting should be sent to OCRM's David Kaiser.

Secretarial Appeal Decisions

CZMA Consistency Appeal Decisions Since February 1996

Under CZMA § 307(c)(3), a state's consistency objection precludes a federal agency from issuing a permit for an activity

at issue unless, upon appeal by the appellant, the Secretary of Commerce finds that the activity is either consistent with the objectives of the CZMA (Ground I) or necessary in the interest of national security (Ground II). If the requirements of either Ground I or Ground II are met, the Secretary must override the state's objection. Since February 1996 the Secretary has issued the following consistency appeal decision to date.

Puerto Rico - Decision and Findings in the Consistency Appeal of Vieques Marine Laboratories, May 28, 1996.

On May 28, 1996, the Secretary declined to override the Commonwealth of Puerto Rico's consistency objection to the Vieques Marine Laboratories (VML) proposed shrimp mariculture project. VML planned to construct and operate a shrimp mariculture farm in the submerged lands and waters of Puerto Ferro Bay on the Island of Vieques. The shrimp farm operation would have involved the maintenance in floating cages of approximately 37,500 pounds of a species of shrimp exotic to the waters of the Bay. VML needed approval, under section 10 of the Rivers and Harbors Act, from the U.S. Army Corps of Engineers for the project. Of specific concern to the Commonwealth of Puerto Rico in making its objection was that VML's proposed project would jeopardize the ecological communities in and close to the area by virtue of introducing exotic species, and would also affect the water quality of the Bay by the increase of nutrients from food and animal waste resulting from the concentrated culture of shrimp. The Secretary concluded that the adverse coastal effects of the proposed activity outweigh the activity's contribution to the national interest. The Secretary also concluded that no national defense or other national security interest would be significantly impaired if VML were not allowed to proceed with its proposed activity.

Pending Consistency Appeals

(As of April 1, 1997)

Appellant	Activity	State
Texasgulf	Phosphate Mining	NC
Joseph Mattone	Construction of seawall and Placement of fill	NY
Jessie Taylor	Placement of fill	SC
Jose Gregory	Mooring piles	PR
Margaret Bryan	Placement of fill	SC

For further information on appeals call Roger Eckert, NOAA Office of General Counsel for Ocean Services, (301) 713-2967, ext. 213.

Federal Consistency Bulletin Board

The Consistency Bulletin Board provides states, OCRM, and other parties the opportunity to alert readers to upcoming events, various issues, request information from other states on a federal consistency issue, transfer ideas, etc.

After reading this Bulletin, include it in your Federal Consistency Workbook with the other Bulletins

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Federal Consistency Internet Addresses

OCRM has listed the Internet addresses for OCRM staff and state coastal management program managers on the OCRM home page: **<http://www.nos.noaa.gov/ocrm/email.html>**. We also want to include a federal consistency contact Internet address list (especially for state coastal programs). If you have an Internet address, please send it to OCRM at: **<dkaiser@coasts.nos.noaa.gov>**.

Three state coastal managers who have played a significant role in federal consistency over the years have moved on to other activities. These three people made substantial contributions to the implementation of federal consistency for their respective states and nationally.

Wayne Beam, long time South Carolina coastal program manager and a leader in the national coastal management community, retired from state government. Wayne continues to be involved in coastal management as a consultant and continues to teach at the University of South Carolina.

Gabriela Goldfarb, Federal Programs Manager, with the California Coastal Commission for several years, was instrumental in furthering California's coastal management and federal consistency interests and was an effective advocate for coastal management at the national level. Gabriela has moved on to the world of non-profits where she is the Deputy Director of *For the Sake of the Salmon*, in Portland Oregon. Gabriela's replacement is **Ms. Jaime Kooser**, formerly with the Washington State Department of Ecology.

Bryan Cullen, staff attorney with New York's Department of State (New York's coastal program), used his effective legal and negotiation abilities to further New York coastal management program's objectives. Often working "behind the scenes" Bryan successfully furthered New York's interests with federal agencies. Bryan was also very active nationally through

the Coastal States Organization's Legal Counsel (he was a past chair of the CSO Legal Counsel). Bryan continues to work with the New York Department of State on other legal matters.

Wayne, Gabriela, and Bryan will be missed and OCRM wishes them luck in their new endeavors.

New Coastal States Organization (CSO) Executive Director

Tony McDonald is the new CSO Executive Director, replacing David Slade. Tony was formerly with the American Association of Port Authorities. OCRM looks forward to working with Tony on many upcoming coastal management issues.

OCRM's Coastal Programs Division Staff. CPD has been recently reorganized. The office now consists of:

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